

By Senators Harris and Latvala

24-301B-98

1 A bill to be entitled
2 An act relating to the shipment of wine;
3 amending s. 561.545, F.S.; decreasing the
4 penalty imposed for the offense of shipping or
5 transporting any alcoholic beverage from an
6 out-of-state location directly to a person in
7 this state; providing for the penalty to remain
8 unchanged if the person who receives the
9 alcoholic beverage is less than 21 years of
10 age; providing that the prohibition against
11 shipping alcoholic beverages to state residents
12 does not apply to the direct shipment of wine
13 from outside the state to an individual of a
14 specified age or older for personal use and not
15 for resale; prohibiting the shipment of more
16 than a specified amount of wine to the same
17 individual within a specified period; amending
18 ss. 562.15, 562.16, F.S., relating to a
19 prohibition against possessing alcoholic
20 beverages on which taxes have not been paid;
21 providing that such prohibition is inapplicable
22 to the possession of wine shipped directly to
23 an individual from outside the state for
24 personal use and not for resale; limiting the
25 amount of such wine an individual may receive
26 within a specified period; amending s. 564.06,
27 F.S.; providing that certain excise taxes on
28 wine are not required for wine shipped directly
29 from outside the state for personal use and not
30 for resale; providing that the delivery of such
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1 wine does not constitute a sale for purposes of
2 the Beverage Law; providing an effective date.

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

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6 Section 1. Section 561.545, Florida Statutes, is
7 amended to read:

8 561.545 Certain shipments of beverages prohibited;
9 penalties; exceptions.--The Legislature finds that the direct
10 shipment of alcoholic beverages by persons in the business of
11 selling alcoholic beverages to residents of this state in
12 violation of the Beverage Law poses a serious threat to the
13 public health, safety, and welfare; to state revenue
14 collections; and to the economy of the state. The Legislature
15 further finds that the penalties for illegal direct shipment
16 of alcoholic beverages to residents of this state should be
17 made adequate to ensure compliance with the Beverage Law and
18 that the measures provided for in this section are fully
19 consistent with the powers conferred upon the state by the
20 Twenty-first Amendment to the United States Constitution.

21 (1) Any person in the business of selling alcoholic
22 beverages who knowingly and intentionally ships, or causes to
23 be shipped, any alcoholic beverage from an out-of-state
24 location directly to any person in this state who does not
25 hold a valid manufacturer's or wholesaler's license or
26 exporter's registration issued by the Division of Alcoholic
27 Beverages and Tobacco or who is not a state-bonded warehouse
28 is in violation of this section.

29 (2) Any common carrier or permit carrier or any
30 operator of a privately owned car, truck, bus, or other
31 conveyance who knowingly and intentionally transports any

1 alcoholic beverage from an out-of-state location directly to
2 any person in this state who does not hold a valid
3 manufacturer's or wholesaler's license or exporter's
4 registration or who is not a state-bonded warehouse is in
5 violation of this section.

6 (3) Any person found by the division to be in
7 violation of subsection (1) shall be issued a notice, by
8 certified mail, to show cause why a cease and desist order
9 should not be issued. Any person who violates subsection (1)
10 within 2 years after receiving a cease and desist order or
11 within 2 years after a prior conviction for violating
12 subsection (1) commits a misdemeanor ~~felony~~ of the first third
13 degree, punishable as provided in s. 775.082 ~~or~~s. 775.083,
14 ~~or s. 775.084.~~

15 (4) Any common carrier or permit carrier, or any
16 operator of a privately owned car, truck, bus, or other
17 conveyance found by the division to be in violation of
18 subsection (2) as a result of a second or subsequent delivery
19 from the same source and location, within a 2-year period
20 after the first delivery shall be issued a notice, by
21 certified mail, to show cause why a cease and desist order
22 should not be issued. Any person who violates subsection (2)
23 within 2 years after receiving the cease and desist order or
24 within 2 years after a prior conviction for violating
25 subsection (2) commits a misdemeanor ~~felony~~ of the first third
26 degree, punishable as provided in s. 775.082 ~~or~~s. 775.083,
27 ~~or s. 775.084.~~

28 (5)(a) Any person in the business of selling alcoholic
29 beverages who knowingly and intentionally ships, or causes to
30 be shipped any alcoholic beverage from an out-of-state
31 location directly to any person in this state who is less than

1 21 years of age commits a felony of the third degree,
2 punishable as provided in s. 775.082, s. 775.083, or s.
3 775.084.

