

1 A bill to be entitled
2 An act relating to alcoholic beverages;
3 repealing s. 561.501, F.S., relating to the
4 surcharge on the sale of alcoholic beverages
5 for consumption on the premises, contingent
6 upon certain conditions being met; amending s.
7 561.025, F.S.; conforming provisions contingent
8 upon the repeal of s. 561.501, F.S.; amending
9 s. 561.121, F.S.; conforming provisions
10 contingent upon the repeal of s. 561.501, F.S.;
11 providing for a portion of funds from the
12 excise taxes on alcoholic beverages to be
13 transferred to the Children and Adolescents
14 Substance Abuse Trust Fund; amending s. 561.24,
15 F.S.; including manufacturers of wine within a
16 group of manufacturers who may not be licensed
17 as distributors or registered exporters;
18 providing exceptions; amending s. 561.501,
19 F.S.; providing for a surcharge on cider;
20 creating s. 561.5101, F.S.; requiring all malt
21 beverages to come to rest at a wholesaler's
22 licensed premises prior to sale; providing
23 exceptions; providing penalties; amending s.
24 561.01, F.S.; providing definitions; amending
25 s. 561.54, F.S.; providing for injunctive
26 relief; providing for confiscation and
27 destruction of certain alcoholic beverages;
28 providing for treble damages; providing for
29 costs and attorney's fees; creating s. 561.545,
30 F.S.; providing legislative intent; prohibiting
31 the direct shipment of alcoholic beverages to

1 any person in the state other than a licensed
2 manufacturer or wholesaler, registered
3 exporter, or state bonded warehouse; providing
4 penalties; providing exceptions; amending s.
5 561.68, F.S., relating to the licensure of
6 salesmen of spirituous or vinous beverages;
7 providing an exception; providing an effective
8 date.
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10 Be It Enacted by the Legislature of the State of Florida:
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12 Section 1. No later than March 1, 1999, the Department
13 of Business and Professional Regulation shall certify to the
14 President of the Senate and the Speaker of the House of
15 Representatives the amount of taxes due and paid during
16 calendar year 1998 under sections 563.05, 564.06, and 565.12,
17 Florida Statutes, and payments made to the state pursuant to
18 section 561.54, Florida Statutes. If this amount is greater
19 than \$535 million, then, effective July 1, 1999, section
20 561.501, Florida Statutes, is repealed.

21 Section 2. Contingent upon the repeal of section
22 561.501, Florida Statutes, section 561.025, Florida Statutes,
23 is amended to read:

24 561.025 Alcoholic Beverage and Tobacco Trust
25 Fund.--There is created within the State Treasury the
26 Alcoholic Beverage and Tobacco Trust Fund. All funds collected
27 by the division under ss. 210.15, 210.40, or under s. 569.003
28 and the Beverage Law with the exception of state funds
29 collected pursuant to ss. ~~561.501~~, 563.05, 564.06, and 565.12
30 shall be deposited in the State Treasury to the credit of the
31 trust fund, notwithstanding any other provision of law to the

1 contrary. Moneys deposited to the credit of the trust fund
2 shall be used to operate the division and to provide a
3 proportionate share of the operation of the office of the
4 secretary and the Division of Administration of the Department
5 of Business and Professional Regulation; except that:

6 (1) The revenue transfer provisions of ss. 561.32 and
7 561.342(1) and (2) shall continue in full force and effect,
8 and the division shall cause such revenue to be returned to
9 the municipality or county in the manner provided for in s.
10 561.32 or s. 561.342(1) and (2); and

11 (2) Ten percent of the revenues derived from retail
12 tobacco products dealer permit fees collected under s. 569.003
13 shall be transferred to the Department of Education to provide
14 for teacher training and for research and evaluation to reduce
15 and prevent the use of tobacco products by children, pursuant
16 to s. 233.067(4).

17 Section 3. Contingent upon the repeal of section
18 561.501, Florida Statutes, section 561.121, Florida Statutes,
19 is amended to read:

20 561.121 Deposit of revenue.--

21 (1) All state funds collected pursuant to ss. 563.05,
22 564.06, and 565.12 shall be paid into the State Treasury and
23 disbursed in the following manner:

24 (a) Two percent of monthly collections of the excise
25 taxes on alcoholic beverages established in ss. 563.05,
26 564.06, and 565.12 shall be deposited into the Alcoholic
27 Beverage and Tobacco Trust Fund to meet the division's
28 appropriation for the state fiscal year.

29 (b) Ten million dollars annually shall be transferred
30 to the Children and Adolescents Substance Abuse Trust Fund,
31 which shall remain with the Department of Children and Family

1 Services for the purpose of funding programs directed at
2 reducing and eliminating substance abuse problems among
3 children and adolescents.

4 ~~(c)(b)~~ The remainder of collection shall be credited
5 to the General Revenue Fund.

