

By Senator Saunders

37-65-07

1 A bill to be entitled
2 An act relating to the Beverage Law; amending
3 s. 561.14, F.S.; providing for license
4 classification as a winery shipper; creating s.
5 561.585, F.S.; authorizing certain direct
6 shipments of wine; requiring licensure of
7 winery shippers; providing requirements for
8 licensure; providing prohibitions; requiring
9 that a winery shipper licensee file a surety
10 bond with the Division of Alcoholic Beverages
11 and Tobacco of the Department of Business and
12 Professional Regulation; requiring that each
13 container of wine shipped directly be labeled
14 with a notice; requiring monthly reports by
15 winery shipper licensees; providing limitations
16 on the amount of wine a winery shipper may ship
17 or cause to be shipped; providing age
18 requirements for those receiving direct
19 shipments of wine; providing a defense to
20 certain actions; requiring payment of taxes by
21 direct shippers; requiring that winery shippers
22 maintain certain records for a certain time
23 period; providing for jurisdiction; providing
24 penalties; amending s. 561.54, F.S.; removing a
25 provision requiring that the licensee be
26 aggrieved by a violation involving prohibited
27 delivery from without the state to have
28 standing to bring an action; exempting from
29 such prohibition shipment of wine by a winery
30 shipper licensee; amending s. 561.545, F.S.,
31 relating to the prohibition against direct

1 shipment of alcoholic beverages; exempting
2 applicability of such prohibition to the
3 shipment of wine by a winery shipper licensee;
4 amending s. 561.57, F.S.; providing that
5 Internet orders shall be construed as telephone
6 orders; exempting common carriers, licensees,
7 or other persons using common carriers as their
8 agents from certain report-filing requirements;
9 requiring common carriers to verify the age of
10 persons receiving shipments; providing a
11 defense to certain actions; amending s.
12 599.004, F.S.; revising qualifications for the
13 certification of Florida Farm Wineries;
14 amending s. 561.24, F.S.; revising an effective
15 date; authorizing certain manufacturers of wine
16 holding a distributor's license to renew such
17 license; removing exemption of Florida Farm
18 Wineries from prohibition against a
19 manufacturer's being licensed as a distributor
20 or registered as an exporter; providing for
21 severability; providing that certain contracts
22 are not impaired; providing for rulemaking
23 authority; providing an effective date.
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25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Subsection (8) is added to section 561.14,
28 Florida Statutes, to read:

29 561.14 License and registration
30 classification.--Licenses and registrations referred to in the
31 Beverage Law shall be classified as follows:

1 (8) Wineries licensed as winery shippers under s.
2 561.585.

3 Section 2. Section 561.585, Florida Statutes, is
4 created to read:

5 561.585 Direct shipment of wine for personal
6 consumption.--

7 (1) WINERY SHIPPER LICENSURE REQUIREMENTS.--

8 (a) Notwithstanding any provision of the Beverage Law
9 or any rule to the contrary, a person, firm, corporation, or
10 other entity that is licensed as a winery shipper under this
11 section may ship wine directly to any person who is at least
12 21 years of age for personal use only and not for resale. To
13 obtain or renew a winery shipper's license, an applicant must:

14 1. File an application with the division on forms
15 prescribed by the division.

16 2. Qualify for licensure under ss. 561.15 and 561.17
17 or provide a true copy of a certification from the alcoholic
18 beverage licensing authority of the Federal Government or the
19 state in which the winery is located that qualifications for
20 that winery license include at a minimum the following
21 components:

22 a. Fingerprinting of applicants;

23 b. Disqualification of applicants under 21 years of
24 age;

25 c. Disqualification of applicants convicted of:

26 (I) Any violation of the beverage laws of this state,
27 the United States, or any other state in the past 5 years;

28 (II) Any felony in this state or another state within
29 the past 15 years; or

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

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

6 4. Provide to the division a true copy of its current
7 wine manufacturer's license issued by this state or another
8 state and a true copy of its current federal basic permit as a
9 wine producer issued in accordance with the Federal Alcohol
10 Administration Act.

11 5. Manufacture no more than 250,000 gallons of wine
12 per year.

