

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Planas offered the following:

2  
3 **Amendment**

4 Remove lines 93-378 and insert:

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

6 6. File with the division a surety bond acceptable to the  
7 division in the sum of \$5,000 as surety for the payment of all  
8 taxes provided that when, at the discretion of the division, the  
9 amount of business done by the winery shipper licensee is such  
10 volume that a bond of less than \$5,000 will be adequate, the  
11 division may accept a bond in a lesser sum but not less than  
12 \$1,000. The surety bond currently on file with the division for  
13 a winery pursuant to s. 561.37 is deemed to comply with this  
14 requirement. Upon written request of the winery shipper, the  
15 division shall review the total tax liability to the state by  
16 the winery shipper and reduce the bond to 110 percent of the

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17 prior year's total tax liability as a licensee under this  
18 section but not less than \$1,000.

19 (b) Applicants under this section may obtain a temporary  
20 initial license as authorized in s. 561.181.

21 (c) Winery shipper licensees may not ship or cause to be  
22 shipped more than 18 cases of wine per calendar year to one  
23 adult individual. For purposes of this section, a case is  
24 defined as a container or containers that contain no more than  
25 9,000 milliliters of wine.

26 (d) Licensees shall comply with s. 564.05, which limits  
27 the size of wine containers.

28 (e) Purchasers shall not purchase or cause to be shipped  
29 more than 18 cases of wine per calendar year to any adult  
30 individual.

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

34 (a) This package contains alcohol.

35 (b) An adult signature is required.

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

37 (3) SIGNATURE.--

38 (a) Each winery shipper licensee and common carrier shall  
39 require, prior to delivery, that the signature of the addressee  
40 or other person at least 21 years of age is obtained after  
41 presentation of a valid driver's license, an identification card  
42 issued under the provisions of s. 322.051, or, if the person is  
43 physically handicapped, a comparable identification card issued  
44 by another state which indicates the person's age, a passport,  
45 or a United States Uniformed Services identification card.

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46        (b) A winery shipper licensee or common carrier who  
47 violates this subsection shall have a complete defense to any  
48 civil action therefor, except for any administrative action by  
49 the division, if, at the time the alcoholic beverage was sold,  
50 given, delivered, or transferred, the person falsely evidenced  
51 that he or she was of legal age to purchase or consume the  
52 alcoholic beverage and the appearance of the person was such  
53 that an ordinarily prudent person would believe him or her to be  
54 of legal age to purchase or consume the alcoholic beverage and  
55 if the winery shipper licensee or common carrier acted in good  
56 faith and in reliance upon the representation and appearance of  
57 the person in the belief that he or she was of legal age to  
58 purchase or consume the alcoholic beverage and carefully checked  
59 one of the following forms of identification with respect to the  
60 person: a valid driver's license, an identification card issued  
61 under the provisions of s. 322.051, or, if the person is  
62 physically handicapped, a comparable identification card issued  
63 by another state which indicates the person's age, a passport,  
64 or a United States Uniformed Services identification card.

65        (4) MONTHLY REPORT.--

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

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

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

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

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

77 (b) The report required by this subsection is not required  
78 from a winery shipper licensee who files a monthly report  
79 pursuant to s. 561.55 that contains all the information required  
80 in paragraph (a). The division is authorized to prescribe the  
81 format for submission of this information in order that  
82 duplicate filings are eliminated.

83 (5) TAXES.--

84 (a) Each winery shipper licensee shall collect and remit  
85 monthly to the Department of Revenue all sales taxes and pay to  
86 the division all excise taxes due on sales to persons in this  
87 state for the preceding month. Notwithstanding s. 212.0596, the  
88 amount of such taxes shall be calculated as if the sale took  
89 place at the location where the delivery occurred in this state.

90 (b) Each winery shipper licensee shall maintain for at  
91 least 3 years after the date of delivery records of its  
92 shipments into or within this state pursuant to this section,  
93 including the names, addresses, amounts, and dates of all  
94 shipments to persons in this state, and shall allow the  
95 Department of Revenue or the division, upon request, to perform  
96 an audit of such records.

97 (c) The cost of performing an audit under paragraph (b)  
98 shall be assigned to the agency requesting the audit unless the  
99 winery shipper licensee is found to be in material violation of  
100 this subsection, in which case the cost of the audit shall be  
101 assigned to the licensee.

