

## REVENUE ESTIMATING CONFERENCE

**TAX:** ALCOHOLIC BEVERAGE TAX ON WINE

**ISSUE:** DIRECT WINE SHIPMENTS

**BILL NUMBER(S):** HB 693

**SPONSOR(S):** Representative Bogdanoff

**MONTH/YEAR COLLECTION IMPACT BEGINS:** Upon becoming law.

**DATE OF ANALYSIS:** January 30, 2008

### SECTION 1: NARRATIVE

#### a. Current Law:

Due to the court rulings in Granholt v. Heald, 125 S.Ct. 1885, and Bainbridge v. Florida, US Middle District Court, Middle District of Florida, Tampa Division, Case number 8:99-CV-268-T-27TBN, August 5, 2005, Florida was enjoined from enforcing current prohibitions against direct shipment of wine because the courts found the laws unconstitutional in that they discriminate against out-of-state wineries.

With the above caveat, Florida Statutes currently prohibit any shipments of alcoholic beverages going directly to any consumer in Florida.

- Section 561.54, F.S., makes it unlawful to make delivery of any alcoholic beverage from outside the state to any person, association of persons, or corporation within the state, except to qualified manufacturers, distributors, exporters, and bonded warehouses in this state.
- Section 561.545, F.S., finds any direct shipment of alcoholic beverages by persons in the business of selling alcoholic beverages to residents of this state to be in violation of the statutes.
- Section 561.14, F.S., requires alcoholic beverage products to pass through a three-tier system before ultimately reaching the consumer. The manufacturer/supplier can only sell to the wholesaler/distributor, who in turn can sell to the vendor/retailer. The retailer then sells to the ultimate consumer. This three-tier system of supplier-distributor-retailer has been in place and guided the flow of alcoholic beverages in Florida and the nation since the repeal of Prohibition in 1933.
- Section 561.545, F.S., provides penalties for direct shipment of alcoholic beverages to residents of this state.

Certified Florida Farm Wineries are permitted to obtain licensure as a manufacturer, distributor, and a vendor.

#### b. Proposed Change:

HB 693 creates Section 585.585, F.S., to authorize certain specific direct shipments of wine to be made to consumers within Florida, while keeping in place the statutes which make other direct shipment of malt and spirituous beverages to Florida consumers a violation of law. The bill provides for out-of-state entities to be licensed by the State of Florida to ship directly to persons in Florida who are at least 21 years of age for personal use only, up to a maximum of 18 cases of 9 liters of wine per calendar year to any household address.

There are various criteria associated with the licensing of the winery shipper. The winery shipper must:

- Qualify for licensure under sections 561.15 and 561.17, Florida Statutes, or provide certification from the federal government or the state in which the winery is located that the qualifications for that winery license include a minimum of the following components:
  - a. Fingerprinting;
  - b. Disqualification of applicant under 21; and
  - c. Disqualification of persons convicted of a felony within the last 15 years, of the beverage law of this state, the United States, or any other state in the past 5 years, or a criminal violation of the controlled substance act of this state, the United States, or any other state;
- Obtain and maintain a current license as a Primary American Source of Supply (PAS), as provided in section 564.045, Florida Statutes;
- Provide a true copy of a current wine manufacturer's license issued by this state or another state and a true copy of its current Federal Basic Permit as a wine producer;
- Pay an annual license fee of \$250;
- File a \$5,000 surety bond, which may be reduced to no less than \$1,000: 1.) At the discretion of the division, the amount of business done by the winery shipper licensee is such volume that a bond of less than \$5,000 will be adequate. Upon written request of the winery shipper, the division must review the total tax liability to the state by the winery shipper and reduce the

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bond to 110 percent of the prior year's total tax liability as a licensee. 2.) The surety bond currently on file with the division for a winery pursuant to s. 561.37, Florida Statutes, is deemed to comply with this requirement;

- Ensure the outside shipping label is conspicuous and includes three components: 1) This package contains alcohol; 2) An adult signature is required; and 3) The recipient must be at least 21 years of age;
- Report monthly to the division whether any wine product was shipped during the preceding month; the total amount of wine shipped for the preceding month; the quantity and types of wine shipped; and the amount of
- excise tax paid to the division (The report is not required from a winery shipper licensee who files a monthly report pursuant to section 561.55, Florida Statutes, that contains all of the information required by this bill);
- Remit monthly all sales taxes and excise taxes due on sales to persons in this state for the preceding month to
- the Department of Revenue and the Division of Alcoholic Beverages and Tobacco, respectively (The amount of
- tax is calculated as if the sale occurred at the place of delivery);
- Maintain records of all shipments to include the names, addresses, amounts, and dates for at least three years after date of delivery, and must allow the Department of Revenue and the Division of Alcoholic Beverages and Tobacco to perform an audit of the records upon request; and
- Consent to the jurisdiction of any applicable Florida agency or court concerning enforcement of this law.

The bill requires each winery shipper licensee and common carrier to obtain signature of the recipient prior to delivery and after presentation of a valid identification. A complete defense to any civil action, except for any administration action by the division is provided if the person purchasing the alcoholic beverage falsely evidenced that they were of legal age to purchase or consume the alcohol; an acceptable form of identification was carefully checked; and the person appeared to be of an age where an ordinarily prudent person would believe them to be of legal age. It amends section 561.545(5), Florida Statutes, to conform with this requirement, permitting any common carrier or any licensee or other person utilizing a common carrier as his or her agent to make deliveries of alcoholic beverages within the state and exempts them from the report filing requirements in section 562.20, Florida Statutes, as long as it is verified that the person receiving alcoholic beverages is at least 21 years of age the common carrier and the licensee or other person hiring the common carrier shall have a complete defense of selling, giving or serving alcoholic beverages to any person under the age of 21.

