

1 providing a defense to certain actions;
2 providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 561.14, Florida Statutes, is
7 amended to read:

8 561.14 License and registration
9 classification.--Licenses and registrations referred to in the
10 Beverage Law shall be classified as follows:

11 (1) Manufacturers licensed to manufacture alcoholic
12 beverages and distribute the same at wholesale to licensed
13 distributors and to no one else within the state, unless
14 authorized by statute. Persons engaged in the business of
15 distilling, rectifying, or blending spirituous liquors
16 licensed under s. 565.03(1)(a)1. and (b) shall sell and
17 distribute such beverages at wholesale only to other
18 manufacturers and to licensed distributors and to no one else
19 within this state.

20 (2) Distributors licensed to sell and distribute
21 alcoholic beverages at wholesale to persons who are licensed
22 to sell alcoholic beverages.

23 (3) Vendors licensed to sell alcoholic beverages at
24 retail only. No vendor shall purchase or acquire in any manner
25 for the purpose of resale any alcoholic beverages from any
26 person not licensed as a vendor, manufacturer, bottler, or
27 distributor under the Beverage Law. Purchases of alcoholic
28 beverages by vendors from vendors shall be strictly limited to
29 purchases between members of a pool buying group for which the
30 initial purchase of the alcoholic beverages was ordered by a
31 pool buying agent as a single transaction. No vendor shall be

1 a member of more than one cooperative or pool buying group at
2 any time. No vendor shall import, or engage in the
3 importation of, any alcoholic beverages from places beyond the
4 limits of the state. No vendor shall purchase or acquire wine
5 from a direct shipper for the purpose of resale, except that a
6 vendor may purchase or acquire wine from a manufacturer that
7 is licensed as a distributor.

8 (4) Brokers or sales agents, whether resident or
9 nonresident, licensed to sell, or to cause to be sold,
10 shipped, and invoiced, alcoholic beverages to licensed
11 manufacturers or licensed distributors, and to no one else, in
12 this state. Such licensed brokers or sales agents, except as
13 relates to malt beverages, only shall represent one or more
14 primary American sources of supply, registered as such with
15 the division, and may be compensated on a commission or
16 remuneration basis and shall have no direct or indirect
17 affiliation with any vendor licensed in this state. This
18 license classification does not include manufacturers'
19 representatives who are registered with the division under the
20 provisions of ss. 564.045(1) and (2) and 565.095(1) and (2).

21 (5) Importers, whether resident or nonresident,
22 licensed to sell, or to cause to be sold, shipped, and
23 invoiced, alcoholic beverages to licensed manufacturers or
24 licensed distributors, and to no one else, in this state;
25 provided that the provisions of ss. 564.045 and 565.095 are in
26 no way violated by such imports. Such licensed importers
27 shall have no direct or indirect affiliation with any vendor
28 licensed in this state. The holder of an importer's license
29 shall be considered as having complied with the licensing
30 requirements of a broker or sales agent. This license
31 classification does not include manufacturers' representatives

1 who are registered with the division under the provisions of
2 ss. 564.045(1) and (2) and 565.095(1) and (2).

3 (6) Bottle clubs. It is the finding of the
4 Legislature that bottle clubs are susceptible to a distinct
5 and separate classification under the Beverage Law for
6 purposes of regulating establishments permitting the
7 consumption of alcoholic beverages. Any person operating a
8 bottle club must be licensed pursuant to this chapter and may
9 not hold any other alcoholic beverage license for such
10 premises while licensed as a bottle club. Nothing in this
11 subsection shall be construed to permit the purchase at
12 wholesale or retail of alcoholic beverages for supplying or
13 reselling to the patrons pursuant to a license issued under
14 this chapter. Any such business shall be subject to all
15 general, special, and local laws regulating vendors of
16 alcoholic beverages. Bottle club licenses shall be issued at
17 a fee of \$500 annually and shall be renewed in accordance with
18 the schedule set out in ss. 561.26 and 561.27. This
19 subsection shall include bottle clubs in existence on January
20 1, 1991. The Division of Alcoholic Beverages and Tobacco is
21 hereby authorized to adopt rules to carry out the purposes of
22 this section.

23 (7) Exporters registered to sell alcoholic beverages.

24 (8) Direct shippers licensed under s. 561.575 to sell
25 wine directly to a resident of this state who is at least 21
26 years of age for that resident's personal use and not for
27 resale.