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102       (6) JURISDICTION.--Each winery shipper licensee is deemed  
103 to have consented to the jurisdiction of the division or any  
104 other state agency or local law enforcement agency and the  
105 courts of this state concerning enforcement of this section and  
106 any related laws or rules.

107       (7) PENALTIES.--

108       (a) In addition to any other penalty provided in the  
109 Beverage Law, the division may suspend or revoke a winery  
110 shipper license or impose fines on the winery shipper licensee  
111 in an amount not to exceed \$1,000 per violation for any  
112 violation of this section.

113       (b) A winery shipper licensee that knowingly and  
114 intentionally ships, or causes to be shipped, wine to any person  
115 in this state who is under 21 years of age commits a felony of  
116 the third degree, punishable as provided in s. 775.082, s.  
117 775.083, or s. 775.084.

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

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

127       Section 2. Subsection (8) is added to section 561.14,  
128 Florida Statutes, to read:

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129           561.14 License and registration classification.--Licenses  
130 and registrations referred to in the Beverage Law shall be  
131 classified as follows:

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

133           Section 3. Section 561.54, Florida Statutes, is amended to  
134 read:

135           561.54 Certain deliveries of beverages prohibited.--

136           (1) It is unlawful for common or permit carriers,  
137 operators of privately owned cars, trucks, buses, or other  
138 conveyances or out-of-state manufacturers or suppliers to make  
139 delivery from without the state of any alcoholic beverage to any  
140 person, association of persons, or corporation within the state,  
141 except to qualified manufacturers, distributors, and exporters  
142 of such beverages so delivered and to qualified bonded  
143 warehouses in this state.

144           (2) Any licensee ~~aggrieved by a violation of this section~~  
145 may bring an action in any court of competent jurisdiction to  
146 recover for the state all moneys obtained by common carriers or  
147 permit carriers; obtained by operators of privately owned cars,  
148 trucks, buses, or other conveyances; or obtained by out-of-state  
149 manufacturers or suppliers as a result of the delivery of  
150 alcoholic beverages in violation of this section, and may obtain  
151 a declaratory judgment that an act or practice violates this  
152 section and enjoin any person from violating this section. In  
153 addition to such relief, the court may order the confiscation  
154 and destruction of any alcoholic beverages delivered in  
155 violation of this section. In assessing damages, the court shall  
156 enter judgment against a defendant for three times the amount of  
157 the delivery charges proved or the fair market value of

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158 merchandise unlawfully brought into the state. Payment or  
159 satisfaction of any judgment under this section, other than for  
160 costs and attorney's fees, shall be made in its entirety to the  
161 state. In any successful action under this section, the court  
162 shall award the plaintiff costs and reasonable attorney's fees.

163 (3) This section does not apply to the shipment of wine by  
164 a winery shipper licensee to a person who is at least 21 years  
165 of age in accordance with s. 561.585.

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

168 561.545 Certain shipments of beverages prohibited;  
169 penalties; exceptions.--The Legislature finds that the direct  
170 shipment of alcoholic beverages by persons in the business of  
171 selling alcoholic beverages to residents of this state in  
172 violation of the Beverage Law poses a serious threat to the  
173 public health, safety, and welfare; to state revenue  
174 collections; and to the economy of the state. The Legislature  
175 further finds that the penalties for illegal direct shipment of  
176 alcoholic beverages to residents of this state should be made  
177 adequate to ensure compliance with the Beverage Law and that the  
178 measures provided for in this section are fully consistent with  
179 the powers conferred upon the state by the Twenty-first  
180 Amendment to the United States Constitution.

181 (1) Any person in the business of selling alcoholic  
182 beverages who knowingly and intentionally ships, or causes to be  
183 shipped, any alcoholic beverage from an out-of-state location  
184 directly to any person in this state who does not hold a valid  
185 manufacturer's or wholesaler's license or exporter's  
186 registration issued by the Division of Alcoholic Beverages and  
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187 Tobacco or who is not a state-bonded warehouse is in violation  
188 of this section.

189 (2) Any common carrier or permit carrier or any operator  
190 of a privately owned car, truck, bus, or other conveyance who  
191 knowingly and intentionally transports any alcoholic beverage  
192 from an out-of-state location directly to any person in this  
193 state who does not hold a valid manufacturer's or wholesaler's  
194 license or exporter's registration or who is not a state-bonded  
195 warehouse is in violation of this section.

