SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 16, 1998 Revised: ________ ________ ________ ________

Subject: Shipment of Wine

	Analyst	Staff Director	Reference	Action
1.	Matthews	Guthrie	RI	Favorable/CS
2.			WM	
3.				
4.				
5.				

I. Summary:

This bill amends the Florida Beverage Law. It allows a maximum of 4 cases of wine per year to be shipped directly to a registered person from licensed out-of-state shippers. The bill also imposes a number of restrictions regarding licensure, limitations on shipment, monthly reports to the Division of Alcoholic Beverages and Tobacco (division), monthly payment of excise and sales and use taxes to the Department of Revenue and the division, jurisdictional enforcement, and person's registration with the division. The bill exempts charitable organizations from the imposition of excise and sales and use taxes on sales of wine shipped from out-of-state, subject to certain requirements. The bill creates new offenses and corresponding civil and criminal penalties for violations under this act. Lastly, the bill excludes from certain prohibitions against shipments and delivery of alcoholic beverages under ss. 561.54, and 561.545, F.S., direct shipments of wine made in accordance with the newly created s. 561.59, F.S.

This bill substantially amends the following sections of the Florida Statutes: 561.54 and 561.545. This bill also creates section 561.59, F.S.

II. Present Situation:

The Florida Beverage Law generally requires alcoholic beverages to move through 3 separate regulated tiers — manufacturer, wholesaler, and retailer — before reaching consumers. The current Florida Beverage Law consists of chapter 561 relating to administration, chapter 562 relating to enforcement, chapters 563, 564, and 565 relating to beer, wine and liquor; and chapters 567 and 568 relating to wet and dry county elections. A person must be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages from out-of-state to any person or corporation in the state.

In recent years, the Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation, the Department of Revenue, and the Office of the Attorney General, have raised concerns about the expansion of direct mail-order sales and shipment of alcoholic beverages by out-of-state suppliers into the state. Sales of this nature bypass the state's regulatory and tax collection procedures and have been difficult to enforce.

In response to these concerns, the Legislature substantially amended the Florida Beverage Law during the 1997 session. Specifically, ch. 97-213, F.S.:

- created felony offenses for the knowing and intentional shipment of alcoholic beverage from out-of-state to a Florida consumer, (s. 561.545, F.S.)

- required malt beverages brought into the state to "come-to-rest" with a wholesaler prior to the sale or delivery to a retailer and created a felony offense for violation thereof, (s. 561.5101, F.S.)

- granted legal standing to any licensee to sue for injunctive and declaratory relief, and provided treble damages award to the state and recovery of costs and attorney's fees to a successful plaintiff (s. 561.54, F.S.),

- prohibited wine manufacturers from being licensed as wholesale distributors, but provided a grandfather clause to exempt those holding such licenses on April 1, 1997, and those certified as Florida Farm Wineries, (s. 561.24, F.S.),

- excluded sellers of cider from licensure requirements, and allowed cider to be sold from malt beverage delivery vehicles (s. 561.68, F.S.),

- repealed the alcoholic beverage surcharge in s. 561.501, F.S., effective July 1, 1999, contingent upon collection of more than $535 million in excise tax revenue,

- reduced the surcharge rate on cider from $0.10 per 4 ounce serving to $0.06 per 12 ounce serving (s. 561.501, F.S.), and

- appropriated $10 million from excise tax collections annually to the Children and Adolescent Substance Abuse Trust Fund that funds certain programs of the Department of Children and Family Services (s. 561.121, F.S.).

Proponents of the legislation argued that it would remove inequities between Florida manufacturers, distributors, and retailers who are subject to licensure, regulatory and tax requirements, and out-of-state shippers who do not adhere to the same requirements. Opponents of the legislation claimed that the regulatory structure was anti-competitive and that it would limit consumer choice.

Recently, the U.S. Supreme Court denied certiorari to review an 11th Circuit Court of Appeal ruling that upheld the federal district court's dismissal, for lack of subject matter jurisdiction, of a 1995 lawsuit filed by the Florida Attorney General and Division of Alcoholic Beverages and Tobacco against several out-of-state suppliers. (*See, State of Florida, Dept. of Business and Professional Regulation v. Zachy's Wines and Liquors, Inc., et al.*, 125 F.3d 1399 (11th Circuit 1997), cert. denied, ___ U.S. ___ (1998). The federal lawsuit pre-dated the 1996 law. It claimed, among other charges, that the defendants violated state laws relating to the importation, distribution and sale of alcoholic beverages and collection and payment of state licenses fees, excise taxes, and sales taxes when selling or shipping alcoholic beverages directly to Florida consumers. In dismissing the federal complaint, the appellate court noted that the state still had legal recourse to enforce liquor laws in state court. A similar lawsuit was filed by the Attorney General and the division in state court, alleging that out-of-state shippers of wine were violating state laws by bypassing the state's regulatory and tax collection procedures. The case was dismissed in December 1997, and subsequently appealed to the First District Court of Appeal, where the parties are awaiting a date for oral argument. (*See, State of Florida, Dept. of Business and Professional Regulation v. Sam's Wines & Liquors, et al.*, 96-3602, Fla. 2nd Cir., Leon County.)

