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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 1163
RELATING TO: Beverage Law; Direct Shipping of Wine
SPONSOR(S): Representative(s) Dockery
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION
 - (2) FISCAL POLICY & RESOURCES
 - (3) FISCAL RESPONSIBILITY COUNCIL
 - (4)
 - (5)
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I. SUMMARY:

This bill creates two exceptions to the alcoholic beverage shipment prohibitions contained in the Alcoholic Beverage Law.

First, the bill expands the existing statutory provision that allows a person to possess up to one gallon of untaxed alcoholic beverages by adding a provision which allows a person to possess up to 24 bottles of untaxed wine under specified conditions.

Second, the bill allows a qualifying charitable organization to receive wine directly from an out-of-state shipper for fundraising purposes. Such wine would also be exempt from the state excise tax.

The bill will have a negative, but indeterminate, impact on state excise and sales tax collections.
[Please see D. FISCAL COMMENTS section.]

The act will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Beverage Law consists of Chapters 561-565 and 567-568, Florida Statutes, and requires a person to be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages. Cross licensing between the separate licensed groups is prohibited.

A simple explanation of the Florida Beverage Law is that the law generally requires all alcoholic beverages to move through three separate regulated tiers (manufacturer, wholesaler, retailer) before reaching the ultimate consumer. Since excise taxes are collected at the wholesale level and product shipments between each tier are documented and subject to audit, this structured distribution system has proved to be an efficient and effective tax collection mechanism.

Direct Shipment of Alcoholic Beverages

Section 561.14, Florida Statutes, requires alcoholic beverages to pass through the licensed distribution system with all sales to consumers made by licensed retail vendors. The direct shipment of any alcoholic beverage from an out-of-state supplier to a Florida consumer is unlawful. [see s.561.45, Florida Statutes] Further, s. 561.545, Florida Statutes, provides that any person found to be knowingly and intentionally shipping alcoholic beverages from an out-of-state location into the state to anyone other than a licensed manufacturer or distributor, registered exporter, or to a state bonded warehouse shall be issued a notice to show cause why a cease and desist order should not be issued; a second or subsequent violation of this law within two years constitutes a third-degree felony. This statute does not apply to the direct shipment of sacramental alcoholic beverages to bona fide religious organizations or to the possession of alcoholic beverages pursuant to s. 562.15(2), Florida Statutes.

Documentation of Shipments into the State

Section 564.045, Florida Statutes, establishes a "Primary American Source of Supply" license which authorizes the shipment of wine manufactured within or without the state to licensed distributors, importers, manufacturers, bonded warehouses and registered exporters within the state. Primary sources of supply are the legally authorized exclusive agents for the manufacturer and are the sources closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor. The term also includes a supplier who directly

purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no Primary American Source of Supply for the brand and petitions the division for approval of licensure. These statutes are designed, in part, to protect the orderly channel of distribution of alcoholic beverages, provide a tax audit trail to ensure the collection of state excise taxes, and restrict the purchase of goods through the "gray" market.

Section 561.54, Florida Statutes, makes it unlawful to make delivery of any alcoholic beverages 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.

Several other provisions of the Beverage Law including, ss. 561.55 and 562.20, and Administrative Rule 61A-4.010 work in concert with these provisions by requiring reports of product shipments into the state in order to construct a reliable audit trail. Section 562.20, Florida Statutes, requires all common carriers operating in the state to file monthly reports showing in detail all shipments of alcoholic beverages transported by them to or from any point in the state. Every other person, except manufacturers and distributors, who brings more than one gallon of an alcoholic beverage into the state, is also required to file detailed monthly reports with the division. Administrative Rule 61A-4.010 requires all out of state manufacturers, importers and distributors to file monthly reports with the division revealing the kind of beverages shipped, the date of shipment, the quantity shipped and the party to whom the beverages were shipped, including alcoholic beverages shipped in Federal bond.

In addition, individuals traveling outside of the United States may bring personally purchased alcoholic beverages into the state upon completion of DBPR Form AB&T 4000A-035 and payment of the appropriate excise tax.

Possession of Untaxed Alcoholic Beverages

The Beverage Law makes it unlawful for any person to own or possess an untaxed alcoholic beverage in this state. Section 562.15, Florida Statutes, creates an exception from this prohibition by allowing a person to possess up to one gallon of alcoholic beverages if the following conditions are met:

- The person purchased the beverage in another state and in accordance with the laws of that state, and
- The beverage was brought into Florida by the purchaser.

The burden of proof that such beverages were purchased outside the state and in accordance with the laws of the place where purchased rests upon the possessor of the alcoholic beverage.

Temporary Alcoholic Beverage Permits for Nonprofit Organizations

Section 561.422, Florida Statutes, allows the issuance of a temporary alcoholic beverage permit to bona fide nonprofit civic organizations. The permit is valid for up to three days and allows the sale of all types of alcoholic beverages for on-premises consumption. No organization may obtain more than three temporary [3-day] permits per calendar year.