196 (3) Any person found by the division to be in violation of  
197 subsection (1) shall be issued a notice, by certified mail, to  
198 show cause why a cease and desist order should not be issued.  
199 Any person who violates subsection (1) within 2 years after  
200 receiving a cease and desist order or within 2 years after a  
201 prior conviction for violating subsection (1) commits a felony  
202 of the third degree, punishable as provided in s. 775.082, s.  
203 775.083, or s. 775.084.

204 (4) Any common carrier or permit carrier, or any operator  
205 of a privately owned car, truck, bus, or other conveyance found  
206 by the division to be in violation of subsection (2) as a result  
207 of a second or subsequent delivery from the same source and  
208 location, within a 2-year period after the first delivery shall  
209 be issued a notice, by certified mail, to show cause why a cease  
210 and desist order should not be issued. Any person who violates  
211 subsection (2) within 2 years after receiving the cease and  
212 desist order or within 2 years after a prior conviction for  
213 violating subsection (2) commits a felony of the third degree,  
214 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

215 (5) This section does not apply to:

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216       (a) The direct shipment of sacramental alcoholic beverages  
217 to bona fide religious organizations as authorized by the  
218 division;

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

221       (c) The shipment of wine in accordance with s. 561.585.

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

224       561.57 Deliveries by licensees.--

225       (1) Vendors shall be permitted to make deliveries away  
226 from their places of business of sales actually made at the  
227 licensed place of business; provided, telephone or mail orders  
228 received at vendor's licensed place of business shall be  
229 construed as a sale actually made at the vendor's licensed place  
230 of business. For purposes of this section, Internet orders shall  
231 be construed as telephone orders.

232       (6) Common carriers are not required to have vehicle  
233 permits to transport alcoholic beverages. Nothing in this  
234 section shall prohibit any licensee from utilizing a common  
235 carrier as his or her agent to make deliveries of alcoholic  
236 beverages within the state. Deliveries of alcoholic beverages by  
237 licensees or common carriers utilized by licensees under this  
238 section are exempt from the report filing requirements in s.  
239 562.20. All common carriers making deliveries under this section  
240 shall verify that any person receiving alcoholic beverages is at  
241 least 21 years of age upon the delivery of such alcoholic  
242 beverages, as prescribed in division rules. Compliance with the  
243 prescribed age verification measures in s. 561.585(3) shall give  
244 the common carrier and the licensee a complete defense to any

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245 civil action thereof, except for any administrative action by  
246 the division, if, at the time the alcoholic beverage was sold,  
247 given, delivered, or transferred, the person falsely evidenced  
248 that he or she was of legal age to purchase or consume the  
249 alcoholic beverage and the appearance of the person was such  
250 that an ordinarily prudent person would believe him or her to be  
251 of legal age to purchase or consume the alcoholic beverage and  
252 if the licensee or common carrier acted in good faith and in  
253 reliance upon the representation and appearance of the person in  
254 the belief that he or she was of legal age to purchase or  
255 consume the alcoholic beverage and carefully checked one of the  
256 following forms of identification with respect to the person: a  
257 valid driver's license, an identification card issued under the  
258 provisions of s. 322.051, or, if the person is physically  
259 handicapped, a comparable identification card issued by another  
260 state which indicates the person's age, a passport, or a United  
261 States Uniformed Services identification card.

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

264 599.004 Florida Farm Winery Program; registration; logo;  
265 fees.--

266 (1) The Florida Farm Winery Program is established within  
267 the Department of Agriculture and Consumer Services. Under this  
268 program, a winery may qualify as a tourist attraction only if it  
269 is registered with and certified by the department as a Florida  
270 Farm Winery. A winery may not claim to be certified unless it  
271 has received written approval from the department.

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

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- 274           1. ~~Produce or sell less than 250,000 gallons of wine~~  
275 ~~annually.~~
- 276           ~~2.~~ Maintain a minimum of 10 acres of owned or managed  
277 vineyards in Florida.
- 278           ~~2.3.~~ Be open to the public for tours, tastings, and sales  
279 at least 30 hours each week.
- 280           ~~3.4.~~ Make annual application to the department for  
281 recognition as a Florida Farm Winery, on forms provided by the  
282 department.
- 283           ~~4.5.~~ Pay an annual application and registration fee of  
284 \$100.