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

14 7. File with the division a surety bond acceptable to
15 the division in the sum of \$5,000 as surety for the payment of
16 all taxes, unless the volume of business done by the winery
17 shipper licensee is such that a bond of less than \$5,000 will
18 be adequate, in which case the division may accept a bond in a
19 lesser sum, but not less than \$1,000. The surety bond
20 currently on file with the division for a winery pursuant to
21 s. 561.37 is deemed to comply with this requirement. Any
22 applicant that has a surety bond for another license on file
23 with the division which is in excess of \$5,000 is deemed to be
24 in compliance with this requirement.

25 (b) An applicant under this section may obtain a
26 temporary initial license as provided in s. 561.181.

27 (c) The division may not issue a license under this
28 section if the applicant or licensee is owned by a winery that
29 manufactures more than 250,000 gallons of wine annually.

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1 (d) Winery shipper licensees may not ship or cause to
2 be shipped more than 18 cases of wine per calendar year to one
3 adult individual.

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

7 (a) This package contains alcohol.

8 (b) An adult signature is required.

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

10 (3) SIGNATURE.--

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

20 (b) A winery shipper licensee or common carrier who
21 violates this subsection shall have a complete defense to any
22 civil action therefor, except for any administrative action by
23 the division, if, at the time the alcoholic beverage was sold,
24 given, delivered, or transferred, the person falsely evidenced
25 that he or she was of legal age to purchase or consume the
26 alcoholic beverage and the appearance of the person was such
27 that an ordinarily prudent person would believe him or her to
28 be of legal age to purchase or consume the alcoholic beverage
29 and if the winery shipper licensee or common carrier acted in
30 good faith and in reliance upon the representation and
31 appearance of the person in the belief that he or she was of

1 legal age to purchase or consume the alcoholic beverage and
2 carefully checked one of the following forms of identification
3 with respect to the person: a valid driver's license, an
4 identification card issued under the provisions of s. 322.051,
5 or, if the person is physically handicapped, a comparable
6 identification card issued by another state which indicates
7 the person's age, a passport, or a United States Uniformed
8 Services identification card.

9 (4) MONTHLY REPORT.--

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

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

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

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

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

22 (b) The report required by this subsection is not
23 required from a winery shipper licensee who files a monthly
24 report pursuant to s. 561.55 which contains all the
25 information required in paragraph (a). The division may
26 prescribe the format for submission of this information in
27 order to eliminate duplicate filings.

28 (5) TAXES.--

29 (a) Each winery shipper licensee shall collect and
30 remit monthly to the Department of Revenue all sales taxes and
31 pay to the division all excise taxes due on sales to persons

1 in this state for the preceding month. Notwithstanding s.
2 212.0596, the amount of such taxes shall be calculated as if
3 the sale took place at the location where the delivery
4 occurred in this state.

5 (b) Each winery shipper licensee shall maintain for at
6 least 3 years after the date of delivery records of its
7 shipments into or within this state pursuant to this section,
8 including the names, addresses, amounts, and dates of all
9 shipments to persons in this state, and shall allow the
10 Department of Revenue or the division, upon request, to
11 perform an audit of such records.

12 (c) The cost of performing an audit under paragraph
13 (b) shall be assigned to the agency requesting the audit
14 unless the winery shipper licensee is found to be in material
15 violation of this subsection, in which case the cost of the
16 audit shall be assigned to the licensee.

17 (6) JURISDICTION.--Each winery shipper licensee is
18 deemed to have consented to the jurisdiction of the division
19 or any other state agency and the courts of this state
20 concerning enforcement of this section and any related laws or
21 rules.

22 (7) PENALTIES.--

23 (a) In addition to any other penalty provided in the
24 Beverage Law, the division may suspend or revoke a winery
25 shipper license or impose fines on the winery shipper licensee
26 in an amount not to exceed \$2,500 per violation for any
27 violation of this section.

28 (b) A winery shipper licensee that knowingly and
29 intentionally ships, or causes to be shipped, wine to any
30 person under 21 years of age in this state commits a felony of
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1 the third degree, punishable as provided in s. 775.082, s.
2 775.083 or s. 775.084.

3 (c) Any common carrier, permit carrier, or other
4 commercial conveyance that knowingly and intentionally
5 delivers wine directly to any person under 21 years of age in
6 this state commits a misdemeanor of the second degree,
7 punishable as provided in s. 775.082 or s. 775.083.

