HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 247 CS Beverage Law
SPONSOR(S): Bogdanoff and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 144, SB 282, SB 944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	18 Y, 0 N, w/CS	Morris	Liepshutz
2) Finance & Tax Committee		Rice	Diez-Arguelles
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

A recent U. S. Supreme Court ruling, *Granholm v. Heald,* struck down laws in Michigan and New York, similar to Florida law, 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. Subsequent to the *Granholm* decision, the U. S. District Court in Tampa ruled, in a pending 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, Florida began allowing out-of-state wine producers to make direct deliveries. A legislative response is needed to provide regulations and guidelines. This bill creates a direct shipper license and the regulatory mechanism for the direct shipment of wine by out-of-state or in-state wineries to Florida consumers for personal consumption.

The Revenue Estimating Conference has determined that the bill has a positive indeterminate impact on state revenues. See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for an estimate of expenditures by the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation.

The bill provides that the act will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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.

Provide Limited Government—The bill creates a new license and regulatory system; the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation estimates the need for 23.5 FTEs and approximately $1.3 million annually to implement and regulate the direct shipment of wine as provided in this legislation.

B. EFFECT OF PROPOSED CHANGES:

HISTORY OF ALCOHOL 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 beverage alcohol. 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 all activity within that state's borders.

The ability to engage in alcoholic beverage commerce is commonly viewed as a privilege subject to stringent safeguards. Alcoholic beverages are a highly taxed and highly regulated commodity at the state and federal levels.

Currently in the United States, most states operate under a "license" system. "License" states issue licenses to private individuals or businesses in all segments of alcoholic beverage commerce. The State of Florida operates under such a license system. Other states, however, maintain more direct control over the sale of alcoholic beverages by substituting the state for the private marketplace and are known as "control" states. Some states control only the wholesale level; others have retained control at retail through government-operated stores; and some control the sale of wine, as well as distilled spirits.

The Division of Alcoholic Beverages and Tobacco [division] in the Department of Business and Professional Regulation is responsible for supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages. Among the division's statutory responsibilities is the authority for licensing businesses, conducting criminal and administrative investigations, conducting audits, inventories and tax assessments, seizing non-tax paid alcoholic beverages, and imposing penalties for violations. Licensees are held to a high standard of accountability.[1] The licensed premises of a Florida alcoholic beverage licensee are subject to random, unannounced inspection and a licensee can lose the ability to operate for violations of the Beverage Law or other state laws.

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

[1] Licensure requirements, qualification standards and prohibitions are set forth in ss. 561.15 and 561.17, F.S.

consumer.[2] Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax and by-the-drink tax are collected at the retail level. For FY 2004-05 the division collected $575.9 million in state alcohol excise taxes - $117.8 million of that amount was from wine products. While estimates specific to wine were not available, the Office of Economic and Demographic Research estimates that $549.3 million was collected from the retail sale of all alcoholic beverages in the state. Alcoholic beverage wholesalers are audited twice each year. The excise tax rate on typical table wine is $2.25 per gallon.[3]
Activities between the license groups are extensively regulated and constitute the basis for Florida's "Tied House Evil" law.[4] 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 vendor. Section 561.22, F.S., provides that no manufacturer, distributor or exporter may be licensed as a vendor [retailer]. 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 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 vendor [retail] alcoholic beverage licenses for wine manufacturers in the state if the retail premises are situated on property contiguous to the manufacturing premises. Florida wineries may also be dually licensed as wholesale distributors. According to the division there are currently 41 licensed wineries in the state, ten of which have wholesale distributor licenses and 32 of which also have retail licenses. 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.

HISTORY OF DIRECT SALES

In recent years there has been an expansion of solicitations and advertisements for alcoholic beverage sales, particularly wine, via magazines, specialty catalogues, direct mailings and, more recently, the Internet.[5] In addition, there has been increased interest on the part of consumers to more easily obtain their specific wines of choice. Sales of this nature most often bypassed the state's regulatory and tax collection procedures. During this same time period, consumers and wine industry interests have sought the ability to legally ship wine into the various states through reciprocity laws or laws allowing for limited direct shipping.

