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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 which produces or sells
56 less than 250,000 gallons of wine per year may ship wines
57 manufactured by such winery 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 issue or renew a license under this
104 section only if the applicant or licensee:

105 1. Has not violated the conditions of licensure or the
106 requirements or limitations of this section;

107 2. Produces or sells less than 250,000 gallons of wine
108 annually;

109 3. Does not have a subsidiary winery and is not otherwise
110 affiliated with another winery, unless such subsidiary winery or
111 affiliated winery produces or sells less than 250,000 gallons of
112 wine annually; and

113 4. Has not appointed a distributor in this state, unless
114 the applicant provides to the division a copy of the applicant's
115 contract with the applicant's appointed distributor containing
116 terms to the contrary or a copy of a written notice sent to the

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117 distributor of the applicant's intent to obtain a winery
118 shipper's license 1 year before applying for such license under
119 this section.

120 (3) SHIPPING REQUIREMENTS.--

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

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

126 2. Conspicuously label the outside of each box of wine
127 shipped with the following information:

128 a. The package contains alcohol.

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

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

131 d. The signature of the recipient is required.

132 3. Refuse to ship or cause to be shipped more than 12 cases
133 containing more than nine liters each of its wine per calendar
134 year to any one household address in this state. Consumers may
135 not purchase, and winery shippers may not sell, ship, or cause to
136 be shipped to a single household, more than 12 cases of more than
137 nine liters of wine per calendar year.

138 (b) A licensed winery shipper shall require a common
139 carrier contracting with the shipper for the delivery of the
140 shipper's wine to obtain, before delivery, the signature of the
141 addressee or other recipient who is at least 21 years of age
142 after a valid driver's license, an identification card issued by
143 this state or another state, a passport, or a United States armed
144 services identification card verifying age is presented. The
145 signature form must inform the recipient that his or her

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146 signature is an acknowledgment that such wine is for personal or
147 household consumption and not for resale.

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

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

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

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

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

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

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

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

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

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

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

192 (a) The license issued under this section.

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

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

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

203 (a) Register with the division and acknowledge the

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204 requirements contained in this section for the direct shipment of
205 wine and the carrier's intent to deliver wines in accordance with
206 this section.

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

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

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

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

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233 has reasonable cause to believe that a winery shipper has acted
234 in violation of this section, the division may issue a cease and
235 desist order requiring the winery to cease shipments. The
236 division may impose a civil penalty of up to \$50,000 against a
237 winery who knowingly violates a cease and desist order issued
238 under this section.

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

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

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

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

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262 so owning stock in the applicant corporation. Any manufacturer of
263 wine holding a license as a distributor on July 1, 2008, ~~the~~
264 ~~effective date of this act~~ shall be entitled to a renewal of such
265 license notwithstanding the provisions of subsections (1)-(5).
266 ~~This section does not apply to any winery qualifying as a~~
267 ~~certified Florida Farm Winery under s. 599.004.~~

268 Section 3. Section 561.54, Florida Statutes, is amended to
269 read:

270 561.54 Certain deliveries of beverages prohibited.--

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

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

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291 judgment against a defendant for three times the amount of the
292 delivery charges proved or the fair market value of merchandise
293 unlawfully brought into the state. Payment or satisfaction of a
294 ~~any~~ judgment under this section, other than for costs and
295 attorney's fees, shall be made in its entirety to the state. In a
296 ~~any~~ successful action under this section, the court shall award
297 the plaintiff costs and reasonable attorney's fees.

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

301 Section 4. Section 561.545, Florida Statutes, is amended to
302 read:

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

316 (1) A ~~Any~~ person in the business of selling alcoholic
317 beverages who knowingly and intentionally ships, or causes to be
318 shipped, any alcoholic beverage from an out-of-state location
319 directly to any person in this state who does not hold a valid

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320 manufacturer's or wholesaler's license or exporter's registration
321 ~~issued by the division of Alcoholic Beverages and Tobacco~~ or who
322 is not a state-bonded warehouse is in violation of this section.

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

330 (3) A ~~Any~~ person found by the division to be in violation
331 of subsection (1) shall be issued a notice, sent by certified
332 mail, to show cause why a cease and desist order should not be
333 issued. Any person who violates subsection (1) within 2 years
334 after receiving a cease and desist order or within 2 years after
335 a prior conviction for violating subsection (1) commits a felony
336 of the third degree, punishable as provided in s. 775.082, s.
337 775.083, or s. 775.084.

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

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349 (5) This section does not apply to the direct shipment of
350 wine by a licensed winery shipper to a person 21 years of age or
351 older for household consumption, the direct shipment of
352 sacramental alcoholic beverages to bona fide religious
353 organizations as authorized by the division, or to possession of
354 alcoholic beverages in accordance with s. 562.15(2).

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

357 564.045 Licensure as primary American source of supply.--

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

372 Section 6. Paragraph (a) of subsection (1) of section
373 599.004, Florida Statutes, is amended to read:

374 599.004 Florida Farm Winery Program; registration; logo;
375 fees.--

376 (1) The Florida Farm Winery Program is established within
377 the Department of Agriculture and Consumer Services. Under this

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378 program, a winery may qualify as a tourist attraction only if it
379 is registered with and certified by the department as a Florida
380 Farm Winery. A winery may not claim to be certified unless it has
381 received written approval from the department.

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

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

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

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

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

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

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

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