III. Effect of Proposed Changes:

Section 1 creates s. 561.59, F.S., relating to the direct shipment of wine from out-of-state. A firm, corporation, or other entity licensed as an out-of-state shipper may ship wine directly to any person registered under this section who is at least 21 years of age, provided that the wine is for personal use only and not for resale. To obtain an out-of-state shipper license, the applicant must: a) obtain and maintain a current license as a primary American source of supply, as provided in s. 564.045, F.S.; b) provide to the division a true copy of a current alcoholic beverage license issued by another state; and c) pay a $100 registration fee. A shipper may renew annually its out-of-state shipper's license upon fee payment of $100, and submission of a true copy of its current alcoholic beverage license issued by another state.

Additionally, this section:

- limits direct shipments of wine from an out-of-state shipper to 4 cases per year to the same registered person. A single case may not contain more than 9 liters of wine.

- requires that the outside label of each package containing wine shipped under this section conspicuously state in all caps "Signature of addressee age 21 or older required for delivery", and that, prior to delivery, the signature of the registered addressee is obtained after presentation of one of several forms of identification.

- requires that each out-of-state shipper report monthly to the division the total amount of wine by type shipped into the state during the preceding month.

- requires that each out-of-state shipper pay monthly all sales and use taxes to the Department of Revenue and all excise taxes to the division, calculating the amount of taxes as if the sale took place in the state where the delivery occurred. The out-of-state shipper must maintain records of all sales including the names, addresses, amounts and shipment dates to persons in this state, and must allow the Department of Revenue and the division to conduct audits of these records.

- deems each out-of-state shipper to have consented to the jurisdiction of the division and any other agency and state courts regarding enforcement of this section and related laws and regulations.

- requires persons to register with the division prior to obtaining direct shipments of wine from out-of-state. A person must file a sworn statement to include a full name, address of legal residence, mailing address, if different from street address, telephone number, proof of minimum legal age of 21, a statement that wine obtained under this section is for personal use only and not for resale, a statement that the person will obtain no more than 4 cases of wine per year from all out-of-state shippers combined, and any other information the division determines by rule to be necessary to carry out the registration provisions. A person must update the registration within 30 days of any change. A registration remains valid up to 5 years and expires on December 31 of the 5th year.

- exempts from excise and sales and use taxes any sales on wine shipped directly from out-of-state to a charitable organization for purposes of fundraising. A charitable organization means an organization that is tax exempt from federal income tax under section 501(c) of the Internal Revenue Code, and that is tax exempt under chapter 212, F.S., relating to sales tax. All proceeds and profits must be deposited with the charitable organization and any unsold bottles of wine returned to the out-of-state shipper.

- creates additional offenses and corresponding civil and criminal penalties:

  a) any out-of-state shipper in violation of this section is subject, in addition to existing criminal penalties under s. 561.545, F.S., to suspension or revocation of its out-of-state shipper's license, or alternatively, a fine by the Division;

  b) any out-of-state shipper who knowingly and intentionally ships or causes to be shipped directly any wine to any person in this state less than 21 years of age commits a third degree felony. This offense is punishable for a maximum sentence of 5 years imprisonment under s. 775.082, F.S., a maximum fine of $5,000 under s. 775.083, F.S. or a maximum sentence of 10 years imprisonment if determined a habitual felony offender, or minimum mandatory sentence of 10 years not to exceed 15 years if determined a habitual violent felony offender under s. 775.084, F.S.;

  c) any common carrier or permit carrier or any operator of a privately owned car, truck, bus, or other conveyance who knowingly and intentionally transports directly any wine to any person in this state less than 21 years of age commits a third degree felony. This offense is punishable for a maximum sentence of 5 years imprisonment under s. 775.082, F.S., a maximum fine of $5,000 under s. 775.083, F.S. or a maximum sentence of 10 years imprisonment if determined a habitual felony offender, or minimum mandatory sentence of 10 years not to exceed 15 years if determined a habitual violent felony offender under s. 775.084, F.S.; and

d) any person who obtains wine from an out-of-state shipper in violation of this section commits a second degree misdemeanor, punishable as provided in s. 775.082 by a term not to exceed 1 year of imprisonment, or as provided in s. 775.083, F.S., by a fine not to exceed $500.00;

Section 3 amends s. 561.54, F.S., relating to the prohibition against certain deliveries of alcoholic beverages, to exempt direct shipments of wine to persons within the state made in accordance with s. 561.59, F.S.

Section 4 amends s. 561,545, F.S., relating to the prohibition against certain shipments of alcoholic beverages, to exempt direct shipments of wine to persons within the state made in accordance with s. 561.59, F.S.

Section 5 provides that the act becomes effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Collection of sales and use taxes on direct-shipped wine will remain difficult to enforce. According to the division, it is not known how many out-of-state shippers actually exist and would comply with the direct shipment of wine provisions, thus the fiscal impact is indeterminate. The fiscal impact of exempting the excise and sales and use tax exemptions on any sales of wine shipped directly from out-of-state to a charitable organization is yet indeterminate.

B. Private Sector Impact:

This bill will benefit consumers and direct out-of-state shippers who avail themselves of wine shipments from out-of-state. The bill will adversely impact in-state retailers and distributors who must adhere to all of the state’s regulatory and tax laws.

C. Government Sector Impact:

The division anticipates that it will need additional FTE’s and appropriations to implement the licensure, registration, audit, and enforcement provisions of the bill. The division anticipates, at a minimum, the need for the following:

- A minimum of 37 FTE positions at an estimated cost of $1,002,000 and 15 OPS positions for the first year at an estiamted cost of $320,000 to implement the licensure provisions.

- A minimum of 15 FTE positions at an estimated cost of $584,823 to implement the audit provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.