

By Senator Geller

31-1397-07

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A bill to be entitled

An act relating to the Beverage Law; creating s. 561.222, F.S.; authorizing the direct shipment of wine into this state for personal consumption; requiring licensure of winery shippers; providing eligibility requirements for licensure; requiring that recipients be 21 years of age; requiring proof of age and signature of recipient; requiring monthly reports by winery shippers; requiring payment of taxes by winery shippers; providing for jurisdiction; providing administrative and criminal penalties; amending ss. 561.24, 561.54, 561.545, 564.045, and 599.004, F.S., to conform to the provisions of s. 561.222, F.S.; providing an effective date.

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

Section 1. Section 561.222, Florida Statutes, is created to read:

561.222 Winery shipments for personal consumption.--  
(1) LEGISLATIVE INTENT.--It is the intent of the Legislature that this section apply only to the sale and distribution of wine produced by wineries that manufacture no more than 250,000 gallons of wine per year. The Legislature finds a rational basis for the limitations contained herein as the least discriminatory means of protecting the public and state revenues through equivalent regulation of farm wineries. It is the intent of the Legislature that the state continue to maintain and enforce laws regulating the importation,

1 distribution, and sale of alcoholic beverages. The Legislature  
2 finds that the importation, distribution, and sale of  
3 alcoholic beverages require strict regulation of orderly  
4 markets with transparent and accountable distribution and sale  
5 to promote temperance by discouraging consumption by underage  
6 persons and abusive consumption by adults and by the  
7 collection of excise and sales taxes critical to the fiscal  
8 health of the state. The Legislature finds that this is best  
9 achieved by a comprehensive system of licensed and regulated  
10 importation into and distribution and sale within the state,  
11 including the three-tier system. The Legislature continues to  
12 maintain its interest in the state exercising its proper  
13 police power, ensuring enforcement of the Beverage Law, and  
14 regulating the transportation, importation, distribution, and  
15 sale of alcoholic beverages to the maximum extent allowed by  
16 the State and United States Constitutions. The Legislature  
17 reaffirms its intent that the direct shipment of beer and  
18 spirits to residents of this state remains prohibited and  
19 reaffirms its intent to uphold and preserve the laws of this  
20 state relating to alcoholic beverages against constitutional  
21 challenges.

22 (2) LICENSURE REQUIREMENTS.--

23 (a) Notwithstanding any provision of law to the  
24 contrary, a wine manufacturer in any state who holds a wine  
25 producer basic permit issued pursuant to the Federal Alcohol  
26 Administration Act and a current wine manufacturer's license  
27 from the state in which it is domiciled and who manufactures  
28 no more than 250,000 gallons of wine per year may ship those  
29 wines to a resident of this state who is at least 21 years of  
30 age for that resident's personal use and not for resale, upon  
31 obtaining a winery shipper license from the division. To

1 obtain a winery shipper license, an applicant must file the  
2 following with the division:  
3       1. An application on forms prescribed by the division  
4 pursuant to s. 561.17, providing information that is identical  
5 to the information required for licensure as a wine  
6 manufacturer in this state, a copy of its current basic permit  
7 as a wine producer issued under the Federal Alcohol  
8 Administration Act, and a copy of a current license to  
9 manufacture wine from the state in which it is domiciled;  
10       2. Evidence that it qualifies for licensure under s.  
11 561.15;  
12       3. An affirmation that it consents to the jurisdiction  
13 of the courts and agencies of this state for enforcement of  
14 the Beverage Law, including actions by third parties for  
15 violations of this section;  
16       4. A copy of its appointment of a registered agent in  
17 this state for acceptance of service of process. It must also  
18 notify the division upon a change in registered agents;  
19       5. Evidence that it has registered all brands shipped  
20 and has obtained licensure as a primary American source of  
21 supply pursuant to s. 564.045;  
22       6. Evidence of a \$5,000 surety bond acceptable to the  
23 division as surety for the payment of all taxes. However, if  
24 the division determines a smaller bond is adequate, based on  
25 the volume of business done by the applicant, it may accept a  
26 bond in a lesser amount, but not less than \$1,000;  
27       7. A copy of its registration number from the  
28 Department of Revenue as a collector and remitter of state  
29 sales tax and evidence that its registration is current; and  
30       8. A license fee of \$250. The license must be renewed  
31 before August 1 of each year by paying a renewal fee of \$250.