4 (b) Any common carrier or permit carrier or any
5 operator of a privately owned car, truck, bus, or other
6 conveyance who knowingly and intentionally transports any
7 alcoholic beverage from an out-of-state location directly to
8 any person in this state who is less than 21 years of age
9 commits a felony of the third degree, punishable as provided
10 in s. 775.082, s. 775.083, or s. 775.084.

11 (6)(5) This section does not apply to:

12 (a) The direct shipment of sacramental alcoholic
13 beverages to bona fide religious organizations as authorized
14 by the division, ~~or to~~

15 (b) The possession of alcoholic beverages in
16 accordance with s. 562.15(2).

17 (c) The direct shipment of wine from outside the state
18 to an individual 21 years of age or older for personal use and
19 not for resale. A person in the business of selling alcoholic
20 beverages may not ship more than four cases of wine per year
21 from outside the state to the same individual, and a single
22 case may not contain more than 9 liters of wine.

23 Section 2. Section 562.15, Florida Statutes, is
24 amended to read:

25 562.15 Unlawful possession; unpaid taxes.--It is
26 unlawful for any person to own or possess within this state
27 any alcoholic beverage, unless full compliance has been had
28 with the pertinent provisions of the Beverage Law as to
29 payment of excise taxes on beverages of like alcohol content.
30 However, this section does ~~shall~~ not apply to:

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1 (1) ~~To~~ Manufacturers or distributors licensed under
2 the Beverage Law, ~~to~~ state bonded warehouses, or ~~to~~ common
3 carriers. ~~† or~~

4 (2) ~~To~~ Persons possessing not in excess of 1 gallon of
5 such beverages if the beverage is ~~shall have been~~ purchased by
6 the said possessor outside of the state in accordance with the
7 laws of the place where purchased and ~~shall have been~~ brought
8 into this state by the said possessor. The burden of proof
9 that such beverages were purchased outside the state and in
10 accordance with the laws of the place where purchased shall in
11 all cases be upon the possessor of such beverages.

12 (3) A person 21 years of age or older who possesses
13 wine shipped directly to him or her from outside the state for
14 personal use and not for resale. A person may not receive by
15 direct shipment more than four cases of wine per year, except
16 that a person may receive up to four cases of wine per week if
17 such person ships the wine directly to himself or herself from
18 a location outside the state. For purposes of this subsection
19 a single case may not contain more than 9 liters of wine.

20 Section 3. Section 562.16, Florida Statutes, is
21 amended to read:

22 562.16 Possession of beverages upon which tax is
23 unpaid.--Any person or corporation who shall own or have in
24 her or his or its possession any beverage upon which a tax is
25 imposed by the Beverage Law, or which would be imposed if such
26 beverage were manufactured in or brought into this state in
27 accordance with the regulatory provisions of the Beverage Law,
28 and upon which such tax has not been paid shall, in addition
29 to the fines and penalties otherwise provided in the Beverage
30 Law, be personally liable for the amount of the tax imposed on
31 such beverage, and the division may collect such tax from such

1 person by suit or otherwise. However, ~~provided,~~ that this
2 section does ~~shall~~ not apply to:

3 (1) Manufacturers or distributors licensed under the
4 Beverage Law, ~~to~~ state bonded warehouses, ~~or to~~ common
5 carriers. ~~provided, further, this section shall not apply to~~

6 (2) Persons possessing not in excess of 1 gallon of
7 such beverages ~~if provided,~~ the beverage is ~~shall have been~~
8 purchased by the ~~said~~ possessor outside of the state in
9 accordance with the laws of the place where purchased and
10 ~~shall have been~~ brought into this state by the ~~said~~ possessor.
11 The burden of proof that such beverages were purchased outside
12 the state and in accordance with the laws of the place where
13 purchased in all cases shall be upon the possessor of such
14 beverages.

15 (3) A person 21 years of age or older who possesses
16 wine shipped directly to him or her from outside the state for
17 personal use and not for resale. A person may not receive by
18 direct shipment more than four cases of wine per year, except
19 that a person may receive up to four cases of wine per week if
20 such person ships the wine directly to himself or herself from
21 a location outside the state. For purposes of this subsection
22 a single case may not contain more than 9 liters of wine.

23 Section 4. Section 564.06, Florida Statutes, is
24 amended to read:

25 564.06 Excise taxes on wines and beverages.--

26 (1) As to beverages including wines, except natural
27 sparkling wines, cider and malt beverages, containing 0.5
28 percent or more alcohol by volume and less than 17.259 percent
29 alcohol by volume, there shall be paid by all manufacturers
30 and distributors a tax at the rate of \$2.25 per gallon.

