

By Senator Saunders

37-60-06

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 and pay
6 excise taxes; providing for administrative and
7 criminal penalties; requiring a person
8 receiving a shipment of wine from out of state
9 to register with the Division of Alcoholic
10 Beverages and Tobacco; exempting charitable
11 organizations from excise and sales and use
12 taxes on sales made from direct shipments of
13 wine from out of state, subject to
14 restrictions; amending ss. 561.54 and 561.545,
15 F.S.; providing that those sections are
16 inapplicable to wine shipped under certain
17 circumstances; providing an effective date.

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

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

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

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

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

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

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

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

20 (3) MONTHLY REPORT.--Each out-of-state shipper shall
21 report monthly to the division the total amount of wine by
22 type shipped into the state during the preceding month.

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

1 Department of Revenue or the division, upon its request, to
2 perform an audit of such records.

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

7 (6) REGISTRATION.--Before receiving any shipment under
8 this section, a person must register with the division on a
9 form prescribed by the division by filing a sworn statement
10 and providing:

11 (a) The purposes:

12 1. Full name;

13 2. Address of legal residence, and mailing address, if
14 different from street address;

15 3. Telephone number;

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

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

19 (d) A statement that the person will obtain a maximum
20 of 4 cases of wine per calendar year from all out-of-state
21 shippers combined; and

22 (e) Any other information the division by rule deems
23 necessary to adequately carry out the provisions of this
24 section.

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

29 (7) PENALTIES.--

30 (a) In addition to the penalties provided by s.
31 561.545, the division may suspend or revoke an out-of-state

1 shipper's license or impose fines on the out-of-state shipper
2 for any violation of this section.

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

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

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

19 (8) EXEMPTION FOR CHARITABLE ORGANIZATIONS.--A
20 charitable organization is exempt from the excise and sales
21 and use taxes on any sales of wine obtained from an
22 out-of-state shipper under this section for purposes of
23 fundraising if all proceeds and profits are deposited with the
24 organization. Any bottles of wine that are not sold at the
25 fundraising event must be returned to the out-of-state
26 shipper. As used in this subsection, the term "charitable
27 organization" means an organization that holds a current tax
28 exemption from federal income tax under s. 501(c)(3) of the
29 Internal Revenue Code, as amended, and that is exempt from the
30 sales and use taxes imposed by chapter 212.

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

3 561.54 Certain deliveries of beverages prohibited.--

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

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

1 (3) This section does not apply to the shipment of
2 wine by a licensed out-of-state shipper to a registered person
3 21 years of age or older in accordance with s. 561.585 or to
4 the delivery of wine from an out-of-state shipper by common
5 carrier or operators of privately owned cars, trucks, buses,
6 or other conveyances, if, prior to delivery, the signature of
7 an adult 21 years of age or older is obtained.

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

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

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

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

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

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

31 (5) This section does not apply to:

1 (a) The direct shipment of sacramental alcoholic
2 beverages to bona fide religious organizations as authorized
3 by the division; ~~or to~~

4 (b) The possession of alcoholic beverages in
5 accordance with s. 562.15(2); ~~or-~~

6 (c) The shipment of wine by a licensed out-of-state
7 shipper to a registered person 21 years of age or older in
8 accordance with s. 561.585 or the delivery of wine from an
9 out-of-state shipper by common carrier, permit carriers,
10 operators of privately owned cars, trucks, buses, or other
11 conveyances, if, prior to delivery, the signature of an adult
12 21 years of age or older is obtained.

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

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17 SENATE SUMMARY

18 Authorizes the direct shipment of wine from out of state
19 to persons at least 21 years of age. Provides requirement
20 for obtaining an out-of-state shipper's license from the
21 Division of Alcoholic Beverages and Tobacco. Requires
22 reports and the payment of taxes to the Department of
23 Revenue. Requires that persons receiving out-of-state
24 shipments register with the division. Provides an
25 exemption for charitable organizations. (See bill for
26 details.)
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