

By Senator Saunders

37-523-05

1 |   A bill to be entitled  
 2 |           An act relating to the Beverage Law; creating  
 3 |           s. 561.585, F.S.; providing for certain direct  
 4 |           shipments of wine from out of state; requiring  
 5 |           shippers to have certain licenses; providing  
 6 |           prohibitions; providing for administrative and  
 7 |           criminal penalties; exempting charitable  
 8 |           organizations from excise and sales and use  
 9 |           taxes on sales made from direct shipments of  
 10 |          wine from out of state, subject to  
 11 |          restrictions; amending ss. 561.54 and 561.545,  
 12 |          F.S.; providing that those sections are  
 13 |          inapplicable to wine shipped under s. 561.585,  
 14 |          F.S.; providing an effective date.

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

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

20 |           561.585 Direct shipment of wine.--  
 21 |           (1) LICENSURE REQUIREMENTS.--Notwithstanding any  
 22 |          provision of the Beverage Law or any rule to the contrary, a  
 23 |          person, firm, corporation, or other entity who is licensed as  
 24 |          an out-of-state shipper under this section may ship wine  
 25 |          directly to any person registered under this section who is at  
 26 |          least 21 years of age for personal use only and not for  
 27 |          resale. To obtain an out-of-state shipper's license, an  
 28 |          applicant must:  
 29 |           (a) Obtain and maintain a current license as a primary  
 30 |          American source of supply as provided in s. 564.045;  
 31 |

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

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

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

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

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

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

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

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,  
19 if 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  
28 deem 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 is valid for a period of up to 5 years and  
4 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  
6 is 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. 561.585.

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  
31 |

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. 561.585.

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

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15 SENATE SUMMARY

16 Provides for the direct shipping of no more than 4 cases  
17 of wine per calendar year to any resident of this state  
18 who is at least 21 years old. Requires out-of-state  
19 shippers to be licensed by the Division of Alcoholic  
20 Beverages and Tobacco. Provides prohibitions. Provides  
21 for administrative and criminal penalties. Provides for  
22 the payment of taxes. Provides for a tax exemption for  
23 charitable organizations. Provides that ss. 561.54 and  
24 561.545, F.S., do not apply to direct out-of-state  
25 shipments of wine to persons in this state.