

By the Committees on General Government Appropriations;  
Regulated Industries; and Senators Dockery, Argenziano, Lynn  
and Diaz de la Portilla

601-2385-06

1   A bill to be entitled  
2             An act relating to the Beverage Law; amending  
3             s. 561.14, F.S.; prohibiting vendor purchases  
4             and acquisitions of wine from direct shippers;  
5             providing for direct shipper license  
6             classification; creating s. 561.575, F.S.;  
7             providing for the direct shipment of wine from  
8             within or outside the state; requiring that a  
9             shipper hold a direct shipper's license;  
10            providing requirements for licensure; requiring  
11            that each container of wine shipped directly be  
12            labeled with a notice; requiring that a direct  
13            shipper file a surety bond with the Division of  
14            Alcoholic Beverages and Tobacco of the  
15            Department of Business and Professional  
16            Regulation; providing for attorney's fees and  
17            costs in an action to collect unpaid taxes;  
18            authorizing the division to suspend or revoke a  
19            direct shipper's license or impose fines;  
20            providing for criminal penalties; authorizing  
21            the division to adopt rules; amending ss.  
22            561.54 and 561.545, F.S.; specifying that  
23            provisions prohibiting the direct shipment of  
24            alcoholic beverages are inapplicable to wine  
25            shipped under s. 561.575, F.S.; amending s.  
26            561.57, F.S.; including Internet sales as sales  
27            construed to be actually made at the vendor's  
28            licensed place of business; exempting common  
29            carriers from certain report filing  
30            requirements; requiring common carriers to  
31            verify the age of persons receiving shipments;

1 providing a defense to certain actions;  
2 authorizing positions and providing an  
3 appropriation; providing an effective date.  
4

5 Be It Enacted by the Legislature of the State of Florida:  
6

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

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

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

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

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

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

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

22 (5) Importers, whether resident or nonresident,  
23 licensed to sell, or to cause to be sold, shipped, and  
24 invoiced, alcoholic beverages to licensed manufacturers or  
25 licensed distributors, and to no one else, in this state;  
26 provided that the provisions of ss. 564.045 and 565.095 are in  
27 no way violated by such imports. Such licensed importers  
28 shall have no direct or indirect affiliation with any vendor  
29 licensed in this state. The holder of an importer's license  
30 shall be considered as having complied with the licensing  
31 requirements of a broker or sales agent. This license

1 classification does not include manufacturers' representatives  
2 who are registered with the division under the provisions of  
3 ss. 564.045(1) and (2) and 565.095(1) and (2).

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

24 (7) Exporters registered to sell alcoholic beverages.

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

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

31 561.575 Direct shipment of wine.--

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 total gallons of wine per tax classification  
31 shipped into or 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. For the 2006-2007 fiscal year, eight  
13 full-time equivalent positions with associated salary rate of  
14 275,795 are authorized and the sums of \$416,563 in recurring  
15 funds and \$69,785 in nonrecurring funds are appropriated from  
16 the Alcoholic Beverage and Tobacco Trust Fund in the  
17 Department of Business and Professional Regulation for the  
18 purpose of implementing the regulatory and administrative  
19 functions authorized in this act.

20       Section 7. This act shall take effect upon becoming a  
21 law.

22  
23                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
24                   COMMITTEE SUBSTITUTE FOR  
25                   CS for SB 282

26 Requires that direct shippers report on wine shipments to  
27 Florida residents.

28 Appropriates eight positions and \$486,348 to the Department of  
29 Business and Professional Regulation for implementing the  
30 regulatory and administrative functions authorized by this  
31 bill.