HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1217 Beverage Law
SPONSOR(S): Bogdanoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Business Regulation	(ref. removed)		
2) Jobs & Entrepreneurship Council		Livingston	Thorn
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

A recent U. S. Supreme Court ruling, *Granholm v. Heald,* struck down laws in Michigan and New York allowing in-state wineries to make direct deliveries of wine to consumers but prohibiting out-of-state wineries from making direct deliveries. The Court held that the laws in both states discriminated against interstate commerce to the benefit of in-state interests in violation of the Commerce Clause, Art. I, s. 8, cl. 3, and that the discrimination was neither authorized nor permitted by the Twenty-first Amendment which places the responsibility of controlling alcoholic beverage commerce upon the individual states for all activity within that state's borders. Subsequent to the *Granholm* decision, the U. S. District Court in Tampa ruled, in a Florida case, *Bainbridge v. Turner*, that ss. 561.54(1) and (2) and 561.545(1), F.S., also discriminated against out-of-state wine producers to the advantage of in-state wine producers and were unconstitutional under *Granholm*.

In response to the Granholm and Bainbridge decisions, the Department of Business and Professional Regulation (DBPR) began allowing out-of-state wine producers to make direct deliveries of wine to Florida consumers.

Both the Granholm and Bainbridge decisions addressed inequities with regard to direct shipments of wine. Sections 561.54 and 561.545, F.S., were the two statutory provisions ruled unconstitutional in Bainbridge. This bill amends both sections.

The bill creates s. 561.585, F.S. to provide the license and regulatory mechanism for the direct shipment of wine by licensed winery shippers into or within Florida for personal consumption. Among its provisions the bill specifies the qualifications for a winery shipper license, provides for labeling of packages and signature of recipient, provides for monthly reports, and requires payment of taxes.

Fiscal

The March 22, 2007, Revenue Estimating Conference (REC) adopted an indeterminate estimate. According to the Department of Business and Professional Regulation, the legislation will have a nonrecurring cost of $80,884 in Fiscal Year 2007-08 and $52,672 in Fiscal Year 2008-09. Recurring costs are estimated at $487,180 in Fiscal Year 2007-08 and will increase to an estimated $1,000,825 in subsequent years. These recurring costs include the funding of 17 full-time equivalent (FTE) positions to be located in the Division of Information Technology, the Division of Service Operations, the General Counsel's Office, and various sections within the Division of Alcoholic Beverages and Tobacco.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill creates licensure and regulatory requirements.

Ensure Lower Taxes - The bill creates a new winery shipper license fee in the amount of $250.

Safeguard Individual Liberty - Both commercial and individual freedom are expanded by allowing out-of-state, as well as in-state wineries, to sell wine directly to Florida consumers without the current restrictions of the three-tier system of alcoholic beverage distribution. In addition, the bill proposes to cure the Commerce Clause violations cited in the *Granholm* decision by the U. S. Supreme Court.

B. EFFECT OF PROPOSED CHANGES:

History of alcoholic beverage regulation

Methods of controlling alcoholic beverage commerce have varied from complete inaction to absolute prohibition. Adopted in 1920, the 18th Amendment to the U. S. Constitution ushered in prohibition by forbidding the manufacture, sale, transportation, importation and exportation of alcoholic beverages. The 21st Amendment to the U. S. Constitution, adopted in 1933, repealed prohibition. The 21st Amendment prohibits the transportation or importation into any state in violation of that state's laws and places the responsibility of controlling alcoholic beverage commerce upon the individual states for activity within that state's borders.

The Division of Alcoholic Beverages and Tobacco [Division] in the DBPR is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer to wholesale distributor to retailer, with the retail vendor making the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law.[1] Among those restrictions, s. 561.42, F.S., prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of any retail vendor. Section 561.22, F.S., provides that no manufacturer, distributor or exporter may be licensed as a retail vendor. This statute further provides that no vendor may also be licensed as a manufacturer, distributor or exporter. Section 561.24, F.S., provides that no manufacturer, rectifier or distiller of spirituous liquors or wine can be licensed as a distributor or be registered as an exporter.

