

By Senator Geller

31-738-06

1                                   A bill to be entitled  
2           An act relating to the Beverage Law; creating  
3           s. 561.585, F.S.; providing for certain direct  
4           shipments of wine from out of state to a  
5           resident of this state; requiring shippers to  
6           have certain licenses; providing prohibitions;  
7           providing for administrative and criminal  
8           penalties; amending ss. 561.54 and 561.545,  
9           F.S.; providing that those provisions  
10          prohibiting the shipment of alcoholic beverages  
11          do not apply to wine shipped under s. 561.585,  
12          F.S.; providing an effective date.

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

16           Section 1. Section 561.585, Florida Statutes, is  
17 created to read:

- 18           561.585 Direct shipment of wine.--  
19           (1) LICENSURE REQUIREMENTS.--Notwithstanding any  
20 provision of the Beverage Law or any rule to the contrary, a  
21 person, firm, corporation, or other entity who is licensed as  
22 an out-of-state shipper under this section may ship wine  
23 directly to any person registered under this section who is at  
24 least 21 years of age for personal use only and not for  
25 resale. To obtain an out-of-state shipper's license, an  
26 applicant must:  
27           (a) Obtain and maintain a current license as a primary  
28 American source of supply as provided in s. 564.045;  
29           (b) Provide to the division a true copy of its current  
30 alcoholic beverage license issued by another state; and  
31           (c) Pay a registration fee in the amount of \$100.

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2 A shipper may annually renew its out-of-state shipper's  
3 license with the division by paying a renewal fee in the  
4 amount of \$100 and providing to the division a true copy of  
5 its current alcoholic beverage license issued by another  
6 state.

7       (2) LIMITATION ON SHIPMENTS.--A person registered  
8 under this section, while physically present at an  
9 out-of-state winery that is licensed as an out-of-state  
10 shipper under this section, may purchase and have shipped to  
11 this state no more than two cases of wine per winery and no  
12 more than eight cases of wine per calendar year for personal  
13 use only. A single case may contain no more than 9 liters of  
14 wine.

15       (3) SIGNATURE.--Each out-of-state shipper shall ensure  
16 that the outside shipping label of each package containing  
17 wine shipped under this section conspicuously states  
18 "SIGNATURE OF ADDRESSEE AGE 21 OR OLDER REQUIRED FOR DELIVERY"  
19 and that, prior to delivery, the signature of the addressee is  
20 obtained after presentation of a valid Florida driver's  
21 license or an identification card issued by this state.

22       (4) QUARTERLY REPORT.--Each out-of-state shipper shall  
23 report quarterly to the division the total amount of wine by  
24 type shipped into the state during the preceding 3 months.

25       (5) TAXES.--Each out-of-state shipper shall pay  
26 monthly to the Department of Revenue all sales taxes and to  
27 the division all excise taxes due on sales to persons in this  
28 state for the preceding month. The amount of such taxes shall  
29 be calculated as if the sale took place at the location where  
30 the delivery occurred in this state. Each out-of-state shipper  
31 shall maintain records of its direct shipments to this state,

1 including the names, addresses, amounts, and dates of all  
2 shipments to persons in this state, and shall allow the  
3 Department of Revenue or the division, upon its request, to  
4 perform an audit of such records.

5 (6) JURISDICTION.--Each out-of-state shipper is deemed  
6 to have consented to the jurisdiction of the division or any  
7 other state agency and the courts of this state concerning  
8 enforcement of this section and any related laws or rules.

9 (7) REGISTRATION.--Before receiving any shipment under  
10 this section, a person must be at least 21 years of age, must  
11 be a resident of this state, and must register with the  
12 division on a form prescribed by the division by filing a  
13 sworn statement and providing:

14 (a) Full name;

15 (b) Address of legal residence, and mailing address,  
16 if different from street address;

17 (c) Telephone number;

18 (d) Proof that the person is at least 21 years of age;

19 (e) A statement that wine obtained under this section  
20 is for personal use only and not for resale;

21 (f) A statement that the person will obtain no more  
22 than a total of eight cases of wine per calendar year from all  
23 out-of-state shippers combined; and

24 (g) Any other information the division by rule may  
25 deem necessary to adequately carry out the provisions of this  
26 section.

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28 A registration must be updated with the division within 30  
29 days after any change. The registration with the division  
30 under this section is valid for a period of up to 5 years and  
31 expires on December 31 of the 5th year.

1           (8) PENALTIES.--

2           (a) In addition to the penalties provided by s.  
3 561.545, the division may suspend or revoke an out-of-state  
4 shipper's license or impose fines on the out-of-state shipper  
5 for any violation of this section.