6 (2) The unencumbered balance in the Alcoholic Beverage
7 and Tobacco Trust Fund at the close of each fiscal year may
8 not exceed \$2 million. These funds shall be held in reserve
9 for use in the event that trust fund revenues are unable to
10 meet the division's appropriation for the next fiscal year. In
11 the event of a revenue shortfall, these funds shall be spent
12 pursuant to subsection (3). Notwithstanding subsection (1), if
13 the unencumbered balance on June 30 in any fiscal year is less
14 than \$2 million, the department is authorized to retain the
15 difference between the June 30 unencumbered balance in the
16 trust fund and \$2 million from the July collections of state
17 funds collected pursuant to ss. 563.05, 564.06, and 565.12.
18 Any unencumbered funds in excess of reserve funds shall be
19 transferred unallocated to the General Revenue Fund by August
20 31 of the next fiscal year.

21 (3) Funds deposited into the Alcoholic Beverage and
22 Tobacco Trust Fund pursuant to subsection (1) shall be used
23 for administration and enforcement of chapters 210, 561, 562,
24 563, 564, 565, 567, 568, and 569.

25 ~~(4) State funds collected pursuant to s. 561.501 shall~~
26 ~~be paid into the State Treasury and credited to the following~~
27 ~~accounts:~~

28 ~~(a) Nine and eight-tenths of the surcharge on the sale~~
29 ~~of alcoholic beverages for consumption on premises shall be~~
30 ~~transferred to the Children and Adolescents Substance Abuse~~
31 ~~Trust Fund, which shall remain with the Department of Health~~

1 ~~and Rehabilitative Services for the purpose of funding~~
2 ~~programs directed at reducing and eliminating substance abuse~~
3 ~~problems among children and adolescents.~~

4 ~~(b) The remainder of collections shall be credited to~~
5 ~~the General Revenue Fund.~~

6 Section 4. Subsections (1), (2), (3), (4), and (5) of
7 section 561.24, Florida Statutes, are amended to read:

8 561.24 Licensing manufacturers as distributors or
9 registered exporters prohibited; procedure for issuance and
10 renewal of distributors' licenses and exporters'
11 registrations.--

12 (1) A manufacturer, rectifier, or distiller that
13 manufactures, rectifies, or distills spirituous liquors or
14 wine may not be granted a license as a distributor and may not
15 register as an exporter.

16 (2) A manufacturer, rectifier, or distiller that
17 manufactures, rectifies, or distills spirituous liquors or
18 wine may not be granted a renewal of a license or registration
19 previously held as a distributor or exporter.

20 (3) If the applicant for a distributor's license or
21 exporter's registration, or renewal thereof, is an individual
22 or copartnership, such individual or copartnership is within
23 the provisions of subsection (1) or subsection (2), as the
24 case may be, if the individual or any member of the
25 copartnership is interested or connected, directly or
26 indirectly, with any corporation which is engaged directly or
27 indirectly or through any subsidiary or affiliate corporation,
28 including any stock ownership as set forth in subsection (4),
29 in manufacturing, rectifying, or distilling spirituous liquors
30 or wine. If any individual or any member of such
31 copartnership within 6 months next preceding the making of an

1 application hereunder has been interested or connected as
2 provided by this subsection, such individual or such member of
3 the copartnership shall be prima facie presumed to be so
4 interested or connected with such corporation at the time of
5 the making of the application, and such prima facie
6 presumption shall continue until overcome by the applicant.

7 (4) If the applicant for a distributor's license or
8 exporter's registration, or for the renewal thereof, is a
9 corporation, such corporation is within the provisions of
10 subsections (1) and (2), as the case may be, if such
11 corporation is affiliated with, directly or indirectly, any
12 other corporation which is engaged in manufacturing,
13 rectifying, or distilling spirituous liquors or wine or if
14 such applicant corporation is controlled by, or the majority
15 of stock therein is owned by, another corporation, which
16 latter corporation is engaged, directly or indirectly, in
17 manufacturing, rectifying, or distilling spirituous liquors or
18 wine.

19 (5) Notwithstanding any of the provisions of the
20 foregoing subsections, any corporation which holds a license
21 as a distributor on June 3, 1947, shall be entitled to a
22 renewal thereof, provided such corporation complies with all
23 of the provisions of the Beverage Law of Florida, as amended,
24 and of this section and establishes by satisfactory evidence
25 to the division ~~board of county commissioners of the county~~
26 ~~wherein the original license was issued~~ that, during the
27 6-month period next preceding its application for such
28 renewal, of the total volume of its sales of spirituous
29 liquors, in either dollars or quantity, not more than 40
30 percent of such spirituous liquors sold by it, in either
31 dollars or quantity, were manufactured, rectified, or

1 distilled by any corporation with which the applicant is
2 affiliated, directly or indirectly, including any corporation
3 which owns or controls in any way any stock in the applicant
4 corporation or any corporation which is a subsidiary or
5 affiliate of the corporation so owning stock in the applicant
6 corporation. Any manufacturer of wine holding a license as a
7 distributor on the effective date of this act shall be
8 entitled to a renewal of such license notwithstanding the
9 provisions of subsections (1) through (5). This section does
10 not apply to any winery qualifying as a certified Florida Farm
11 Winery under s. 599.004.

