

By the Committee on Finance and Tax; and Senators Margolis,
Lynn, Haridopolos and Bennett

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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 for severability; providing
20 an effective date.

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

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

26 561.222 Winery shipper's license.--

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

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

52 (2) LICENSE REQUIREMENTS.--

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

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59 resale, upon obtaining a winery shipper's license from the
60 division. The manufacturer may obtain a winery shipper's license
61 by:

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

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

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

69 4. Meeting the qualifications for licensure under s.
70 561.15.

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

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

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

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

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

87 e. An affirmation that the applicant consents to the

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88 jurisdiction of the courts of this state and its agencies for the
89 enforcement of this section and any related laws or rules,
90 including actions by third parties for violations of this
91 section.

92 6. Filing with the division a surety bond in the sum of
93 \$5,000 as surety for the payment of all taxes. If the division
94 determines that the volume of business done by the manufacturer
95 is such that a bond of less than \$5,000 is adequate, the division
96 may accept a bond in a lesser sum, but not less than \$1,000. The
97 surety bond currently on file with the division for a winery
98 pursuant to s. 561.37 is deemed to comply with this requirement.

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

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

105 1. Has violated the conditions of licensure, requirements,
106 or limitations of this section;

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

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

111 4. Has appointed a distributor in this state, unless the
112 applicant provides to the division a copy of the applicant's
113 contract with the applicant's appointed distributor showing terms
114 to the contrary or a copy of a written notice sent to the
115 distributor of the applicant's intent to obtain a winery
116 shipper's license 1 year before applying for such license under

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117 this section.

118 (3) SHIPPING REQUIREMENTS.--

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

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

124 2. Conspicuously label the outside of each box of wine
125 shipped with the following information:

126 a. The package contains alcohol.

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

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

129 d. The signature of the recipient is required.

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

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

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

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146 (c) A licensed winery shipper must obtain from a common
147 carrier contracting for the delivery of the shipper's wine the
148 common carrier's written policy declaring that the common carrier
149 shall, before delivering any wine, adhere to the requirements of
150 paragraph (b).

151 (d) A licensed winery shipper must offer to its distributor
152 for purchase and sale per calendar year the same brands and
153 quantities of wine shipped per calendar year under this section,
154 unless its contract with its appointed distributor contains terms
155 to the contrary.

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

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

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

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

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

170 (d) The amount of excise tax paid to the division for the
171 shipments of wine to residents of this state during the preceding
172 month.

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

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175 (f) The report required by this subsection is not required
176 from a winery shipper licensee who files a monthly report
177 pursuant to s. 561.55 containing all information required in
178 paragraph (a). The division is authorized to prescribe the format
179 for submission of this information for the purpose of eliminating
180 duplicate filings.

181 (6) RECORDS.--All licensed winery shippers shall maintain
182 the following records, electronically or otherwise, available for
183 inspection by the Department of Revenue or the division upon
184 request for a period of 3 years after the date of delivery, and
185 shall allow the Department of Revenue or the division to perform
186 an audit of the records, not to exceed the frequency of audits of
187 licensees of the Beverage Law generally, but at least once per
188 year. Upon such request, the licensee shall submit any related
189 documents to that agency within 30 days.

190 (a) The license issued under this section.

191 (b) A record of all wines ordered, sold, or shipped to
192 residents of this state including the name, address, and date of
193 birth of the purchaser, the name and address of the person to
194 whom the wine is shipped, and the date of shipment, quantity, and
195 brands of wine shipped.

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

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

201 (a) Register with the division and acknowledge the
202 requirements contained in this section for the direct shipment of
203 wine and the carrier's intent to deliver wines in accordance with

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204 this section.

205 (b) Maintain a written wine-delivery policy stating that
206 the common carrier shall, before delivering any wine, obtain the
207 signature of the recipient after a valid driver's license, an
208 identification card issued by this state or another state, a
209 passport, or a United States armed services identification card
210 is presented verifying that the recipient is 21 years of age or
211 older.

212 (c) Refuse delivery if the recipient appears to be younger
213 than 21 years of age; fails or refuses to present a valid
214 driver's license, an identification card issued by this state or
215 another state, a passport, or a United States armed services
216 identification card verifying age; or fails or refuses to sign
217 the signature form.

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

224 (8) PENALTIES.--In addition to the penalties provided by s.
225 561.545, knowingly or intentionally shipping, causing to be
226 shipped, or delivering wine to a person younger than 21 years of
227 age is a third-degree felony, punishable as provided in s.
228 775.082, s. 775.083, or s. 775.084. The division may suspend or
229 revoke the license of a winery shipper or impose fines against a
230 winery shipper for any violation of this section. If the division
231 has reasonable cause to believe that a winery shipper has acted
232 in violation of this section, the division may issue a cease and

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233 desist order requiring the winery to cease shipments. The
234 division may impose a civil penalty of up to \$50,000 against a
235 winery who knowingly violates a cease and desist order issued
236 under this section.

237 (9) RULEMAKING.--The Department of Revenue and the division
238 may adopt rules to administer and enforce the applicable
239 provisions of this section.