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[2] See s. 561.14, F.S. for license and registration classifications

[3] Section 564.06, F.S., establishes a staggered taxation rate on wine based upon the percent of alcohol by volume. Typical table wine containing 0.5 percent or more alcohol by volume but less than 17.259 percent alcohol by volume is taxed at a rate of $2.25 per gallon.

[4] 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.

[5] Federal law, 18 USC 1716 (f), prohibits mailing any alcoholic beverage through the U. S. Postal Service.

In the early 1990's the Division of Alcoholic Beverages and Tobacco issued numerous requests to out-of-state shippers to discontinue the practice of selling and shipping alcoholic beverages, primarily wine, directly to Florida consumers in violation of state law. The division, however, lacked legal jurisdiction to require compliance on two fronts: 1) since the out-of-state shippers did not maintain a physical presence in the State of Florida there was no nexus to bring them under Florida jurisdiction; and 2) federal law did not provide a remedy by which the state could receive injunctive relief in federal courts.[6] This scenario appeared to leave Florida regulators without a means to require out-of-state shippers to comply with Florida's regulatory and taxation requirements.

The Legislature, in 1997, found that the direct shipment of alcoholic beverages was a danger to the public health, safety, and welfare; to state revenue collections; and to the economy of the state. The 1997 Legislature enacted Chapter 97-213, Laws of Florida, which increased the penalty from a misdemeanor to a 3rd degree felony for knowingly and intentionally shipping alcoholic beverages from an out-of-state location directly to a Florida consumer in violation of the Beverage Law. Some argued that this penalty increase would act as a deterrent to direct shipping since a wine manufacturer would not risk losing their federal permit by being charged with a felony.[7] Others argued that the penalty and the underlying regulatory structure were antiquated, anticompetitive, and a violation of free trade between the states.

Florida's direct shipping statute was subsequently challenged in *Bainbridge v. Turner*.[8] During this same period, similar challenges were taking place in other states, including Michigan and New York, with mixed results.

DIRECT SHIPPING LITIGATION

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*.[9] 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 dormant 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.

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[6] See *Department of Business and Professional Regulation v. Sam's Wines and Liquors*, No. 96-3602, (Fla. 2nd Cir. Ct., September 3, 1997), *affirmed* 731 So.2d 655 (Fla. 1st DCA 1999) and *Florida DBR v. Zachy's*, 125 F.3d 1399 (11th Cir. 1997)

[7] The Federal Alcohol Administration 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, to engage in the business of distilling spirits or producing wine, and for wine, spirits and beer wholesalers. Retailers and beer manufacturers are not required to obtain a federal basic permit.

[8] *Bainbridge v. Turner*, Case No. 8:99-CV-2681-T-27TBM; Originally *Bainbridge v. Martelli* , 148 F.S.Supp.2d 1306 (M.D. Fla. 2001)

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

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 ship direct. 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.

The Court did not specifically address the issue of personal jurisdiction for purposes of enforcement but referenced the authority of the states' attorneys general to seek injunctive relief in federal court under the 21st Amendment Enforcement Act and a winery's potential loss of its federal basic permit as incentive to comply with a state's alcoholic beverage statutes. [See also **Federal Law** comments.]

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*,[10] 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.

> "Florida's direct shipment scheme, codified in ss. 561.54 and 561.545, Florida Statutes, does precisely what was determined to be unconstitutional in *Granholm*. 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*." [Emphasis supplied]

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. A legislative response to *Granholm* and *Bainbridge* is required to clarify Florida law.

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.

[10] *Bainbridge v. Turner,*[10] Case No. 8:99-CV-2681-T-27TBM, (M.D. Fla. August 5, 2005)

According to the Bureau of Alcohol and Tobacco Tax and Trade in the Department of the Treasury [TTB] there are currently 4,390 wine premises with federal basic producer permits. 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.