28 Section 2. Section 561.575, Florida Statutes, is
29 created to read:

30 561.575 Direct shipment of wine.--
31

1 (1) LICENSE REQUIRED.--Notwithstanding any other law
2 to the contrary, a manufacturer of wine which is located
3 within or outside this state, holds a wine producer and
4 blender's basic permit issued in accordance with the Federal
5 Alcohol Administration Act, and obtains a direct shipper's
6 license may ship wine directly to a resident of this state who
7 is at least 21 years of age for that resident's personal use
8 and not for resale.

9 (2) LICENSURE QUALIFICATIONS.--

10 (a) Before shipping wine to a resident of this state,
11 a manufacturer must obtain a direct shipper's license by:

- 12 1. Filing an application with the division;
13 2. Paying an annual license fee of \$100; and
14 3. Providing to the division a certified copy of its
15 current wine manufacturer's license issued by this state or
16 another state and its current basic permit as a wine producer
17 and blender issued in accordance with the Federal Alcohol
18 Administration Act.

19 (b) Each licensee holding a direct shipper's license
20 shall:

- 21 1. Maintain a current license as provided in this
22 section.
23 2. Maintain a wine manufacturer's license issued by
24 this state or another state and a federal basic permit as a
25 wine producer and blender issued in accordance with the
26 Federal Alcohol Administration Act.

27 (c) A direct shipper shall obtain and maintain a
28 current license as a primary American source of supply as
29 provided in s. 564.045.

30 (d) A direct shipper must comply with s. 564.05, which
31 limits the size of wine containers.

1 (e) An applicant for licensure as a direct shipper is
2 exempt from the fingerprinting and license investigation
3 requirements in ss. 561.17 and 561.18 if he or she holds a
4 current active wine manufacturer's license in another state
5 and has met qualifications substantially similar to,
6 equivalent to, or greater than the qualifications required of
7 applicants in this state. The division shall adopt rules
8 pursuant to ss. 120.536(1) and 120.54 specifying procedures
9 for determining whether the applicant is qualified under this
10 exemption.

11 (f) A direct shipper shall renew on or before August 1
12 of each year its license with the division by paying a renewal
13 fee of \$100.

14 (3) JURISDICTION.--By obtaining a direct shipper's
15 license, a licensee consents to the jurisdiction of the
16 division, any other state agency, and the courts of this state
17 concerning compliance with state laws.

18 (4) AGE-VERIFICATION REQUIREMENTS.--

19 (a) Each direct shipper shall use an age-verification
20 process that is approved by the division to ensure that any
21 sale made to a resident of this state is to a person at least
22 21 years of age. The process must be sufficient to accurately
23 verify the age and identity of the purchaser.

24 (b) Each direct shipper shall ensure that the outside
25 shipping label on each package is conspicuous and includes the
26 following information:

- 27 1. This package contains alcohol.
- 28 2. An adult signature is required.
- 29 3. The recipient must be at least 21 years of age.

30 (c) If the direct shipper uses a common carrier to
31 make, or cause to be made, deliveries within or from outside

1 the state, the direct shipper shall require that the common
2 carrier comply with the age-verification procedures required
3 for deliveries made under this section. The direct shipper
4 shall use any age-verification service provided by the common
5 carrier which complies with these requirements.

6 (d) Each direct shipper licensee and common carrier
7 shall require, prior to delivery, that the signature of the
8 addressee or other person at least 21 years of age is obtained
9 after presentation of a valid driver's license, an
10 identification card issued under the provisions of s. 322.051,
11 or, if the person is physically handicapped, a comparable
12 identification card issued by another state which indicates
13 the person's age, a passport, or a United States Uniformed
14 Services identification card.

15 (e) A direct shipper licensee or common carrier who
16 violates this section shall have a complete defense to any
17 civil action therefor, except for any administrative action by
18 the division, if, at the time the alcoholic beverage was sold,
19 given, delivered, or transferred, the person falsely evidenced
20 that he or she was of legal age to purchase or consume the
21 alcoholic beverage and the appearance of the person was such
22 that an ordinarily prudent person would believe him or her to
23 be of legal age to purchase or consume the alcoholic beverage
24 and if the direct shipper licensee or common carrier acted in
25 good faith and in reliance upon the representation and
26 appearance of the person in the belief that he or she was of
27 legal age to purchase or consume the alcoholic beverage and
28 carefully checked one of the following forms of identification
29 with respect to the person: a valid driver's license, an
30 identification card issued under the provisions of s. 322.051,
31 or, if the person is physically handicapped, a comparable

1 identification card issued by another state which indicates
2 the person's age, a passport, or a United States Uniformed
3 Services identification card.

