

1 A bill to be entitled

2 An act relating to the Beverage Law; creating s. 561.585,
3 F.S.; authorizing certain direct shipments of wine;
4 requiring licensure of winery shippers; providing
5 requirements for licensure; providing prohibitions;
6 requiring that a winery shipper licensee file a surety
7 bond with the Division of Alcoholic Beverages and Tobacco
8 of the Department of Business and Professional Regulation;
9 requiring that each container of wine shipped directly be
10 labeled with a notice; requiring monthly reports by winery
11 shipper licensees; providing limitations on the amount of
12 wine a winery shipper may ship or cause to be shipped;
13 limiting the size of wine containers; limiting the amount
14 of wine a purchaser can purchase or cause to be shipped;
15 providing age requirements for those receiving direct
16 shipments of wine; providing a defense to certain actions;
17 requiring the collection, remittance, and payment of
18 certain taxes by direct shippers; requiring certain
19 proceeds from discretionary sales surtaxes to be deposited
20 into an account in the Discretionary Sales Surtax Clearing
21 Trust Fund; requiring that winery shippers maintain
22 certain records for a certain time period; providing for
23 jurisdiction; providing penalties; amending s. 561.14,
24 F.S.; classifying the winery shipper license; amending s.
25 561.54, F.S.; removing a provision requiring that the
26 licensee be aggrieved by a violation involving prohibited
27 delivery from without the state to have standing to bring

28 an action; exempting from such prohibition shipment of
29 wine by a winery shipper licensee; amending s. 561.545,
30 F.S.; exempting applicability of the prohibition against
31 direct shipment of alcoholic beverages to the shipment of
32 wine by a winery shipper licensee; amending s. 561.57,
33 F.S.; providing that Internet orders shall be construed as
34 telephone orders; exempting common carriers, licensees, or
35 other persons utilizing common carriers as their agents
36 from certain report filing requirements; requiring common
37 carriers to verify the age of persons receiving shipments;
38 providing a defense to certain actions; providing criteria
39 for the defense; amending s. 599.004, F.S.; revising
40 qualifications for the certification of Florida Farm
41 Wineries; amending s. 561.24, F.S.; revising an effective
42 date; authorizing certain manufacturers of wine holding a
43 distributor's license to renew such license; removing
44 exemption of Florida Farm Wineries from prohibition
45 against manufacturer being licensed as distributor or
46 registered as exporter; providing for severability;
47 providing for nonimpairment of contracts; providing for
48 rulemaking authority; authorizing additional positions;
49 providing appropriations; providing an effective date.

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

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53 Section 1. Section 561.585, Florida Statutes, is created
54 to read:

55 561.585 Direct shipment of wine for personal
 56 consumption.--

57 (1) WINERY SHIPPER LICENSURE REQUIREMENTS.--

58 (a) Wineries shall not ship or cause to be shipped any
 59 wine to individual consumers in this state unless licensed under
 60 this section. Notwithstanding any provision of the Beverage Law
 61 or any rule to the contrary, a person, firm, corporation, or
 62 other entity that is licensed as a winery shipper under this
 63 section may ship wine directly to any person who is at least 21
 64 years of age for personal use only and not for resale. To obtain
 65 or renew a winery shipper's license, an applicant must:

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

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

74 a. Fingerprinting of applicants.

75 b. Disqualification for applicants under 21 years of age.

76 c. Disqualification for applicants convicted of the
 77 following:

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

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

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

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

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

91 5. Manufacture no more than 250,000 gallons of wine per
92 year.

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

94 7. File with the division a surety bond acceptable to the
95 division in the sum of \$5,000 as surety for the payment of all
96 taxes provided that when, at the discretion of the division, the
97 amount of business done by the winery shipper licensee is such
98 volume that a bond of less than \$5,000 will be adequate, the
99 division may accept a bond in a lesser sum but not less than
100 \$1,000. The surety bond currently on file with the division for
101 a winery pursuant to s. 561.37 is deemed to comply with this
102 requirement. Upon written request of the winery shipper, the
103 division shall review the total tax liability to the state by
104 the winery shipper and reduce the bond to 110 percent of the
105 prior year's total tax liability as a licensee under this
106 section but not less than \$1,000.

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

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

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

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

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

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

125 (a) This package contains alcohol.

126 (b) An adult signature is required.

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

128 (3) SIGNATURE.--

129 (a) Each winery shipper licensee and common carrier shall
130 require, prior to delivery, that the signature of the addressee
131 or other person at least 21 years of age is obtained after
132 presentation of a valid driver's license, an identification card
133 issued under the provisions of s. 322.051, or, if the person is
134 physically handicapped, a comparable identification card issued

135 by another state which indicates the person's age, a passport,
136 or a United States Uniformed Services identification card.