Section 561.422, Florida Statutes, also provides an exception to Beverage Law prohibitions by allowing nonprofit civic organizations utilizing 3-day permits to purchase alcoholic beverages either from a licensed retailer or distributor. The state excise tax is required to be paid on all alcoholic beverages whether donated to or sold to Florida licensees for sale or use in their fundraising activities by the licensed Florida wholesale distributor.

As a condition of receiving a 3-day permit, nonprofit civic organizations are required to maintain records of donations, purchases and sales of alcoholic beverages; however, the Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation indicates that this information is not required to be reported to the division and receipts and sales are not audited.

Tax Collection

Alcoholic beverage sales at events sponsored by nonprofit organizations pursuant to s. 561.422, Florida Statutes, are presently exempt from the state sales tax and the alcoholic beverage surcharge. The state excise tax is, however, required to be paid by the licensed Florida wholesale distributor on both purchased and donated alcoholic beverages.

State *excise taxes* are collected on alcoholic beverages at the wholesale level based on their inventory depletions and accounted for over \$487 million in tax revenue for the state for FY 1999-2000. The state *sales tax* is collected on the retail sale of beverages and generated an estimated \$450 million in tax revenue for the state in FY 1999-2000.

C. EFFECT OF PROPOSED CHANGES:

This bill creates two exceptions to the alcoholic beverage shipment prohibitions contained in the Beverage Law.

Direct Shipment of Wine to Non-profit Organizations

The bill creates a new s. 561.585, Florida Statutes, to allow qualifying charitable organizations to receive wine directly from out-of-state shippers for fundraising purposes. Charitable organizations are defined as organizations that hold a current tax exemption from federal income tax under s. 501(c) (3) of the Internal Revenue Code and are exempt from the state sales and use tax. Qualifying 501(c) (3) organizations include: religious, charitable, scientific, literary, educational, national or international amateur sports competition and groups organized for the prevention of cruelty to children or animals.

The bill requires unsold wine to be returned to the out-of-state shipper but does not specify a timeframe within which the return is required to take place or documentation of the return.

This bill allows "out-of-state shippers" to ship unlimited amounts of wine directly to charitable organizations in the state. It is somewhat unclear whether the out-of-state shipper would be required to comply with the reporting requirements of existing law. It is possible that an out-of-state shipper could include suppliers other than those presently required to provide monthly reports of their shipments to the division. Similarly, there is no provision in the bill that requires the non-profit organization to report to the division the amount of wine received in this manner.

Without specific directives that the out-of-state shipper be subject to the imposition of fines or other penalties for violations of the Beverage Law, provide documentation to the division of all wines shipped to non-profit organizations in Florida, and that the non-profit organization maintain documentation of wine received subject to division audit, the division will have no ability to cross-check product shipments to determine the tax exempt status of wine in a licensee's possession.

Possession and Shipment of Untaxed Wine to Florida Consumers

The bill expands the provisions of s. 562.15, Florida Statutes, which allow a person to possess up to one gallon of untaxed alcoholic beverages and adds a provision that allows a person to possess up to 24 bottles of untaxed wine if the following conditions are met:

- The wine was purchased in accordance with the laws of the state where purchased; and
- The wine was brought, shipped, or caused to be shipped into Florida by the purchaser.

This provision would appear to apply to wine purchases both within and without the territorial limits of the United States. The bill does not specify whether the 24-bottle limitation is restricted by time, e.g., during a calendar year; rather, it appears that the consumer could deplete a 24-bottle supply numerous times and be within the constraints of the law as long as not possessing more than 24 bottles of wine at any one time.

The burden of proof that the wine was purchased outside of Florida in accordance with the laws of the place where purchased is placed upon the possessor of the wine. As is the case with the similar existing provision allowing the possession of up to one gallon on untaxed alcoholic beverages there is no mechanism in the Beverage Law to monitor the amount of untaxed alcoholic beverages in a person's possession.

Moreover, Uniform Commercial Code provisions in various states provide that the transfer of title to purchased goods takes place in the state where the product is purchased. A common condition of purchase printed on order forms for both mail order and Internet purchases of wine includes a statement to that effect and further states that the seller is authorized to act as an agent for the buyer for purposes of arranging shipment of the product to the purchaser. The term "in accordance with the laws of the state where purchased" could be interpreted to allow a consumer to purchase wine via any number of methods [telephonic, electronic or by mail] without being physically present at the winery at the time of purchase.

This bill provides that wine received from an out-of-state supplier under these provisions is exempt from the excise tax provisions of the Beverage Law. According to the division a case of wine will usually contain 12 bottles and the contents may vary from 2.38 to 3.17 gallons. The excise rate for wine is \$2.25 up to \$3.50 per gallon.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates a new s. 561.585, Florida Statutes, to allow the direct shipment of wine to charitable organizations in Florida for fundraising purposes.

Section 2. Amends s. 562.15, Florida Statutes, to allow a person to possess up to 24 bottles of untaxed wine if specified conditions are met.

Section 3. Amends s. 561.545, Florida Statutes, to add exceptions from the direct shipping prohibitions for wine shipped in accordance with the amendments made to ss. 561.585 and 562.15, by this legislation.