4 (5) TAXATION.--

5 (a) Each direct shipper shall collect and remit
6 monthly to the Department of Revenue all sales taxes and to
7 the division all excise taxes due on sales to persons in this
8 state for the preceding month. The amount of such taxes shall
9 be calculated as if the sale took place in this state.

10 (b) File with the division a bond of \$5,000 as surety
11 for the payment of taxes required under this chapter. However,
12 the division may authorize a lesser bond if the volume of
13 business done by the direct shipper is such that a bond of
14 less than \$5,000 will be adequate to secure the payment of
15 taxes assessed or authorized under the Beverage Law. The
16 division may not accept a bond of less than \$1,000 and may
17 require a bond to be increased to \$5,000. The surety bond
18 currently on file with the division for a winery pursuant to
19 s. 561.37 is deemed to comply with this requirement. Any
20 applicant that has a surety bond for another license on file
21 with the division that is in excess of \$5,000 shall be deemed
22 to be in compliance with this requirement.

23 (6) REPORTING REQUIREMENTS.--Each direct shipper shall
24 report to the division, by the 10th day of each month, on
25 forms prescribed by the division:

26 (a) Whether any wine product was shipped into or
27 within this state during the preceding month;

28 (b) The total amount of wine shipped into or within
29 this state during the preceding month;

30 (c) The quantity and brands of wine shipped into or
31 within this state during the preceding month;

1 (d) The amount of tax paid to the division and the
2 Department of Revenue for the shipments of wine to residents
3 of this state during the preceding month; and

4 (e) Any other information that the division determines
5 is necessary to enforce this section.

6
7 The report required by this paragraph is not required from a
8 direct shipper licensee who files a monthly report pursuant to
9 s. 561.55 which contains all the information required in
10 paragraph (a). The division may prescribe the format for
11 submission of this information in order to avoid duplicate
12 filings.

13 (7) RECORDKEEPING REQUIREMENT.--Each direct shipper
14 shall keep complete, accurate, and separate records of wine
15 products sold and shipped to this state for at least 3 years.

16 (8) AUDIT REQUIREMENTS.--

17 (a) Each direct shipper shall permit the division and
18 the Department of Revenue to audit the records of the direct
19 shipper upon request.

20 (b) The cost of performing an audit under paragraph
21 (2)(i) shall be assigned to the division or the Department of
22 Revenue, as applicable, unless the licensee is found to be in
23 material violation of this section, in which case the cost of
24 the audit shall be assigned to the licensee. A direct shipper
25 shall pay all attorney's fees and costs in any action to
26 collect unpaid taxes.

27 (9) PENALTIES.--

28 (a) In addition to any other penalty provided in the
29 Beverage Law, the division may suspend or revoke a direct
30 shipper license or impose fines on the direct shipper licensee
31

1 in an amount not to exceed \$2,500 per violation for any
2 violation of this section.

3 (b) A direct shipper licensee that knowingly and
4 intentionally ships, or causes to be shipped, wine to any
5 person in this state who is under 21 years of age commits a
6 felony of the third degree, punishable as provided in s.
7 775.082, s. 775.083, or s. 775.084.

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

13 (10) RULEMAKING AUTHORITY.--The division may adopt
14 rules pursuant to ss. 120.536(1) and 120.54 to administer this
15 section.

16 Section 3. Section 561.54, Florida Statutes, is
17 amended to read:

18 561.54 Certain deliveries of beverages prohibited.--

19 (1) It is unlawful for common or permit carriers,
20 operators of privately owned cars, trucks, buses, or other
21 conveyances or out-of-state manufacturers or suppliers to make
22 delivery from without the state of any alcoholic beverage to
23 any person, association of persons, or corporation within the
24 state, except to qualified manufacturers, distributors, and
25 exporters of such beverages so delivered and to qualified
26 bonded warehouses in this state.

