

CHAMBER ACTION

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1 The Finance & Tax Committee recommends the following:

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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 the collection, remittance, and payment of  
20 certain taxes by direct shippers; requiring that winery  
21 shippers maintain certain records for a certain time  
22 period; providing for jurisdiction; providing penalties;  
23 amending s. 561.14, F.S.; classifying the winery shipper

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24 license; amending s. 561.54, F.S.; removing a provision  
25 requiring that the licensee be aggrieved by a violation  
26 involving prohibited delivery from without the state to  
27 have standing to bring an action; exempting from such  
28 prohibition shipment of wine by a winery shipper licensee;  
29 amending s. 561.545, F.S.; revising provisions relating to  
30 prohibition against direct shipment of alcoholic beverages  
31 to limit applicability to malt or spirituous beverages;  
32 exempting applicability of such prohibition to the  
33 shipment of wine by a winery shipper licensee; amending s.  
34 561.57, F.S.; providing that Internet orders shall be  
35 construed as telephone orders; exempting common carriers,  
36 licensees, or other persons utilizing common carriers as  
37 their agents from certain report filing requirements;  
38 requiring common carriers to verify the age of persons  
39 receiving shipments; providing a defense to certain  
40 actions; amending s. 599.004, F.S.; revising  
41 qualifications for the certification of Florida Farm  
42 Wineries; amending s. 561.24, F.S.; revising an effective  
43 date; authorizing certain manufacturers of wine holding a  
44 distributor's license to renew such license; removing  
45 exemption of Florida Farm Wineries from prohibition  
46 against manufacturer being licensed as distributor or  
47 registered as exporter; providing for severability;  
48 providing for non-impairment of contracts; providing for  
49 rulemaking authority; providing an effective date.

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

2. Qualify for licensure under ss. 561.15 and 561.17 or provide a true copy of a certification from the alcoholic beverage licensing authority of the Federal Government or the state in which the winery is located that qualifications for the winery license include, at a minimum, the following components:

a. Fingerprinting of applicants.

b. Disqualification for applicants under 21 years of age.

c. Disqualification for applicants convicted of the following:

(I) Within the past 5 years, any violation of the beverage laws of this state, the United States, or any other state;

(II) Within the past 15 years, any felony in this state or any other state of the United States; or

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

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

83 4. Provide to the division a true copy of its current wine  
 84 manufacturer's license issued by this state or another state and  
 85 a true copy of its current federal basic permit as a wine  
 86 producer issued in accordance with the Federal Alcohol  
 87 Administration Act.

88 5. Manufacture no more than 250,000 gallons of wine per  
 89 year.

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

91 7. File with the division a surety bond acceptable to the  
 92 division in the sum of \$5,000 as surety for the payment of all  
 93 taxes provided that when, at the discretion of the division, the  
 94 amount of business done by the winery shipper licensee is such  
 95 volume that a bond of less than \$5,000 will be adequate, the  
 96 division may accept a bond in a lesser sum but not less than  
 97 \$1,000. The surety bond currently on file with the division for  
 98 a winery pursuant to s. 561.37 is deemed to comply with this  
 99 requirement. Any applicant that has a surety bond for another  
 100 license on file with the division that is in excess of \$5,000  
 101 shall be deemed to be in compliance with this requirement.

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

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

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

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

113 (a) This package contains alcohol.

114 (b) An adult signature is required.

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

116 (3) SIGNATURE.--

117 (a) Each winery shipper licensee and common carrier shall  
118 require, prior to delivery, that the signature of the addressee  
119 or other person at least 21 years of age is obtained after  
120 presentation of a valid driver's license, an identification card  
121 issued 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 (b) A winery shipper licensee or common carrier who  
126 violates this subsection shall have a complete defense to any  
127 civil action therefor, except for any administrative action by  
128 the division, if, at the time the alcoholic beverage was sold,  
129 given, delivered, or transferred, the person falsely evidenced  
130 that he or she was of legal age to purchase or consume the  
131 alcoholic beverage and the appearance of the person was such  
132 that an ordinarily prudent person would believe him or her to be  
133 of legal age to purchase or consume the alcoholic beverage and  
134 if the winery shipper licensee or common carrier acted in good

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135 faith and in reliance upon the representation and appearance of  
136 the person in the belief that he or she was of legal age to  
137 purchase or consume the alcoholic beverage and carefully checked  
138 one of the following forms of identification with respect to the  
139 person: a valid driver's license, an identification card issued  
140 under the provisions of s. 322.051, or, if the person is  
141 physically handicapped, a comparable identification card issued  
142 by another state which indicates the person's age, a passport,  
143 or a United States Uniformed Services identification card.

144 (4) MONTHLY REPORT.--

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

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

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

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

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

156 (b) The report required by this subsection is not required  
157 from a winery shipper licensee who files a monthly report  
158 pursuant to s. 561.55 that contains all the information required  
159 in paragraph (a). The division is authorized to prescribe the  
160 format for submission of this information in order that  
161 duplicate filings are eliminated.