Notwithstanding the overall premise, the Beverage Law contains a series of exceptions to the structured three-tiered distribution system. Included among those exceptions is authority for the licensure of wineries where the manufacturer of the beverage is also the wholesale distributor and the retail vendor of the product.

Section 561.221, F.S., authorizes the issuance of up to three retail vendor licenses for wine manufacturers in the state if the retail premises are situated on property contiguous to the manufacturing premises. Retail licensees are allowed to make direct to consumer deliveries of wine

[1] In the beverage alcohol industry, licensed premises are often called "houses." It was perceived to be an *evil* for houses of the retail tier to be tied to houses at the wholesaler or manufacturing tier – hence, *Tied House Evil.* This group of laws is designed to prevent manufacturers or wholesalers from owning or controlling retail outlets where their product may be sold to the exclusion of other products and where, during pre-prohibition years, an abundance of social ills existed.

products. Florida wineries may also be dually licensed as wholesale distributors. In addition, qualifying wineries may receive a designation as a Certified Florida Farm Winery. To qualify as a Certified Florida Farm Winery, a winery must:

- Produce or sell less than 250,000 gallons of wine annually;
- Maintain a minimum of 10 acres of owned or managed vineyards in Florida;
- Be open to the public for tours, tastings, and sales at least 30 hours each week;
- Make application for the designation and pay an annual fee of $100.

To facilitate growth in Florida's viticulture industry the Commissioner of Agriculture is authorized to officially recognize a certified Florida Farm Winery as a state tourist attraction and the Department of Transportation is authorized to place logo, emblem and directional signs on the state's interstate, primary and secondary highways.

Granholm v. Heald

Similar to Florida's law, the State of Michigan banned out-of-state wineries from shipping wine directly to consumers but allowed in-state wineries to do so. The State of New York allowed direct shipments to residents but only if the out-of-state shipper obtained a license and a condition of obtaining that license was a physical presence in the state. Both laws were challenged and Michigan's law was held invalid while the New York law was upheld. Appeals from these two cases were ultimately consolidated into a single case before the U. S. Supreme Court, *Granholm v. Heald*.[2] In its decision, the Court attempted to balance two parts of the U. S. Constitution: the Commerce Clause which requires unrestricted, non-discriminatory trade between the states and the 21st Amendment which gives regulatory power to the states over all alcoholic beverage sales within that state's borders.

The question before the Supreme Court was: *Does a state regulatory scheme that permits in-state wineries directly to ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the Commerce Clause in light of Section 2 of the Twenty-first Amendment?*

Section 2 of the 21st Amendment to the U. S. Constitution reads: *The 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 laws thereof, is hereby prohibited.*

The U. S. Supreme Court struck down both the Michigan and New York laws. The Court held that the laws in both states discriminated against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3, and that the discrimination was neither authorized nor permitted by the 21st Amendment.

The Court ruled that either all sales of wine must be through face-to-face transactions or a permit system must be developed to allow for wine deliveries from out-of-state which did not discriminate against out-of-state interests to the benefit of in-state interests. The Court stated that tax collection and other regulatory objectives -- facilitating orderly market conditions, ensuring regulatory accountability, protecting the public health and safety -- could be achieved through a permit system. States may not require residency of wine producers in order to compete on equal terms with in-state businesses, nor may states require reciprocal shipping privileges for wine producers from other states. The Court's decision addresses only wine producers. The Court specifically distinguished other products and the opinion does not directly open the door for out-of-state retailers to directly ship other alcoholic beverage products to consumers. The Court made a clear distinction between laws regarding direct sales by wine producers as distinguished from the state's regulation within its borders of the resale of alcohol beverages.

