

HB 1217

2007

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

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

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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.

50
 51 Be It Enacted by the Legislature of the State of Florida:

52
 53 Section 1. Section 561.585, Florida Statutes, is created
 54 to read:

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

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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

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

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

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

107 (c) Winery shipper licensees may not ship or cause to be
108 shipped more than 18 cases of wine per calendar year to one
109 adult individual. For purposes of this section, a case is
110 defined as a container or containers that contain no more than
111 9,000 milliliters of wine.

112 (d) Licensees shall comply with s. 564.05, which limits

113 the size of wine containers.

114 (e) Purchasers shall not purchase or cause to be shipped
 115 more than 18 cases of wine per calendar year to any adult
 116 individual.

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

120 (a) This package contains alcohol.

121 (b) An adult signature is required.

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

123 (3) SIGNATURE.--

124 (a) Each winery shipper licensee and common carrier shall
 125 require, prior to delivery, that the signature of the addressee
 126 or other person at least 21 years of age is obtained after
 127 presentation of a valid driver's license, an identification card
 128 issued under the provisions of s. 322.051, or, if the person is
 129 physically handicapped, a comparable identification card issued
 130 by another state which indicates the person's age, a passport,
 131 or a United States Uniformed Services identification card.

132 (b) A winery shipper licensee or common carrier who
 133 violates this subsection shall have a complete defense to any
 134 civil action therefor, except for any administrative action by
 135 the division, if, at the time the alcoholic beverage was sold,
 136 given, delivered, or transferred, the person falsely evidenced
 137 that he or she was of legal age to purchase or consume the
 138 alcoholic beverage and the appearance of the person was such
 139 that an ordinarily prudent person would believe him or her to be
 140 of legal age to purchase or consume the alcoholic beverage and

141 if the winery shipper licensee or common carrier acted in good
 142 faith and in reliance upon the representation and appearance of
 143 the person in the belief that he or she was of legal age to
 144 purchase or consume the alcoholic beverage and carefully checked
 145 one of the following forms of identification with respect to the
 146 person: a valid driver's license, an identification card issued
 147 under the provisions of s. 322.051, or, if the person is
 148 physically handicapped, a comparable identification card issued
 149 by another state which indicates the person's age, a passport,
 150 or a United States Uniformed Services identification card.

151 (4) MONTHLY REPORT.--

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

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

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

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

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

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

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169 (5) TAXES.--

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

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

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

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

197 (7) PENALTIES.--

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

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

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

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

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

219 561.14 License and registration classification.--Licenses
 220 and registrations referred to in the Beverage Law shall be
 221 classified as follows:

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

223 Section 3. Section 561.54, Florida Statutes, is amended to
 224 read:

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225 561.54 Certain deliveries of beverages prohibited.--

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

234 (2) Any licensee ~~aggrieved by a violation of this section~~
235 may bring an action in any court of competent jurisdiction to
236 recover for the state all moneys obtained by common carriers or
237 permit carriers; obtained by operators of privately owned cars,
238 trucks, buses, or other conveyances; or obtained by out-of-state
239 manufacturers or suppliers as a result of the delivery of
240 alcoholic beverages in violation of this section, and may obtain
241 a declaratory judgment that an act or practice violates this
242 section and enjoin any person from violating this section. In
243 addition to such relief, the court may order the confiscation
244 and destruction of any alcoholic beverages delivered in
245 violation of this section. In assessing damages, the court shall
246 enter judgment against a defendant for three times the amount of
247 the delivery charges proved or the fair market value of
248 merchandise unlawfully brought into the state. Payment or
249 satisfaction of any judgment under this section, other than for
250 costs and attorney's fees, shall be made in its entirety to the
251 state. In any successful action under this section, the court
252 shall award the plaintiff costs and reasonable attorney's fees.

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

256 Section 4. Section 561.545, Florida Statutes, is amended
257 to read:

258 561.545 Certain shipments of beverages prohibited;
259 penalties; exceptions.--The Legislature finds that the direct
260 shipment of alcoholic beverages by persons in the business of
261 selling alcoholic beverages to residents of this state in
262 violation of the Beverage Law poses a serious threat to the
263 public health, safety, and welfare; to state revenue
264 collections; and to the economy of the state. The Legislature
265 further finds that the penalties for illegal direct shipment of
266 alcoholic beverages to residents of this state should be made
267 adequate to ensure compliance with the Beverage Law and that the
268 measures provided for in this section are fully consistent with
269 the powers conferred upon the state by the Twenty-first
270 Amendment to the United States Constitution.

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

279 (2) Any common carrier or permit carrier or any operator
280 of a privately owned car, truck, bus, or other conveyance who

281 knowingly and intentionally transports any alcoholic beverage
 282 from an out-of-state location directly to any person in this
 283 state who does not hold a valid manufacturer's or wholesaler's
 284 license or exporter's registration or who is not a state-bonded
 285 warehouse is in violation of this section.