162 (5) TAXES.--

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

169        (b) Each winery shipper licensee shall maintain for at  
170 least 3 years after the date of delivery records of its  
171 shipments into or within this state pursuant to this section,  
172 including the names, addresses, amounts, and dates of all  
173 shipments to persons in this state, and shall allow the  
174 Department of Revenue or the division, upon request, to perform  
175 an audit of such records.

176        (c) The cost of performing an audit under paragraph (b)  
177 shall be assigned to the agency requesting the audit unless the  
178 winery shipper licensee is found to be in material violation of  
179 this subsection, in which case the cost of the audit shall be  
180 assigned to the licensee.

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

185        (7) PENALTIES.--

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

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191       (b) A winery shipper licensee that knowingly and  
 192 intentionally ships, or causes to be shipped, wine to any person  
 193 in this state who is under 21 years of age commits a felony of  
 194 the third degree, punishable as provided in s. 775.082, s.  
 195 775.083, or s. 775.084.

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

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

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

207       561.14 License and registration classification.--Licenses  
 208 and registrations referred to in the Beverage Law shall be  
 209 classified as follows:

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

211       Section 3. Section 561.54, Florida Statutes, is amended to  
 212 read:

213       561.54 Certain deliveries of beverages prohibited.--

214       (1) It is unlawful for common or permit carriers,  
 215 operators of privately owned cars, trucks, buses, or other  
 216 conveyances or out-of-state manufacturers or suppliers to make  
 217 delivery from without the state of any alcoholic beverage to any  
 218 person, association of persons, or corporation within the state,



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219 | except to qualified manufacturers, distributors, and exporters  
 220 | of such beverages so delivered and to qualified bonded  
 221 | warehouses in this state.

222 |       (2) Any licensee ~~aggrieved by a violation of this section~~  
 223 | may bring an action in any court of competent jurisdiction to  
 224 | recover for the state all moneys obtained by common carriers or  
 225 | permit carriers; obtained by operators of privately owned cars,  
 226 | trucks, buses, or other conveyances; or obtained by out-of-state  
 227 | manufacturers or suppliers as a result of the delivery of  
 228 | alcoholic beverages in violation of this section, and may obtain  
 229 | a declaratory judgment that an act or practice violates this  
 230 | section and enjoin any person from violating this section. In  
 231 | addition to such relief, the court may order the confiscation  
 232 | and destruction of any alcoholic beverages delivered in  
 233 | violation of this section. In assessing damages, the court shall  
 234 | enter judgment against a defendant for three times the amount of  
 235 | the delivery charges proved or the fair market value of  
 236 | merchandise unlawfully brought into the state. Payment or  
 237 | satisfaction of any judgment under this section, other than for  
 238 | costs and attorney's fees, shall be made in its entirety to the  
 239 | state. In any successful action under this section, the court  
 240 | shall award the plaintiff costs and reasonable attorney's fees.

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

244 |       Section 4. Section 561.545, Florida Statutes, is amended  
 245 | to read:

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246           561.545 Certain shipments of beverages prohibited;  
247 penalties; exceptions.--The Legislature finds that the direct  
248 shipment of alcoholic beverages by persons in the business of  
249 selling malt or spirituous ~~alcoholic~~ beverages to residents of  
250 this state in violation of the Beverage Law poses a serious  
251 threat to the public health, safety, and welfare; to state  
252 revenue collections; and to the economy of the state. The  
253 Legislature further finds that the penalties for illegal direct  
254 shipment of malt or spirituous ~~alcoholic~~ beverages to residents  
255 of this state should be made adequate to ensure compliance with  
256 the Beverage Law and that the measures provided for in this  
257 section are fully consistent with the powers conferred upon the  
258 state by the Twenty-first Amendment to the United States  
259 Constitution.

260           (1) Any person in the business of selling malt or  
261 spirituous ~~alcoholic~~ beverages who knowingly and intentionally  
262 ships, or causes to be shipped, any malt or spirituous ~~alcoholic~~  
263 beverage from an out-of-state location directly to any person in  
264 this state who does not hold a valid manufacturer's or  
265 wholesaler's license or exporter's registration issued by the  
266 Division of Alcoholic Beverages and Tobacco or who is not a  
267 state-bonded warehouse is in violation of this section.

268           (2) Any common carrier or permit carrier or any operator  
269 of a privately owned car, truck, bus, or other conveyance who  
270 knowingly and intentionally transports any malt or spirituous  
271 beverages ~~alcoholic beverage~~ from an out-of-state location  
272 directly to any person in this state who does not hold a valid  
273 manufacturer's or wholesaler's license or exporter's

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

276 (3) Any person found by the division to be in violation of  
277 subsection (1) shall be issued a notice, by certified mail, to  
278 show cause why a cease and desist order should not be issued.  
279 Any person who violates subsection (1) within 2 years after  
280 receiving a cease and desist order or within 2 years after a  
281 prior conviction for violating subsection (1) commits a felony  
282 of the third degree, punishable as provided in s. 775.082, s.  
283 775.083, or s. 775.084.

