

By Senator Margolis

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1 A bill to be entitled

2 An act relating to the production and shipment of wine;  
3 creating s. 561.222, F.S.; authorizing the direct shipment  
4 of wine into and within this state for personal  
5 consumption only; providing legislative intent; requiring  
6 licensure of winery shippers by the Division of Alcoholic  
7 Beverages and Tobacco; providing license requirements;  
8 requiring recipients of a direct shipment of wine to be 21  
9 years of age; requiring proof of age and the signature of  
10 a recipient; providing for the payment of taxes, a monthly  
11 report, and recordkeeping by winery shippers; providing  
12 requirements for common carriers that make deliveries of  
13 wine; providing administrative and criminal penalties for  
14 violations of the act; authorizing the division and the  
15 Department of Revenue to adopt rules; amending ss. 561.24,  
16 561.54, 561.545, and 564.045, F.S.; conforming provisions  
17 to changes made by the act; amending s. 599.004, F.S.;  
18 revising requirements for qualifying as a certified  
19 Florida Farm Winery; providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Section 561.222, Florida Statutes, is created to  
24 read:

25 561.222 Winery shipper's license.--

26 (1) LEGISLATIVE INTENT.--The Legislature finds that the  
27 importation, distribution, and sale of alcoholic beverages  
28 require strict regulation in order to promote temperance by  
29 discouraging consumption by underage persons and abusive

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30 consumption by adults, to ensure orderly markets having  
31 transparent and accountable sales, and to facilitate the  
32 collection of excise and sales taxes critical to the fiscal  
33 health of the state. The Legislature finds that these purposes  
34 are best achieved through the state's comprehensive system of  
35 licensing and regulation, including the three-tier system of  
36 alcohol distribution which has been the law of this state since  
37 the repeal of Prohibition. The Legislature finds that the  
38 limitations contained in this section for the uniform regulation  
39 of direct shipping by small, in-state and out-of-state farm  
40 wineries are the least discriminatory means of protecting the  
41 public and state revenues. The Legislature continues to maintain  
42 its interest in having the state exercise its police power,  
43 ensure enforcement of the beverage laws, and thereby regulate the  
44 transportation, importation, distribution, and sale of alcoholic  
45 beverages to the maximum extent allowed by the state and federal  
46 constitutions. The Legislature reaffirms its policy prohibiting  
47 manufacturers from causing the direct shipment of beer and  
48 spirits to individuals in this state and its intent to uphold and  
49 preserve against constitutional challenge all of the laws of this  
50 state relating to alcoholic beverages.

51 (2) LICENSE REQUIREMENTS.--

52 (a) A winery may directly ship wine to a resident of this  
53 state only under a winery shipper's license. A manufacturer of  
54 wine within this state or any other state who manufactures no  
55 more than 250,000 gallons of wine per year may ship wines that  
56 the winery manufactures to a resident of this state who is at  
57 least 21 years of age for that person's personal use, and not for  
58 resale, upon obtaining a winery shipper's license from the

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59 division. The manufacturer may obtain a winery shipper's license  
60 by:

61 1. Holding a current wine producer basic permit issued in  
62 accordance with the Federal Alcohol Administration Act.

63 2. Holding a current wine manufacturer's license from the  
64 state in which it manufactures wine.

65 3. Holding a current license as a primary American source  
66 of supply in accordance with s. 564.045 and registering with the  
67 division all brands shipped.

68 4. Meeting the qualifications for licensure under s.  
69 561.15.

70 5. Filing an application with the division in accordance  
71 with s. 561.17. The information required by the division in the  
72 application must be the same as the information required by the  
73 division for licensure as a wine manufacturer. The applicant  
74 shall also include with the application:

75 a. A copy of its current basic permit as a wine producer  
76 issued in accordance with the Federal Alcohol Administration Act.

77 b. A copy of its current state license to manufacture wine.

78 c. A copy of the appointment of a registered agent in this  
79 state for the acceptance of service of process. Winery shippers  
80 must maintain an appointed registered agent and must notify the  
81 division of a change in appointment.