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1 (2) As to all wines, except natural sparkling wines,
2 containing 17.259 percent or more alcohol by volume, there
3 shall be paid by manufacturers and distributors a tax at the
4 rate of \$3.00 per gallon.

5 (3) As to natural sparkling wines, there shall be paid
6 by all manufacturers and distributors a tax at the rate of
7 \$3.50 per gallon.

8 (4) As to cider, which is made from the normal
9 alcoholic fermentation of the juice of sound, ripe apples,
10 including but not limited to flavored, sparkling, or
11 carbonated cider and cider made from condensed apple must,
12 that contain not less than one-half of 1 percent of alcohol by
13 volume and not more than 7 percent of alcohol by volume, there
14 shall be paid by all manufacturers and distributors a tax at
15 the rate of \$.89 per gallon. With the sole exception of the
16 excise tax rate, cider shall be considered wine and shall be
17 subject to the provisions of this chapter.

18 (5)(a) As to wine coolers, which are a combination of
19 wines containing 0.5 percent or more alcohol by volume,
20 carbonated water, and flavors or fruit juices and
21 preservatives and which contain 1 to 6 percent alcohol content
22 by volume, there shall be paid by all manufacturers and
23 distributors a tax at the rate of \$2.25 per gallon.

24 (b) All products however derived, distilled, mixed, or
25 fermented and which contain less than 6 percent alcohol by
26 volume which are taxed under this chapter shall be available
27 for purchase and sale as provided in ss. 563.02, 564.02, and
28 564.04 by any licensee holding a valid license to sell
29 alcoholic beverages for consumption either on or off premises,
30 and nothing contained in chapter 562, chapter 563, chapter
31 565, or this chapter shall be construed to prevent such sales.

1 (6) Wine used by any established church as sacramental
2 wine or in connection with religious services is hereby
3 expressly exempted from the provisions of this section.

4 (7) Every distributor selling wine within the state
5 shall pay the tax to the division monthly on or before the
6 10th day of the following month, less 1.9 percent of the tax
7 due, which shall be withheld by the distributor for keeping
8 prescribed records, furnishing bond, and properly accounting
9 for and remitting taxes due to the state. However, no
10 allowance shall be granted or permitted when the tax is
11 delinquent at the time of payment.

12 (8) The excise taxes required to be paid by this
13 section are not required to be paid upon:

14 (a) Any alcoholic beverage sold to a post exchange,
15 ship service store, or base exchange located in a military,
16 naval, or air force reservation within this state.

17 (b) Wine for personal use and not for resale which is
18 shipped from outside the state directly to a person in this
19 state who is 21 years of age or older. A person may not
20 receive more than four cases of wine per year shipped from
21 outside the state, except that a person may receive up to four
22 cases of wine per week if such person ships the wine directly
23 to himself or herself from a location outside the state. For
24 purposes of this paragraph, a single case may not contain more
25 than 9 liters of wine. The delivery of wine shipped as
26 provided in this paragraph does not constitute a sale for
27 purposes of the Beverage Law.

28 (9) The department may ~~is authorized to~~ adopt rules to
29 effectuate the provisions of this section.

30 (10) Fifty percent of all revenues collected from the
31 excise taxes imposed by this section on wine produced by

1 manufacturers in this state from products grown in the state
2 must be deposited into the Viticulture Trust Fund established
3 pursuant to s. 599.012.

4 Section 5. This act shall take effect July 1, 1998.

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SENATE SUMMARY

8 Provides that the penalty imposed for the offense of
9 shipping or transporting any alcoholic beverage from an
10 out-of-state location directly to a person in this state
11 is a first-degree misdemeanor rather than a third-degree
12 felony. Provides for the penalty for such offense to
13 remain a third-degree felony if the person who receives
14 the alcoholic beverage is less than 21 years of age.

15 Allows a person who is at least 21 years of age to
16 receive up to four cases of wine per month which is
17 shipped directly to that person from outside the state
18 and allows a person to ship up to four cases of wine per
19 week to himself or herself if the wine is shipped from
20 outside the state. Provides that a single case may not
21 contain more than 9 liters of wine. Provides that the
22 delivery of wine shipped from outside the state as
23 provided for in the act does not constitute a sale for
24 purposes of the Beverage Law.

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