

By the Committee on Regulated Industries and Senators Harris, Latvala, Dyer, Horne, Brown-Waite, Cowin, Sullivan, Crist, Campbell, Forman, Bronson and Klein

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A bill to be entitled
An act relating to the Beverage Law; creating s. 561.59, F.S.; providing for certain direct shipments of wine from out of state; requiring shippers to have certain licenses; providing prohibitions; providing for administrative and criminal penalties; exempting charitable organizations from excise and sales and use taxes on sales made from direct shipments of wine from out of state, subject to restrictions; amending ss. 561.54 and 561.545, F.S.; providing that those sections are inapplicable to wine shipped under s. 561.59, F.S.; providing an effective date.

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

Section 1. Section 561.59, Florida Statutes, is created to read:

561.59 Direct shipment of wine.--

(1) LICENSURE REQUIREMENTS.--Notwithstanding any provision of the Beverage Law or any rule or regulation to the contrary, a person, firm, corporation, or other entity who is licensed as an out-of-state shipper under this section may ship wine directly to any person registered under this section who is at least 21 years of age for personal use only and not for resale. To obtain an out-of-state shipper's license, an applicant must:

(a) Obtain and maintain a current license as a primary American source of supply as provided in s. 564.045;

1 (b) Provide to the division a true copy of its current
2 alcoholic beverage license issued by another state; and

3 (c) Pay a registration fee in the amount of \$100.

4 A shipper may annually renew its out-of-state shipper's
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 (2) LIMITATION ON SHIPMENTS.--An out-of-state shipper
10 may ship no more than 4 cases of wine per calendar year to the
11 same person registered under this section. A person registered
12 under this section may obtain no more than a total of 4 cases
13 of wine per calendar year from all out-of-state shippers
14 combined. A single case may contain no more than 9 liters of
15 wine.

16 (3) SIGNATURE.--Each out-of-state shipper shall ensure
17 that the outside shipping label of each package containing
18 wine shipped under this section conspicuously states
19 "SIGNATURE OF ADDRESSEE AGE 21 OR OLDER REQUIRED FOR DELIVERY"
20 and that, prior to delivery, the signature of the addressee is
21 obtained after presentation of a valid driver's license, an
22 identification card issued by this state or another state of
23 the United States, a passport, or a United States armed
24 services identification card.

25 (4) MONTHLY REPORT.--Each out-of-state shipper shall
26 report monthly to the division the total amount of wine by
27 type shipped into the state during the preceding month.

28 (5) TAXES.--Each out-of-state shipper shall pay monthly
29 to the Department of Revenue all sales taxes and to the
30 division all excise taxes due on sales to persons in this
31 state for the preceding month. The amount of such taxes is to

1 be calculated as if the sale took place at the location where
2 the delivery occurred in this state. Each out-of-state shipper
3 shall maintain records of its direct shipments to this state,
4 including the names, addresses, amounts, and dates of all
5 shipments to persons in this state, and shall allow the
6 Department of Revenue or the division, upon its request, to
7 perform an audit of such records.

8 (6) JURISDICTION.--Each out-of-state shipper is deemed
9 to have consented to the jurisdiction of the division or any
10 other state agency and the courts of this state concerning
11 enforcement of this section and any related laws, rules, or
12 regulations.

13 (7) REGISTRATION.--Before receiving any shipment under
14 this section, a person must register with the division on a
15 form prescribed by the division by filing a sworn statement
16 and providing:

17 (a) Full name;

18 (b) Address of legal residence, and mailing address, if
19 different from street address;

20 (c) Telephone number;

21 (d) Proof that the person is at least 21 years of age;

22 (e) A statement that wine obtained under this section
23 is for personal use only and not for resale;

24 (f) A statement that the person will obtain no more
25 than a total of 4 cases of wine per calendar year from all
26 out-of-state shippers combined; and

27 (g) Any other information the division by rule may deem
28 necessary to adequately carry out the provisions of this
29 section.

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1 A registration must be updated with the division within 30
2 days after any change. The registration with the division
3 under this section shall be valid for a period of up to 5
4 years and expires on December 31 of the 5th year.

5 (8) PENALTIES.--

6 (a) In addition to the penalties provided by s.
7 561.545, the division may suspend or revoke an out-of-state
8 shipper's license, or impose fines on the out-of-state shipper
9 for any violation of this section.

10 (b) An out-of-state shipper who knowingly and
11 intentionally ships, or causes to be shipped, wine to any
12 person in this state who is younger than 21 years of age
13 commits a felony of the third degree, punishable as provided
14 in s. 775.082, s. 775.083, or s. 775.084.

15 (c) Any common carrier or permit carrier or any
16 operator of a privately owned car, truck, bus, or other
17 conveyance who knowingly and intentionally transports wine
18 from an out-of-state location directly to any person in this
19 state who is younger than 21 years of age commits a felony of
20 the third degree, punishable as provided in s. 775.082, s.
21 775.083, or s. 775.084.

22 (d) A person who obtains wine from an out-of-state
23 shipper in violation of this section commits a misdemeanor of
24 the second degree, punishable as provided in s. 775.082 or s.
25 775.083.

