

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Regulated Industries Committee

BILL: SB 944

SPONSOR: Senator Geller

SUBJECT: Wine Shipments

DATE: March 23, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>GE</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill legalizes the direct shipment of wine to Florida consumers by out-of-state state wine manufacturers. It requires that out-of-state wine manufacturers must be licensed by the Division of Alcoholic Beverage and Tobacco within the Department of Business and Professional Regulation, and may only ship wine to a person who is 21 years of age or older and is registered with the division to receive the shipment for that resident's personal use and not for resale.

A licensed out-of-state shipper must:

- Obtain and maintain a current license as a primary American source of supply under s. 564.045, F.S.,
- Provide to the division a true and correct copy of its current alcoholic beverage license issued by another state,
- Pay a registration and annual renewal fee of \$100,
- Comply with the labeling requirements in the bill, and
- Require proof of age and the signature of the addressee before delivery.

The bill provides that, by obtaining an out-of-state shippers license, a licensee consents to the jurisdiction of the division, any other state agency, and the courts of this state concerning compliance with this section and related laws and rules.

Florida consumers who register to receive wine shipments must also provide a statement that they will obtain a maximum of four cases of wine per calendar year from all out-of-state shippers combined. The bill provides that a person registered under this section, while physically present as an out-of-state winery, may purchase and have shipped to this state no more than two cases of

wine per calendar year for personal use only. The winery must also be licensed by Florida as an out-of-state shipper.

The bill requires that direct shippers pay all applicable sales and excise taxes on wine dues on sales to persons in this state for the preceding month. It requires that the amount of the taxes be calculated as if the sale took place at the location where the delivery occurred in this state. The bill provides monthly reporting requirements and a record keeping requirement. It also requires that out-of-state shippers submit to audits by the Department of Revenue or the Division of Alcoholic Beverage and Tobacco.

The bill provides for suspending or revoking an out-of-state shipper's license or imposing fines for violations. It also provides third degree felony violations for out-of-state shippers and common carriers that sell or give wine to any person in this state who is younger than 21 years of age. It also provides a second degree misdemeanor for any person who obtains wine from an out-of-state shipper in violation of this section.

The bill provides an exemption from excise and sales taxes for a charitable organization on any sales of wine obtained from an out-of-state shipper under this section for the purposes of fundraising if all proceeds and profits are deposited with the organization.

The bill provides exemptions for the direct shippers from the direct shipment prohibitions in ss. 561.54 and 561.545, F.S.

The bill would take effect upon becoming law.

This bill creates section 561.585, Florida Statutes. This bill substantially amends sections 561.54 and 561.545, Florida Statutes.

II. Present Situation:

Florida's Three-Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the "three-tier system." The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is also deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹

There are some exceptions to this regulatory system, usually for special circumstances. Typically the exemptions include allowing beer brewpubs to manufacture malt beverages and to sell them

¹ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: <http://www.wsba.org/media/publications/barnews/2004/june-04-price.htm> (last visited September 20, 2005).

to consumers,² allowing individuals to bring small quantities of alcohol back from trips out-of-state,³ and allowing in-state wineries to manufacture and sell directly to consumers.⁴

In Florida, alcoholic beverages are regulated by the Beverage Law.⁵ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.⁶ The Division of Alcoholic Beverage and Tobacco within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.⁷

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁸ Manufacturers of wine may not be licensed as a distributor.⁹ Florida law also prohibits any distributor or vendor from having an interest in any manufacturer.¹⁰

In *Granholm v. Heald* (*Granholm*),¹¹ the U.S. Supreme Court held that states can regulate alcoholic beverages through a three-tier system, but states cannot provide an exception to that system that is limited to in-state businesses, i.e., in-state wine manufacturers.

Sales, by out-of-state alcoholic beverage manufacturers and retailers to consumers in another state, made outside established three-tier systems are commonly termed “direct shipment.” The term also includes sales made directly to consumers by in-state manufacturers.

Granholm vs. Heald

In *Granholm v. Heald*, consolidated cases from Michigan and New York, the U.S. Supreme Court held that a state cannot allow in-state wineries to sell wine directly to consumers in that state while simultaneously prohibiting out-of-state wineries from also selling wine directly to consumers. The decision invalidated laws in Michigan and New York that discriminated between in-state and out-of-state wine manufacturers in this manner.

