

Bill No. PCS for SB's 144 & 944 (335868)

Barcode 755886

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Saunders) recommended
the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (8) is added to section 561.14,
Florida Statutes, to read:

561.14 License and registration
classification.--Licenses and registrations referred to in the
Beverage Law shall be classified as follows:

(8) Wineries licensed as winery shippers under s.
561.585.

Section 2. Section 561.585, Florida Statutes, is
created to read:

561.585 Direct shipment of wine for personal
consumption.--

(1) WINERY SHIPPER LICENSURE REQUIREMENTS.--

(a) Notwithstanding any provision of the Beverage Law
or any rule to the contrary, a person, firm, corporation, or

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1 other entity that is licensed as a winery shipper under this
2 section may ship wine directly to any person who is at least
3 21 years of age for personal use only and not for resale. To
4 obtain or renew a winery shipper's license, an applicant must:

5 1. File an application with the division on forms
6 prescribed by the division.

7 2. Qualify for licensure under ss. 561.15 and 561.17
8 or provide a true copy of a certification from the alcoholic
9 beverage licensing authority of the federal government or the
10 state in which the winery is located that qualifications for
11 that winery license include at a minimum the following
12 components:

13 a. Fingerprinting of applicants;

14 b. Disqualification of applicants under 21 years of
15 age;

16 c. Disqualification of applicants convicted of the
17 following:

18 (I) Any violation of the beverage laws of this state,
19 the United States, or any other state in the past five years;

20 (II) Any felony in this state or another state within
21 the past 15 years; and

22 (III) Any criminal violation of the controlled
23 substance act of this state, the United States, or any other
24 state.

25 3. Obtain and maintain a current license as a primary
26 American source of supply as provided in s. 564.045.

27 4. Provide to the division a true copy of its current
28 wine manufacturer's license issued by this state or another
29 state and a true copy of its current federal basic permit as a
30 wine producer issued in accordance with the Federal Alcohol
31 Administration Act.

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1 5. Manufacture no more than 250,000 gallons of wine
2 per year.

3 6. Pay an annual license fee in the amount of \$250.

4 7. File with the division a surety bond acceptable to
5 the division in the sum of \$5,000 as surety for the payment of
6 all taxes provided that when, at the discretion of the
7 division, the amount of business done by the winery shipper
8 licensee is such volume that a bond of less than \$5,000 will
9 be adequate, the division may accept a bond in a lesser sum
10 but not less than \$1,000. The surety bond currently on file
11 with the division for a winery pursuant to s. 561.37 is deemed
12 to comply with this requirement. Any applicant that has a
13 surety bond for another license on file with the division that
14 is in excess of \$5,000 shall be deemed to be in compliance
15 with this requirement.

16 (b) Applicants under this section may obtain a
17 temporary initial license as provided in s. 561.181.

18 (c) The division may not issue a license under this
19 section if the applicant or licensee is owned by a winery that
20 manufactures more than 250,000 gallons of wine annually.

21 (d) Winery shipper licensees may not ship or cause to
22 be shipped more than 18 cases of wine per calendar year to one
23 adult individual.

24 (2) LABEL.--Each winery shipper licensee shall ensure
25 that the outside shipping label on each package is conspicuous
26 and includes the following components:

27 (a) This package contains alcohol.

28 (b) An adult signature is required.

29 (c) The recipient must be at least 21 years of age.

30 (3) SIGNATURE.--

31 (a) Each winery shipper licensee and common carrier

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1 shall require, prior to delivery, that the signature of the
 2 addressee or other person at least 21 years of age is obtained
 3 after presentation of a valid driver's license, an
 4 identification card issued under the provisions of s. 322.051,
 5 or, if the person is physically handicapped, a comparable
 6 identification card issued by another state which indicates
 7 the person's age, a passport, or a United States Uniformed
 8 Services identification card.

9 (b) A winery shipper licensee or common carrier who
 10 violates this subsection shall have a complete defense to any
 11 civil action therefor, except for any administrative action by
 12 the division, if, at the time the alcoholic beverage was sold,
 13 given, delivered, or transferred, the person falsely evidenced
 14 that he or she was of legal age to purchase or consume the
 15 alcoholic beverage and the appearance of the person was such
 16 that an ordinarily prudent person would believe him or her to
 17 be of legal age to purchase or consume the alcoholic beverage
 18 and if the winery shipper licensee or common carrier acted in
 19 good faith and in reliance upon the representation and
 20 appearance of the person in the belief that he or she was of
 21 legal age to purchase or consume the alcoholic beverage and
 22 carefully checked one of the following forms of identification
 23 with respect to the person: a valid driver's license, an
 24 identification card issued under the provisions of s. 322.051,
 25 or, if the person is physically handicapped, a comparable
 26 identification card issued by another state which indicates
 27 the person's age, a passport, or a United States Uniformed
 28 Services identification card.

