

By Senators Latvala, Bronson and Harris

19-581B-98

1                                   A bill to be entitled  
 2           An act relating to the Beverage Law; amending  
 3           s. 561.14, F.S.; allowing vendor-to-vendor  
 4           sales; establishing limits; providing an  
 5           exemption from the alcoholic beverage  
 6           surcharge; requiring the maintenance of certain  
 7           records; providing for administrative sanctions  
 8           to be imposed for recordkeeping violations;  
 9           creating s. 561.59, F.S.; providing for direct  
 10          shipping of a limited amount of wine from out  
 11          of state to certain residents of this state;  
 12          requiring shippers to have an out-of-state  
 13          shipper's license; providing prohibitions;  
 14          providing a penalty; providing for  
 15          administrative enforcement; amending ss.  
 16          561.54, 561.545, F.S.; providing that those  
 17          sections are inapplicable to wine that is  
 18          shipped under s. 561.59, F.S.; providing an  
 19          effective date.

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 21 Be It Enacted by the Legislature of the State of Florida:

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 23           Section 1. Subsection (3) of section 561.14, Florida  
 24 Statutes, is amended to read:

25           561.14 License and registration  
 26 classification.--Licenses and registrations referred to in the  
 27 Beverage Law shall be classified as follows:

28           (3)(a) Vendors licensed to sell alcoholic beverages at  
 29 retail only. No vendor shall purchase or acquire in any manner  
 30 for the purpose of resale any alcoholic beverages from any  
 31 person not licensed as a vendor, manufacturer, bottler, or

1 distributor under the Beverage Law. Purchases of alcoholic  
2 beverages by vendors from vendors shall be strictly limited to  
3 purchases between members of a pool buying group for which the  
4 initial purchase of the alcoholic beverages was ordered by a  
5 pool buying agent as a single transaction. No vendor shall be  
6 a member of more than one cooperative or pool buying group at  
7 any time. No vendor shall import, or engage in the  
8 importation of, any alcoholic beverages from places beyond the  
9 limits of the state.

10 (b) Notwithstanding the provisions of paragraph (a), a  
11 vendor may purchase wine or spirits from a vendor licensed to  
12 sell alcoholic beverages for off-premises consumption in a  
13 cumulative amount not to exceed \$1,000 annually. Wine or  
14 spirits purchased and subsequently resold pursuant to this  
15 paragraph are exempt from collection of the alcoholic beverage  
16 surcharge imposed under s. 561.501. Records of  
17 vendor-to-vendor sales must be maintained by both parties to  
18 the sale for a period of 3 years. A vendor who fails to  
19 maintain accurate documentation concerning all  
20 vendor-to-vendor sales is subject to administrative sanctions  
21 for that violation.

22 Section 2. Section 561.59, Florida Statutes, is  
23 created to read:

24 561.59 Direct shipping for resident's personal use.--

25 (1) Notwithstanding any provision of the Beverage Law  
26 or any rule or regulation to the contrary, a person who is  
27 licensed in another state as a wine producer, supplier,  
28 importer, wholesaler, distributor, or retailer and who obtains  
29 an out-of-state shipper's license under this section may ship,  
30 directly to a resident of this state who is at least 21 years  
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1 of age, 24 bottles or less per month of wine for the  
2 resident's personal use and not for resale.

3 (2) Before sending any shipment to a resident of this  
4 state, an out-of-state shipper must first:

5 (a) File with the Division of Alcoholic Beverages and  
6 Tobacco an application for an out-of-state shipper's license;

7 (b) Pay a registration fee in the amount of \$100;

8 (c) Provide to the division a true copy of its current  
9 alcoholic beverage license issued in the other state; and

10 (d) Obtain from the division an out-of-state shipper's  
11 license.

12 (3) Each out-of-state shipper licensee:

13 (a) May ship no more than 24 bottles per month to any  
14 person.

15 (b) Shall ensure that each container of wine which is  
16 shipped directly to a resident in this state is conspicuously  
17 labeled with the words "SIGNATURE OF PERSON AGE 21 OR OLDER  
18 REQUIRED FOR DELIVERY."

19 (c) Shall annually report to the division the total of  
20 wine by type which the licensee shipped into the state during  
21 the preceding calendar year.

22 (d) Shall annually pay to the Department of Revenue  
23 all sales taxes and excise taxes due on sales to residents of  
24 this state in the preceding calendar year, the amount of such  
25 taxes to be calculated as if the sale were made in this state  
26 at the location where the delivery took place.

27 (e) Shall allow the Department of Revenue, upon its  
28 request, to perform an audit of the out-of-state shipper's  
29 records.

30 (f) Is considered to have consented to the  
31 jurisdiction of the Division of Alcoholic Beverages and

1 Tobacco or any other state agency and the courts of this state  
2 concerning enforcement of this section and any related laws,  
3 rules, or regulations.

4 (4) The out-of-state shipper may annually renew its  
5 license with the division by paying a renewal fee in the  
6 amount of \$100 and providing to the division a true copy of  
7 its current alcoholic beverage license issued by another  
8 state.

9 (5) The division may adopt rules to administer this  
10 section.

11 (6) The division may enforce this section by  
12 administrative proceedings to suspend or revoke an  
13 out-of-state shipper's license, and the division may accept in  
14 lieu of suspension the payment of a fine or an offer in  
15 compromise, as the division provides by rule.

16 (7) Shipments of wine from out of state directly to  
17 consumers in this state from persons who do not possess a  
18 valid out-of-state shipper's license or other permit or  
19 license from the Division of Alcoholic Beverages and Tobacco  
20 are prohibited. Any person who knowingly makes, participates  
21 in, transports, imports, or receives such a shipment from  
22 outside this state in violation of this section commits a  
23 misdemeanor of the second degree, punishable as provided in s.  
24 775.082 or s. 775.083.