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

12 Section 3. Section 561.54, Florida Statutes, is
13 amended to read:

14 561.54 Certain deliveries of beverages prohibited.--

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

23 (2) Any licensee ~~aggrieved by a violation of this~~
24 ~~section~~ may bring an action in any court of competent
25 jurisdiction to recover for the state all moneys obtained by
26 common carriers or permit carriers; obtained by operators of
27 privately owned cars, trucks, buses, or other conveyances; or
28 obtained by out-of-state manufacturers or suppliers as a
29 result of the delivery of alcoholic beverages in violation of
30 this section, and may obtain a declaratory judgment that an
31 act or practice violates this section and enjoin any person

1 from violating this section. In addition to such relief, the
2 court may order the confiscation and destruction of any
3 alcoholic beverages delivered in violation of this section. In
4 assessing damages, the court shall enter judgment against a
5 defendant for three times the amount of the delivery charges
6 proved or the fair market value of merchandise unlawfully
7 brought into the state. Payment or satisfaction of any
8 judgment under this section, other than for costs and
9 attorney's fees, shall be made in its entirety to the state.
10 In any successful action under this section, the court shall
11 award the plaintiff costs and reasonable attorney's fees.

12 (3) This section does not apply to the shipment of
13 wine by a winery shipper licensee to a person who is at least
14 21 years of age in accordance with s. 561.585.

15 Section 4. Section 561.545, Florida Statutes, is
16 amended to read:

17 561.545 Certain shipments of beverages prohibited;
18 penalties; exceptions.--The Legislature finds that the direct
19 shipment of alcoholic beverages by persons in the business of
20 selling alcoholic beverages to residents of this state in
21 violation of the Beverage Law poses a serious threat to the
22 public health, safety, and welfare; to state revenue
23 collections; and to the economy of the state. The Legislature
24 further finds that the penalties for illegal direct shipment
25 of alcoholic beverages to residents of this state should be
26 made adequate to ensure compliance with the Beverage Law and
27 that the measures provided for in this section are fully
28 consistent with the powers conferred upon the state by the
29 Twenty-first Amendment to the United States Constitution.

30 (1) Any person in the business of selling alcoholic
31 beverages who knowingly and intentionally ships, or causes to

1 | be shipped, any alcoholic beverage from an out-of-state
2 | location directly to any person in this state who does not
3 | hold a valid manufacturer's or wholesaler's license or
4 | exporter's registration issued by the Division of Alcoholic
5 | Beverages and Tobacco or who is not a state-bonded warehouse
6 | is in violation of this section.

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

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

24 | (4) Any common carrier or permit carrier, or any
25 | operator of a privately owned car, truck, bus, or other
26 | conveyance found by the division to be in violation of
27 | subsection (2) as a result of a second or subsequent delivery
28 | from the same source and location, within a 2-year period
29 | after the first delivery shall be issued a notice, by
30 | certified mail, to show cause why a cease and desist order
31 | should not be issued. Any person who violates subsection (2)

1 | within 2 years after receiving the cease and desist order or
2 | within 2 years after a prior conviction for violating
3 | subsection (2) commits a felony of the third degree,
4 | punishable as provided in s. 775.082, s. 775.083, or s.
5 | 775.084.

6 | (5) This section does not apply to:

7 | (a) The direct shipment of sacramental alcoholic
8 | beverages to bona fide religious organizations as authorized
9 | by the division;

10 | (b) ~~The or to~~ possession of alcoholic beverages in
11 | accordance with s. 562.15(2); or

12 | (c) The shipment of wine in accordance with s.
13 | 561.585.

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

16 | 561.57 Deliveries by licensees.--

17 | (1) Vendors shall be permitted to make deliveries away
18 | from their places of business of sales actually made at the
19 | licensed place of business; provided, telephone or mail orders
20 | received at vendor's licensed place of business shall be
21 | construed as a sale actually made at the vendor's licensed
22 | place of business. For purposes of this section, Internet
23 | orders shall be construed as telephone orders.