A basic permit may not be issued to a person that has, within 5 years prior to the date of making application, been convicted of a state or federal felony, or has, within 3 years of making application, been convicted of a federal misdemeanor relating to liquor. The TTB indicates that at the present time fingerprint-based background checks are not conducted, rather the Bureau conducts a background investigation based on the name, date-of-birth and social security number of the applicant. The FAA Act provides that basic permits are conditioned upon, among other things, compliance with the 21st Amendment and other Federal laws relating to its enforcement and may be suspended or revoked for certain violations.[11] There is no fee for a basic permit.

There is no distinction based on the size of a winery for licensing purposes. For tax purposes, however, federal law treats domestic wineries producing less than 250,000 gallons of wine annually differently than those producing more than 250,000 gallons. Federal law allows incremental tax credits for those smaller domestic wineries producing between 100,000 and 250,000 gallons of wine annually.[12]

Generally, wine producers are required to post a bond as surety for the payment of taxes in amounts ranging from $1,000 to $100,000 depending upon expected tax liability. Smaller wine producers are allowed to defer tax payments for as long as one year and may post a second type of bond called deferral coverage. A deferred coverage bond must be sufficient to cover the outstanding tax for the deferral period but may not be less than $500 or more than $250,000.[13]

The Bureau of Alcohol, Tobacco, and Firearms [now Bureau of Alcohol and Tobacco Tax and Trade] in ATF Ruling 2000-1 ruled that the Bureau could, under appropriate circumstances, take administrative action against a basic permit where a basic permittee ships alcoholic beverages into a State in violation of the laws of that State.

> "ATF will intervene when it is determined that there is a continuing, material, adverse impact upon a State through the actions of a basic permittee located outside the boundaries of the affected State. However, while ATF is vested with authority to regulate interstate commerce in alcoholic beverages pursuant to the FAA Act, the extent of this authority does not extend to situations where *an out-of-State retailer* is making the shipment into the State of the consumer." [Emphasis supplied.]

Preliminary reports from TTB did not identify any instance where the federal government has taken action in this manner against a federal basic permit as a result of an unlawful shipment of alcoholic beverages.

The Twenty-first Amendment Enforcement Act, 27 U.S.C. s. 122a, provides the federal district courts with subject matter jurisdiction over any action brought by a state attorney general against a person who is engaged in, or has engaged in, the illegal transportation of alcoholic beverages into a state. The act prohibits the direct shipment of wine into a state in violation of state laws and authorizes state attorneys general the power to sue wineries in federal court to enjoin violations of state law. Staff has been unable to determine whether a state attorney general has utilized this law.[14]

Recent Changes in Florida Law

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[11] Title 27, ch.8, subchapter I, s.204(c)
[12] 27 CFR 24.278
[13] 27 CFR 24.145-.159
[14] Empirical information gathered from conversations with TTB personnel and with industry representatives; see also *Interim Project Summary 2006-146*, Committee on Regulated Industries, the Florida Senate, October 2005.

In response to the *Granholm* and *Bainbridge* decisions, the Division of Alcoholic Beverages and Tobacco began allowing out of state direct shipments of wine in February 2006.

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 with instructions on how. 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.

EFFECT OF PROPOSED CHANGES

The bill creates s. 561.585, F.S. to provide the license and regulatory mechanism for the direct shipment of wine into 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

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 without the state into the state except to qualified licensees. This bill creates a new subsection (3) in s. 561.54, F.S., to provide an exception to the direct shipping prohibition and allow the shipment of wine by a winery shipper licensee and delivery by a common carrier in accordance with newly created s. 561.585, F.S.

Section 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 for the state 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.

Both the *Granholm* and *Bainbridge* decisions addressed inequities with regard to direct shipments of wine. This bill amends s. 561.545, F.S., the primary direct shipping prohibition statute, to delete its applicability to wine and keep in place the direct shipping prohibitions with regard to beer and liquor.