Section 4. Provides that the act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Bill Impact Committee of the Revenue Estimating Conference has not yet met on this legislation. The provisions of this bill are, however, anticipated to have a negative impact on state excise and sales tax collections. [See FISCAL COMMENTS]

2. Expenditures:

The department anticipates the need for one additional Revenue Specialist I position to administer the workload associated with the provisions of the bill at a cost of \$40,091 for FY 2001-2002; \$36,103 for FY 2002-2003 and \$36,688 for FY 2003-2004. These cost estimates include Salaries and Benefits and Standard Expenses and OCO Packages.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is possible that some out-of-state suppliers may be more inclined to donate product for fundraising events in Florida, which will aid the beneficiaries of the various fundraising events.

Licensed Florida manufacturers, wholesalers and retailers may experience a decline in sales if individuals who purchase wine from out-of-state under the provisions of this bill reduce their in-state purchases of wine proportionately.

D. FISCAL COMMENTS:

The combined provisions in this legislation could result in reduced excise and sales tax revenues to the state of over \$700,000. This estimate of decreased revenue collections was based on two hypothetical situations as postulated by the Division of Alcoholic Beverages and Tobacco.

Wine Shipments to Non-profit Organizations

Neither the state sales tax nor the alcoholic beverage surcharge is presently collected on alcohol sales by a nonprofit organization utilizing a temporary 3-day permit per s. 561.422, Florida Statutes. Under the provisions of this bill, wine, which is received directly from [either purchased from or donated by] an out-of-state shipper, would also be exempt from the state excise tax. The excise tax on wine purchased from or donated by a licensed Florida wholesaler or retailer is not exempt under the provisions of this legislation.

During FY 1999-2000, the Division of Alcoholic Beverages and Tobacco issued over 3,300 temporary permits to non-profit civic organizations. If at each event 10 cases of wine were sold, the

loss of excise tax revenue would have been in excess of \$176,000. An average case of wine contains between 2.38 and 3.17 gallons and the minimum excise tax imposed on a gallon of wine is \$2.25: $3,300 \times 10 \times 2.38 \text{ gallons} \times \$2.25 = \$176,715$.

Wines Shipped to Florida Consumers

There is no reliable data on the number of consumers who purchase wine during out-of-state trips or who would avail themselves of this opportunity. To determine the number of consumers who might receive wine shipments in this manner, the division offered the following hypothetical formula utilizing population data:

The drinking age in Florida is 21 but population data for this age group was not available; therefore, the division looked at data for persons 25 years of age or older. The current estimated population in Florida over 25 years of age is 9,922,800. If $\frac{1}{4}$ of 1% of the consuming age population were to purchase tax-exempt wine via out-of-state travels or direct shipments, there would be 25,000 sales. If each consumer purchased the maximum of 24 bottles only once, the loss of excise taxes could be in excess of \$267,000 annually. An average case of wine contains between 2.38 and 3.17 gallons and the minimum excise tax imposed on a gallon of wine is \$2.25: $25,000 \times 2 \times 2.38 \text{ gallons} \times \$2.25 = \$267,750$.

According to the Office of Economic Development and Research, an acceptable formula to estimate sales tax collections for off-premise sales of alcoholic beverages is that the state sales tax will generate \$1.00 for every \$1.00 in excise tax revenue. Therefore, using the above formula, the direct shipping provision in this legislation would result in reduced sales tax collections of \$267,750 annually.

Industry estimates of present on-going unlawful direct shipments of wine and other alcoholic beverages from out-of-state suppliers to Florida consumers indicate that gross sales may be in the millions of dollars annually with significant tax implications.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Possession of Untaxed Wine

The provision in this legislation in newly created s. 562.15(3), Florida Statutes, allowing the possession of up to 24 bottles of untaxed wine will be difficult to enforce since there is virtually no acceptable means of monitoring an individual consumer's purchases, shipments and/or storage of wine.

In addition, it is possible that the term "in accordance with the laws where purchased" could be interpreted in a manner which allows an "agent" acting on behalf of the customer to purchase and ship the beverage, thereby avoiding the presumed intent of the legislation that the ultimate purchaser be physically present for the purchase and that appropriate taxes be paid at the time of purchase. This apparent loophole could result in the increased unlawful direct shipments of wine to Florida consumers.

Shipment of Wine to Nonprofit Organizations

The bill, in newly created s. 561.548, Florida Statutes, may not provide adequate safeguards to prevent the unintended abuse of the exception created in the statute. For example, the bill provides that wine not sold at the fundraising event must be returned to the out-of-state shipper. Since no verification/audit is required, it is conceivable that excess product would not be returned but could be sold to an individual in a transaction unrelated to the fundraising event; to a local retailer for resale; given away, etc.

Federal Law

Recently enacted federal legislation, the "21st Amendment Enforcement Act" permits states Attorneys General to enter federal district court to enjoin any shipping or transporting of alcohol into their state in violation of state law. As of this date no state has sought injunctive relief through this avenue; however, the statute may prove to be an effective enforcement tool for states seeking to enforce their state alcoholic beverage importation and transportation laws.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

Janet Clark Morris

M. Paul Liepshutz