27 (2) Any licensee aggrieved by a violation of this
28 section may bring an action in any court of competent
29 jurisdiction to recover for the state all moneys obtained by
30 common carriers or permit carriers; obtained by operators of
31 privately owned cars, trucks, buses, or other conveyances; or

1 | obtained by out-of-state manufacturers or suppliers as a
2 | result of the delivery of alcoholic beverages in violation of
3 | this section, and may obtain a declaratory judgment that an
4 | act or practice violates this section and enjoin any person
5 | from violating this section. In addition to such relief, the
6 | court may order the confiscation and destruction of any
7 | alcoholic beverages delivered in violation of this section.
8 | In assessing damages, the court shall enter judgment against a
9 | defendant for three times the amount of the delivery charges
10 | proved or the fair market value of merchandise unlawfully
11 | brought into the state. Payment or satisfaction of any
12 | judgment under this section, other than for costs and
13 | attorney's fees, shall be made in its entirety to the state.
14 | In any successful action under this section, the court shall
15 | award the plaintiff costs and reasonable attorney's fees.

16 | (3) This section does not apply to the shipment of
17 | wine by a licensed direct shipper to a person 21 years of age
18 | or older in accordance with s. 561.575.

19 | Section 4. Section 561.545, Florida Statutes, is
20 | amended to read:

21 | 561.545 Certain shipments of beverages prohibited;
22 | penalties; exceptions.--The Legislature finds that the direct
23 | shipment of alcoholic beverages by persons in the business of
24 | selling alcoholic beverages to residents of this state in
25 | violation of the Beverage Law poses a serious threat to the
26 | public health, safety, and welfare; to state revenue
27 | collections; and to the economy of the state. The Legislature
28 | further finds that the penalties for illegal direct shipment
29 | of alcoholic beverages to residents of this state should be
30 | made adequate to ensure compliance with the Beverage Law and
31 | that the measures provided for in this section are fully

1 consistent with the powers conferred upon the state by the
2 Twenty-first Amendment to the United States Constitution.

3 (1) Any person in the business of selling alcoholic
4 beverages who knowingly and intentionally ships, or causes to
5 be shipped, any alcoholic beverage from an out-of-state
6 location directly to any person in this state who does not
7 hold a valid manufacturer's or wholesaler's license or
8 exporter's registration issued by the Division of Alcoholic
9 Beverages and Tobacco or who is not a state-bonded warehouse
10 is in violation of this section.

11 (2) Any common carrier or permit carrier or any
12 operator of a privately owned car, truck, bus, or other
13 conveyance who knowingly and intentionally transports any
14 alcoholic beverage from an out-of-state location directly to
15 any person in this state who does not hold a valid
16 manufacturer's or wholesaler's license or exporter's
17 registration or who is not a state-bonded warehouse is in
18 violation of this section.

19 (3) Any person found by the division to be in
20 violation of subsection (1) shall be issued a notice, by
21 certified mail, to show cause why a cease and desist order
22 should not be issued. Any person who violates subsection (1)
23 within 2 years after receiving a cease and desist order or
24 within 2 years after a prior conviction for violating
25 subsection (1) commits a felony of the third degree,
26 punishable as provided in s. 775.082, s. 775.083, or s.
27 775.084.

28 (4) Any common carrier or permit carrier, or any
29 operator of a privately owned car, truck, bus, or other
30 conveyance found by the division to be in violation of
31 subsection (2) as a result of a second or subsequent delivery

1 from the same source and location, within a 2-year period
2 after the first delivery shall be issued a notice, by
3 certified mail, to show cause why a cease and desist order
4 should not be issued. Any person who violates subsection (2)
5 within 2 years after receiving the cease and desist order or
6 within 2 years after a prior conviction for violating
7 subsection (2) commits a felony of the third degree,
8 punishable as provided in s. 775.082, s. 775.083, or s.
9 775.084.

10 (5) This section does not apply to:

11 (a) The direct shipment of sacramental alcoholic
12 beverages to bona fide religious organizations as authorized
13 by the division; ~~or to~~

14 (b) The possession of alcoholic beverages in
15 accordance with s. 562.15(2); ~~or-~~

16 (c) The shipment of wine by a licensed direct shipper
17 to a person 21 years of age or older in accordance with s.
18 561.575.

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

21 561.57 Deliveries by licensees.--

22 (1) Vendors shall be permitted to make deliveries away
23 from their places of business of sales actually made at the
24 licensed place of business; provided, telephone, Internet, or
25 mail orders received at vendor's licensed place of business
26 shall be construed as a sale actually made at the vendor's
27 licensed place of business.