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

156 (4) MONTHLY REPORT.--

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

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

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

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

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

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

174 (5) TAXES.--

175 (a) Each winery shipper licensee shall collect and remit
176 monthly to the Department of Revenue all sales taxes and pay to
177 the division all excise taxes due on sales to persons in this
178 state for the preceding month. Notwithstanding s. 212.0596, the
179 amount of such taxes shall be calculated as if the sale took
180 place at the location where the delivery occurred in this state.
181 The proceeds of the discretionary sales surtaxes imposed under
182 s. 212.055 shall be deposited into an account in the
183 Discretionary Sales Surtax Clearing Trust Fund described in s.
184 212.054(4)(c) and distributed as provided therein.

185 (b) Each winery shipper licensee shall maintain for at
186 least 3 years after the date of delivery records of its
187 shipments into or within this state pursuant to this section,

188 including the names, addresses, amounts, and dates of all
189 shipments to persons in this state, and shall allow the
190 Department of Revenue or the division, upon request, to perform
191 an audit of such records.

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

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

202 (7) PENALTIES.--

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

208 (b) A winery shipper licensee that knowingly and
209 intentionally ships, or causes to be shipped, wine to any person
210 in this state who is under 21 years of age commits a felony of
211 the third degree, punishable as provided in s. 775.082, s.
212 775.083, or s. 775.084.

213 (c) Any common carrier, permit carrier, or other
214 commercial conveyance that knowingly and intentionally delivers

215 wine directly to any person in this state who is under 21 years
 216 of age commits a misdemeanor of the second degree, punishable as
 217 provided in s. 775.082 or s. 775.083.

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

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

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

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

228 Section 3. Section 561.54, Florida Statutes, is amended to
 229 read:

230 561.54 Certain deliveries of beverages prohibited.--

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

239 (2) Any licensee ~~aggrieved by a violation of this section~~
 240 may bring an action in any court of competent jurisdiction to
 241 recover for the state all moneys obtained by common carriers or

242 permit carriers; obtained by operators of privately owned cars,
243 trucks, buses, or other conveyances; or obtained by out-of-state
244 manufacturers or suppliers as a result of the delivery of
245 alcoholic beverages in violation of this section, and may obtain
246 a declaratory judgment that an act or practice violates this
247 section and enjoin any person from violating this section. In
248 addition to such relief, the court may order the confiscation
249 and destruction of any alcoholic beverages delivered in
250 violation of this section. In assessing damages, the court shall
251 enter judgment against a defendant for three times the amount of
252 the delivery charges proved or the fair market value of
253 merchandise unlawfully brought into the state. Payment or
254 satisfaction of any judgment under this section, other than for
255 costs and attorney's fees, shall be made in its entirety to the
256 state. In any successful action under this section, the court
257 shall award the plaintiff costs and reasonable attorney's fees.

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

261 Section 4. Section 561.545, Florida Statutes, is amended
262 to read:

263 561.545 Certain shipments of beverages prohibited;
264 penalties; exceptions.--The Legislature finds that the direct
265 shipment of alcoholic beverages by persons in the business of
266 selling alcoholic beverages to residents of this state in
267 violation of the Beverage Law poses a serious threat to the
268 public health, safety, and welfare; to state revenue

269 collections; and to the economy of the state. The Legislature
270 further finds that the penalties for illegal direct shipment of
271 alcoholic beverages to residents of this state should be made
272 adequate to ensure compliance with the Beverage Law and that the
273 measures provided for in this section are fully consistent with
274 the powers conferred upon the state by the Twenty-first
275 Amendment to the United States Constitution.

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

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

291 (3) Any person found by the division to be in violation of
292 subsection (1) shall be issued a notice, by certified mail, to
293 show cause why a cease and desist order should not be issued.
294 Any person who violates subsection (1) within 2 years after
295 receiving a cease and desist order or within 2 years after a

296 prior conviction for violating subsection (1) commits a felony
 297 of the third degree, punishable as provided in s. 775.082, s.
 298 775.083, or s. 775.084.