284 (4) Any common carrier or permit carrier, or any operator  
285 of a privately owned car, truck, bus, or other conveyance found  
286 by the division to be in violation of subsection (2) as a result  
287 of a second or subsequent delivery from the same source and  
288 location, within a 2-year period after the first delivery shall  
289 be issued a notice, by certified mail, to show cause why a cease  
290 and desist order should not be issued. Any person who violates  
291 subsection (2) within 2 years after receiving the cease and  
292 desist order or within 2 years after a prior conviction for  
293 violating subsection (2) commits a felony of the third degree,  
294 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

295 (5) This section does not apply to:

296 (a) The direct shipment of sacramental alcoholic beverages  
297 to bona fide religious organizations as authorized by the  
298 division;

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

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

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

304 561.57 Deliveries by licensees.--

305 (1) Vendors shall be permitted to make deliveries away  
306 from their places of business of sales actually made at the  
307 licensed place of business; provided, telephone or mail orders  
308 received at vendor's licensed place of business shall be  
309 construed as a sale actually made at the vendor's licensed place  
310 of business. For purposes of this section, Internet orders shall  
311 be construed as telephone orders.

312 (6) Common carriers are not required to have vehicle  
313 permits to transport alcoholic beverages. Nothing in this  
314 section shall prohibit any common carrier or any licensee or  
315 other person utilizing a common carrier as his or her agent from  
316 making deliveries of alcoholic beverages within the state.  
317 Deliveries of alcoholic beverages by common carriers or by  
318 licensees or other persons utilizing common carriers as their  
319 agents under this section are exempt from the report filing  
320 requirements in s. 562.20. All common carriers acting as  
321 designated agents for delivery under this section shall verify  
322 that any person receiving alcoholic beverages is at least 21  
323 years of age upon the delivery of such alcoholic beverages, as  
324 prescribed in division rules. Compliance with the prescribed age  
325 verification measures in s. 561.585(3) shall give the common  
326 carrier and the licensee or other person hiring the common  
327 carrier a complete defense of selling, giving, delivering, or  
328 transferring alcoholic beverages to any person under the age of  
329 21.

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

332 599.004 Florida Farm Winery Program; registration; logo;  
333 fees.--

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

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

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

346 2. Maintain a minimum of 10 acres of owned or managed  
347 vineyards in Florida.

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

350 4. Make annual application to the department for  
351 recognition as a Florida Farm Winery, on forms provided by the  
352 department.

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

354 (b) To maintain certification and recognition as a Florida  
355 Farm Winery, a winery must comply with the qualifications  
356 provided in this section. The Commissioner of Agriculture is

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357 | authorized to officially recognize a certified Florida Farm  
358 | Winery as a state tourist attraction.

359 |       Section 7. Subsection (5) of section 561.24, Florida  
360 | Statutes, is amended to read:

361 |           561.24 Licensing manufacturers as distributors or  
362 | registered exporters prohibited; procedure for issuance and  
363 | renewal of distributors' licenses and exporters'  
364 | registrations.--

365 |       (5) Notwithstanding any of the provisions of the foregoing  
366 | subsections, any corporation which holds a license as a  
367 | distributor on June 3, 1947, shall be entitled to a renewal  
368 | thereof, provided such corporation complies with all of the  
369 | provisions of the Beverage Law of Florida, as amended, and of  
370 | this section and establishes by satisfactory evidence to the  
371 | division that, during the 6-month period next preceding its  
372 | application for such renewal, of the total volume of its sales  
373 | of spirituous liquors, in either dollars or quantity, not more  
374 | than 40 percent of such spirituous liquors sold by it, in either  
375 | dollars or quantity, were manufactured, rectified, or distilled  
376 | by any corporation with which the applicant is affiliated,  
377 | directly or indirectly, including any corporation which owns or  
378 | controls in any way any stock in the applicant corporation or  
379 | any corporation which is a subsidiary or affiliate of the  
380 | corporation so owning stock in the applicant corporation. Any  
381 | manufacturer of wine holding a license as a distributor on July  
382 | 1, 2006, ~~the effective date of this act~~ shall be entitled to a  
383 | renewal of such license notwithstanding the provisions of

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384 ~~subsections (1)-(5). This section does not apply to any winery~~  
 385 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

386 Section 8. Should any portion of this act be held  
 387 unconstitutional, it is the intent of the Legislature that the  
 388 courts disturb only as much of the regulatory system of this  
 389 state as is necessary to enforce the United States Constitution.

390 Section 9. Notwithstanding the provisions of s. 561.585,  
 391 Florida Statutes, contracts not otherwise prohibited by the  
 392 Beverage Law shall not be impaired.

393 Section 10. The Division of Alcoholic Beverages and  
 394 Tobacco of the Department of Business and Professional  
 395 Regulation and the Department of Revenue may adopt rules  
 396 pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to  
 397 implement and administer this act.

398 Section 11. This act shall take effect upon becoming a  
 399 law.