[2] *Granholm v. Heald*, 125 S.Ct. 1885 (May 16, 2005)

The traditional three tier system of alcohol beverage distribution utilized by Florida and many other states was held to be legitimate as long as state laws satisfy the key holdings of *Granholm.*

Bainbridge v. Turner

At a status conference held by the court on May 25, 2005, the State conceded that based upon the *Granholm* decision the two statutes in question in *Bainbridge v. Turner*,[3] ss. 561.54(1)-(2) and 561.545(1), F.S., were unconstitutional. Subsequently, an August 5, 2005 Order issued by U. S. District Court Judge James Whittemore in Tampa found the two statutes in question in *Bainbridge* violated the Commerce Clause to the extent that they 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.

While the Order enjoined the State from enforcing the two statutes in question, it is unclear whether direct wine shipments are allowed under the statutory scheme remaining in place. Further, it remains unclear whether this injunction is limited to out-of-state wineries or permits direct shipments by out-of-state wineries and *other shippers* that are not wineries. The Order did not address the constitutionality of these statutes with regard to other alcoholic beverages such as beer and spirits.

Nevertheless, in response to the *Granholm* and *Bainbridge* decisions, in February 2006 the Division began allowing out of state direct shipments of wine. The Division provided information on its web site informing wineries that there are five dry counties in Florida and that Florida prohibits sales of alcoholic beverages to persons under the age of 21. The Division also informed wineries that excise taxes must be paid and posted links to forms and payment instructions. In addition the Division provided information regarding the applicability of the use tax to Florida consumers who purchase items from an out-of-state seller.

Federal law

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. s. 203, requires a basic permit in order to engage in the business of importing into the United States, distilled spirits, wine or malt beverages. Likewise, a basic permit is required to engage in the business of distilling spirits or producing wine. A basic permit is also required for spirits, wine and malt beverage wholesalers. Retailers are not required to obtain basic permits under the FAA Act. Under appropriate circumstances, administrative action can be taken against a basic permit where a permittee ships alcoholic beverages into a state in violation of the laws of that state.

The bill creates s. 561.585, F.S. to provide the license and regulatory mechanism for the direct shipment of wine by licensed winery shippers into or within Florida for personal consumption. Among its provisions the bill specifies the qualifications for a winery shipper license, provides for labeling of packages and signature of recipient, provides for monthly reports, and requires payment of taxes.

Amendments to Direct Shipping Prohibition Statutes

Both the *Granholm* and *Bainbridge* decisions addressed inequities with regard to direct shipments of wine. Sections 561.54 and 561.545, F.S., were the two statutory provisions ruled unconstitutional in *Bainbridge*. **This bill** amends both sections.

Existing s. 561.54, F.S. prohibits the delivery of an alcoholic beverage from outside the state into the state except to qualified licensees. Section 561.545, F.S., reiterates that prohibition and provides penalties for knowingly and intentionally shipping in violation. **This bill** creates a new subsection (3) in s. 561.54, and a new paragraph (c) in s. 561.545(5) to exempt wine shipped in accordance with the wine shipping license created by **the bill** from these prohibitions.

[3] *Bainbridge v. Turner*,[3] Case No. 8:99-CV-2681-T-27TBM, (M.D. Fla. August 5, 2005)

Existing s. 561.54, F.S., grants standing for a licensee aggrieved by a violation of the direct shipping prohibition statute in any court of jurisdiction to recover money and to seek injunctive relief. **The bill** removes the requirement that a licensee be "aggrieved by a violation of this section" and grants standing without requiring the licensee meet this burden of proof.

Section 561.22, F.S., prohibits a manufacturer, distributor, or exporter from being licensed as a retail vendor. Section 561.24, F.S., prohibits a manufacturer, rectifier or distiller of spirituous liquors or wine from being licensed as a distributor. However, ss. 561.221 and 561.24 contain exceptions to these prohibitions for certain qualifying wineries, including Certified Florida Farm Wineries, which allow a wine manufacturer to be licensed as both a wholesale distributor and as a retail vendor. Retail vendors are authorized to make deliveries of alcoholic beverage sold on its licensed premises. Telephone and mail orders are considered as sales actually made on the licensed premises.