82 d. A copy of the applicant's sales tax registration number  
83 issued by the Department of Revenue. An applicant must register  
84 and maintain a current sales tax registration with the department  
85 as a collector and remitter of state sales tax.

86 e. An affirmation that the applicant consents to the  
87 jurisdiction of the courts of this state and its agencies for the

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88 enforcement of this section and any related laws or rules,  
89 including actions by third parties for violations of this  
90 section.

91 6. Filing with the division a surety bond in the sum of  
92 \$5,000 as surety for the payment of all taxes. If the division  
93 determines that the volume of business done by the manufacturer  
94 is such that a bond of less than \$5,000 is adequate, the division  
95 may accept a bond in a lesser sum, but not less than \$1,000.

96 7. Paying a license fee of \$250 to the division. Winery  
97 shippers must maintain a current license as provided in this  
98 section which must be renewed annually by August 1 by paying a  
99 renewal fee of \$250 to the division.

100 (b) The division may not issue or renew a license under  
101 this section if the applicant or licensee:

102 1. Has violated the conditions of licensure, requirements,  
103 or limitations of this section;

104 2. Produces more than 250,000 gallons of wine annually;

105 3. Has a subsidiary or is otherwise affiliated with a  
106 winery whose production totals are greater than 250,000 gallons  
107 per year; or

108 4. Has appointed a distributor in this state, unless the  
109 applicant provides to the division a copy of a written notice  
110 sent to the distributor of intent to obtain a winery shipper's  
111 license 1 year before applying for a winery shipper's license  
112 under this section.

113 (3) SHIPPING REQUIREMENTS.--

114 (a) Before shipping wine directly to a resident of this  
115 state, a licensed winery shipper shall:

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116       1. Verify the purchaser's age at the point of purchase  
117 before completing any transaction and refuse sales of wine to  
118 anyone younger than 21 years of age.

119       2. Conspicuously label the outside of each box of wine  
120 shipped with the following information:

121           a. The package contains alcohol.

122           b. The recipient must be at least 21 years of age.

123           c. The wine is for personal use only and not for resale.

124           d. The signature of the recipient is required.

125       3. Refuse to ship or cause to be shipped more than four  
126 cases containing more than nine liters each of its wine per  
127 calendar year to any one household address in this state.

128 Consumers may not purchase, and winery shippers may not sell,  
129 ship, or cause to be shipped to a single household, more than  
130 four cases of more than nine liters of wine per calendar year.

131       (b) A licensed winery shipper shall require a common  
132 carrier contracting with the shipper for the delivery of the  
133 shipper's wine to obtain, before delivery, the signature of the  
134 addressee or other recipient who is at least 21 years of age  
135 after a valid driver's license, an identification card issued by  
136 this state or another state, a passport, or a United States armed  
137 services identification card verifying age is presented. The  
138 signature form must inform the recipient that his or her  
139 signature is an acknowledgment that such wine is for personal or  
140 household consumption and not for resale.

141       (c) A licensed winery shipper must obtain from a common  
142 carrier contracting for the delivery of the shipper's wine the  
143 common carrier's written policy declaring that the common carrier

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144 shall, before delivering any wine, adhere to the requirements of  
145 paragraph (b).

146 (d) A licensed winery shipper must offer to its distributor  
147 for purchase and sale per calendar year the same brands and  
148 quantities of wine shipped per calendar year under this section.

149 (4) TAXES.--A licensed winery shipper shall pay monthly to  
150 the Department of Revenue all sales taxes and to the division all  
151 state excise taxes due on sales to persons in this state for the  
152 preceding month. The amount of the taxes shall be calculated as  
153 if the sale took place in this state.

154 (5) MONTHLY REPORT.--A licensed winery shipper shall report  
155 to the division, by the 10th day of each month, on forms  
156 prescribed by the division:

157 (a) Whether any wine was shipped to residents of this state  
158 during the preceding month.

159 (b) The quantity and brands of wine shipped to residents of  
160 this state during the preceding month.