26 (9) EXEMPTION FOR CHARITABLE ORGANIZATIONS.--Any
27 charitable organization is exempt from the excise and sales
28 and use taxes on any sales of wine obtained from an
29 out-of-state shipper under this section for purposes of
30 fundraising if all proceeds and profits are deposited with the
31 organization. Any bottles of wine that are not sold at the

1 fundraising event must be returned to the out-of-state shipper
2 for purposes of this section. As used in this subsection, the
3 term "charitable organization" means an organization that
4 holds a current tax exemption from federal income tax under s.
5 501(c)(3) of the Internal Revenue Code, as amended and that is
6 exempt from the sales and use taxes imposed by chapter 212.

7 Section 2. Section 561.54, Florida Statutes, is
8 amended to read:

9 561.54 Certain deliveries of beverages prohibited.--

10 (1) It is unlawful for common or permit carriers,
11 operators of privately owned cars, trucks, buses, or other
12 conveyances or out-of-state manufacturers or suppliers to make
13 delivery from without the state of any alcoholic beverage to
14 any person, association of persons, or corporation within the
15 state, except to qualified manufacturers, distributors, and
16 exporters of such beverages so delivered and to qualified
17 bonded warehouses in this state.

18 (2) Any licensee aggrieved by a violation of this
19 section may bring an action in any court of competent
20 jurisdiction to recover for the state all moneys obtained by
21 common carriers or permit carriers; obtained by operators of
22 privately owned cars, trucks, buses, or other conveyances; or
23 obtained by out-of-state manufacturers or suppliers as a
24 result of the delivery of alcoholic beverages in violation of
25 this section, and may obtain a declaratory judgment that an
26 act or practice violates this section and enjoin any person
27 from violating this section. In addition to such relief, the
28 court may order the confiscation and destruction of any
29 alcoholic beverages delivered in violation of this section.
30 In assessing damages, the court shall enter judgment against a
31 defendant for three times the amount of the delivery charges

1 proved or the fair market value of merchandise unlawfully
2 brought into the state. Payment or satisfaction of any
3 judgment under this section, other than for costs and
4 attorney's fees, shall be made in its entirety to the state.
5 In any successful action under this section, the court shall
6 award the plaintiff costs and reasonable attorney's fees.

7 (3) This section does not apply to the shipment of
8 wine by a licensed out-of-state shipper to a registered person
9 21 years of age or older in accordance with s. 561.59.

10 Section 3. Section 561.545, Florida Statutes, is
11 amended to read:

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

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

3 (2) Any common carrier or permit carrier or any
4 operator of a privately owned car, truck, bus, or other
5 conveyance who knowingly and intentionally transports any
6 alcoholic beverage from an out-of-state location directly to
7 any person in this state who does not hold a valid
8 manufacturer's or wholesaler's license or exporter's
9 registration or who is not a state-bonded warehouse is in
10 violation of this section.

11 (3) Any person found by the division to be in
12 violation of subsection (1) shall be issued a notice, by
13 certified mail, to show cause why a cease and desist order
14 should not be issued. Any person who violates subsection (1)
15 within 2 years after receiving a cease and desist order or
16 within 2 years after a prior conviction for violating
17 subsection (1) commits a felony of the third degree,
18 punishable as provided in s. 775.082, s. 775.083, or s.
19 775.084.

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

3 (5) This section does not apply to:

4 (a) The direct shipment of sacramental alcoholic
5 beverages to bona fide religious organizations as authorized
6 by the division;~~or to~~

7 (b) The possession of alcoholic beverages in
8 accordance with s. 562.15(2); ~~or~~

9 (c) The shipment of wine by a licensed out-of-state
10 shipper to a registered person 21 years of age or older in
11 accordance with s. 561.59.

12 Section 4. This act shall take effect upon becoming a
13 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SBs 2120 & 1906
4 Deletes provisions relating to certain vendor-to-vendor sales,
5 not exceeding \$1,000 annually; deletes provisions regarding
6 authorization for self-shipments of wine from out-of-state.
7 Permits direct shipments of wine from a licensed out-of-state
8 shipper to a registered person 21 years of age or older;
9 provides that a registered person may obtain no more than 4
10 cases per year from all out-of-state shippers combined.
11 Requires the licensed out-of-state shipper to be licensed as a
12 "primary American source of supply;" to provide a copy of
13 current alcoholic beverage license from another state and to
14 pay \$100 registration fee. Requires annual renewal with
15 payment of \$100 fee and copy of current alcoholic beverage
16 license from another state.
17 Requires persons to register by filing sworn statement with
18 the division before obtaining direct shipments of wine.
19 Requires Signature and presentation of valid identification by
20 addressee age 21 before delivery.
21 Requires monthly payment by out-of-state shipper of all excise
22 and sales and use taxes. Provides for audits and monthly
23 reports.
24 Authorizes division to suspend or revoke an out-of-state
25 shipper's license or impose fines for violations.
26 Provides second degree misdemeanor for any person who obtains
27 wine from an out-of-state shipper in violation of the bill.
28 Retains current law provisions making second shipment or
29 delivery of alcoholic beverages within 2 years, except as
30 authorized by the bill, a third degree felony. Provides third
31 degree felony for the knowing and intentional sale, shipment,
32 or transportation of wine to a person under the age of 21.
33 Adds an exemption under certain conditions from excise taxes
34 for wine obtained by charitable organizations from
35 out-of-state for purposes of fundraising.
36 Exempts direct shipments of wine by out-of-state shippers
37 under s. 561.59, F.S, from civil action by an aggrieved
38 licensee for violations of the prohibitions of certain
39 deliveries of alcoholic beverages.
40 Deletes provisions regarding authorization for self-shipments
41 of wine from out-of-state of up to 4 cases per week.
42 Provides an effective date upon becoming a law.