Michigan and New York regulate the sale and importation of wine through three-tier systems and require separate licenses for manufacturers, wholesalers, and retailers. These schemes allow in-state, but not out-of-state, wineries to make direct sales to consumers. The Court held that this differential treatment violated the Commerce Clause, Art.I, s. 8, cl. 3 of the U.S. Constitution,

² See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

³ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

⁴ See s. 561.221, F.S.

⁵ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. See s. 561.01(6), F.S.

⁶ See s. 561.14, F.S.

⁷ Section 561.02, F.S.

⁸ Section 561.14(3), F.S. However, see discussion below regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁹ See s. 561.24, F.S. However, see discussion below regarding the exception for Florida manufacturers of wine in s. 561.221, F.S.

¹⁰ See s. 561.42, F.S.

¹¹ *Granholm v. Heald*, 544 U.S. 460 (2005).

which provides that “[t]he Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”

Michigan Law

Under Michigan law, wine producers must distribute their wine through wholesalers. Michigan has an exception for the approximately 40 in-state wineries that are eligible for a wine maker license that allows the direct shipment of wine to in-state consumers. Out-of-state wineries can apply for an out-of-state seller of wine license that allows them to sell to in-state wholesalers, but not directly to Michigan consumers.

In the Michigan case, Michigan residents, joined by an out-of-state winery, sued Michigan officials, claiming that the state’s laws violated the Commerce Clause. The state and an in-state wholesalers association responded that the direct shipment ban was a valid exercise of Michigan’s power under the Twenty-first Amendment of the U.S. Constitution. The Twenty-first Amendment provides in section 2 that “[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the law thereof, is hereby prohibited.” The United States District Court for the Eastern District of Michigan sustained the scheme, but the Sixth Circuit reversed,¹² rejecting the argument that the Twenty-first Amendment immunizes state liquor laws from Commerce Clause provisions and holding that there was no showing that the state could not meet its policy objectives through nondiscriminatory means.

New York Law

New York’s licensing scheme is somewhat different from Michigan’s. It also provides for distribution through the three-tier system and makes exceptions for in-state farm wineries. Wineries that produce wine only from New York grapes can apply for a license that allows direct shipment to in-state consumers. An out-of-state winery may ship directly to consumers only if the winery becomes licensed as a New York Winery, establishes a distribution operation in New York, and has a physical presence in the state, i.e., a warehouse, office, or storeroom. Moreover, out-of-state wineries that establish the requisite in-state presence are still not eligible for the farm winery license that provides the most direct means of shipping to New York consumers. Instead, they must obtain a separate license that authorizes direct shipping to consumers. New York law does not require a separate direct shipping license for its farm wineries.

In the New York case, out-of-state wineries and their New York customers filed suit against state officials, seeking a declaration that the State’s direct shipment laws violated the Commerce Clause. State liquor wholesalers and retailers’ representatives joined in support of the state. The United States District Court for the Southern District of New York granted the plaintiffs’ summary judgment against the state, but the Second Circuit reversed, holding that New York’s laws fell within the state’s powers under the Twenty-first Amendment.¹³

¹² *Heald v. Engler*, 342 F.3d 517 (6th Cir. 2003).

¹³ *Swedenburg v. Kelly*, 358 F.3d 223 (2nd Cir. 2004).

Supreme Court Decision

The United States Supreme Court consolidated the Michigan and New York cases into a single case to address this issue:

Does a State regulatory scheme that permits in-state wineries to directly ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of Section 2 of the Twenty-first Amendment?

The U.S. Supreme Court held in *Granholm* that:

the laws in both States discriminate against interstate commerce in violation of the Commerce Clause, Art. I, s.8, cl. 3, [United States Constitution] and that the discrimination is neither authorized nor permitted by the Twenty-first Amendment. Accordingly, we affirm the judgment of the Court of Appeals for the Sixth Circuit, which invalidated the Michigan laws; and we reverse the judgment of the Court of Appeals for the Second Circuit, which upheld the New York laws.