161 (c) The total price of wine shipped to residents of this  
162 state during the preceding month.

163 (d) The amount of excise tax paid to the division for the  
164 shipments of wine to residents of this state during the preceding  
165 month.

166 (e) Any other information that the division determines  
167 necessary to enforce this section.

168 (6) RECORDS.--All licensed winery shippers shall maintain  
169 the following records, electronically or otherwise, available for  
170 inspection by the Department of Revenue or the division upon  
171 request for a period of 3 years after the date of delivery, and  
172 shall allow the Department of Revenue or the division to perform

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173 an audit of the records, not to exceed the frequency of audits of  
174 licensees of the Beverage Law generally, but at least once per  
175 year. Upon such request, the licensee shall submit any related  
176 documents to that agency within 30 days.

177 (a) The license issued under this section.

178 (b) A record of all wines ordered, sold, or shipped to  
179 residents of this state including the name, address, and date of  
180 birth of the purchaser, the name and address of the person to  
181 whom the wine is shipped, and the date of shipment, quantity, and  
182 brands of wine shipped.

183 (c) All contracts with common carriers for the delivery of  
184 the shipper's wine in this state and the carrier's written wine-  
185 delivery policy.

186 (7) COMMON CARRIERS.--Each common carrier making deliveries  
187 of wine under this section shall:

188 (a) Register with the division and acknowledge the  
189 requirements contained in this section for the direct shipment of  
190 wine and the carrier's intent to deliver wines in accordance with  
191 this section.

192 (b) Maintain a written wine-delivery policy stating that  
193 the common carrier shall, before delivering any wine, obtain the  
194 signature of the recipient after a valid driver's license, an  
195 identification card issued by this state or another state, a  
196 passport, or a United States armed services identification card  
197 is presented verifying that the recipient is 21 years of age or  
198 older.

199 (c) Refuse delivery if the recipient appears to be younger  
200 than 21 years of age; fails or refuses to present a valid  
201 driver's license, an identification card issued by this state or

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202 another state, a passport, or a United States armed services  
203 identification card verifying age; or fails or refuses to sign  
204 the signature form.

205 (d) Obtain the recipient's name and address and signed  
206 acknowledgement of personal consumption for each wine delivery as  
207 required in this section; maintain such records and the shipping  
208 order, including the name and address of the person to whom the  
209 wine is shipped, for 3 years; and make the records available for  
210 inspection upon request by the division.

211 (8) PENALTIES.--In addition to the penalties provided by s.  
212 561.545, knowingly or intentionally shipping, causing to be  
213 shipped, or delivering wine to a person younger than 21 years of  
214 age is a third-degree felony, punishable as provided in s.  
215 775.082, s. 775.083, or s. 775.084. The division may suspend or  
216 revoke the license of a winery shipper or impose fines against a  
217 winery shipper for any violation of this section. If the division  
218 has reasonable cause to believe that a winery shipper has acted  
219 in violation of this section, the division may issue a cease and  
220 desist order requiring the winery to cease shipments. The  
221 division may impose a civil penalty of up to \$50,000 against a  
222 winery who knowingly violates a cease and desist order issued  
223 under this section.

224 (9) RULEMAKING.--The Department of Revenue and the division  
225 may adopt rules to administer and enforce the applicable  
226 provisions of this section.

