

CHAMBER ACTION

1 The Business Regulation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the Beverage Law; creating s. 561.585,
7 F.S.; authorizing certain direct shipments of wine;
8 requiring licensure of winery shippers; providing
9 requirements for licensure; providing prohibitions;
10 requiring that a winery shipper licensee file a surety
11 bond with the Division of Alcoholic Beverages and Tobacco
12 of the Department of Business and Professional Regulation;
13 requiring that each container of wine shipped directly be
14 labeled with a notice; requiring monthly reports by winery
15 shipper licensees; providing limitations on the amount of
16 wine a winery shipper may ship or cause to be shipped;
17 providing age requirements for those receiving direct
18 shipments of wine; providing a defense to certain actions;
19 requiring payment of taxes by direct shippers; requiring
20 that winery shippers maintain certain records for a
21 certain time period; providing for jurisdiction; providing
22 penalties; amending s. 561.54, F.S.; removing a provision
23 requiring that the licensee be aggrieved by a violation

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24 involving prohibited delivery from without the state to
25 have standing to bring an action; exempting from such
26 prohibition shipment of wine by a winery shipper licensee;
27 amending s. 561.545, F.S.; revising provisions relating to
28 prohibition against direct shipment of alcoholic beverages
29 to limit applicability to malt or spirituous beverages;
30 exempting applicability of such prohibition to the
31 shipment of wine by a winery shipper licensee; amending s.
32 561.57, F.S.; providing that Internet orders shall be
33 construed as telephone orders; exempting common carriers,
34 licensees, or other persons utilizing common carriers as
35 their agents from certain report filing requirements;
36 requiring common carriers to verify the age of persons
37 receiving shipments; providing a defense to certain
38 actions; amending s. 599.004, F.S.; revising
39 qualifications for the certification of Florida Farm
40 Wineries; amending s. 561.24, F.S.; revising an effective
41 date; authorizing certain manufacturers of wine holding a
42 distributor's license to renew such license; removing
43 exemption of Florida Farm Wineries from prohibition
44 against manufacturer being licensed as distributor or
45 registered as exporter; providing for severability;
46 providing for rulemaking authority; providing an effective
47 date.

48
49 Be It Enacted by the Legislature of the State of Florida:
50

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

53 561.585 Direct shipment of wine for personal
54 consumption.--

55 (1) WINERY SHIPPER LICENSURE REQUIREMENTS.--

56 (a) Notwithstanding any provision of the Beverage Law or
57 any rule to the contrary, a person, firm, corporation, or other
58 entity that is licensed as a winery shipper under this section
59 may ship wine directly to any person who is at least 21 years of
60 age for personal use only and not for resale. To obtain or renew
61 a winery shipper's license, an applicant must:

62 1. Obtain and maintain a current license as a primary
63 American source of supply as provided in s. 564.045.

64 2. Provide to the division a true copy of its current wine
65 manufacturer's license issued by this state or another state and
66 a true copy of its current federal basic permit as a wine
67 producer issued in accordance with the Federal Alcohol
68 Administration Act.

69 3. Manufacture no more than 250,000 gallons of wine per
70 year.

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

72 5. File with the division a surety bond acceptable to the
73 division in the sum of \$5,000 as surety for the payment of all
74 taxes provided that when, at the discretion of the division, the
75 amount of business done by the winery shipper licensee is such
76 volume that a bond of less than \$5,000 will be adequate, the
77 division may accept a bond in a lesser sum but not less than
78 \$1,000. The surety bond currently on file with the division for

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79 a winery pursuant to s. 561.37 is deemed to comply with this
80 requirement. Any applicant that has a surety bond for another
81 license on file with the division that is in excess of \$5,000
82 shall be deemed to be in compliance with this requirement.

83 (b) The division shall not issue or renew a license under
84 this section if the applicant or licensee is owned by a winery
85 that manufactures more than 250,000 gallons of wine annually.

86 (c) Winery shipper licensees shall not ship or cause to be
87 shipped more than 42 gallons of wine per calendar year to a
88 single address.