Granholm explicitly noted that states may regulate the distribution and sale of wine via a three-tier system of licensed manufacturers, distributors, and retailers. The court also noted that states may prohibit the direct shipment of alcoholic beverages to consumers.¹⁴ However, states may not impose requirements on interstate commerce that discriminate in favor of in-state interests. States can regulate imported wine only to the same extent and in the same manner that they regulate domestically produced wine. The court applied the rule that the court must still consider whether a state's regulatory regime "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives."¹⁵

In *Granholm*, the court noted that New York could provide adequate safeguards for direct shipping of wine with licensing and self-reporting, because these methods were sufficient for wine distributed through the three-tier system. The court also noted that licensees could be required to submit regular sales reports and remit taxes. The court observed that licensing, reporting, and tax requirements have been used by other states that permit direct shipping and that these states have reported no problems with tax collection.¹⁶ The court also noted that this is the approach sanctioned by the National Conference of State Legislatures in their Model Direct Shipping Bill.

Florida's Direct Shipping Prohibition

Section 561.545(1), F.S., prohibits the direct shipping of all alcoholic beverages to consumers from out-of-state. It also prohibits common carriers from transporting alcoholic beverages from an out-of-state location to anyone in this state who does not hold a valid manufacturer, wholesaler, or exporter's license, or who is not a state-bonded warehouse.

¹⁴ The court's analysis is based, in part, upon the Webb-Kenyon Act, 27 U.S.C. s. 122, which prohibits the shipping of alcoholic beverages into a state in violation of that states laws, and Twenty First Amendment of the U.S. Constitution.

¹⁵ See *Granholm* at 1890, quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278 (1988).

¹⁶ See *Granholm* at 1906.

A first violation of this prohibition results in the issuance of an order to show cause why a cease and desist order should not be issued. A violation within two years of a cease and desist order, or within two years of a previous conviction, constitutes a felony of the third degree.

Section 561.545(5), F.S., provides an exception for the direct shipping of sacramental alcoholic beverages to bona fide religious organizations as authorized by the division. It also exempts registered exporters.

Section 561.54(1), F.S., prohibits deliveries of alcoholic beverages from out-of-state by common or permit carriers, operators of privately owned cars, trucks, buses, or other conveyances, except to manufacturers, wholesalers, or exporters, or bonded warehouses in this state. Section 561.54(2), F.S., provides a cause of action for any licensee who is aggrieved by a violation of this prohibition. The court must assess damages equal to three times the amount of delivery charges or the fair market value of the merchandise unlawfully brought into the state. The court must also award the plaintiff its costs and reasonable attorney's fees.

Florida's prohibition against direct shipping is limited to the direct shipping of alcoholic beverages from out-of-state to Florida; it does not prohibit direct shipping from a Florida winery to another state or from a Florida winery to a person in Florida.

Sales by Florida Wineries

Florida law provides an exception to the general prohibition against manufacturers of alcoholic beverages selling directly to consumers. Florida permits in-state wine¹⁷ manufacturers to sell their wines directly to consumers. The premises licensed to conduct vendor sales must be situated on property contiguous to the manufacturing process.¹⁸ Florida also permits wineries that are certified by the Department of Agriculture and Consumer Services as a Florida Farm Winery to conduct tastings and sales of wine directly to consumers at Florida fairs, trade shows, expositions, and festivals.¹⁹

Florida wine manufacturers may also function in all three tiers of the state's regulatory system. Wineries may distribute any alcoholic beverages, including beer and liquor.²⁰ Although s. 561.24, F.S., prohibits manufacturers from being licensed as a distributor, this prohibition does not apply to Florida wineries.

¹⁷ Section 564.01(1), F.S., defines the term "wine to mean:

all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

¹⁸ See s. 561.221(1), F.S.

¹⁹ See s. 561.221(2), F.S.

²⁰ See s. 561.14(1), F.S.

Certified Florida Farm Wineries

To qualify as a certified Florida Farm Winery, a winery must meet each of the following standards:

1. Produce or sell less than 250,000 gallons of wine annually.
2. Maintain a minimum of 10 acres of owned or managed vineyards in Florida.
3. Be open to the public for tours, tastings, and sales at least 30 hours each week.
4. Make annual application to the department for recognition as a Florida Farm Winery, on forms provided by the department.
5. Pay an annual application and registration fee of \$100.²¹

According to industry representatives, many Florida wines are blended with citrus or grapes grown outside the state. Current law does not require that wines from certified Florida Farm Wineries must consist of any particular percentage of Florida-grown grapes or other Florida-grown agriculture products.

Bainbridge v. Turner

Florida's direct shipping prohibition was challenged in the case of *Bainbridge v. Turner* (*Bainbridge*) by wine consumers and out-of-state wineries.²² This law suit challenged Florida's statutory scheme prohibiting out-of-state wineries from shipping their products directly to Florida consumers while permitting in-state wineries to do so.