1           **(b) The division may not issue or renew a license to**  
2 **an applicant or licensee who:**

3           **1. Has violated the provisions of this section;**

4           **2. Produces more than 250,000 gallons of wine**  
5 **annually;**

6           **3. Has subsidiary or affiliated wineries whose**  
7 **individual production totals are greater than 250,000 gallons**  
8 **per year; or**

9           **4. Has appointed a distributor in this state, unless**  
10 **the applicant provides to the division a copy of written**  
11 **notice to that distributor of its application as a winery**  
12 **shipper at least 1 year before applying for a license.**

13           **(3) SHIPPING REQUIREMENTS AND LIMITATIONS.--**

14           **(a) Before shipping wine to a resident of this state,**  
15 **a winery shipper must:**

16           **1. Require the person to state that he or she is 21**  
17 **years of age or older;**

18           **2. Conspicuously post a label on the outside of each**  
19 **wine box disclosing that the package contains alcohol, that**  
20 **the recipient must be at least 21 years of age, and that the**  
21 **signature of a person at least 21 years of age is required for**  
22 **delivery; and**

23           **3. Ship no more than 15 cases or 9 liters each of wine**  
24 **per calendar year to any household address in this state.**

25           **(b) Each winery shipper and common carrier must**  
26 **require, prior to delivery, that the signature of the**  
27 **addressee or another person at least 21 years of age is**  
28 **obtained after presentation of a valid driver's license,**  
29 **state-issued identification card, passport, or United States**  
30 **armed services identification card.**

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1           (c) Each common carrier shall provide, before  
2 delivering wine, a written policy to that winery that the  
3 common carrier will obtain the information required by  
4 paragraph (b). The signature form must inform the recipient  
5 that his or her signature acknowledges that the wine is for  
6 personal or household use and is not for resale.

7           (d) Each winery shipper shall also offer the brands of  
8 wine shipped under this section to licensed distributors in  
9 the same quantities per calendar year as are direct shipped.

10           (4) TAXES.--

11           (a) Each winery shipper shall monthly pay all sales  
12 taxes to the Department of Revenue, and to the division all  
13 state excise taxes due on sales to persons in this state for  
14 the preceding month. The taxes shall be calculated as if the  
15 sales took place in this state.

16           (b) Each winery shipper shall maintain records of its  
17 direct shipments to this state, including the names,  
18 addresses, amounts, and dates of shipments for at least 3  
19 years after the date of delivery, and shall allow the  
20 Department of Revenue or the division, upon request, to audit  
21 such records, not to exceed the frequency of audits of  
22 licensees of the Beverage Law generally, but no less than once  
23 per year. The winery shipper shall furnish any documents  
24 within 30 days after a request is made.

25           (5) MONTHLY REPORT.--All winery shippers shall report  
26 to the division, by the 10th of each month, on division forms:

27           (a) Whether any wine was shipped to residents of this  
28 state during the preceding month;

29           (b) The total price of any wine shipped;

30           (c) The quantity and brands of wine shipped;

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1       (d) The amount of excise tax paid to the division for  
2 the shipments; and

3       (e) Any other information that the division requires.

4       (6) RECORD KEEPING.--All winery shippers must maintain  
5 the following records, electronic or otherwise, available for  
6 inspection by the Department of Revenue or the division upon  
7 request for a period of 3 years after the date of delivery:

8       (a) A license issued under this section;

9       (b) Records of all wines ordered, sold, or shipped to  
10 residents of this state and the names, addresses, and date of  
11 birth of the buyers, as well as the quantities and brands of  
12 wine shipped and the name of the common carrier for each  
13 shipment; and

14       (c) Any contracts with common carriers and the adult  
15 signature delivery policy of such common carriers.

16       (7) COMMON CARRIERS.--Common carriers making  
17 deliveries under this section shall:

18       (a) Register with the division and acknowledge their  
19 intent to deliver wines and acknowledge the requirements for  
20 delivery of such shipments;

21       (b) Refuse to deliver a shipment if the recipient  
22 appears to be under 21 years of age and does not present valid  
23 identification required by this section; and

24       (c) Obtain the recipient's address, signature, and  
25 acknowledgement of personal consumption for each delivery,  
26 maintain such records for 3 years, and have them available for  
27 inspection upon request by the division.

28       (8) PENALTIES.--The Department of Revenue shall  
29 enforce the collection of sales tax under this section. The  
30 division shall enforce the other requirements of this section.  
31 In addition to the penalties provided by s. 561.545, knowingly

1 or intentionally shipping or delivering wine to a person under  
2 21 years of age is a third-degree felony, punishable as  
3 provided in s. 775.082, s. 775.083, or s. 775.084. The  
4 division may suspend or revoke the license of or impose a fine  
5 against a winery shipper for any violation of this section. If  
6 the division has reasonable cause to believe that a winery  
7 shipper has violated this section, the division may issue a  
8 cease and desist order requiring the winery shipper to cease  
9 shipments. The division may impose a civil penalty of not more  
10 than \$50,000 against a winery shipper who knowingly violates a  
11 cease and desist order.

12 (9) RULEMAKING.--The Department of Revenue and the  
13 division may adopt rules to administer this section.