28 (6) Common carriers are not required to have vehicle
29 permits to transport alcoholic beverages. This section does
30 not prohibit any common carrier or any licensee from using a
31 common carrier to deliver alcoholic beverages within the

1 state. Deliveries of alcoholic beverages by common carriers,
2 licensees, or their employees or agents are exempt from the
3 reporting requirements in s. 562.20. Each common carrier
4 acting as a designated agent for delivery shall verify that
5 any person receiving alcoholic beverages is at least 21 years
6 of age upon the delivery of such alcoholic beverages, as
7 prescribed in division rules. Compliance with the prescribed
8 age-verification requirements gives the common carrier and the
9 licensee, or their employees or agents, a complete defense to
10 selling, giving, or serving alcoholic beverages to any person
11 younger than 21 years of age.

12 Section 6. This act shall take effect upon becoming a
13 law.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 282

4 The CS creates an alcoholic beverage license classification
5 for direct shippers, and to prohibit vendors from purchasing
6 or acquiring wine from a direct shipper for the purpose of
7 resale, unless also licensed as a distributor.

8 The CS deletes the provision that only licensed manufacturers,
9 licensed wholesalers, registered exporters, state-bonded
10 warehouses, and licensed direct-shippers may knowingly and
11 intentionally ship, or cause to be shipped, an alcoholic
12 beverage from an out-of-state or in-state location directly to
13 a person in this state.

14 The CS requires that direct shippers obtain and maintain a
15 current license as a Primary American Source of Supply,
16 maintain all current state and federal licenses, and comply
17 with container size requirements.

18 The CS provides an exemption from fingerprinting and license
19 investigation requirements and directs the Division of
20 Alcoholic Beverage and Tobacco to specify by rule the
21 procedures for determining whether an applicant qualifies for
22 this exemption.

23 The CS deletes the age verification provision that requires
24 direct shippers to verify the identity of the person to whom
25 each container of wine is intended to be shipped.

26 The CS lists the information that must be contained on a
27 container of wine shipped from a direct shipper. It deletes
28 the specific wording requirement for the label.

29 The CS requires that a direct shipper must require that the
30 common carrier use the age verification requirements in the
31 bill if a common carrier is used to make the delivery. It
also requires that direct shippers use the common carrier's
age verification procedure which complies with the bill's
requirements. For the purpose of age verification, the bill
specifies acceptable forms of identification for persons who
are physically handicapped.

The CS provides a good faith defense to any civil action,
except for an administrative action by the division, to direct
shipper licensees and common carriers who sell alcoholic
beverages to a minor under specified conditions.

The CS requires that direct shippers collect and remit sales
taxes to the Department of Revenue (DOR). It also provides
for the calculation of the sales tax.

The CS requires the reporting to the division of brands
shipped in place of the types of wines shipped. It also
requires the reporting to the division of the amount of sales
taxes paid to the DOR.

The CS deletes the exemption from the reporting requirement
for Florida Farm Wineries and exempts direct shippers who file

1 | a report under s. 561.55, F.S., that contains all the
2 | information required by the CS. It also grants the division
3 | rule making authority to prescribe format or submissions to
4 | avoid duplicative filings.
5 |
6 | The CS assigns the cost of the audit to a direct shipper if a
7 | material violation is found. It also requires that direct
8 | shippers pay all attorney's fees and costs in an action to
9 | collect unpaid taxes and requires that a direct shipper submit
10 | to an audit by the DOR.
11 |
12 | The CS deletes the reference to the division's authority to
13 | enforce the provisions of this section pursuant to ch. 120,
14 | F.S. It also decreases the amount of the fine from \$5,000 to
15 | \$2,500.
16 |
17 | The CS deletes the provision relating to cease and desist
18 | orders for violations of this section. The bill provides third
19 | degree felony violations for direct shipper licensees that
20 | knowingly and intentionally ship wine to a minor. The CS
21 | decreases the criminal penalty for a common carrier who
22 | delivers wine to a minor from a third degree felony to a
23 | second degree misdemeanor.
24 |
25 | The CS includes Internet sales as a sale actually made at the
26 | vendor's place of business. It also deletes duplicative
27 | language in this subsection.
28 |
29 | The CS replaces the term "or other person using a common
30 | carrier as his or her agent" with the term "their employees or
31 | agents" for the exemption from certain reporting requirements.
It replaces the term "other person hiring the common carrier"
with the term "their employees or agents" in the context of
providing a complete defense to selling, serving alcoholic
beverages to minors. It also corrects a typographical error
by replacing the term "of" with "or".