Before the Supreme Court issued its decision in *Granholm*, the case resulted in two written federal appellate court opinions. In the first opinion, *Bainbridge v. Martelli* (*Bainbridge I*),²³ the United States District Court for the Middle District of Florida held that s. 561.54, F.S., and the statutory scheme that bars direct shipping violated the Commerce Clause. In *Bainbridge v. Turner* (*Bainbridge II*),²⁴ the Eleventh Circuit Court of Appeals held that, if Florida could demonstrate that its statutory scheme was closely related to raising revenue and is not a pretext to mere protectionism, Florida's statutory scheme could be upheld against a Commerce Clause challenge. The appellate court remanded the case to the district court for further consideration of this issue.

The case was held in abeyance because of the pending cases before the U.S. Supreme Court. On August 5, 2005, the United States District Court for the Middle District of Florida issued an order finding ss. 561.54(1)-(2) and 561.545(1), F.S., violated the Commerce Clause and were therefore unconstitutional under the authority in *Granholm*, and enjoined the enforcement of these provisions.²⁵ The court found that these statutes discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

²¹ See s. 599.004, F.S., which establishes the Florida Farm Winery program within the Department of Agriculture and Consumer Services.

²² *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla.).

²³ *Bainbridge v. Martell*, 148 F.Supp.2d 1306 (M.D. Fla. 2001).

²⁴ *Bainbridge v. Turner*, 311 F.3d 1104 (11th Cir. 2002).

²⁵ *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla. August 5, 2005).

Enforcement by the Division of Alcoholic Beverage and Tobacco

According to the DBPR, the *Bainbridge* final order bars the enforcement of ss. 561.54 and 561.545, F.S., against out-of-state wineries. According to the division, it is interpreting the *Bainbridge* order as applicable only to out-of-state wine manufacturers. The division initially advised that it intended to issue vendor permits to allow out-of-state wine manufactures that hold all current, valid federal permits to legally direct ship wines to Florida consumers, and that it did not intend to issue vendor permits to out-of-state retailers who wish to direct ship wines into the state. However, the division's response to the *Bainbridge* ruling on its Internet site does not reference any licensure requirement for out-of-state direct shippers of wine. It states that the ruling "precludes enforcement of the ban on direct wine shipments from non-Florida wineries to Florida consumers, but does "not limit the state's authority to collect taxes on wine or to enforce the prohibition of the sale of alcoholic beverages, including wine, to a person under the age of 21."²⁶ The division's statement on its website provides information for the payment of sales and excise taxes, the prohibition against sales in dry counties, and the underage sales prohibition.

According to the department, it has received excise tax payments from 14 direct shippers totaling \$200 since the department's response to the *Bainbridge* decision was posted on its website in mid-February, 2006.

Primary American Source of Supply Brand Registration

Section 564.045, F.S., requires registration of wine brands for the purpose of tax revenue control. Before being shipped, sold, or offered for sale to a distributor or importer in Florida, a wine brand must be registered by the brand's "primary American source of supply," which s. 564.045(1), F.S., defines as the:

manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

The annual license fee for each brand is \$15. All Florida wineries that conduct direct sales to consumers must register the brands they sell and pay the fee for each brand. According to the Wine Institute, some states require brands and labels to be registered before shipping those brands to consumers in the state.

Interim Project 2006-146

The Senate President approved Interim Project Report 2006-146 to study the issues presented by the direct shipment of wine to Florida consumers by unlicensed out-of-state persons. This study

²⁶ See http://www.myflorida.com/dbpr/abt/hot_topics/wine_shipment_into_florida.shtml. (Last visited March 9, 2006.)

included a review of the status of the current law and surveying the concerns of the affected interests.²⁷ The interim project resulted in the recommendation that the legislature either continue to prohibit all direct shipment of wines into Florida and eliminate the ability of in-state wine manufacturers to sell wine directly to consumers, or legalize the direct shipment of wine and regulate the practice.