Section 561.22, F.S., prohibits a manufacturer, distributor, or exporter from being licensed as a retail vendor. [Retail vendors are authorized to make deliveries of any alcoholic beverage sold on its licensed premises and telephone and mail orders are considered as sales actually made on the licensed premises.] Section 561.24, F.S., provides that no manufacturer, rectifier or distiller of spirituous liquors or wine can be licensed as a distributor or registered as an exporter. That statute also prohibits the renewal of a dual license but contains an exception to this structured three-tiered distribution system for certain qualifying wineries, including Certified Florida Farm Wineries. 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, 2006, while prohibiting any wine manufacturer from obtaining a wholesale distributor license in the future.

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:

- obtain and maintain licensure as a primary American source of supply;
- 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;
- manufacture less than 250,000 gallons of wine per year;
- pay a $250 license fee; and
- file a $5,000 surety bond with the division.

The present annual license fee for a wine manufacturer in Florida is $1,000 [$2,000 if manufacturing wines and cordials]; the annual license fee for a wine distributor in Florida is $1,250; and the annual licensee fee for a retail vendor of wine is based on county population ranging from $60 to $280.

This bill does not require an in-state licensee to relinquish any existing beverage license but provides an option for licensure as a winery shipper. Licensees presently holding dual licenses are grandfathered and may continue to ship wine directly to Florida consumers. 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; one means does not preclude the other.

Since applicants for a winery shipper license are required to submit copies of their current federal basic permit and state wine manufacturer license, they are not required to meet the licensure requirements and qualification standards set out in ss. 561.15 and 561.17, F.S.; instead, the bill relies on the applicant having met appropriate licensing qualification criteria established in other states and by the federal government.

A winery shipper license may not be issued or renewed if the applicant or licensee is owned by a winery that manufacturers more than 250,000 gallons of wine annually. Therefore, if a winery producing less than 250,000 annually is owned by a winery that producers more than 250,000 annually, the smaller winery could not qualify for a winery shipper license. Production statistics are not readily available as many wineries are privately held and their production information is considered proprietary information; therefore, it is not possible to ascertain the actual number of wineries that could qualify, or be disqualified, for licensure based on production levels. While the percentage is not verifiable, various interests contend that over 90% of wineries nationwide produce less than 250,000 gallons of wine annually.

Winery shipper licensees may not ship more than 42 gallons of wine per calendar year to a single Florida address and Florida consumers are prohibited from purchasing more than 42 gallons of wine per calendar year per address.

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 primary American source of supply.

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 all beverages manufactured, imported, exported, and 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, alcoholic beverage wholesalers and manufacturers are required to file a surety bond with the division to ensure the payment of all 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. (Please see FISCAL COMMENTS section for further tax implication discussion.) Records of the direct shipments, including the names, addresses, amounts, and dates of all shipments to persons in this state must be maintained for a period of three years and are subject to audit by the Division of Alcoholic Beverages and Tobacco 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. No audit schedule is provided in the bill.

Winery shipper licensees are required to post a $5,000 surety bond as surety for the payment of all 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; however, the bond may not be reduced below $1,000. If a winery already has a surety bond on file with the division pursuant to s. 561.37, F.S., or for another license in an amount in excess of $5,000, 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. For these purposes approved forms of identification include: a driver's license, an identification card issued by this state or another state, a passport, or a United States Uniformed Services identification card. [See s. 562.11, F.S.]

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. Acceptable forms of identification are the same as specified in s. 562.11, F.S. 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 complied with the specified age verification procedures.

The bill provides that a winery shipper licensee that knowingly and intentionally ships wine to a person in Florida under the age of 21 commits a 3rd degree felony. Likewise, a common carrier, permit carrier, or other commercial conveyance that knowingly and intentionally delivers wine to a person in Florida under the age of 21 commits a 3rd degree felony. A person who knowingly and intentionally obtains wine in violation of newly created s. 561.585, F.S., commits a 2nd degree misdemeanor.