299 (4) Any common carrier or permit carrier, or any operator
 300 of a privately owned car, truck, bus, or other conveyance found
 301 by the division to be in violation of subsection (2) as a result
 302 of a second or subsequent delivery from the same source and
 303 location, within a 2-year period after the first delivery shall
 304 be issued a notice, by certified mail, to show cause why a cease
 305 and desist order should not be issued. Any person who violates
 306 subsection (2) within 2 years after receiving the cease and
 307 desist order or within 2 years after a prior conviction for
 308 violating subsection (2) commits a felony of the third degree,
 309 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

310 (5) This section does not apply to:

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

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

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

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

319 561.57 Deliveries by licensees.--

320 (1) Vendors shall be permitted to make deliveries away
 321 from their places of business of sales actually made at the
 322 licensed place of business; provided, telephone or mail orders

323 received at vendor's licensed place of business shall be
324 construed as a sale actually made at the vendor's licensed place
325 of business. For purposes of this section, Internet orders shall
326 be construed as telephone orders.

327 (6) Common carriers are not required to have vehicle
328 permits to transport alcoholic beverages. Nothing in this
329 section shall prohibit any licensee from utilizing a common
330 carrier as his or her agent to make deliveries of alcoholic
331 beverages within the state. Deliveries of alcoholic beverages by
332 licensees or common carriers utilized by licensees under this
333 section are exempt from the report filing requirements in s.
334 562.20. All common carriers making deliveries under this section
335 shall verify that any person receiving alcoholic beverages is at
336 least 21 years of age upon the delivery of such alcoholic
337 beverages, as prescribed in division rules. Compliance with the
338 prescribed age verification measures in s. 561.585(3) shall give
339 the common carrier and the licensee a complete defense to any
340 civil action thereof, except for any administrative action by
341 the division, if, at the time the alcoholic beverage was sold,
342 given, delivered, or transferred, the person falsely evidenced
343 that he or she was of legal age to purchase or consume the
344 alcoholic beverage and the appearance of the person was such
345 that an ordinarily prudent person would believe him or her to be
346 of legal age to purchase or consume the alcoholic beverage and
347 if the licensee or common carrier acted in good faith and in
348 reliance upon the representation and appearance of the person in
349 the belief that he or she was of legal age to purchase or

350 consume the alcoholic beverage and carefully checked one of the
 351 following forms of identification with respect to the person: a
 352 valid driver's license, an identification card issued under the
 353 provisions of s. 322.051, or, if the person is physically
 354 handicapped, a comparable identification card issued by another
 355 state which indicates the person's age, a passport, or a United
 356 States Uniformed Services identification card.

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

359 599.004 Florida Farm Winery Program; registration; logo;
 360 fees.--

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

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

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

373 2. Maintain a minimum of 10 acres of owned or managed
 374 vineyards in Florida.

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

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

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

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

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

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

392 (5) Notwithstanding any of the provisions of the foregoing
393 subsections, any corporation which holds a license as a
394 distributor on June 3, 1947, shall be entitled to a renewal
395 thereof, provided such corporation complies with all of the
396 provisions of the Beverage Law of Florida, as amended, and of
397 this section and establishes by satisfactory evidence to the
398 division that, during the 6-month period next preceding its
399 application for such renewal, of the total volume of its sales
400 of spirituous liquors, in either dollars or quantity, not more
401 than 40 percent of such spirituous liquors sold by it, in either
402 dollars or quantity, were manufactured, rectified, or distilled
403 by any corporation with which the applicant is affiliated,

404 directly or indirectly, including any corporation which owns or
 405 controls in any way any stock in the applicant corporation or
 406 any corporation which is a subsidiary or affiliate of the
 407 corporation so owning stock in the applicant corporation. Any
 408 manufacturer of wine holding a license as a distributor on July
 409 1, 2006, ~~the effective date of this act~~ shall be entitled to a
 410 renewal of such license notwithstanding the provisions of
 411 subsections (1)-(5). ~~This section does not apply to any winery~~
 412 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

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

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

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

425 Section 11. For fiscal year 2006-2007, six full-time
 426 equivalent positions are authorized, and the sums of \$484,096 in
 427 recurring funds and \$41,944 in nonrecurring funds from the
 428 Alcoholic Beverage and Tobacco Trust Fund of the Department of
 429 Business and Professional Regulation are hereby appropriated
 430 within a qualified expenditure category for the purpose of

431 carrying out regulatory activities provided in this act. In
432 addition, for fiscal year 2006-2007, two full-time equivalent
433 positions, with associated salary rate of 76,129, are
434 authorized, and the sums of \$127,340 in recurring funds and
435 \$10,486 in nonrecurring funds from the Administrative Trust Fund
436 of the Department of Business and Professional Regulation are
437 hereby appropriated for the purpose of carrying out central-
438 service administrative support functions related to the
439 regulatory activities provided in this act.

440 Section 12. This act shall take effect upon becoming a
441 law.