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



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229           561.24 Licensing manufacturers as distributors or  
230 registered exporters prohibited; procedure for issuance and  
231 renewal of distributors' licenses and exporters' registrations.--  
232           (5) Notwithstanding any other provision of this section ~~of~~  
233 ~~the provisions of the foregoing subsections, a~~ any corporation  
234 licensed ~~which holds a license~~ as a distributor on June 3, 1947,  
235 is shall be entitled to a renewal of such license if the ~~thereof,~~  
236 ~~provided such~~ corporation is in compliance ~~complies~~ with all  
237 applicable ~~of the~~ provisions of the Beverage Law ~~of Florida, as~~  
238 ~~amended, and of this section~~ and establishes by satisfactory  
239 evidence to the division that, during the 6-month period ~~next~~  
240 preceding its application for ~~such~~ renewal, of the total volume  
241 of its sales of spirituous liquors, in either dollars or  
242 quantity, not more than 40 percent ~~of such spirituous liquors~~  
243 ~~sold by it, in either dollars or quantity,~~ were manufactured,  
244 rectified, or distilled by a any corporation with which the  
245 applicant is affiliated, directly or indirectly, including a any  
246 corporation that ~~which~~ owns or controls in any way ~~any~~ stock in  
247 the applicant corporation or a any corporation that ~~which~~ is a  
248 subsidiary or affiliate of the corporation ~~se~~ owning stock in the  
249 applicant corporation. Notwithstanding any other provision of  
250 this section a Any manufacturer of wine licensed ~~holding a~~  
251 license as a distributor on July 1, 2008, ~~is the effective date~~  
252 ~~of this act shall be~~ entitled to a renewal of such license  
253 ~~notwithstanding the provisions of subsections (1)-(5).~~ However, a  
254 manufacturer who is licensed as a distributor or vendor may not  
255 also hold a winery shipper's license. ~~This section does not apply~~  
256 ~~to any winery qualifying as a certified Florida Farm Winery under~~  
257 ~~s. 599.004.~~

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258 Section 3. Section 561.54, Florida Statutes, is amended to  
259 read:

260 561.54 Certain deliveries of beverages prohibited.--

261 (1) ~~It is unlawful for~~ Common or permit carriers, operators  
262 of privately owned cars, trucks, buses, or other conveyances or  
263 out-of-state manufacturers or suppliers may not ~~to~~ make delivery  
264 from outside ~~without~~ the state of any alcoholic beverage to any  
265 person, association of persons, or corporation within the state,  
266 except to qualified manufacturers, distributors, and exporters ~~of~~  
267 ~~such beverages so delivered~~ and to qualified bonded warehouses in  
268 this state.

269 (2) Any licensee aggrieved by a violation of this section  
270 may bring an action ~~in any court of competent jurisdiction~~ to  
271 recover for the state all moneys obtained by common carriers or  
272 permit carriers; ~~obtained~~ by operators of privately owned cars,  
273 trucks, buses, or other conveyances; or ~~obtained~~ by out-of-state  
274 manufacturers or suppliers as a result of the delivery of  
275 alcoholic beverages in violation of this section, and may obtain  
276 a declaratory judgment that an act or practice violates this  
277 section and enjoin any person from violating this section. In  
278 addition to such relief, the court may order the confiscation and  
279 destruction of any alcoholic beverages delivered in violation of  
280 this section. In assessing damages, the court shall enter  
281 judgment against a defendant for three times the amount of the  
282 delivery charges proved or the fair market value of merchandise  
283 unlawfully brought into the state. Payment or satisfaction of a  
284 ~~any~~ judgment under this section, other than for costs and  
285 attorney's fees, shall be made in its entirety to the state. In a

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286 any successful action under this section, the court shall award  
287 the plaintiff costs and reasonable attorney's fees.

288 (3) This section does not apply to the direct shipment of  
289 wine by a licensed winery shipper to a person 21 years of age or  
290 older for household consumption.

291 Section 4. Section 561.545, Florida Statutes, is amended to  
292 read:

293 561.545 Certain shipments of beverages prohibited;  
294 penalties; exceptions.--The Legislature finds that the direct  
295 shipment of alcoholic beverages by persons in the business of  
296 selling alcoholic beverages to residents of this state in  
297 violation of the Beverage Law poses a serious threat to the  
298 public health, safety, and welfare; to state revenue collections;  
299 and to the economy of the state. The Legislature further finds  
300 that the penalties for illegal direct shipment of alcoholic  
301 beverages to residents of this state should be made adequate to  
302 ensure compliance with the Beverage Law and that the measures  
303 provided for in this section are fully consistent with the powers  
304 conferred upon the state by the Twenty-first Amendment to the  
305 United States Constitution.