29 (4) MONTHLY REPORT.--

30 (a) Each winery shipper licensee shall report monthly
 31 to the division on forms prescribed by the division:

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1 1. Whether any wine product was shipped into or within
2 this state under this section during the preceding month.

3 2. The total amount of wine shipped into or within
4 this state under this section during the preceding month.

5 3. The quantity and types of wine shipped into or
6 within this state under this section during the preceding
7 month.

8 4. The amount of excise tax paid to the division for
9 shipments of wine into or within this state under this section
10 during the preceding month.

11 (b) The report required by this subsection is not
12 required from a winery shipper licensee who files a monthly
13 report pursuant to s. 561.55 that contains all the information
14 required in paragraph (a). The division is authorized to
15 prescribe the format for submission of this information in
16 order that duplicate filings are eliminated.

17 (5) TAXES.--

18 (a) Each winery shipper licensee shall collect and
19 remit monthly to the Department of Revenue all sales taxes and
20 pay to the division all excise taxes due on sales to persons
21 in this state for the preceding month. Notwithstanding s.
22 212.0596, the amount of such taxes shall be calculated as if
23 the sale took place at the location where the delivery
24 occurred in this state.

25 (b) Each winery shipper licensee shall maintain for at
26 least 3 years after the date of delivery records of its
27 shipments into or within this state pursuant to this section,
28 including the names, addresses, amounts, and dates of all
29 shipments to persons in this state, and shall allow the
30 Department of Revenue or the division, upon request, to
31 perform an audit of such records.

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1 (c) The cost of performing an audit under paragraph
 2 (b) shall be assigned to the agency requesting the audit
 3 unless the winery shipper licensee is found to be in material
 4 violation of this subsection, in which case the cost of the
 5 audit shall be assigned to the licensee.

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

11 (7) PENALTIES.--

12 (a) In addition to any other penalty provided in the
 13 Beverage Law, the division may suspend or revoke a winery
 14 shipper license or impose fines on the winery shipper licensee
 15 in an amount not to exceed \$2,500 per violation for any
 16 violation of this section.

17 (b) A winery shipper licensee that knowingly and
 18 intentionally ships, or causes to be shipped, wine to any
 19 person in this state who is under 21 years of age commits a
 20 felony of the third degree, punishable as provided in s.
 21 775.082, s. 775.083 or s. 775.084.

22 (c) Any common carrier, permit carrier, or other
 23 commercial conveyance that knowingly and intentionally
 24 delivers wine directly to any person in this state who is
 25 under 21 years of age commits a misdemeanor of the second
 26 degree, punishable as provided in s. 775.082 or s. 775.083.

27 (d) A person who knowingly and intentionally obtains
 28 wine from a winery shipper licensee in violation of this
 29 section commits a misdemeanor of the second degree, punishable
 30 as provided in s. 775.082 or s. 775.083.

31 Section 3. Section 561.54, Florida Statutes, is

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1 amended to read:

2 561.54 Certain deliveries of beverages prohibited.--

3 (1) It is unlawful for common or permit carriers,
4 operators of privately owned cars, trucks, buses, or other
5 conveyances or out-of-state manufacturers or suppliers to make
6 delivery from without the state of any alcoholic beverage to
7 any person, association of persons, or corporation within the
8 state, except to qualified manufacturers, distributors, and
9 exporters of such beverages so delivered and to qualified
10 bonded warehouses in this state.

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

31 (3) This section does not apply to the shipment of

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1 wine by a winery shipper licensee to a person who is at least
2 21 years of age in accordance with s. 561.585.