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

242 561.24 Licensing manufacturers as distributors or
243 registered exporters prohibited; procedure for issuance and
244 renewal of distributors' licenses and exporters' registrations.--

245 (5) Notwithstanding any of the provisions of the foregoing
246 subsections, any corporation which holds a license as a
247 distributor on June 3, 1947, shall be entitled to a renewal
248 thereof, provided such corporation complies with all of the
249 provisions of the Beverage Law of Florida, as amended, and of
250 this section and establishes by satisfactory evidence to the
251 division that, during the 6-month period next preceding its
252 application for such renewal, of the total volume of its sales of
253 spirituous liquors, in either dollars or quantity, not more than
254 40 percent of such spirituous liquors sold by it, in either
255 dollars or quantity, were manufactured, rectified, or distilled
256 by any corporation with which the applicant is affiliated,
257 directly or indirectly, including any corporation which owns or
258 controls in any way any stock in the applicant corporation or any
259 corporation which is a subsidiary or affiliate of the corporation
260 so owning stock in the applicant corporation. Any manufacturer of
261 wine holding a license as a distributor on July 1, 2008, ~~the~~

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262 ~~effective date of this act~~ shall be entitled to a renewal of such
263 license notwithstanding the provisions of subsections (1)-(5).
264 ~~This section does not apply to any winery qualifying as a~~
265 ~~certified Florida Farm Winery under s. 599.004.~~

266 Section 3. Section 561.54, Florida Statutes, is amended to
267 read:

268 561.54 Certain deliveries of beverages prohibited.--

269 (1) ~~It is unlawful for~~ Common or permit carriers, operators
270 of privately owned cars, trucks, buses, or other conveyances or
271 out-of-state manufacturers or suppliers may not ~~to~~ make delivery
272 from outside ~~without~~ the state of any alcoholic beverage to any
273 person, association of persons, or corporation within the state,
274 except to qualified manufacturers, distributors, and exporters ~~of~~
275 ~~such beverages so delivered~~ and to qualified bonded warehouses in
276 this state.

277 (2) Any licensee aggrieved by a violation of this section
278 may bring an action ~~in any court of competent jurisdiction~~ to
279 recover for the state all moneys obtained by common carriers or
280 permit carriers; ~~obtained~~ by operators of privately owned cars,
281 trucks, buses, or other conveyances; or ~~obtained~~ by out-of-state
282 manufacturers or suppliers as a result of the delivery of
283 alcoholic beverages in violation of this section, and may obtain
284 a declaratory judgment that an act or practice violates this
285 section and enjoin any person from violating this section. In
286 addition to such relief, the court may order the confiscation and
287 destruction of any alcoholic beverages delivered in violation of
288 this section. In assessing damages, the court shall enter
289 judgment against a defendant for three times the amount of the
290 delivery charges proved or the fair market value of merchandise

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291 | unlawfully brought into the state. Payment or satisfaction of a
292 | ~~any~~ judgment under this section, other than for costs and
293 | attorney's fees, shall be made in its entirety to the state. In a
294 | ~~any~~ successful action under this section, the court shall award
295 | the plaintiff costs and reasonable attorney's fees.

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

299 | Section 4. Section 561.545, Florida Statutes, is amended to
300 | read:

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

314 | (1) A ~~Any~~ person in the business of selling alcoholic
315 | beverages who knowingly and intentionally ships, or causes to be
316 | shipped, any alcoholic beverage from an out-of-state location
317 | directly to any person in this state who does not hold a valid
318 | manufacturer's or wholesaler's license or exporter's registration
319 | ~~issued by the division of Alcoholic Beverages and Tobacco~~ or who

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320 is not a state-bonded warehouse is in violation of this section.

321 (2) A ~~Any~~ common carrier or permit carrier or any operator
322 of a privately owned car, truck, bus, or other conveyance who
323 knowingly and intentionally transports any alcoholic beverage
324 from an out-of-state location directly to any person in this
325 state who does not hold a valid manufacturer's or wholesaler's
326 license or exporter's registration or who is not a state-bonded
327 warehouse is in violation of this section.

328 (3) A ~~Any~~ person found by the division to be in violation
329 of subsection (1) shall be issued a notice, sent by certified
330 mail, to show cause why a cease and desist order should not be
331 issued. Any person who violates subsection (1) within 2 years
332 after receiving a cease and desist order or within 2 years after
333 a prior conviction for violating subsection (1) commits a felony
334 of the third degree, punishable as provided in s. 775.082, s.
335 775.083, or s. 775.084.

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

347 (5) This section does not apply to the direct shipment of
348 wine by a licensed winery shipper to a person 21 years of age or

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349 older for household consumption, the direct shipment of
350 sacramental alcoholic beverages to bona fide religious
351 organizations as authorized by the division, or to possession of
352 alcoholic beverages in accordance with s. 562.15(2).

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

355 564.045 Licensure as primary American source of supply.--

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

370 Section 6. Paragraph (a) of subsection (1) of section
371 599.004, Florida Statutes, is amended to read:

372 599.004 Florida Farm Winery Program; registration; logo;
373 fees.--

374 (1) The Florida Farm Winery Program is established within
375 the Department of Agriculture and Consumer Services. Under this
376 program, a winery may qualify as a tourist attraction only if it
377 is registered with and certified by the department as a Florida

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378 Farm Winery. A winery may not claim to be certified unless it has
379 received written approval from the department.

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

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

386 2. Maintain a minimum of 10 acres of owned or managed
387 vineyards in this state Florida.

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

390 4. Make annual application to the department for
391 recognition as a Florida Farm Winery, on forms provided by the
392 department.

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

394 Section 7. If any provision of this act or its application
395 to any person or circumstance is held invalid, the invalidity
396 does not affect other provisions or applications of the act which
397 can be given effect without the invalid provision or application,
398 and to this end the provisions of this act are severable.

399 Section 8. This act shall take effect July 1, 2008.