14 Section 2. Subsection (5) of section 561.24, Florida  
15 Statutes, is amended to read:

16 561.24 Licensing manufacturers as distributors or  
17 registered exporters prohibited; procedure for issuance and  
18 renewal of distributors' licenses and exporters'  
19 registrations.--

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

1 applicant is affiliated, directly or indirectly, including any  
2 corporation which owns or controls in any way any stock in the  
3 applicant corporation or any corporation which is a subsidiary  
4 or affiliate of the corporation so owning stock in the  
5 applicant corporation. Any manufacturer of wine holding a  
6 license as a distributor on the effective date of this act  
7 shall be entitled to a renewal of such license notwithstanding  
8 the provisions of subsections (1)-(5). The division may not  
9 issue a winery shipper license to a manufacturer who is  
10 licensed as a distributor or vendor in any state. This section  
11 does not apply to any winery qualifying as a certified Florida  
12 Farm Winery under s. 599.004.

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

15 561.54 Certain deliveries of beverages prohibited.--

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

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



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

13 (3) This section does not apply to the shipment of  
14 wine by a licensed winery shipper to a person 21 years of age  
15 or older or a vendor licensed to sell alcoholic beverages for  
16 resale in accordance with s. 561.222.

17 Section 4. Section 561.545, Florida Statutes, is  
18 amended to read:

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

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

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

20 (3) Any person found by the division to be in  
21 violation of subsection (1) shall be issued a notice, by  
22 certified mail, to show cause why a cease and desist order  
23 should not be issued. Any person who violates subsection (1)  
24 within 2 years after receiving a cease and desist order or  
25 within 2 years after a prior conviction for violating  
26 subsection (1) commits a felony of the third degree,  
27 punishable as provided in s. 775.082, s. 775.083, or s.  
28 775.084.

29 (4) Any common carrier or permit carrier, or any  
30 operator of a privately owned car, truck, bus, or other  
31 conveyance found by the division to be in violation of

1 subsection (2) as a result of a second or subsequent delivery  
2 from the same source and location, within a 2-year period  
3 after the first delivery shall be issued a notice, by  
4 certified mail, to show cause why a cease and desist order  
5 should not be issued. Any person who violates subsection (2)  
6 within 2 years after receiving the cease and desist order or  
7 within 2 years after a prior conviction for violating  
8 subsection (2) commits a felony of the third degree,  
9 punishable as provided in s. 775.082, s. 775.083, or s.  
10 775.084.

11 (5) This section does not apply to the direct shipment  
12 of sacramental alcoholic beverages to bona fide religious  
13 organizations as authorized by the division or to possession  
14 of alcoholic beverages in accordance with s. 562.15(2).

15 Section 5. Subsection (2) of section 564.045, Florida  
16 Statutes, is amended to read:

17 564.045 Licensure as primary American source of  
18 supply.--

19 (2) TAX CONTROL LICENSURE REQUIRED.--For purposes of  
20 tax revenue control, ~~a no~~ person, firm, corporation, or other  
21 entity ~~that which~~ which is the primary American source of supply as  
22 defined herein may not sell, offer for sale, accept orders for  
23 sale, ship, or cause to be shipped into this state any vinous  
24 beverages to any distributor, ~~or~~ importer, or resident for  
25 household consumption under s. 561.222 within the state  
26 without having first obtained licensure as a primary American  
27 source of supply on forms provided by, and in such manner as  
28 prescribed by, the division. Applicants for licensure as a  
29 primary American source of supply are ~~shall be~~ exempt from the  
30 requirements and qualification standards set forth in ss.  
31

1 561.15 and 561.17, except applicants for winery shipper  
2 licenses under s. 561.222.

3 Section 6. Paragraph (a) of subsection (1) of section  
4 599.004, Florida Statutes, is amended to read:

5 599.004 Florida Farm Winery Program; registration;  
6 logo; fees.--

7 (1) The Florida Farm Winery Program is established  
8 within the Department of Agriculture and Consumer Services.  
9 Under this program, a winery may qualify as a tourist  
10 attraction only if it is registered with and certified by the  
11 department as a Florida Farm Winery. A winery may not claim  
12 to be certified unless it has received written approval from  
13 the department.

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

16 1. Produce or sell less than 250,000 gallons of wine  
17 annually, of which 60 percent of the wine produced must be  
18 made from agricultural products produced in this state. The  
19 Commissioner of Agriculture may waive this requirement in  
20 times of hardship.

21 2. Maintain a minimum of 10 acres of owned or managed  
22 vineyards in Florida.

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

25 4. Make annual application to the department for  
26 recognition as a Florida Farm Winery, on forms provided by the  
27 department.

28 5. Pay an annual application and registration fee of  
29 \$100.

30 Section 7. This act shall take effect July 1, 2007.

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SENATE SUMMARY

Authorizes certain producers of wine, licensed as winery shippers, to directly ship wine into this state for personal consumption by the consumer. Provides licensure requirements and operating requirements for such winery shippers. Provides requirements for the purchasers of such wines. Provides for the payment of taxes. Provides penalties.