The ability of in-state licensees to avail themselves of the benefits of these exceptions in the Beverage Law was central to the *Bainbridge* decision which stated:

> Florida's direct shipment statutes prohibit out-of-state vendors and producers from delivering wine directly to Florida residents whereas in-state producers are not so prohibited. Florida's statutory scheme requires out-of-state wine to pass through a wholesaler and retailer, whereas wine produced in Florida is not required to pass through a wholesaler and distributor. Florida's statutory scheme thereby discriminates against out-of-state wine producers to the advantage of in-state wine producers in violation of the Commerce Clause and is therefore unconstitutional under *Granholm*.

This bill amends s. 561.24, F.S., to grandfather in any winery that holds a license as a distributor on July 1, 2007, while prohibiting any wine manufacturer from obtaining a wholesale distributor license in the future. In addition, the bill creates a new license classification for "winery shippers" which authorizes an out-of-state or in-state winery that meets the license qualifications to receive a license which authorizes the direct delivery of wine to adult consumers in Florida.

Winery Shipper License

The bill creates a "winery shipper license" and authorizes winery shipper licensees to ship wine directly to Florida consumers for their personal use only and not for resale. To qualify for a winery shipper license the applicant must:

- file a Division-prescribed application with the Division;
- obtain and maintain licensure as a primary American source of supply [explained later in this analysis];
- provide the Division with a copy of its current wine manufacturer's license issued by this or another state;
- provide the Division with a copy of its current federal basic permit as a wine producer;
- pay a $250 license fee; and
- file a $5,000 surety bond with the Division.

The applicant must also:

- qualify for licensure under ss. 561.15 and 561.17; **or**
- provide the Division with a copy of its current certification from the alcoholic beverage authority of the Federal Government or the state in which the winery is located that include the following standards:
    - fingerprinting of applicant;
    - applicant must be at least 21 years of age; and

- disqualification of applicants that have been convicted of the following:
  - violation of the beverage laws of this state, another state, or the federal government within the past five years;
  - a felony in this or any state; or
  - a criminal violation of controlled substances in this state or any other state or the federal government.

The bill does not require an in-state licensee to relinquish any existing beverage license and Florida wineries holding retail vendor licenses may continue to make direct deliveries under their vendor license. Licensees presently holding dual licenses are grandfathered. In addition, winery shipper licensees may continue to use the state's licensed distribution network while also shipping direct to the consumer under the authority of the newly created winery shipper license.

The bill permits winery shipper license applicants to receive a temporary license under the provisions outlined in the Beverage Law which enables the applicant to begin operation immediately while the license application is under review.[4]

Primary American Source of Supply

For purposes of tax revenue control s. 564.045, F.S., requires the registration of each brand of wine sold in Florida and the licensure of that brand's "primary American source of supply" [PAS]. There is only one PAS for each brand and each brand must have a licensed PAS. Generally, the PAS is either the wine manufacturer or the source closest to the manufacturer in the channel of commerce from whom the product can be secured. In the case of foreign-produced wine it is often an importer. Licensure as a PAS authorizes the shipment of wine manufactured within and without the state to licensed distributors, importers, manufacturers, bonded warehouses, and registered exporters within the state.

This bill requires, as a condition of licensure, that the winery shipper licensee obtain and maintain a current license as a PAS.

Record Retention and Reporting Requirements

The Beverage Law requires manufacturers, distributors, sales agents, importers, and exporters to maintain records and make monthly reports to the Division of beverages manufactured, imported, exported, or sold within the state. Reports must be made by the 10th day of each month and records must be maintained for a period of three years.