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, without specifying the format:

- 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, or persons acting on their behalf, to make deliveries away from their place of business of alcoholic beverage sales actually made at the business location, s. 561.57, F.S. The 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 penalty. 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 require all licensees, common carriers or other person acting as an agent for delivery in this manner to verify that the person receiving the alcoholic beverage is at least 21 years of age and requires the division to adopt rules. The bill specifies that adherence to these age verification procedures provides the common carrier and the licensee or other person hiring the common carrier with a complete defense of selling, giving or serving alcoholic beverages to any person under the age of 21. This same standard applies to individuals using a common carrier to make a delivery of an alcoholic beverage, e.g. a gift delivery.

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.

Penalties

Section 561.585(7), F.S., provides that in addition to the penalties provided by in the Beverage Law, the division may suspend or revoke a winery shipper's license or impose a fine in an amount up to $2,500 per violation of s. 561.585, F.S. In addition, this subsection 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 misdemeanor of the second degree.

The bill provides that any winery shipper licensee, or any common carrier, permit carrier or other commercial conveyance 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.

The bill changes the applicability of existing s. 561.545, F.S., from all alcoholic beverages to only beer and spirits. As amended, the bill makes it a violation for a business selling beer or spirits, a common carrier, permit carrier or any operator of a privately owned car, truck, bus, or other conveyance to knowingly and intentionally transport beer or spirits from an out-of-state location directly to a Florida consumer. Any business selling beer or spirits who violates this prohibition within two years after receiving a cease and desist order, or within two years after a prior conviction, commits a 3rd degree felony. Any common carrier, permit carrier or any operator of a privately owned car, truck, bus, or other conveyance who violates this prohibition due to a second or subsequent delivery from the same source and location within a 2-year period after the first delivery shall be issued a notice to show cause why a cease and desist order should not be issued. Any subsequent violation within two years after receiving the cease and desist order or within two years of a prior conviction is a 3rd degree felony.

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 to any other state agency and the courts of this state concerning 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. To encourage the use of Florida agricultural products 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

Please see II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT portion of the bill analysis for estimates of fiscal impact.

The bill contains a severability clause and 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 payment of sales and excise taxes; authorizes audits; provides jurisdiction; and establishes penalties.

Section 2. 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 3. Amends s. 561.545, F.S., authorizing the direct shipment of wine to individuals by licensed winery shippers and exempting those shipments from the direct shipping prohibitions and penalties in s. 561.545; maintains direct shipping prohibition for beer and liquor.

Section 4. Amends s. 561.57, F.S., to construe Internet orders as taking place on a Florida vendor's licensed premises; exempting common carriers from certain reporting requirements; providing for age verification procedures; and providing a defense for common carriers and licensees for certain unlawful sales.

Section 5. Amends s. 599.004, F.S., to add a new criteria for qualification as a certified Florida Farm Winery.

Section 6. Amends s. 561.24(5), F.S., to remove the authority for renewal of distributor licenses held by a wine manufacturers and grandfathers in existing licensees.

Section 7. Provides for severability.

Section 8. Provides for rulemaking by the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation and the Department of Revenue.

Section 9. 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:

<u>Licensing Fees</u>
The State of Florida will receive a $250 licensing fee for every winery shipper licensee who wishes to ship wine directly to consumers in Florida. The Revenue Estimating Conference estimates the bill would generate a positive-indeterminate increase in license fee revenue annually to the Alcoholic Beverage and Tobacco Trust Fund.

<u>Sales and Excise Taxes</u>
Licensed winery shippers are required to pay excise taxes on and to collect and remit sales for all wines shipped directly to individuals in this state. The Revenue Estimating Conference estimates the bill would generate a positive-indeterminate increase in sales and excise tax collections.

	2006-07	2007-08
General Revenue	Indeterminate	Indeterminate
Alcoholic Beverage and Tobacco TF	Indeterminate	Indeterminate
Total	Indeterminate	Indeterminate

2. Expenditures:

Assuming each of the current 1,098 Primary American Source of Supply licensees receive a winery shipper license, the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation estimates the need for a total of 23.5 additional positions to implement and regulate the direct shipment of wines into the state.

Licensing
Based on the assumption that there would be an estimated 1,098 winery shipper licenses to be processed each year, the division estimates that the increase in workload will require one half-time Regulatory Specialist II position. This position will license the winery shippers and microfilm all of the corresponding licensing records. The Division contends it will be necessary to keep this permanent position in order to maintain the continual licensing and registering processes.