The study recommended that a single license classification to license out-of-state and in-state direct shippers of wines should be created and that, and that licensure should be required as a condition of legal direct shipping. The study recommended the following licensure options:

- Licensure may be limited to persons who operate a winery located in the United States and hold all state and federal permits necessary to operate the winery;
- The Legislature may permit persons operating a winery outside the United States to qualify for licensure;
- In addition, the Legislature may permit non-manufacturers, e.g., out-of-state retailers, to be licensed direct shippers; and
- If the Legislature opts to limit licensed direct shippers to wine manufacturers, it may require that a winery licensed as a direct shipper must produce or sell less than 250,000 gallons of wine annually.

In addition to licensure, the study recommended consideration of the following options for regulating direct shipment of wine:

- Require, as a condition of licensure, that out-of-state direct shippers must satisfy all of the minimum license qualification requirements required under the Beverage Law for a Florida alcoholic beverage license;
- Require, as a condition of licensure, that the license holder submit to the jurisdiction of the regulatory agency and the courts of this state in regards to compliance with the laws of this state;
- Limit direct shipment sales to sales for personal consumption, and prohibit the resale at retail of wines purchased directly from a direct shipper;
- Require age verification procedures for the point of delivery, point of sale, or both, that, at minimum, require that an adult provide proof of age with a valid photographic identification at the time of the delivery;
- Require that containers of wine shipped directly to consumers must be conspicuously labeled with words that identify them as containing alcohol requiring the signature of a person 21 years of age or older before delivery can be made;
- Impose specific shipping requirements on common carriers, including requiring that the common carrier must require that the recipient of wine provide proof of age, and that the recipient of the wine must sign an acknowledgment of receipt. The common carrier should also be required to refuse delivery if the recipient refuses to provide proof of age;
- Require that direct shippers remit to the state all applicable Florida excise and sales taxes;

²⁷ See Committee on Regulated Industries, *Direct Shipment of Wine to Florida Consumers*, report no. 2006-146, October 2005.

- Require that direct shippers register all wine brands before shipping, selling, or offering for sale any wine to a consumer in Florida;
- Require payment of a license fee comparable to the fee required for an in-state wine vendor;
- Require that direct shippers maintain records of sales and shipments of wine into Florida, and require that the direct shippers permit state regulators to have access to these records;
- Require that direct shippers pay all attorney's fees and costs in any action to collect unpaid taxes;
- Require monthly reporting to the Division of Alcoholic Beverage and Tobacco that details all shipment of wine made into Florida, including the number of bottles shipped, to whom the wine was shipped, the identity of the common carrier making the shipment, and the brands shipped.
- Require periodic audits of direct shippers by the division, that all required reports should be signed by a certified public accountant, or both; and
- Require that direct shippers pay all travel related costs necessary to conduct a compliance audit of an out-of-state direct shipper if the state auditor must travel out-of-state to conduct the audit.

III. Effect of Proposed Changes:

The bill creates s. 561.585, F.S., to legalize the direct shipment of wine, and to regulate the practice.

Licensure Requirement

The bill creates a license classification for an out-of-state shipper. It permits a person, firm, corporation, or other entity, if licensed under this section, to ship wine directly to any person in this state if the person is registered with the division to receive the shipment. A licensed out-of-state shipper may ship wine directly to any registered person in this state who is at least 21 years of age for that resident's personal use and not for resale.

An out-of-state shipper must obtain and maintain a current license as a primary American source of supply under s. 564.045, F.S. An out-of-state shipper must also provide to the division a true and correct copy of its current alcoholic beverage license issued by another state, and pay a registration fee of \$100. The license must be renewed annually with a renewal fee of \$100. A true and correct copy of its current alcoholic beverage license issued by another state must be provided to the division for renewal.

Limitation on Shipments

The bill provides that a person registered under this section, while physically present as an out-of-state winery may purchase and have shipped to this state no more than two cases of wine²⁸ per calendar year for personal use only. The winery must also be licensed by Florida as an out-of-state shipper. The bill provides that each case of wine may contain no more than nine liters of wine.

²⁸ There are 12 bottles of wine per case.

Consumer Registration Requirement

The bill requires that residents of this state register with the division before receiving any shipment of wine from an out-of-state direct shipper. Only persons 21 years of age or older may register. Wines received under this provision are limited for personal use only and not for resale. To register, a person must provide the division the following information:

- Full name;
- Address of legal residence, and mailing address, if different from street address;
- Telephone number;
- Proof that the person is at least 21 years of age;
- A statement that the wine obtained under this section is for personal use and not for resale;
- A statement that the person will obtain a maximum of four cases of wine per calendar year from all out-of-state shippers combined;
- Any other information that the division by rule deems necessary to adequately carry out the provisions of this section.