306 (1) A ~~Any~~ person in the business of selling alcoholic  
307 beverages who knowingly and intentionally ships, or causes to be  
308 shipped, any alcoholic beverage from an out-of-state location  
309 directly to any person in this state who does not hold a valid  
310 manufacturer's or wholesaler's license or exporter's registration  
311 ~~issued by the division of Alcoholic Beverages and Tobacco~~ or who  
312 is not a state-bonded warehouse is in violation of this section.

313 (2) A ~~Any~~ common carrier or permit carrier or any operator  
314 of a privately owned car, truck, bus, or other conveyance who

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315 knowingly and intentionally transports any alcoholic beverage  
316 from an out-of-state location directly to any person in this  
317 state who does not hold a valid manufacturer's or wholesaler's  
318 license or exporter's registration or who is not a state-bonded  
319 warehouse is in violation of this section.

320 (3) A ~~Any~~ person found by the division to be in violation  
321 of subsection (1) shall be issued a notice, sent by certified  
322 mail, to show cause why a cease and desist order should not be  
323 issued. Any person who violates subsection (1) within 2 years  
324 after receiving a cease and desist order or within 2 years after  
325 a prior conviction for violating subsection (1) commits a felony  
326 of the third degree, punishable as provided in s. 775.082, s.  
327 775.083, or s. 775.084.

328 (4) A ~~Any~~ common carrier or permit carrier, or ~~any~~ operator  
329 of a privately owned car, truck, bus, or other conveyance found  
330 by the division to be in violation of subsection (2) as a result  
331 of a second or subsequent delivery from the same source and  
332 location, within a 2-year period after the first delivery shall  
333 be issued a notice, sent by certified mail, to show cause why a  
334 cease and desist order should not be issued. A ~~Any~~ person who  
335 violates subsection (2) within 2 years after receiving the cease  
336 and desist order or within 2 years after a prior conviction for  
337 violating subsection (2) commits a felony of the third degree,  
338 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

339 (5) This section does not apply to the direct shipment of  
340 wine by a licensed winery shipper to a person 21 years of age or  
341 older for household consumption, the direct shipment of  
342 sacramental alcoholic beverages to bona fide religious

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343 organizations as authorized by the division, or to possession of  
344 alcoholic beverages in accordance with s. 562.15(2).

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

347 564.045 Licensure as primary American source of supply.--

348 (2) TAX CONTROL LICENSURE REQUIRED.--For purposes of tax  
349 revenue control, a ~~no~~ person, firm, corporation, or other entity  
350 that ~~which~~ is the primary American source of supply ~~as defined~~  
351 ~~herein~~ may not sell, offer for sale, accept orders for the sale  
352 of, ship, or cause to be shipped into this state any vinous  
353 beverages to any distributor, ~~or~~ importer, or person for  
354 household consumption, as provided in s. 561.222, within this the  
355 state without having first obtained licensure as a primary  
356 American source of supply on forms provided by, and in such  
357 manner as prescribed by, the division. Except for applicants for  
358 a winery shipper's license, applicants for licensure as a primary  
359 American source of supply are ~~shall be~~ exempt from ~~the~~  
360 ~~requirements and qualification standards set forth in ss. 561.15~~  
361 ~~and 561.17.~~

362 Section 6. Paragraph (a) of subsection (1) of section  
363 599.004, Florida Statutes, is amended to read:

364 599.004 Florida Farm Winery Program; registration; logo;  
365 fees.--

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

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372 (a) To qualify as a certified Florida Farm Winery, a winery  
373 must ~~shall meet the following standards:~~

374 1. Produce or sell less than 250,000 gallons of wine  
375 annually of which 60 percent of the wine produced is made from  
376 state agricultural products. The Commissioner of Agriculture may  
377 waive this requirement in times of hardship.

378 2. Maintain a minimum of 10 acres of owned or managed  
379 vineyards in this state ~~Florida~~.

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

382 4. Make annual application to the department for  
383 recognition as a Florida Farm Winery, on forms provided by the  
384 department.

385 5. Pay an annual application and registration fee of \$100.  
386 Section 7. This act shall take effect July 1, 2008.