Auditing
A total of 13,176 reports would be received annually if each of the estimated 1,098 winery shipper licensees report each month as required by the legislation. Assuming it will take 30 minutes to process each report, and using 1,854 available work hours per employee, the Division estimates that the Bureau of Auditing will need 4 additional Revenue Specialist positions in addition to current staff for monthly report processing.

The frequency of audits is not determined by the bill. In-state manufacturers and distributors are currently audited semi-annually by the division. Although this audit frequency may not be practical for the out-of-state entities, by auditing the estimated 1,098 licensed direct shippers semi-annually, and assuming a minimum of 16 hours to perform each audit, the Division estimates that the Bureau of Auditing would need 9 additional Tax Auditor positions. In addition, the Division estimates annual travel expenses of $12,000 per auditor, which would encompass one trip per month, per auditor.

Enforcement:
The division estimates that the enforcement program will require four new law enforcement positions to be stationed throughout the state and two new Administrative Assistant positions. The law enforcement positions will be required to investigate violations and prepare criminal court prosecutions for tax compliance, non-payment of fees, and sales of alcohol to minors.

Information Technology:
The division estimates that there will be a need for extensive computer programming for the direct shipment program. This includes a licensing program to incorporate the licensing of the winery shipper licensees, a records maintenance system to incorporate the additional records that must be maintained for the new licensees, and audit programs to verify the accuracy of the reported shipments and tax payments. The Division estimates the need for one Systems Programming Administrator to develop and maintain these programs.

Office of the General Counsel:
The division estimates the need for one additional senior attorney position, and associated travel expenses, to assist the division in the implementation and enforcement of the program.

Service Operations:

The new license requires an annual renewal, which will create a workload increase in the Central Intake Unit. Annual renewals increase the revenue activity and renewal of license records and support of these license records is performed throughout the life of the record. The Division estimates the need for two Regulatory Specialist II positions to process annual renewals for a conservative base of 1,000 records. In addition, these positions will perform data entry needed to maintain license records, including name, address and renewal changes.

EXPENDITURES – FUNDING SOURCE (ABT TRUST FUND)			
Non-Recurring Effects	FY 2006-07	FY 2007-08	FY 2008-09
Operating Capital Outlay	45,050	0	0
Other Personal Services	0	0	0
Other Expenses	77,457	0	0
Subtotal	122,507	0	0

EXPENDITURES – FUNDING SOURCE (ABT TRUST FUND)			
Recurring Effects	FY 2006-07	FY 2007-08	FY 2008-09
Salaries/Benefits 23.5 FTE's	1,065,131	1,103,476	1,131,063
Expenses	262,055	262,055	262,055
Other DMS/Hr Svc.	9,236	9,568	9,807
Subtotal	1,336,421	1,375,099	1,402,925

Non-Operating Expenditures	FY 2006-07	FY 2007-08	FY 2008-09
Service Charges (to General Revenue)	9,896	10,503	11,476
Other Indirect Costs	0	0	0

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Federal Trade Commission bans on interstate direct shipping of wine represent the single largest regulatory barrier to expanded e-commerce of wine.[15] Many wine producers reportedly rely on the Internet to market their product and implementation of this legislation would support the increased viability of these businesses.

It is unknown to what extent the availability of direct-to-consumer purchases of wine will decrease sales made at licensed Florida retail locations and from licensed wholesalers.

D. FISCAL COMMENTS:

The bill provides that each direct shipper of wine, as provided in s. 561.585(6), F.S., is deemed to have consented to the jurisdiction of any state agency. As such, every dealer who is licensed as a direct shipper of wine has consented to the requirements of ch. 212, F.S. related to sales and use tax.