89 (d) Recipients shall not purchase to be shipped more than
90 42 gallons of wine per calendar year to a single address.

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

94 (a) This package contains alcohol.

95 (b) An adult signature is required.

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

97 (3) SIGNATURE.--

98 (a) Each winery shipper licensee and common carrier shall
99 require, prior to delivery, that the signature of the addressee
100 or other person at least 21 years of age is obtained after
101 presentation of a valid driver's license, an identification card
102 issued under the provisions of s. 322.051, or, if the person is
103 physically handicapped, a comparable identification card issued
104 by another state which indicates the person's age, a passport,
105 or a United States Uniformed Services identification card.

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106 (b) A winery shipper licensee or common carrier who
107 violates this subsection shall have a complete defense to any
108 civil action therefor, except for any administrative action by
109 the division, if, at the time the alcoholic beverage was sold,
110 given, delivered, or transferred, the person falsely evidenced
111 that he or she was of legal age to purchase or consume the
112 alcoholic beverage and the appearance of the person was such
113 that an ordinarily prudent person would believe him or her to be
114 of legal age to purchase or consume the alcoholic beverage and
115 if the winery shipper licensee or common carrier acted in good
116 faith and in reliance upon the representation and appearance of
117 the person in the belief that he or she was of legal age to
118 purchase or consume the alcoholic beverage and carefully checked
119 one of the following forms of identification with respect to the
120 person: a valid driver's license, an identification card issued
121 under the provisions of s. 322.051, or, if the person is
122 physically handicapped, a comparable identification card issued
123 by another state which indicates the person's age, a passport,
124 or a United States Uniformed Services identification card.

125 (4) MONTHLY REPORT.--

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

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

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

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

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

137 (b) The report required by this subsection is not required
 138 from a winery shipper licensee who files a monthly report
 139 pursuant to s. 561.55 that contains all the information required
 140 in paragraph (a). The division is authorized to prescribe the
 141 format for submission of this information in order that
 142 duplicate filings are eliminated.

143 (5) TAXES.--

144 (a) Each winery shipper licensee shall pay monthly to the
 145 Department of Revenue all sales taxes and to the division all
 146 excise taxes due on sales to persons in this state for the
 147 preceding month. The amount of such taxes shall be calculated as
 148 if the sale took place at the location where the delivery
 149 occurred in this state.

150 (b) Each winery shipper licensee shall maintain for at
 151 least 3 years after the date of delivery records of its
 152 shipments into or within this state pursuant to this section,
 153 including the names, addresses, amounts, and dates of all
 154 shipments to persons in this state, and shall allow the
 155 Department of Revenue or the division, upon request, to perform
 156 an audit of such records.

157 (c) The cost of performing an audit under paragraph (b)
 158 shall be assigned to the agency requesting the audit unless the
 159 winery shipper licensee is found to be in material violation of
 160 this subsection, in which case the cost of the audit shall be
 161 assigned to the licensee.

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

166 (7) PENALTIES.--

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

172 (b) A winery shipper licensee that knowingly and
 173 intentionally ships, or causes to be shipped, wine to any person
 174 in this state who is under 21 years of age commits a felony of
 175 the third degree, punishable as provided in s. 775.082, s.
 176 775.083, or s. 775.084.

177 (c) Any common carrier, permit carrier, or other
 178 commercial conveyance that knowingly and intentionally delivers
 179 wine directly to any person in this state who is under 21 years
 180 of age commits a felony of the third degree, punishable as
 181 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

188 561.54 Certain deliveries of beverages prohibited.--

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189 (1) It is unlawful for common or permit carriers,
190 operators of privately owned cars, trucks, buses, or other
191 conveyances or out-of-state manufacturers or suppliers to make
192 delivery from without the state of any alcoholic beverage to any
193 person, association of persons, or corporation within the state,
194 except to qualified manufacturers, distributors, and exporters
195 of such beverages so delivered and to qualified bonded
196 warehouses in this state.