In addition to penalties provided in section 561.545, Florida Statutes, HB 693 authorizes the division to suspend or revoke a direct shipper's license or impose fines up to \$1,000 for any violation of this section. Any direct shipper transporting wine to any person in this state who is under 21 years of age commits a felony of the third degree. Any common carrier transporting wine from a direct shipper directly to any person in this state who is under 21 years of age commits a felony of the second degree. Any person who obtains wine from a direct shipper in violation of this section commits a misdemeanor of the second degree.

HB 693 amends s. 561.24, F.S., to prohibit the issuance of a winery shipper license to a manufacturer who is licensed as a distributor or vendor in any state.

HB 693 amends s. 561.54, F.S., to allow a winery shipper to ship wine or a licensed Florida vendor to ship alcoholic beverages to persons 21 years of age or older.

HB 693 amends s. 561.545, F.S., to permit the direct shipment of wine only to residents of this state.

HB 693 amends section 599.004, Florida Statutes, to reduce the current requirement that 90% of wine produced must be made from Florida agricultural products in order to qualify for the certification as a Florida Farm Winery down to 60% and authorizes the Commissioner of Agriculture to waive this requirement for hardship reasons.

The bill appropriates eight positions and \$616,152 for the Department of Business and Professional Regulation in FY 2008-09 for the purpose of carrying out the regulatory activities provided in the bill and related administrative support.

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**SECTION 2: DESCRIPTION OF DATA AND SOURCES**

1. Current Florida PAS Licenses – 1,328;
2. Federally Licensed Manufacturers – 5,438;
3. Estimated Recipients - 60,000
4. Fees @ \$250;
5. TAXES @ \$2.25 PER GALLON; AND
6. PURCHASE LIMITS – 18 CASES PER RECIPIENT

It is uncertain how many of the current federally licensed manufacturers will want to become licensed to ship wine into Florida. It is also uncertain how many consumers in Florida will wish to purchase wine via direct shipments. To estimate these numbers the following methodologies were used.

We are projecting that 2,095 of the current 5,438 federally licensed manufacturers will wish to ship directly into Florida. It is estimated that there will be 2,095 entities who will meet licensure requirements and who will seek licensure to sell wine directly into Florida. The number of individuals who will purchase wine directly from the licensed direct shippers is unknown. Assuming that approximately 1/2 of 1% of the consuming population will purchase directly, there could be 60,000 individual recipients. The bill limits the amount of wine that can be purchased by the individuals from the licensed winery shippers to 18 cases per year. For analysis purposes, we have assumed that individuals will purchase a high of 8 cases, middle of 6 cases or a low of 2 cases of wine per year.

**SECTION 3: METHODOLOGY (INCLUDE ASSUMPTIONS AND ATTACH DETAILS)**

Sales Tax Assumptions:

9 bottles per case (average of 6-12/case)

\$15 per bottle

4 Cases/consumer

60,000 consumers annually

Grown 3%

9 X \$15 X 4 = \$540 purchase X 60,000 purchases = \$32,400,000 X .06 = \$1.94 m a year

**SECTION 4: PROPOSED FISCAL IMPACT**

State Impact—All Funds	FY 2008-09 Annualized	FY 2008-09 Cash	FY 2009-10 Cash
<b>High 8 Cases Per Year</b>			
Excise Tax (GR)	2,570,400	2,570,400	2,647,512
License Fees (AB&T TF)	523,750	523,750	539,463
<b>Middle 6 Cases Per Year</b>			
Excise Tax (GR)	1,927,800	1,927,800	1,985,634
License Fees (AB&T TF)	523,750	523,750	539,463
<b>Low 4 Cases Per Year</b>			
Excise Tax (GR)	1,285,200	1,285,200	1,323,756
License Fees (AB&T TF)	523,750	523,750	539,463
Sales Tax	1,940,000	1,780,000	2,000,000

State Impact—All Funds	FY 2010-11 Cash	FY 2011-12 Cash
<b>High 8 Cases Per Year</b>		
Excise Tax (GR)	2,726,937	2,808,745
License Fees (AB&T TF)	555,647	572,316
<b>Middle 6 Cases Per Year</b>		
Excise Tax (GR)	2,045,203	2,106,559
License Fees (AB&T TF)	555,647	572,316
<b>Low 4 Cases Per Year</b>		
Excise Tax (GR)	1,363,469	1,404,373
License Fees (AB&T TF)	555,647	572,316
Sales Tax	2,060,000	2,120,000

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**SECTION 5: CONSENSUS ESTIMATE (ADOPTED 2 / 8 / 08 )** The conference adopted the 4 case estimate.

	FY 2008-09 Annualized	FY 2008-09 Cash	FY 2009-10 Cash
General Revenue—Sales	1.7	1.6	1.8
General Revenue—Beverage	1.3	1.3	1.3
General Revenue—Svc Chg	Insignificant	Insignificant	Insignificant
State Trust—AB&T TF	.5	.5	.5
Total State Impact	3.5	3.4	3.6
Revenue Sharing	.1	.1	.1
Local Gov't Half Cent	.2	.2	.2
Local Option	.2	.2	.2
Total Local Impact	.5	.5	.5
Total Impact	4.0	3.9	4.1

	FY 2010-11 Cash	FY 2011-12 Cash
General Revenue—Sales	1.9	1.9
General Revenue--Beverage	1.4	1.4
General Revenue—Svc Chg	Insignificant	Insignificant
State Trust—AB&T TF	.6	.6
Total State Impact	3.9	3.9
Revenue Sharing	.1	.1
Local Gov't Half Cent	.2	.2
Local Option	.2	.2
Total Local Impact	.5	.5
Total Impact	4.4	4.4