12 Section 5. Subsection (1) of section 561.501, Florida
13 Statutes, is amended to read:

14 561.501 Surcharge on sale of alcoholic beverages for
15 consumption on the premises; penalty.--

16 (1) Notwithstanding s. 561.50 or any other provision
17 of the Beverage Law, a surcharge of 10 cents is imposed upon
18 each ounce of liquor and each 4 ounces of wine, a surcharge of
19 6 cents is imposed on each 12 ounces of cider, and a surcharge
20 of 4 cents is imposed on each 12 ounces of beer sold at retail
21 for consumption on premises licensed by the division as an
22 alcoholic beverage vendor.

23 Section 6. Section 561.5101, Florida Statutes, is
24 created to read:

25 561.5101 Come-to-rest requirement; exceptions;
26 penalties.--

27 (1) For purposes of inspection and tax-revenue
28 control, all malt beverages, except those manufactured and
29 sold pursuant to s. 561.221(3), must come to rest at the
30 licensed premises of an alcoholic beverage wholesaler in this
31 state before being sold to a vendor by the wholesaler. The

1 prohibition contained in this subsection does not apply to the
2 shipment of malt beverages commonly known as private labels.
3 The prohibition contained in this subsection shall not prevent
4 a manufacturer from shipping malt beverages for storage at a
5 bonded warehouse facility, provided that such malt beverages
6 are distributed as provided in this subsection or to an
7 out-of-state entity.

8 (2) Any person who is in the business of selling
9 alcoholic beverages and who knowingly and intentionally sells
10 malt beverages in a manner inconsistent with the requirements
11 of subsection (1), whether to a vendor or to an ultimate
12 consumer, commits a felony of the third degree, punishable as
13 provided in s. 775.082, s. 775.083, or s. 775.084.

14 Section 7. Subsections (18) and (19) are added to
15 section 561.01, Florida Statutes, to read:

16 561.01 Definitions.--As used in the Beverage Law:

17 (18) "Common carrier" means any person, firm, or
18 corporation that undertakes for hire, as a regular business,
19 the transportation of persons or commodities from place to
20 place, offering its services to all who choose to employ it
21 and pay its charges.

22 (19) "Permit carrier" means a licensee authorized to
23 make deliveries as provided in s. 561.57.

24 Section 8. Section 561.54, Florida Statutes, is
25 amended to read:

26 561.54 Certain deliveries of beverages prohibited.--

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

1 state, except to qualified manufacturers, distributors, and
 2 exporters of such beverages so delivered and to qualified
 3 bonded warehouses in this state.

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

24 Section 9. Section 561.545, Florida Statutes, is
 25 created to read:

26 561.545 Certain shipments of beverages prohibited;
 27 penalties; exceptions.--The Legislature finds that the direct
 28 shipment of alcoholic beverages by persons in the business of
 29 selling alcoholic beverages to residents of this state in
 30 violation of the Beverage Law poses a serious threat to the
 31 public health, safety, and welfare, to state revenue

1 collections, and to the economy of the state. The Legislature
2 further finds that the penalties for illegal direct shipment
3 of alcoholic beverages to residents of this state should be
4 made adequate to ensure compliance with the Beverage Law and
5 that the measures provided for in this section are fully
6 consistent with the powers conferred upon the state by the
7 Twenty-first Amendment to the United States Constitution.

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

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

24 (3) Any person found by the division to be in
25 violation of subsection (1) 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 (1)
28 within 2 years after receiving a cease and desist order or
29 within 2 years after a prior conviction for violating
30 subsection (1) 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 (4) Any common carrier or permit carrier, or any
4 operator of a privately owned car, truck, bus, or other
5 conveyance found by the division to be in violation of
6 subsection (2) as a result of a second or subsequent delivery
7 from the same source and location, within a 2-year period
8 after the first delivery shall be issued a notice, by
9 certified mail, to show cause why a cease and desist order
10 should not be issued. Any person who violates subsection (2)
11 within 2 years after receiving the cease and desist order or
12 within 2 years after a prior conviction for violating
13 subsection (2) commits a felony of the third degree,
14 punishable as provided in s. 775.082, s. 775.083, or s.
15 775.084.

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

20 Section 10. Paragraph (a) of subsection (1) of section
21 561.68, Florida Statutes, is amended to read:

22 561.68 Licensure; distributor's salesmen.--

23 (1)(a) Before any person may solicit or sell to
24 vendors or become employed as a salesman of spirituous or
25 vinous beverages for a licensed Florida distributor in
26 accordance with the provisions of this section, such person
27 shall file with the district supervisor of the district of the
28 Division of Alcoholic Beverage and Tobacco in which the
29 distributor's premises is located a sworn application for a
30 license on forms provided by the division. Prior to any
31 application being approved, the division shall require the

1 applicant to file a fee of \$50 and file a set of fingerprints
2 on regular United States Department of Justice forms. The
3 licensure requirement provided in this paragraph does not
4 apply to the solicitation or sale of cider.

5 Section 11. This act shall take effect upon becoming a
6 law.

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