This bill requires winery shipper licensees to report monthly to the Division whether any wine was shipped into or within the state during the previous month, the total amount of wine shipped into or within the state for the preceding month, the quantity and types of wine shipped, and the amount of excise tax paid to the Division for the wine shipped during the previous month. To avoid duplicate filings, this report is not required from a winery shipper licensee that files a monthly report pursuant to s. 561.55, F.S. that contains all the required information.

Section 562.20, F.S., requires common carriers to file monthly reports of alcoholic beverages deliveries into or within the state with the Division. **This bill** exempts common carriers making deliveries of alcoholic beverages from this required report filing.

Audit, Bond and Tax Requirements

Present law requires alcoholic beverage excise taxes to be paid by the 10th day of each month, and licensed wholesalers and manufacturers are audited twice each year for compliance. In addition,

[4] s.561.181, F.S.

alcoholic beverage wholesalers and manufacturers are required to file a surety bond with the Division to ensure the payment of taxes. The surety bond for a winery is $5,000 and for a wine distributor is $25,000. [See ss. 561.37, 561.41, 561.50, 561.55, F.S.]

This bill requires winery shipper licensees to pay the appropriate excise tax to the Division and the appropriate sales tax to the Department of Revenue monthly. To establish that the transfer of title takes place in Florida and that sales and excise taxes are due in Florida, the bill specifies that taxes shall be calculated as if each sale takes place at the location where the delivery occurs in Florida. Records of the direct shipments, including the names, addresses, amounts, and dates of shipments to persons in this state must be maintained for a period of three years and are subject to audit by the Division or the Department of Revenue upon request. The cost of performing an audit is assigned to the agency requesting the audit unless the licensee is found to be in material violation of the direct shipping statute in which case the cost of the audit is assigned to the licensee.

Winery shipper licensees are required to post a $5,000 surety bond as surety for the payment of taxes. The Division is authorized to accept a bond of a lesser amount if it is determined that the amount of taxable sales is such that a lower bond would be adequate. The bond may not be reduced below $1,000. **The bill** provides that if a winery already has a surety bond on file with the Division pursuant to s. 561.37, F.S., it is deemed to satisfy this requirement.

Age Verification

The Beverage Law makes it unlawful for any person to sell, give, serve, or permit to be served any alcoholic beverage to a person less than 21 years of age. A violation of this prohibition constitutes a 2nd degree misdemeanor. In addition, a retail vendor's alcoholic beverage license is subject to suspension or revocation for unlawful sales to persons under the age of 21 by the licensee or an employee of the licensee. The Beverage Law does not specifically require a vendor to verify age through identification checks prior to the sale of an alcoholic beverage but provides a complete defense to an unlawful sale if: 1) the person falsely evidenced that he or she was of legal age to purchase or consume the beverage; 2) the appearance of the person was such that an ordinarily prudent person would believe him or her to be of lawful age; and 3) the licensee or employee checked one of the approved forms of identification.

This bill, in newly created s. 561.585(3), F.S., mandates that the winery shipper licensee and common carrier must require that the signature of the recipient is obtained prior to delivery and after presentation of valid identification showing the recipient is 21 years of age or older. For these purposes, approved forms of identification include those specified in s. 562.11, F.S.: a driver's license, certain identification cards issued by this state or another state, a passport, or a United States Uniformed Services identification card. A winery shipper licensee or common carrier that allows a person under the age of 21 to accept delivery of an alcoholic beverage is provided with a complete defense against any civil action, except for administrative action by the Division, if the licensee or common carrier acted in good faith and in reliance upon the representation and appearance of the person in the belief that he or she was of legal age to purchase or consume the alcoholic beverage and carefully checked one of the approved forms of identification.

Package Labeling Requirements

The bill establishes labeling requirements for wine shipments but allows flexibility for common carriers to use their individual labeling criteria. The winery shipper and common carrier must ensure that the outside shipping label on each package is conspicuous and includes the following components:

- that the package contains alcohol;
- that an adult signature is required; and
- that the recipient must be at least 21 years of age.