The bill requires that the registrant update the registration within 30 days of any change. Registrations are valid for a five-year period and expire on December 31 of the fifth year.

Jurisdiction

The bill provides that, by obtaining an out-of-state shippers license, a licensee consents to the jurisdiction of the division, any other state agency, and the courts of this state concerning compliance with this section and related laws and rules.

Age Verification

The bill requires that out-of-state shippers ensure that the outside shipping label of each package contain the following notice: “SIGNATURE OF ADDRESSEE AGE 21 OR OLDER REQUIRED FOR DELIVERY.” The out-of-state shipper must also obtain, before delivery, the signature of the addressee after presentation of a valid driver’s license or an identification card of an adult 21 years of age or older.

Quarterly Reporting

The out-of-state shipper must report quarterly to the division the total amount of wine by type shipped into the state during the preceding three months.

Tax Collection

The bill requires that direct shippers pay all applicable sales and excise taxes on wine dues on sales to persons in this state for the preceding month. It requires that the amount of the taxes be calculated as if the sale took place at the location where the delivery occurred in this state.

Recordkeeping and Auditing

The bill requires that out-of-state shippers maintain records of its direct shipments into this state, including the name, address, amount, and dates of all shipments to persons in this state. Out-of-state shippers must permit the Department of Revenue or the division, upon request, to audit the records of the out-of-state shippers.

Penalties

The bill provides that, in addition to the penalties provided in s. 561.545, F.S., the division may suspend or revoke an out-of-state shipper's license or impose fines for violation of this section.

The bill provides the following criminal penalties:

- A third degree felony for an out-of-state shipper who knowingly and intentionally ships, or causes to be shipped, wine to any person in this state who is younger than 21 years of age;
- A third degree felony for any common carrier, permit carrier, or operator of a privately owned car, truck, bus, or other conveyance who knowingly and willfully transports wine from an out-of-state location directly to any person in this state who is younger than 21 years of age; and
- A second degree misdemeanor for any person who obtains wine from an out-of-state shipper in violation of this section.

Other Shipping Provisions

The bill amends the shipping prohibitions in ss. 561.54 and 561.545, F.S., to exempt deliveries made under s. 561.585, F.S., by licensed out-of-state shippers or common carriers to persons over 21 years of age or older.

Effective Date

The bill would take effect upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill raises Commerce Clause concerns under the U.S. Constitution because it provides for the regulation of out-of-state direct shippers of wine in a manner that differs from the requirements imposed on in-state wineries. In *Granholm v. Heald*,²⁹ the U.S. Supreme Court held that laws in New York and Michigan that discriminated between in-state and out-of-state wineries in the regulation of the direct shipment of wine were unconstitutional. The Supreme Court held that these states' laws discriminated against interstate commerce in violation of the Commerce Clause, Art. I, s.8, cl. 3 of United States Constitution and that the discrimination is neither authorized nor permitted by the Twenty-first Amendment.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Direct shipper licensees would have to pay a \$100 license and a renewal fee of \$100. Direct shipper licenses would have to pay sales and excise taxes to the state.

C. Government Sector Impact:

The Revenue Estimating Conference concluded that license fees and tax revenues for this bill were negative indeterminate.

The department anticipates administration costs of \$2,829,420, plus additional costs to implement and maintain the licensing and registration process, the monthly tax reporting process, and audit process. The department maintains that there will be additional costs to implement and maintain the licensing and registration process, the monthly tax reporting and audit process, and to investigate and prosecute violations, including the hiring of additional personnel to perform these functions. The department advises that anticipated license fees and tax revenues will be insufficient to cover the anticipated administrative costs.

The department's cost estimate is based on the assumption that all of the current 4,017 federally licensed manufacturers will become licensed during the first year. The department's analysis sets forth the outer range of potential direct shipper licensees and tax revenue and does not reflect the department's actual expected number of direct shipper licensees, which the department is unable to estimate. According to the Wine Institute, a national association representing wine manufacturers, it anticipates that approximately three-fourths of its membership, or 600 wineries, would seek licensure in Florida as a direct shipper. This estimate is based on its experience in other states.

²⁹ *Granholm v. Heald*, S.Ct. 1885, 161 L.Ed.2d 796 (2005).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