197 (2) Any licensee ~~aggrieved by a violation of this section~~
198 may bring an action in any court of competent jurisdiction to
199 recover for the state all moneys obtained by common carriers or
200 permit carriers; obtained by operators of privately owned cars,
201 trucks, buses, or other conveyances; or obtained by out-of-state
202 manufacturers or suppliers as a result of the delivery of
203 alcoholic beverages in violation of this section, and may obtain
204 a declaratory judgment that an act or practice violates this
205 section and enjoin any person from violating this section. In
206 addition to such relief, the court may order the confiscation
207 and destruction of any alcoholic beverages delivered in
208 violation of this section. In assessing damages, the court shall
209 enter judgment against a defendant for three times the amount of
210 the delivery charges proved or the fair market value of
211 merchandise unlawfully brought into the state. Payment or
212 satisfaction of any judgment under this section, other than for
213 costs and attorney's fees, shall be made in its entirety to the
214 state. In any successful action under this section, the court
215 shall award the plaintiff costs and reasonable attorney's fees.

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

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

221 561.545 Certain shipments of beverages prohibited;
 222 penalties; exceptions.--The Legislature finds that the direct
 223 shipment of alcoholic beverages by persons in the business of
 224 selling malt or spirituous ~~alcoholic~~ beverages to residents of
 225 this state in violation of the Beverage Law poses a serious
 226 threat to the public health, safety, and welfare; to state
 227 revenue collections; and to the economy of the state. The
 228 Legislature further finds that the penalties for illegal direct
 229 shipment of malt or spirituous ~~alcoholic~~ beverages to residents
 230 of this state should be made adequate to ensure compliance with
 231 the Beverage Law and that the measures provided for in this
 232 section are fully consistent with the powers conferred upon the
 233 state by the Twenty-first Amendment to the United States
 234 Constitution.

235 (1) Any person in the business of selling malt or
 236 spirituous ~~alcoholic~~ beverages who knowingly and intentionally
 237 ships, or causes to be shipped, any malt or spirituous ~~alcoholic~~
 238 beverage from an out-of-state location directly to any person in
 239 this state who does not hold a valid manufacturer's or
 240 wholesaler's license or exporter's registration issued by the
 241 Division of Alcoholic Beverages and Tobacco or who is not a
 242 state-bonded warehouse is in violation of this section.

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243 (2) Any common carrier or permit carrier or any operator
 244 of a privately owned car, truck, bus, or other conveyance who
 245 knowingly and intentionally transports any malt or spirituous
 246 beverages ~~alcoholic beverage~~ from an out-of-state location
 247 directly to any person in this state who does not hold a valid
 248 manufacturer's or wholesaler's license or exporter's
 249 registration or who is not a state-bonded warehouse is in
 250 violation of this section.

251 (3) Any person found by the division to be in violation of
 252 subsection (1) shall be issued a notice, by certified mail, to
 253 show cause why a cease and desist order should not be issued.
 254 Any person who violates subsection (1) within 2 years after
 255 receiving a cease and desist order or within 2 years after a
 256 prior conviction for violating subsection (1) commits a felony
 257 of the third degree, punishable as provided in s. 775.082, s.
 258 775.083, or s. 775.084.

259 (4) Any common carrier or permit carrier, or any operator
 260 of a privately owned car, truck, bus, or other conveyance found
 261 by the division to be in violation of subsection (2) as a result
 262 of a second or subsequent delivery from the same source and
 263 location, within a 2-year period after the first delivery shall
 264 be issued a notice, by certified mail, to show cause why a cease
 265 and desist order should not be issued. Any person who violates
 266 subsection (2) within 2 years after receiving the cease and
 267 desist order or within 2 years after a prior conviction for
 268 violating subsection (2) commits a felony of the third degree,
 269 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

270 (5) This section does not apply to:

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271 (a) The direct shipment of sacramental alcoholic beverages
272 to bona fide religious organizations as authorized by the
273 division;

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

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

277 Section 4. Subsections (1) and (6) of section 561.57,
278 Florida Statutes, are amended to read:

279 561.57 Deliveries by licensees.--

280 (1) Vendors shall be permitted to make deliveries away
281 from their places of business of sales actually made at the
282 licensed place of business; provided, telephone or mail orders
283 received at vendor's licensed place of business shall be
284 construed as a sale actually made at the vendor's licensed place
285 of business. For purposes of this section, Internet orders shall
286 be construed as telephone orders.