25 Section 3. Section 561.54, Florida Statutes, is  
26 amended to read:

27 561.54 Certain deliveries of beverages prohibited.--

28 (1) It is unlawful for common or permit carriers,  
29 operators of privately owned cars, trucks, buses, or other  
30 conveyances or out-of-state manufacturers or suppliers to make  
31 delivery from without the state of any alcoholic beverage to

1 any person, association of persons, or corporation within the  
2 state, except to qualified manufacturers, distributors, and  
3 exporters of such beverages so delivered and to qualified  
4 bonded warehouses in this state.

5 (2) Any licensee aggrieved by a violation of this  
6 section may bring an action in any court of competent  
7 jurisdiction to recover for the state all moneys obtained by  
8 common carriers or permit carriers; obtained by operators of  
9 privately owned cars, trucks, buses, or other conveyances; or  
10 obtained by out-of-state manufacturers or suppliers as a  
11 result of the delivery of alcoholic beverages in violation of  
12 this section, and may obtain a declaratory judgment that an  
13 act or practice violates this section and enjoin any person  
14 from violating this section. In addition to such relief, the  
15 court may order the confiscation and destruction of any  
16 alcoholic beverages delivered in violation of this section.  
17 In assessing damages, the court shall enter judgment against a  
18 defendant for three times the amount of the delivery charges  
19 proved or the fair market value of merchandise unlawfully  
20 brought into the state. Payment or satisfaction of any  
21 judgment under this section, other than for costs and  
22 attorney's fees, shall be made in its entirety to the state.  
23 In any successful action under this section, the court shall  
24 award the plaintiff costs and reasonable attorney's fees.

25 (3) This section does not apply to wine that is  
26 direct-shipped under s. 561.59.

27 Section 4. Section 561.545, Florida Statutes, is  
28 amended to read:

29 561.545 Certain shipments of beverages prohibited;  
30 penalties; exceptions.--The Legislature finds that the direct  
31 shipment of alcoholic beverages by persons in the business of

1 selling alcoholic beverages to residents of this state in  
2 violation of the Beverage Law poses a serious threat to the  
3 public health, safety, and welfare; to state revenue  
4 collections; and to the economy of the state. The Legislature  
5 further finds that the penalties for illegal direct shipment  
6 of alcoholic beverages to residents of this state should be  
7 made adequate to ensure compliance with the Beverage Law and  
8 that the measures provided for in this section are fully  
9 consistent with the powers conferred upon the state by the  
10 Twenty-first Amendment to the United States Constitution.

11 (1) Any person in the business of selling alcoholic  
12 beverages who knowingly and intentionally ships, or causes to  
13 be shipped, any alcoholic beverage from an out-of-state  
14 location directly to any person in this state who does not  
15 hold a valid manufacturer's or wholesaler's license or  
16 exporter's registration issued by the Division of Alcoholic  
17 Beverages and Tobacco or who is not a state-bonded warehouse  
18 is in violation of this section.

19 (2) Any common carrier or permit carrier or any  
20 operator of a privately owned car, truck, bus, or other  
21 conveyance who knowingly and intentionally transports any  
22 alcoholic beverage from an out-of-state location directly to  
23 any person in this state who does not hold a valid  
24 manufacturer's or wholesaler's license or exporter's  
25 registration or who is not a state-bonded warehouse is in  
26 violation of this section.

27 (3) Any person found by the division to be in  
28 violation of subsection (1) shall be issued a notice, by  
29 certified mail, to show cause why a cease and desist order  
30 should not be issued. Any person who violates subsection (1)  
31 within 2 years after receiving a cease and desist order or

1 within 2 years after a prior conviction for violating  
2 subsection (1) commits a felony of the third degree,  
3 punishable as provided in s. 775.082, s. 775.083, or s.  
4 775.084.

5 (4) Any common carrier or permit carrier, or any  
6 operator of a privately owned car, truck, bus, or other  
7 conveyance found by the division to be in violation of  
8 subsection (2) as a result of a second or subsequent delivery  
9 from the same source and location, within a 2-year period  
10 after the first delivery shall be issued a notice, by  
11 certified mail, to show cause why a cease and desist order  
12 should not be issued. Any person who violates subsection (2)  
13 within 2 years after receiving the cease and desist order or  
14 within 2 years after a prior conviction for violating  
15 subsection (2) commits a felony of the third degree,  
16 punishable as provided in s. 775.082, s. 775.083, or s.  
17 775.084.

18 (5) This section does not apply to the direct shipment  
19 of sacramental alcoholic beverages to bona fide religious  
20 organizations as authorized by the division or to possession  
21 of alcoholic beverages in accordance with s. 562.15(2).

22 (6) This section does not apply to wine that is  
23 direct-shipped under s. 561.59.

24 Section 5. This act shall take effect upon becoming a  
25 law.

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SENATE SUMMARY

Allows vendor-to-vendor sales of wine or spirits under specified conditions. Exempts such sales from the alcoholic beverage surcharge that is imposed under s. 561.501, F.S. Requires records of vendor-to-vendor sales to be maintained by both parties to the sale for a period of 3 years. Provides for administrative sanctions to be imposed for recordkeeping violations. Provides for the direct shipping of no more than 24 bottles of wine per month to any resident of this state who is at least 21 years old. Requires out-of-state shippers to have a license obtained from the Division of Alcoholic Beverages and Tobacco. Provides prohibitions. Provides a penalty. Provides for administrative enforcement. Provides that ss. 561.54 and 561.545, F.S., do not apply to direct out-of-state shipments of wine to residents of this state.