3 Section 4. Section 561.545, Florida Statutes, is
4 amended to read:

5 561.545 Certain shipments of beverages prohibited;
6 penalties; exceptions.--The Legislature finds that the direct
7 shipment of alcoholic beverages by persons in the business of
8 selling alcoholic beverages to residents of this state in
9 violation of the Beverage Law poses a serious threat to the
10 public health, safety, and welfare; to state revenue
11 collections; and to the economy of the state. The Legislature
12 further finds that the penalties for illegal direct shipment
13 of alcoholic beverages to residents of this state should be
14 made adequate to ensure compliance with the Beverage Law and
15 that the measures provided for in this section are fully
16 consistent with the powers conferred upon the state by the
17 Twenty-first Amendment to the United States Constitution.

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

26 (2) Any common carrier or permit carrier or any
27 operator of a privately owned car, truck, bus, or other
28 conveyance who knowingly and intentionally transports any
29 alcoholic beverage from an out-of-state location directly to
30 any person in this state who does not hold a valid
31 manufacturer's or wholesaler's license or exporter's

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1 registration or who is not a state-bonded warehouse is in
 2 violation of this section.

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

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

25 (5) This section does not apply to:

26 (a) The direct shipment of sacramental alcoholic
 27 beverages to bona fide religious organizations as authorized
 28 by the division;

29 (b) The ~~or to~~ possession of alcoholic beverages in
 30 accordance with s. 562.15(2); or

31 (c) The shipment of wine in accordance with s.

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1 561.585.

2 Section 5. Subsections (1) and (6) of section 561.57,
3 Florida Statutes, are amended to read:

4 561.57 Deliveries by licensees.--

5 (1) Vendors shall be permitted to make deliveries away
6 from their places of business of sales actually made at the
7 licensed place of business; provided, telephone or mail orders
8 received at vendor's licensed place of business shall be
9 construed as a sale actually made at the vendor's licensed
10 place of business. For purposes of this section, Internet
11 orders shall be construed as telephone orders.

12 (6) Common carriers are not required to have vehicle
13 permits to transport alcoholic beverages. Nothing in this
14 section prohibits any common carrier or any licensee or other
15 person using a common carrier as his or her agent from making
16 deliveries of alcoholic beverages within the state. Deliveries
17 of alcoholic beverages by common carriers or by licensees or
18 other persons utilizing common carriers as their agents under
19 this section are exempt from the report-filing requirements in
20 s. 562.20. All common carriers acting as designated agents for
21 delivery under this section shall verify that any person
22 receiving alcoholic beverages is at least 21 years of age upon
23 the delivery of such alcoholic beverages, as prescribed in
24 division rules. Compliance with the prescribed age
25 verification measures in s. 561.585(3) shall give the common
26 carrier and the licensee or other person hiring the common
27 carrier a complete defense of selling, giving, delivering, or
28 transferring alcoholic beverages to any person under the age
29 of 21.

30 Section 6. Subsection (1) of section 599.004, Florida
31 Statutes, is amended to read:

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1 599.004 Florida Farm Winery Program; registration;
2 logo; fees.--

3 (1) The Florida Farm Winery Program is established
4 within the Department of Agriculture and Consumer Services.
5 Under this program, a winery may qualify as a tourist
6 attraction only if it is registered with and certified by the
7 department as a Florida Farm Winery. A winery may not claim to
8 be certified unless it has received written approval from the
9 department.

10 (a) To qualify as a certified Florida Farm Winery, a
11 winery shall meet the following standards:

12 1. Produce or sell less than 250,000 gallons of wine
13 annually of which 60 percent of wine produced shall be made
14 from this state's agricultural products. The Commissioner of
15 Agriculture may waive this requirement in times of hardship.

16 2. Maintain a minimum of 10 acres of owned or managed
17 vineyards in Florida.

18 3. Be open to the public for tours, tastings, and
19 sales at least 30 hours each week.

20 4. Make annual application to the department for
21 recognition as a Florida Farm Winery, on forms provided by the
22 department.

23 5. Pay an annual application and registration fee of
24 \$100.

25 (b) To maintain certification and recognition as a
26 Florida Farm Winery, a winery must comply with the
27 qualifications provided in this section. The Commissioner of
28 Agriculture is authorized to officially recognize a certified
29 Florida Farm Winery as a state tourist attraction.

