

By Senator Geller

31-1591-05

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A bill to be entitled

An act relating to the Beverage Law; creating s. 561.585, F.S.; providing for certain direct shipments of wine from out of state to a resident of this state; requiring shippers to have certain licenses; providing prohibitions; providing for administrative and criminal penalties; amending ss. 561.54 and 561.545, F.S.; providing that those sections do not apply to wine shipped under s. 561.585, F.S.; providing an effective date.

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

Section 1. Section 561.585, Florida Statutes, is created to read:

561.585 Direct shipment of wine.--

(1) LICENSURE REQUIREMENTS.--Notwithstanding any provision of the Beverage Law or any rule 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;

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

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

1 A shipper may annually renew its out-of-state shipper's
2 license with the division by paying a renewal fee in the
3 amount of \$100 and providing to the division a true copy of
4 its current alcoholic beverage license issued by another
5 state.

6 (2) LIMITATION ON SHIPMENTS.--A person registered
7 under this section, while physically present at an
8 out-of-state winery that is licensed as an out-of-state
9 shipper under this section, may purchase and have shipped to
10 this state no more than two cases of wine per winery and no
11 more than eight cases of wine per calendar year for personal
12 use only. A single case may contain no more than 9 liters of
13 wine.

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

21 (4) QUARTERLY REPORT.--Each out-of-state shipper shall
22 report quarterly to the division the total amount of wine by
23 type shipped into the state during the preceding 3 months.

24 (5) TAXES.--Each out-of-state shipper shall pay
25 monthly to the Department of Revenue all sales taxes and to
26 the division all excise taxes due on sales to persons in this
27 state for the preceding month. The amount of such taxes shall
28 be calculated as if the sale took place at the location where
29 the delivery occurred in this state. Each out-of-state shipper
30 shall maintain records of its direct shipments to this state,
31 including the names, addresses, amounts, and dates of all

1 shipments to persons in this state, and shall allow the
2 Department of Revenue or the division, upon its request, to
3 perform an audit of such records.

4 (6) JURISDICTION.--Each out-of-state shipper is deemed
5 to have consented to the jurisdiction of the division or any
6 other state agency and the courts of this state concerning
7 enforcement of this section and any related laws or rules.

8 (7) REGISTRATION.--Before receiving any shipment under
9 this section, a person must be at least 21 years of age, must
10 be a resident of this state, and must register with the
11 division on a form prescribed by the division by filing a
12 sworn statement and providing:

13 (a) Full name;

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

16 (c) Telephone number;

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

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

20 (f) A statement that the person will obtain no more
21 than a total of eight cases of wine per calendar year from all
22 out-of-state shippers combined; and

23 (g) Any other information the division by rule may
24 deem necessary to adequately carry out the provisions of this
25 section.

26
27 A registration must be updated with the division within 30
28 days after any change. The registration with the division
29 under this section is valid for a period of up to 5 years and
30 expires on December 31 of the 5th year.

31 (8) PENALTIES.--

1 (a) In addition to the penalties provided by s.
2 561.545, the division may suspend or revoke an out-of-state
3 shipper's license or impose fines on the out-of-state shipper
4 for any violation of this section.

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

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

17 (d) A person who obtains wine from an out-of-state
18 shipper in violation of this section commits a misdemeanor of
19 the second degree, punishable as provided in s. 775.082 or s.
20 775.083.

21 Section 2. Section 561.54, Florida Statutes, is
22 amended to read:

23 561.54 Certain deliveries of beverages prohibited.--

24 (1) It is unlawful for common or permit carriers,
25 operators of privately owned cars, trucks, buses, or other
26 conveyances or out-of-state manufacturers or suppliers to make
27 delivery from without the state of any alcoholic beverage to
28 any person, association of persons, or corporation within the
29 state, except to qualified manufacturers, distributors, and
30 exporters of such beverages so delivered and to qualified
31 bonded warehouses in this state.

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

21 (3) This section does not apply to the shipment of
22 wine by a licensed out-of-state shipper to a registered person
23 21 years of age or older in accordance with s. 561.585.

24 Section 3. Section 561.545, Florida Statutes, is
25 amended 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,
31 |

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:

17 (a) The direct shipment of sacramental alcoholic
18 beverages to bona fide religious organizations as authorized
19 by the division; ~~or to~~

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

22 (c) The shipment of wine by a licensed out-of-state
23 shipper to a registered person 21 years of age or older in
24 accordance with s. 561.585.

25 Section 4. This act shall take effect upon becoming a
26 law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Provides for the direct shipping of no more than eight cases of wine per calendar year to a resident of this state who is at least 21 years old and who purchases the wine in person at the winery for personal use. Requires out-of-state shippers to be licensed by the Division of Alcoholic Beverages and Tobacco. Provides prohibitions. Provides for administrative and criminal penalties. Provides for the payment of taxes. Provides that ss. 561.54 and 561.545, F.S., do not apply to direct out-of-state shipments of wine to persons in this state as authorized under this act.