Alcoholic Beverage Deliveries by In-state Licensees

The Beverage Law allows retail vendors to make deliveries away from their place of business of alcoholic beverage sales actually made at the business location, s. 561.57, F.S. Section 561.57(1), F.S., specifies that telephone and mail orders received at a licensed business are construed as sales actually made on the licensed premises. **This bill** amends that subsection to construe Internet orders, in addition to telephone and mail orders, as a sale actually made at the vendor's licensed place of business.

The Beverage Law does not specifically require the licensee or an agent of the licensee making an off-premises delivery of an alcoholic beverage to check identification in order to verify the recipient is at least 21 years of age, but treats such sales and deliveries the same as an on-premises sale. An off-premises delivery of an alcoholic beverage to a person under the age of 21 is a violation of s. 562.11, F.S., and subject to the same penalties. In addition, the retail vendor is subject to administrative penalties under the Beverage Law, including license revocation.

This bill amends s. 561.57(6), F.S., to specify that any alcoholic beverage licensee may use the services of a common carrier to make deliveries of alcoholic beverages within the state.

This subsection is also amended by **the bill** to require a common carrier acting as an agent for delivery to a consumer to verify that the person receiving the alcoholic beverage is at least 21 years of age and specifies that adherence to the age verification procedures established in s. 561.585(3) provides the licensee and common carrier with a complete defense of selling, giving, delivering, or transferring alcoholic beverages to any person under the age of 21.

Penalties

Section 561.585(7), F.S., of **the bill** establishes penalties for violations of the newly created winery shipper licensure requirements and provides that in addition to other penalties provided in the Beverage Law, the Division may suspend or revoke a winery shipper's license or impose a fine in an amount up to $1,000 per violation of s. 561.585, F.S. In addition, this subsection:

- Provides that any winery shipper licensee that *knowingly and intentionally* ships or delivers wine directly to any person in this state who is under 21 years of age commits a felony of the 3rd degree.
- Provides that a common carrier that knowingly and intentionally delivers wine to an underage person commits a 2nd degree misdemeanor.
- Provides that any person that *knowingly and intentionally* obtains wine from a winery shipper licensee in violation of s. 561.585, F.S., commits a 2nd degree misdemeanor.

Present s. 561.545, F.S., makes it unlawful for any person in the business of selling alcoholic beverages, any common carrier, permit carrier or any operator of a privately owned car, truck, bus, or other conveyance to knowingly and intentionally transport alcoholic beverages from an out-of-state location directly to a Florida consumer. **This bill** exempts wine shipped in accordance with a winery shipper license as created in s. 561.585, from these prohibitions and accompanying penalties.

Jurisdiction

The bill creates a new s. 561.585(5), F.S., which specifies that by obtaining a direct shipper license the licensee is deemed to have consented to the jurisdiction of the Division and any other state agency, to local law enforcement, and to the courts of this state for purposes of enforcement. To establish that the transfer of title for the product takes place in Florida and that sales and excise taxes are due in Florida, the bill specifies that taxes shall be calculated as if the sale took place at the location where the delivery occurred in Florida.

Florida Farm Wineries

Section 599.004, F.S., establishes the criteria necessary to be designated as a certified Florida Farm Winery. The Commissioner of Agriculture is authorized to officially recognize a certified Florida Farm Winery as a state tourist attraction, and the Department of Transportation is authorized to place logo, emblem and directional signs on the state's interstate, primary and secondary highways. To qualify as a certified Florida Farm Winery a winery must:

- Produce or sell less than 250,000 gallons of wine annually;
- Maintain a minimum of 10 acres of owned or managed vineyards in Florida;
- Be open to the public for tours, tastings, and sales at least 30 hours each week;
- Make application for the designation and pay an annual fee of $100.