30 Section 7. Subsection (5) of section 561.24, Florida
31 Statutes, is amended to read:

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1 561.24 Licensing manufacturers as distributors or
 2 registered exporters prohibited; procedure for issuance and
 3 renewal of distributors' licenses and exporters'
 4 registrations.--

5 (5) Notwithstanding any of the provisions of the
 6 foregoing subsections, any corporation which holds a license
 7 as a distributor on June 3, 1947, shall be entitled to a
 8 renewal thereof, provided such corporation complies with all
 9 of the provisions of the Beverage Law of Florida, as amended,
 10 and of this section and establishes by satisfactory evidence
 11 to the division that, during the 6-month period next preceding
 12 its application for such renewal, of the total volume of its
 13 sales of spirituous liquors, in either dollars or quantity,
 14 not more than 40 percent of such spirituous liquors sold by
 15 it, in either dollars or quantity, were manufactured,
 16 rectified, or distilled by any corporation with which the
 17 applicant is affiliated, directly or indirectly, including any
 18 corporation which owns or controls in any way any stock in the
 19 applicant corporation or any corporation which is a subsidiary
 20 or affiliate of the corporation so owning stock in the
 21 applicant corporation. Any manufacturer of wine holding a
 22 license as a distributor on July 1, 2006, ~~the effective date~~
 23 ~~of this act~~ shall be entitled to a renewal of such license
 24 notwithstanding the provisions of subsections (1)-(5). ~~This~~
 25 ~~section does not apply to any winery qualifying as a certified~~
 26 ~~Florida Farm Winery under s. 599.004.~~

27 Section 8. Should any portion of this act be held
 28 unconstitutional, it is the intent of the Legislature that the
 29 courts disturb only as much of the regulatory system of this
 30 state as is necessary to enforce the United States
 31 Constitution.

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1 Section 9. Notwithstanding the provisions of s.
2 561.585, Florida Statutes, contracts not otherwise prohibited
3 by the Beverage Law shall not be impaired.

4 Section 10. The Division of Alcoholic Beverages and
5 Tobacco of the Department of Business and Professional
6 Regulation and the Department of Revenue may adopt rules
7 pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to
8 implement and administer this act.

9 Section 11. This act shall take effect upon becoming a
10 law.

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13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 Delete everything before the enacting clause

16

17 and insert:

18

A bill to be entitled

19

An act relating to the Beverage Law; amending
20 s. 561.14, F.S.; providing for license
21 classification as a winery shipper; creating s.
22 561.585, F.S.; authorizing certain direct
23 shipments of wine; requiring licensure of
24 winery shippers; providing requirements for
25 licensure; providing prohibitions; requiring
26 that a winery shipper licensee file a surety
27 bond with the Division of Alcoholic Beverages
28 and Tobacco of the Department of Business and
29 Professional Regulation; requiring that each
30 container of wine shipped directly be labeled
31 with a notice; requiring monthly reports by

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1 winery shipper licensees; providing limitations
2 on the amount of wine a winery shipper may ship
3 or cause to be shipped; providing age
4 requirements for those receiving direct
5 shipments of wine; providing a defense to
6 certain actions; requiring payment of taxes by
7 direct shippers; requiring that winery shippers
8 maintain certain records for a certain time
9 period; providing for jurisdiction; providing
10 penalties; amending s. 561.54, F.S.; removing a
11 provision requiring that the licensee be
12 aggrieved by a violation involving prohibited
13 delivery from without the state to have
14 standing to bring an action; exempting from
15 such prohibition shipment of wine by a winery
16 shipper licensee; amending s. 561.545, F.S.;
17 revising provisions relating to prohibition
18 against direct shipment of alcoholic beverages
19 to limit applicability to malt or spirituous
20 beverages; exempting applicability of such
21 prohibition to the shipment of wine by a winery
22 shipper licensee; amending s. 561.57, F.S.;
23 providing that Internet orders shall be
24 construed as telephone orders; exempting common
25 carriers, licensees, or other persons using
26 common carriers as their agents from certain
27 report-filing requirements; requiring common
28 carriers to verify the age of persons receiving
29 shipments; providing a defense to certain
30 actions; amending s. 599.004, F.S.; revising
31 qualifications for the certification of Florida

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1 Farm Wineries; amending s. 561.24, F.S.;
2 revising an effective date; authorizing certain
3 manufacturers of wine holding a distributor's
4 license to renew such license; removing
5 exemption of Florida Farm Wineries from
6 prohibition against manufacturer being licensed
7 as distributor or registered as exporter;
8 providing for severability; providing that
9 certain contracts are not impaired; providing
10 for rulemaking authority; providing an
11 effective date.

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