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

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

305 (5) This section does not apply to:

306 (a) The direct shipment of sacramental alcoholic beverages
 307 to bona fide religious organizations as authorized by the
 308 division;

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

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

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

314 561.57 Deliveries by licensees.--

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

322 (6) Common carriers are not required to have vehicle
323 permits to transport alcoholic beverages. Nothing in this
324 section shall prohibit any licensee from utilizing a common
325 carrier as his or her agent to make deliveries of alcoholic
326 beverages within the state. Deliveries of alcoholic beverages by
327 licensees or common carriers utilized by licensees under this
328 section are exempt from the report filing requirements in s.
329 562.20. All common carriers making deliveries under this section
330 shall verify that any person receiving alcoholic beverages is at
331 least 21 years of age upon the delivery of such alcoholic
332 beverages, as prescribed in division rules. Compliance with the
333 prescribed age verification measures in s. 561.585(3) shall give
334 the common carrier and the licensee a complete defense to any
335 civil action thereof, except for any administrative action by
336 the division, if, at the time the alcoholic beverage was sold,

337 given, delivered, or transferred, the person falsely evidenced
 338 that he or she was of legal age to purchase or consume the
 339 alcoholic beverage and the appearance of the person was such
 340 that an ordinarily prudent person would believe him or her to be
 341 of legal age to purchase or consume the alcoholic beverage and
 342 if the licensee or common carrier acted in good faith and in
 343 reliance upon the representation and appearance of the person in
 344 the belief that he or she was of legal age to purchase or
 345 consume the alcoholic beverage and carefully checked one of the
 346 following forms of identification with respect to the person: a
 347 valid driver's license, an identification card issued under the
 348 provisions of s. 322.051, or, if the person is physically
 349 handicapped, a comparable identification card issued by another
 350 state which indicates the person's age, a passport, or a United
 351 States Uniformed Services identification card.

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

354 599.004 Florida Farm Winery Program; registration; logo;
 355 fees.--

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

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

364 1. Produce or sell less than 250,000 gallons of wine

365 annually of which 60 percent of wine produced shall be made from
 366 this state's agricultural products. The Commissioner of
 367 Agriculture may waive this requirement in times of hardship.

368 2. Maintain a minimum of 10 acres of owned or managed
 369 vineyards in Florida.

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

372 4. Make annual application to the department for
 373 recognition as a Florida Farm Winery, on forms provided by the
 374 department.

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

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

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

383 561.24 Licensing manufacturers as distributors or
 384 registered exporters prohibited; procedure for issuance and
 385 renewal of distributors' licenses and exporters'
 386 registrations.--

387 (5) Notwithstanding any of the provisions of the foregoing
 388 subsections, any corporation which holds a license as a
 389 distributor on June 3, 1947, shall be entitled to a renewal
 390 thereof, provided such corporation complies with all of the
 391 provisions of the Beverage Law of Florida, as amended, and of
 392 this section and establishes by satisfactory evidence to the

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393 division that, during the 6-month period next preceding its
394 application for such renewal, of the total volume of its sales
395 of spirituous liquors, in either dollars or quantity, not more
396 than 40 percent of such spirituous liquors sold by it, in either
397 dollars or quantity, were manufactured, rectified, or distilled
398 by any corporation with which the applicant is affiliated,
399 directly or indirectly, including any corporation which owns or
400 controls in any way any stock in the applicant corporation or
401 any corporation which is a subsidiary or affiliate of the
402 corporation so owning stock in the applicant corporation. Any
403 manufacturer of wine holding a license as a distributor on July
404 1, 2007, ~~the effective date of this act~~ shall be entitled to a
405 renewal of such license notwithstanding the provisions of
406 subsections (1)-(5). ~~This section does not apply to any winery~~
407 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

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

412 Section 9. Notwithstanding the provisions of s. 561.585,
413 Florida Statutes, contracts not otherwise prohibited by the
414 Beverage Law shall not be impaired.

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

420 Section 11. For fiscal year 2007-2008, six full-time

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421 equivalent positions are authorized, and the sums of \$484,096 in
422 recurring funds and \$41,944 in nonrecurring funds from the
423 Alcoholic Beverage and Tobacco Trust Fund of the Department of
424 Business and Professional Regulation are hereby appropriated
425 within a qualified expenditure category for the purpose of
426 carrying out regulatory activities provided in this act. In
427 addition, for fiscal year 2007-2008, two full-time equivalent
428 positions, with associated salary rate of 76,129, are
429 authorized, and the sums of \$127,340 in recurring funds and
430 \$10,486 in nonrecurring funds from the Administrative Trust Fund
431 of the Department of Business and Professional Regulation are
432 hereby appropriated for the purpose of carrying out central-
433 service administrative support functions related to the
434 regulatory activities provided in this act.

435 Section 12. This act shall take effect upon becoming a
436 law.