24 | (6) Common carriers are not required to have vehicle
25 | permits to transport alcoholic beverages. This section does
26 | not prohibit any common carrier or any licensee or other
27 | person using a common carrier as his or her agent from making
28 | deliveries of alcoholic beverages within the state. Deliveries
29 | of alcoholic beverages by common carriers or by licensees or
30 | other persons using common carriers as their agents under this
31 | section are exempt from the report-filing requirements in s.

1 562.20. Each common carrier acting as a designated agent for
2 delivery under this section shall verify that any person
3 receiving alcoholic beverages is at least 21 years of age upon
4 the delivery of such alcoholic beverages, as prescribed in
5 division rules. Compliance with the prescribed age
6 verification measures in s. 561.585(3) gives the common
7 carrier and the licensee or other person hiring the common
8 carrier a complete defense of selling, giving, delivering, or
9 transferring alcoholic beverages to any person under the age
10 of 21.

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

13 599.004 Florida Farm Winery Program; registration;
14 logo; fees.--

15 (1) The Florida Farm Winery Program is established
16 within the Department of Agriculture and Consumer Services.
17 Under this program, a winery may qualify as a tourist
18 attraction only if it is registered with and certified by the
19 department as a Florida Farm Winery. A winery may not claim to
20 be certified unless it has received written approval from the
21 department.

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

24 1. Produce or sell less than 250,000 gallons of wine
25 annually of which 60 percent of wine produced must be made
26 from this state's agricultural products. The Commissioner of
27 Agriculture may waive this requirement in times of hardship.

28 2. Maintain a minimum of 10 acres of owned or managed
29 vineyards in Florida.

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

1 4. Make annual application to the department for
2 recognition as a Florida Farm Winery, on forms provided by the
3 department.

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

6 (b) To maintain certification and recognition as a
7 Florida Farm Winery, a winery must comply with the
8 qualifications provided in this section. The Commissioner of
9 Agriculture is authorized to officially recognize a certified
10 Florida Farm Winery as a state tourist attraction.

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

13 561.24 Licensing manufacturers as distributors or
14 registered exporters prohibited; procedure for issuance and
15 renewal of distributors' licenses and exporters'
16 registrations.--

17 (5) Notwithstanding any of the provisions of the
18 foregoing subsections, any corporation which holds a license
19 as a distributor on June 3, 1947, shall be entitled to a
20 renewal thereof, provided such corporation complies with all
21 of the provisions of the Beverage Law of Florida, as amended,
22 and of this section and establishes by satisfactory evidence
23 to the division that, during the 6-month period next preceding
24 its application for such renewal, of the total volume of its
25 sales of spirituous liquors, in either dollars or quantity,
26 not more than 40 percent of such spirituous liquors sold by
27 it, in either dollars or quantity, were manufactured,
28 rectified, or distilled by any corporation with which the
29 applicant is affiliated, directly or indirectly, including any
30 corporation which owns or controls in any way any stock in the
31 applicant corporation or any corporation which is a subsidiary

1 or affiliate of the corporation so owning stock in the
2 applicant corporation. Any manufacturer of wine holding a
3 license as a distributor on July 1, 2007, ~~the effective date~~
4 ~~of this act~~ shall be entitled to a renewal of such license
5 notwithstanding the provisions of subsections (1)-(5). ~~This~~
6 ~~section does not apply to any winery qualifying as a certified~~
7 ~~Florida Farm Winery under s. 599.004.~~

8 Section 8. If any portion of this act is held
9 unconstitutional, it is the intent of the Legislature that the
10 courts disturb only as much of the regulatory system of this
11 state as is necessary to enforce the United States
12 Constitution.

13 Section 9. Notwithstanding the provisions of s.
14 561.585, Florida Statutes, contracts not otherwise prohibited
15 by the Beverage Law shall not be impaired.

16 Section 10. The Division of Alcoholic Beverages and
17 Tobacco of the Department of Business and Professional
18 Regulation and the Department of Revenue may adopt rules
19 pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to
20 administer this act.

21 Section 11. This act shall take effect upon becoming a
22 law.

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25 SENATE SUMMARY

26 Creates the alcoholic beverage license classification of
27 winery shipper and prescribes qualifications for such
28 licensure. Authorizes direct shipment of wine for
29 personal use only to persons who otherwise are eligible
30 to lawfully purchase it. Provides for collection of taxes
31 on sales of wine directly shipped.