6           (b) An out-of-state shipper who knowingly and  
7 intentionally ships, or causes to be shipped, wine to any  
8 person in this state who is younger than 21 years of age  
9 commits a felony of the third degree, punishable as provided  
10 in s. 775.082, s. 775.083, or s. 775.084.

11           (c) 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 wine  
14 from an out-of-state location directly to any person in this  
15 state who is younger than 21 years of age commits a felony of  
16 the third degree, punishable as provided in s. 775.082, s.  
17 775.083, or s. 775.084.

18           (d) A person who obtains wine from an out-of-state  
19 shipper in violation of this section commits a misdemeanor of  
20 the second degree, punishable as provided in s. 775.082 or s.  
21 775.083.

22           Section 2. Section 561.54, Florida Statutes, is  
23 amended to read:

24           561.54 Certain deliveries of beverages prohibited.--

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

3 (2) Any licensee aggrieved by a violation of this  
4 section may bring an action in any court of competent  
5 jurisdiction to recover for the state all moneys obtained by  
6 common carriers or permit carriers; obtained by operators of  
7 privately owned cars, trucks, buses, or other conveyances; or  
8 obtained by out-of-state manufacturers or suppliers as a  
9 result of the delivery of alcoholic beverages in violation of  
10 this section, and may obtain a declaratory judgment that an  
11 act or practice violates this section and enjoin any person  
12 from violating this section. In addition to such relief, the  
13 court may order the confiscation and destruction of any  
14 alcoholic beverages delivered in violation of this section.  
15 In assessing damages, the court shall enter judgment against a  
16 defendant for three times the amount of the delivery charges  
17 proved or the fair market value of merchandise unlawfully  
18 brought into the state. Payment or satisfaction of any  
19 judgment under this section, other than for costs and  
20 attorney's fees, shall be made in its entirety to the state.  
21 In any successful action under this section, the court shall  
22 award the plaintiff costs and reasonable attorney's fees.

23 (3) This section does not apply to the shipment of  
24 wine by a licensed out-of-state shipper to a registered person  
25 21 years of age or older in accordance with s. 561.585.

26 Section 3. Section 561.545, Florida Statutes, is  
27 amended to read:

28 561.545 Certain shipments of beverages prohibited;  
29 penalties; exceptions.--The Legislature finds that the direct  
30 shipment of alcoholic beverages by persons in the business of  
31 selling alcoholic beverages to residents of this state in

1 violation of the Beverage Law poses a serious threat to the  
2 public health, safety, and welfare; to state revenue  
3 collections; and to the economy of the state. The Legislature  
4 further finds that the penalties for illegal direct shipment  
5 of alcoholic beverages to residents of this state should be  
6 made adequate to ensure compliance with the Beverage Law and  
7 that the measures provided for in this section are fully  
8 consistent with the powers conferred upon the state by the  
9 Twenty-first Amendment to the United States Constitution.

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

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

26 (3) Any person found by the division to be in  
27 violation of subsection (1) shall be issued a notice, by  
28 certified mail, to show cause why a cease and desist order  
29 should not be issued. Any person who violates subsection (1)  
30 within 2 years after receiving a cease and desist order or  
31 within 2 years after a prior conviction for violating

1 subsection (1) commits a felony of the third degree,  
2 punishable as provided in s. 775.082, s. 775.083, or s.  
3 775.084.

4 (4) Any common carrier or permit carrier, or any  
5 operator of a privately owned car, truck, bus, or other  
6 conveyance found by the division to be in violation of  
7 subsection (2) as a result of a second or subsequent delivery  
8 from the same source and location, within a 2-year period  
9 after the first delivery shall be issued a notice, by  
10 certified mail, to show cause why a cease and desist order  
11 should not be issued. Any person who violates subsection (2)  
12 within 2 years after receiving the cease and desist order or  
13 within 2 years after a prior conviction for violating  
14 subsection (2) commits a felony of the third degree,  
15 punishable as provided in s. 775.082, s. 775.083, or s.  
16 775.084.

17 (5) This section does not apply to:

18 (a) The direct shipment of sacramental alcoholic  
19 beverages to bona fide religious organizations as authorized  
20 by the division; ~~or to~~

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

23 (c) The shipment of wine by a licensed out-of-state  
24 shipper to a registered person 21 years of age or older in  
25 accordance with s. 561.585.

26 Section 4. This act shall take effect upon becoming a  
27 law.

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SENATE SUMMARY

Provides for the direct shipping of no more than eight cases of wine per calendar year to a resident of this state who is at least 21 years old and who purchases the wine in person at the winery for personal use. Requires out-of-state shippers to be licensed by the Division of Alcoholic Beverages and Tobacco. Provides prohibitions. Provides for administrative and criminal penalties. Provides for the payment of taxes. Provides that ss. 561.54 and 561.545, F.S., do not apply to direct out-of-state shipments of wine to persons in this state as authorized under this act.