287 (6) Common carriers are not required to have vehicle
288 permits to transport alcoholic beverages. Nothing in this
289 section shall prohibit any common carrier or any licensee or
290 other person utilizing a common carrier as his or her agent from
291 making deliveries of alcoholic beverages within the state.
292 Deliveries of alcoholic beverages by common carriers or by
293 licensees or other persons utilizing common carriers as their
294 agents under this section are exempt from the report filing
295 requirements in s. 562.20. All common carriers acting as
296 designated agents for delivery under this section shall verify
297 that any person receiving alcoholic beverages is at least 21
298 years of age upon the delivery of such alcoholic beverages, as

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299 prescribed in division rules. Compliance with the prescribed age
 300 verification measures in s. 561.585(3) shall give the common
 301 carrier and the licensee or other person hiring the common
 302 carrier a complete defense of selling, giving, delivering, or
 303 transferring alcoholic beverages to any person under the age of
 304 21.

305 Section 5. Subsection (1) of section 599.004, Florida
 306 Statutes, is amended to read:

307 599.004 Florida Farm Winery Program; registration; logo;
 308 fees.--

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

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

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

321 2. Maintain a minimum of 10 acres of owned or managed
 322 vineyards in Florida.

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

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325 4. Make annual application to the department for
326 recognition as a Florida Farm Winery, on forms provided by the
327 department.

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

329 (b) To maintain certification and recognition as a Florida
330 Farm Winery, a winery must comply with the qualifications
331 provided in this section. The Commissioner of Agriculture is
332 authorized to officially recognize a certified Florida Farm
333 Winery as a state tourist attraction.

334 Section 6. Subsection (5) of section 561.24, Florida
335 Statutes, is amended to read:

336 561.24 Licensing manufacturers as distributors or
337 registered exporters prohibited; procedure for issuance and
338 renewal of distributors' licenses and exporters'
339 registrations.--

340 (5) Notwithstanding any of the provisions of the foregoing
341 subsections, any corporation which holds a license as a
342 distributor on June 3, 1947, shall be entitled to a renewal
343 thereof, provided such corporation complies with all of the
344 provisions of the Beverage Law of Florida, as amended, and of
345 this section and establishes by satisfactory evidence to the
346 division that, during the 6-month period next preceding its
347 application for such renewal, of the total volume of its sales
348 of spirituous liquors, in either dollars or quantity, not more
349 than 40 percent of such spirituous liquors sold by it, in either
350 dollars or quantity, were manufactured, rectified, or distilled
351 by any corporation with which the applicant is affiliated,
352 directly or indirectly, including any corporation which owns or

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353 controls in any way any stock in the applicant corporation or
 354 any corporation which is a subsidiary or affiliate of the
 355 corporation so owning stock in the applicant corporation. Any
 356 manufacturer of wine holding a license as a distributor on July
 357 1, 2006, ~~the effective date of this act~~ shall be entitled to a
 358 renewal of such license notwithstanding the provisions of
 359 subsections (1)-(5). ~~This section does not apply to any winery~~
 360 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

361 Section 7. Should any portion of this act be held
 362 unconstitutional, it is the intent of the Legislature that the
 363 courts disturb only as much of the regulatory system of this
 364 state as is necessary to enforce the United States Constitution.

365 Section 8. The Division of Alcoholic Beverages and Tobacco
 366 of the Department of Business and Professional Regulation and
 367 the Department of Revenue may adopt rules pursuant to ss.
 368 120.536(1) and 120.54, Florida Statutes, to implement and
 369 administer this act.

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