Tax Payment and Remittance

Section 212.07(2), F.S., requires the sales tax levied on retail sales to be collected by the dealers from the purchaser or consumer. The amount of the tax is to be separately stated as Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale. Section 212.07(4), F.S., prohibits a

[15] *Possible Anticompetitive Barriers to E-Commerce: Wine*, Federal Trade Commission, July 2003 @ page 3. Report available at http://www.ftc.gov/os/2003/07/winereport2.pdf

dealer from advertising or holding out to the public that he or she will absorb all or any part of the tax or that the tax will not be added to the selling price of the property. Under these provisions, a direct shipper of wine would be required to collect sales tax from the purchaser on its sales of wine and to separately state Florida sales tax on its sales slip, invoice, or other tangible evidence of sale to the purchaser, and would be prohibited from "paying" sales tax due on the sale of wine to its Florida customers.

Under the proposed provisions of s. 561.585(5), F.S., direct shippers of wine would be required to "pay" monthly to the Department of Revenue all sales tax on sales to persons in Florida for the preceding month. These provisions are not consistent with the provisions of s. 212.07, F.S. To better reflect the intended purpose, the word "pay" should be replaced with "collect and remit".

Discretionary Surtax

Section 212.054(3)(a), F.S., requires the collection of applicable discretionary surtaxes on the sale of wine when that wine is delivered within a surtax county. This section is only applicable to dealers with a physical presence in Florida. Businesses located outside of Florida are subject to s. 212.0596, F.S. This section requires every out of state dealer located in or under the jurisdiction of the United States that is engaged in the business of making mail order sales to collect sales tax on sales of tangible personal property. Such dealers are only required to collect discretionary sales surtax at the rate imposed by the surtax county where the taxable item of tangible personal property is delivered when:

- The mail order is placed through a dealer's location within a surtax county;
- Received by the dealer in another state; **and**
- The item is delivered to a location within a surtax county.

These provisions imply an exemption from discretionary surtax for out of state dealers.

Under the proposed provisions of s. 561.585(5), F.S., the amount of sales tax is calculated as if the sale took place at the location where the delivery occurred in Florida. It is unclear if it is the intent of the bill that all sales of wine delivered in a county imposing a discretionary sales surtax be subject to the surtax. While this provision is consistent with the provisions of s. 212.054(3)(a), F.S., regarding the collection of the surtax when taxable items are delivered within a surtax county, it would not be consistent with the treatment afforded a direct shipper of wine who has no Florida location and is making mail order sales pursuant to s. 212.0596, F.S. Out of state shippers are currently not required to collect discretionary sales surtax. In addition, there is no provision for the distribution of proceeds of discretionary sales surtax collected by dealers of mail order sales who have no physical location in Florida.

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:

   The Wine Institute, a California-based industry association, contends that the 250,000 gallon qualification ceiling amounts to discrimination based on size, rather than geographic location as was the case in *Granholm*, and may be subject to a constitutional challenge. Others contend that the

250,000 ceiling captures over 90% of wine producers nationwide and treats similarly situated wine producers equally.

The bill provides that on becoming licensed as a winery shipper the licensee is deemed to have consented to the jurisdiction of the division or any other state agency and the courts of this state. The bill further requires the payment of excise and sales taxes on all wine delivered to Florida consumers and specifies those taxes are to be calculated as if the sale took place at the location where the delivery occurred in Florida. Opinions may vary on whether the consent to personal jurisdiction and title transfer provisions in this legislation accomplish their intended purposes.

B. RULE-MAKING AUTHORITY:

The division is required by rule to prescribe the age verification process of common carriers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Under the proposed provisions of s. 561.585(5), F.S., direct shippers of wine would be required to "pay" monthly to the Department of Revenue all sales tax on sales to persons in Florida for the preceding month. These provisions are not consistent with the provisions of s. 212.07, F.S. To better reflect the intended purpose, the word "pay" should be replaced with "collect and remit".

Section 561.585(7), F.S., provides that any "common carrier, permit carrier, *or other commercial conveyance*" that knowingly and intentionally delivers wine directly to a person who is under 21 commits a 3rd degree felony. The term "other commercial conveyance" is not used elsewhere in the bill when referring to the universe of potential means of commercial transportation.