Some wineries in Florida import grape juices and other products from other states or nations and use those products to produce wine.

This bill amends the criteria for designation as a certified Florida Farm Winery to require that at least 60 percent of wine produced at the winery be made from Florida agricultural products. The Commissioner of Agriculture is authorized to waive this production requirement in times of hardship.

Other

The bill also contains a severability clause, rulemaking authority for the Division and the Department of Revenue, and will take effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1. Creates s. 561.585, F.S., creating a winery shipper license that authorizes the direct shipment of wine for personal consumption; establishes qualifications and restrictions; imposes labeling requirements; provides signature requirements; requires monthly reports; requires collection and remittance of sales and use taxes and payment of excise taxes; authorizes audits; provides jurisdiction; and establishes penalties.

Section 2. Creates s. 561.14(8), F.S., to classify the winery shipper license under the Beverage Law.

Section 3. Amends s. 561.54(2), F.S., to remove the requirement that a licensee be "aggrieved by a violation of this section" and grants standing without requiring the licensee meet this burden of proof; creates s. 561.54(3), F.S., exempting shipments of wine by a licensed winery shipper from the direct shipping prohibitions.

Section 4. Amends s. 561.545, F.S., to exempt wines shipped by a licensed winery shipper from the direct shipping prohibitions and penalties in s. 561.545.

Section 5. Amends s. 561.57, F.S., to construe Internet orders as taking place on a Florida vendor's licensed premises; clarifying that alcoholic beverage licensees may utilize common carriers to make deliveries; exempting common carriers from certain reporting requirements and providing for age verification procedures.

Section 6. Amends s. 599.004, F.S., to add a new criteria for qualification as a certified Florida Farm Winery.

Section 7. Amends s. 561.24(5), F.S., to remove the authority for renewal of distributor licenses held by a wine manufacturers and to grandfather in existing licensees.

Section 8. Provides for severability.

Section 9. Provides for the non-impairment of contracts.

Section 10. Provides for rulemaking by the Division and the Department of Revenue.

Section 11. Provides an appropriation.

Section 12. Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The March 22, 2007, REC adopted an indeterminate estimate.

2. Expenditures:

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Non-Recurring Effects	FY 2007-08	FY 2008-09	FY 2009-10
Operating Capital Outlay – State Stds.	13,000	9,100	0
Operating Capital Outlay - Laptops	2,449	19,590	0
Other (Expenses – State Stds.)	33,767	23,982	0
Other Personal Services	31,668	0	0
Subtotal	80,884	52,672	0

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Effects	FY 2007-08	FY 2008-09	FY 2009-10
Salaries/Benefits – 17 FTE positions	407,767	777,315	777,315
Expenses	75,671	217,094	217,094
Other (DMS/Human Resources)	3,742	6,416	6,416
Subtotal	487,180	1,000,825	1,000,825

Non-Operating Expenditures	FY 2007-08	FY 2008-09	FY 2009-10
Service Charges (to General Revenue)	41,294	42,533	43,809
Other Indirect Costs	0	0	0
Subtotal	41,294	42,533	43,809

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a minimal positive impact due to the reduction, from 90% down to 60%, in the current requirement that a specified percentage of wine produced must be made from Florida agricultural products in order to qualify for the certification as a Florida Farm Winery.

D. FISCAL COMMENTS:

The March 22, 2007, REC adopted an indeterminate estimate. According to the Department of Business and Professional Regulation, the proposed legislation will increase annual expenditures by $487,180 in Fiscal Year 2007-08 and $1,000,825 in subsequent years. These recurring costs include the funding of 17 full-time equivalent (FTE) positions to be located in the Division of Information Technology, the Division of Service Operations, the General Counsel's Office, and various sections within the Division of Alcoholic Beverages and Tobacco.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Grants rule-making authority to the Division and to the Department of Revenue.

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES