

## CHAMBER ACTION

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1 The Commerce Council 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 limiting the size of wine containers; limiting the amount  
18 of wine a purchaser can purchase or cause to be shipped;  
19 providing age requirements for those receiving direct  
20 shipments of wine; providing a defense to certain actions;  
21 requiring the collection, remittance, and payment of  
22 certain taxes by direct shippers; requiring that winery  
23 shippers maintain certain records for a certain time

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24 | period; providing for jurisdiction; providing penalties;  
25 | amending s. 561.14, F.S.; classifying the winery shipper  
26 | license; amending s. 561.54, F.S.; removing a provision  
27 | requiring that the licensee be aggrieved by a violation  
28 | involving prohibited delivery from without the state to  
29 | have standing to bring an action; exempting from such  
30 | prohibition shipment of wine by a winery shipper licensee;  
31 | amending s. 561.545, F.S.; exempting applicability of the  
32 | prohibition against direct shipment of alcoholic beverages  
33 | to the shipment of wine by a winery shipper licensee;  
34 | amending s. 561.57, F.S.; providing that Internet orders  
35 | shall be construed as telephone orders; exempting common  
36 | carriers, licensees, or other persons utilizing common  
37 | carriers as their agents from certain report filing  
38 | requirements; requiring common carriers to verify the age  
39 | of persons receiving shipments; providing a defense to  
40 | certain actions; providing criteria for the defense;  
41 | amending s. 599.004, F.S.; revising qualifications for the  
42 | certification of Florida Farm Wineries; amending s.  
43 | 561.24, F.S.; revising an effective date; authorizing  
44 | certain manufacturers of wine holding a distributor's  
45 | license to renew such license; removing exemption of  
46 | Florida Farm Wineries from prohibition against  
47 | manufacturer being licensed as distributor or registered  
48 | as exporter; providing for severability; providing for  
49 | nonimpairment of contracts; providing for rulemaking  
50 | authority; authorizing additional positions; providing  
51 | appropriations; providing an effective date.

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

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) Wineries shall not ship or cause to be shipped any wine to individual consumers in this state unless licensed under this section. 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, with license qualifications and procedures for that winery license that 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:

80           (I) Within the past 5 years, any violation of the beverage  
 81 laws of this state, the United States, or any other state;  
 82           (II) Within the past 15 years, any felony in this state or  
 83 any other state of the United States; or  
 84           (III) Any criminal violation of the controlled substance  
 85 act of this state, the United States, or any other state.  
 86           3. Obtain and maintain a current license as a primary  
 87 American source of supply as provided in s. 564.045.  
 88           4. Provide to the division a true copy of its current wine  
 89 manufacturer's license issued by this state or another state and  
 90 a true copy of its current federal basic permit as a wine  
 91 producer issued in accordance with the Federal Alcohol  
 92 Administration Act.  
 93           5. Manufacture no more than 250,000 gallons of wine per  
 94 year.  
 95           6. Pay an annual license fee in the amount of \$250.  
 96           7. File with the division a surety bond acceptable to the  
 97 division in the sum of \$5,000 as surety for the payment of all  
 98 taxes provided that when, at the discretion of the division, the  
 99 amount of business done by the winery shipper licensee is such  
 100 volume that a bond of less than \$5,000 will be adequate, the  
 101 division may accept a bond in a lesser sum but not less than  
 102 \$1,000. The surety bond currently on file with the division for  
 103 a winery pursuant to s. 561.37 is deemed to comply with this  
 104 requirement. Upon written request of the winery shipper, the  
 105 division shall review the total tax liability to the state by  
 106 the winery shipper and reduce the bond to 110 percent of the

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

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

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

114 (d) Winery shipper licensees may not ship or cause to be  
115 shipped more than 18 cases of wine per calendar year to one  
116 adult individual. For purposes of this section, a case is  
117 defined as a container or containers that contain no more than  
118 9,000 milliliters of wine.

119 (e) Licensees shall comply with s. 564.05, which limits  
120 the size of wine containers.

121 (f) Purchasers shall not purchase or cause to be shipped  
122 more than 18 cases of wine per calendar year to any adult  
123 individual.

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

127 (a) This package contains alcohol.

128 (b) An adult signature is required.

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

130 (3) SIGNATURE.--

131 (a) Each winery shipper licensee and common carrier shall  
132 require, prior to delivery, that the signature of the addressee  
133 or other person at least 21 years of age is obtained after  
134 presentation of a valid driver's license, an identification card

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135 issued under the provisions of s. 322.051, or, if the person is  
136 physically handicapped, a comparable identification card issued  
137 by another state which indicates the person's age, a passport,  
138 or a United States Uniformed Services identification card.

139 (b) A winery shipper licensee or common carrier who  
140 violates this subsection shall have a complete defense to any  
141 civil action therefor, except for any administrative action by  
142 the division, if, at the time the alcoholic beverage was sold,  
143 given, delivered, or transferred, the person falsely evidenced  
144 that he or she was of legal age to purchase or consume the  
145 alcoholic beverage and the appearance of the person was such  
146 that an ordinarily prudent person would believe him or her to be  
147 of legal age to purchase or consume the alcoholic beverage and  
148 if the winery shipper licensee or common carrier acted in good  
149 faith and in reliance upon the representation and appearance of  
150 the person in the belief that he or she was of legal age to  
151 purchase or consume the alcoholic beverage and carefully checked  
152 one of the following forms of identification with respect to the  
153 person: a valid driver's license, an identification card issued  
154 under the provisions of s. 322.051, or, if the person is  
155 physically handicapped, a comparable identification card issued  
156 by another state which indicates the person's age, a passport,  
157 or a United States Uniformed Services identification card.

158 (4) MONTHLY REPORT.--

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

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

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

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

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

170        (b) The report required by this subsection is not required  
 171 from a winery shipper licensee who files a monthly report  
 172 pursuant to s. 561.55 that contains all the information required  
 173 in paragraph (a). The division is authorized to prescribe the  
 174 format for submission of this information in order that  
 175 duplicate filings are eliminated.

176        (5) TAXES.--

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

183        (b) Each winery shipper licensee shall maintain for at  
 184 least 3 years after the date of delivery records of its  
 185 shipments into or within this state pursuant to this section,  
 186 including the names, addresses, amounts, and dates of all  
 187 shipments to persons in this state, and shall allow the  
 188 Department of Revenue or the division, upon request, to perform  
 189 an audit of such records.

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190        (c) The cost of performing an audit under paragraph (b)  
191 shall be assigned to the agency requesting the audit unless the  
192 winery shipper licensee is found to be in material violation of  
193 this subsection, in which case the cost of the audit shall be  
194 assigned to the licensee.

195        (6) JURISDICTION.--Each winery shipper licensee is deemed  
196 to have consented to the jurisdiction of the division or any  
197 other state agency or local law enforcement agency and the  
198 courts of this state concerning enforcement of this section and  
199 any related laws or rules.

200        (7) PENALTIES.--

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

206        (b) A winery shipper licensee that knowingly and  
207 intentionally ships, or causes to be shipped, wine to any person  
208 in this state who is under 21 years of age commits a felony of  
209 the third degree, punishable as provided in s. 775.082, s.  
210 775.083, or s. 775.084.

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

216        (d) A person who knowingly and intentionally obtains wine  
217 from a winery shipper licensee in violation of this section



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218 | commits a misdemeanor of the second degree, punishable as  
219 | provided in s. 775.082 or s. 775.083.

220 | Section 2. Subsection (8) is added to section 561.14,  
221 | Florida Statutes, to read:

222 | 561.14 License and registration classification.--Licenses  
223 | and registrations referred to in the Beverage Law shall be  
224 | classified as follows:

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

226 | Section 3. Section 561.54, Florida Statutes, is amended to  
227 | read:

228 | 561.54 Certain deliveries of beverages prohibited.--

229 | (1) It is unlawful for common or permit carriers,  
230 | operators of privately owned cars, trucks, buses, or other  
231 | conveyances or out-of-state manufacturers or suppliers to make  
232 | delivery from without the state of any alcoholic beverage to any  
233 | person, association of persons, or corporation within the state,  
234 | except to qualified manufacturers, distributors, and exporters  
235 | of such beverages so delivered and to qualified bonded  
236 | warehouses in this state.

237 | (2) Any licensee ~~aggrieved by a violation of this section~~  
238 | may bring an action in any court of competent jurisdiction to  
239 | recover for the state all moneys obtained by common carriers or  
240 | permit carriers; obtained by operators of privately owned cars,  
241 | trucks, buses, or other conveyances; or obtained by out-of-state  
242 | manufacturers or suppliers as a result of the delivery of  
243 | alcoholic beverages in violation of this section, and may obtain  
244 | a declaratory judgment that an act or practice violates this  
245 | section and enjoin any person from violating this section. In

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

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246 | addition to such relief, the court may order the confiscation  
 247 | and destruction of any alcoholic beverages delivered in  
 248 | violation of this section. In assessing damages, the court shall  
 249 | enter judgment against a defendant for three times the amount of  
 250 | the delivery charges proved or the fair market value of  
 251 | merchandise unlawfully brought into the state. Payment or  
 252 | satisfaction of any judgment under this section, other than for  
 253 | costs and attorney's fees, shall be made in its entirety to the  
 254 | state. In any successful action under this section, the court  
 255 | shall award the plaintiff costs and reasonable attorney's fees.

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

259 | Section 4. Section 561.545, Florida Statutes, is amended  
 260 | to read:

261 | 561.545 Certain shipments of beverages prohibited;  
 262 | penalties; exceptions.--The Legislature finds that the direct  
 263 | shipment of alcoholic beverages by persons in the business of  
 264 | selling alcoholic beverages to residents of this state in  
 265 | violation of the Beverage Law poses a serious threat to the  
 266 | public health, safety, and welfare; to state revenue  
 267 | collections; and to the economy of the state. The Legislature  
 268 | further finds that the penalties for illegal direct shipment of  
 269 | alcoholic beverages to residents of this state should be made  
 270 | adequate to ensure compliance with the Beverage Law and that the  
 271 | measures provided for in this section are fully consistent with  
 272 | the powers conferred upon the state by the Twenty-first  
 273 | Amendment to the United States Constitution.

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274 (1) Any person in the business of selling alcoholic  
275 beverages who knowingly and intentionally ships, or causes to be  
276 shipped, any alcoholic beverage from an out-of-state location  
277 directly to any person in this state who does not hold a valid  
278 manufacturer's or wholesaler's license or exporter's  
279 registration issued by the Division of Alcoholic Beverages and  
280 Tobacco or who is not a state-bonded warehouse is in violation  
281 of this section.

282 (2) Any common carrier or permit carrier or any operator  
283 of a privately owned car, truck, bus, or other conveyance who  
284 knowingly and intentionally transports any alcoholic beverage  
285 from an out-of-state location directly to any person in this  
286 state who does not hold a valid manufacturer's or wholesaler's  
287 license or exporter's registration or who is not a state-bonded  
288 warehouse is in violation of this section.

289 (3) Any person found by the division to be in violation of  
290 subsection (1) shall be issued a notice, by certified mail, to  
291 show cause why a cease and desist order should not be issued.  
292 Any person who violates subsection (1) within 2 years after  
293 receiving a cease and desist order or within 2 years after a  
294 prior conviction for violating subsection (1) commits a felony  
295 of the third degree, punishable as provided in s. 775.082, s.  
296 775.083, or s. 775.084.

297 (4) Any common carrier or permit carrier, or any operator  
298 of a privately owned car, truck, bus, or other conveyance found  
299 by the division to be in violation of subsection (2) as a result  
300 of a second or subsequent delivery from the same source and  
301 location, within a 2-year period after the first delivery shall

302 | be issued a notice, by certified mail, to show cause why a cease  
 303 | and desist order should not be issued. Any person who violates  
 304 | subsection (2) within 2 years after receiving the cease and  
 305 | desist order or within 2 years after a prior conviction for  
 306 | violating subsection (2) commits a felony of the third degree,  
 307 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

308 | (5) This section does not apply to:

309 | (a) The direct shipment of sacramental alcoholic beverages  
 310 | to bona fide religious organizations as authorized by the  
 311 | division;

312 | (b) The ~~or to~~ possession of alcoholic beverages in  
 313 | accordance with s. 562.15(2); or

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

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

317 | 561.57 Deliveries by licensees.--

318 | (1) Vendors shall be permitted to make deliveries away  
 319 | from their places of business of sales actually made at the  
 320 | licensed place of business; provided, telephone or mail orders  
 321 | received at vendor's licensed place of business shall be  
 322 | construed as a sale actually made at the vendor's licensed place  
 323 | of business. For purposes of this section, Internet orders shall  
 324 | be construed as telephone orders.

325 | (6) Common carriers are not required to have vehicle  
 326 | permits to transport alcoholic beverages. Nothing in this  
 327 | section shall prohibit any licensee from utilizing a common  
 328 | carrier as his or her agent to make deliveries of alcoholic  
 329 | beverages within the state. Deliveries of alcoholic beverages by

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330 licensees or common carriers utilized by licensees under this  
331 section are exempt from the report filing requirements in s.  
332 562.20. All common carriers making deliveries under this section  
333 shall verify that any person receiving alcoholic beverages is at  
334 least 21 years of age upon the delivery of such alcoholic  
335 beverages, as prescribed in division rules. Compliance with the  
336 prescribed age verification measures in s. 561.585(3) shall give  
337 the common carrier and the licensee a complete defense to any  
338 civil action thereof, except for any administrative action by  
339 the division, if, at the time the alcoholic beverage was sold,  
340 given, delivered, or transferred, the person falsely evidenced  
341 that he or she was of legal age to purchase or consume the  
342 alcoholic beverage and the appearance of the person was such  
343 that an ordinarily prudent person would believe him or her to be  
344 of legal age to purchase or consume the alcoholic beverage and  
345 if the licensee or common carrier acted in good faith and in  
346 reliance upon the representation and appearance of the person in  
347 the belief that he or she was of legal age to purchase or  
348 consume the alcoholic beverage and carefully checked one of the  
349 following forms of identification with respect to the person: a  
350 valid driver's license, an identification card issued under the  
351 provisions of s. 322.051, or, if the person is physically  
352 handicapped, a comparable identification card issued by another  
353 state which indicates the person's age, a passport, or a United  
354 States Uniformed Services identification card.

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

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357 599.004 Florida Farm Winery Program; registration; logo;  
358 fees.--

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

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

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

371 2. Maintain a minimum of 10 acres of owned or managed  
372 vineyards in Florida.

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

375 4. Make annual application to the department for  
376 recognition as a Florida Farm Winery, on forms provided by the  
377 department.

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

379 (b) To maintain certification and recognition as a Florida  
380 Farm Winery, a winery must comply with the qualifications  
381 provided in this section. The Commissioner of Agriculture is  
382 authorized to officially recognize a certified Florida Farm  
383 Winery as a state tourist attraction.

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

386 561.24 Licensing manufacturers as distributors or  
387 registered exporters prohibited; procedure for issuance and  
388 renewal of distributors' licenses and exporters'  
389 registrations.--

390 (5) Notwithstanding any of the provisions of the foregoing  
391 subsections, any corporation which holds a license as a  
392 distributor on June 3, 1947, shall be entitled to a renewal  
393 thereof, provided such corporation complies with all of the  
394 provisions of the Beverage Law of Florida, as amended, and of  
395 this section and establishes by satisfactory evidence to the  
396 division that, during the 6-month period next preceding its  
397 application for such renewal, of the total volume of its sales  
398 of spirituous liquors, in either dollars or quantity, not more  
399 than 40 percent of such spirituous liquors sold by it, in either  
400 dollars or quantity, were manufactured, rectified, or distilled  
401 by any corporation with which the applicant is affiliated,  
402 directly or indirectly, including any corporation which owns or  
403 controls in any way any stock in the applicant corporation or  
404 any corporation which is a subsidiary or affiliate of the  
405 corporation so owning stock in the applicant corporation. Any  
406 manufacturer of wine holding a license as a distributor on July  
407 1, 2006, ~~the effective date of this act~~ shall be entitled to a  
408 renewal of such license notwithstanding the provisions of  
409 subsections (1)-(5). ~~This section does not apply to any winery~~  
410 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

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

415           Section 9. Notwithstanding the provisions of s. 561.585,  
 416 Florida Statutes, contracts not otherwise prohibited by the  
 417 Beverage Law shall not be impaired.

418           Section 10. The Division of Alcoholic Beverages and  
 419 Tobacco of the Department of Business and Professional  
 420 Regulation and the Department of Revenue may adopt rules  
 421 pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to  
 422 implement and administer this act.

423           Section 11. For fiscal year 2006-2007, six full-time  
 424 equivalent positions are authorized, and the sums of \$484,096 in  
 425 recurring funds and \$41,944 in nonrecurring funds from the  
 426 Alcoholic Beverage and Tobacco Trust Fund of the Department of  
 427 Business and Professional Regulation are hereby appropriated  
 428 within a qualified expenditure category for the purpose of  
 429 carrying out regulatory activities provided in this act. In  
 430 addition, for fiscal year 2006-2007, two full-time equivalent  
 431 positions, with associated salary rate of 76,129, are  
 432 authorized, and the sums of \$127,340 in recurring funds and  
 433 \$10,486 in nonrecurring funds from the Administrative Trust Fund  
 434 of the Department of Business and Professional Regulation are  
 435 hereby appropriated for the purpose of carrying out central-  
 436 service administrative support functions related to the  
 437 regulatory activities provided in this act.



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438 |           Section 12. This act shall take effect upon becoming a  
439 | law.