The Department of Revenue has recommended an effective date of January 1, 2007 to ensure sufficient time to adequately implement the provisions of the law.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The sponsor of this bill offered a strike-all amendment which was adopted by the Business Regulation Committee on February 7, 2006.

This strike-all amendment creates a new s. 561.585, F.S., and the license and regulatory mechanism which allows the direct shipment of wine to any person that is at least 21 years of age for personal consumption; the amendment deletes the provision contained in the original bill allowing for direct shipments to vendors.

A "winery shipper" license may only be obtained by a wine manufacturer. The bill removes the authority for a Florida wine manufacturer to also be licensed as a distributor but grandfathers existing licensees and retains authority for certain wine manufacturers to hold retail licenses. To obtain a winery shipper license a winery applicant must:

- obtain and maintain licensure as a primary American source of supply;
- provide the division with a copy of its current wine manufacturer's license issued by this or another state; [limits to wine manufacturers, not all alcoholic beverage licensees as in original bill]
- provide the division with a copy of its current Federal basic permit as a wine producer; [new requirement]
- manufacture less than 250,000 gallons of wine per year; [new requirement]
- pay a $250 license fee; [increased from $100 fee]
- file a $5,000 surety bond with the division. [new requirement]

The bill provides that a winery shipper license may not be issued to an applicant that is owned by a winery that produces more than 250,000 gallons of wine annually. According to industry estimates over 90 percent of wineries nationwide produce less than 250,000 gallons of wine annually. Winery shippers are prohibited from shipping more than 42 gallons of wine per year to a single address and recipients are prohibited from ordering more than 42 gallons of wine per year per address.

The criteria to become certified as a Florida Farm Winery was amended to require that at least 60 percent of all wine produced by the farm winery be made from Florida agricultural products. The bill allows the Commissioner of Agriculture to waive this requirement in times of hardship.

The strike-all amendment establishes additional labeling requirements for wine shipments. The winery shipper must ensure that the outside shipping label on each package is conspicuous and includes the following components, without specifying the format:

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

Responsibility is placed on both the winery shipper and the common carrier to ensure that the signature of a person that is at least 21 years of age is obtained prior to delivery of the direct-shipped wine. The approved forms of identification are expanded to include an identification card issued under s. 322.051 or, if the person is physically handicapped as defined in s. 553.45(1).

The amendment clarifies administrative penalty provisions and allows for the suspension or revocation of a winery shipper license or the imposition of a fine in an amount up to $2,500 per violation of newly created s. 561.585. Other penalty provisions in the strike-all amendment remain the same as in the original bill, except that the amendment increases the evidentiary standard for a person that obtains wine from a winery shipper in violation of the statute to knowingly and intentionally, which is the same standard applicable to a winery shipper or a common carrier.

The amendment provides the winery shipper and the common carrier with a complete defense to civil actions for the sale or delivery of alcoholic beverages to a person under the age of 21 if the prescribed age verification procedures were followed.

The amendment expands the monthly reporting requirements for winery shippers to provide greater specificity with regard to the wines shipped into the state and taxes paid. The amendment also exempts those licensees that already make monthly reports pursuant to s. 561.55, F.S., from duplicate reporting requirements if all relevant information is captured in other required reports.

The requirement for payment of excise and sales taxes remain in the strike-all amendment. Sales taxes are calculated as if the sale took place at the location where the delivery occurs in the state. A new provision is included to specify that the cost of performing an audit shall be assigned to the agency requesting the audit unless the licensee is found to be in material violation, at which time the cost of the audit will be assigned to the licensee.

The strike-all further amends s. 561.545, F.S., the primary direct shipping prohibition statute, to delete its applicability to wine and keep in place the direct shipping prohibitions with regard to beer and liquor. In-state retailers retain their ability to make direct deliveries of any type of alcoholic beverage.

The strike-all construes Internet orders as telephone orders made at a vendor's place of business and allows vendor delivery of same.

The strike-all amendment contains a severability clause and rulemaking authority for the division and the Department of Revenue.

Please see bill analysis for complete description of legislation.