

HB 1293

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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 s. 561.24,  
16          F.S.; revising an effective date; authorizing certain  
17          manufacturers of wine holding a distributor's license to  
18          renew such license; removing exemption of Florida Farm  
19          Wineries from prohibition against manufacturer being  
20          licensed as distributor or registered as exporter;  
21          amending ss. 561.54, 561.545, and 564.045, F.S.;  
22          conforming provisions to changes made by the act; amending  
23          s. 599.004, F.S.; revising requirements for qualifying as  
24          a certified Florida Farm Winery; providing an effective  
25          date.

26  
27   Be It Enacted by the Legislature of the State of Florida:  
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29 Section 1. Section 561.222, Florida Statutes, is created  
30 to read:

31 561.222 Winery shipper's license.--

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

57        (2) LICENSE REQUIREMENTS.--

58        (a) A winery may directly ship wine to a resident of this  
 59 state only under a winery shipper's license. A manufacturer of  
 60 wine within this state or any other state who manufactures no  
 61 more than 250,000 gallons of wine per year may ship wines that  
 62 the winery manufactures to a resident of this state who is at  
 63 least 21 years of age for that person's personal use, and not  
 64 for resale, upon obtaining a winery shipper's license from the  
 65 division. The manufacturer may obtain a winery shipper's license  
 66 by:

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

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

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

74            4. Meeting the qualifications for licensure under s.  
 75 561.15.

76            5. Filing an application with the division in accordance  
 77 with s. 561.17. The information required by the division in the  
 78 application must be the same as the information required by the  
 79 division for licensure as a wine manufacturer. The applicant  
 80 shall also include with the application:

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

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

86        c. A copy of the appointment of a registered agent in this  
87 state for the acceptance of service of process. Winery shippers  
88 must maintain an appointed registered agent and must notify the  
89 division of a change in appointment.

90        d. A copy of the applicant's sales tax registration number  
91 issued by the Department of Revenue. An applicant must register  
92 and maintain a current sales tax registration with the  
93 department as a collector and remitter of state sales tax.

94        e. An affirmation that the applicant consents to the  
95 jurisdiction of the courts of this state and its agencies for  
96 the enforcement of this section and any related laws or rules,  
97 including actions by third parties for violations of this  
98 section.

99        6. Filing with the division a surety bond in the sum of  
100 \$5,000 as surety for the payment of all taxes. If the division  
101 determines that the volume of business done by the manufacturer  
102 is such that a bond of less than \$5,000 is adequate, the  
103 division may accept a bond in a lesser sum, but not less than  
104 \$1,000.

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

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

- 111        1. Has violated the conditions of licensure, requirements,  
 112 or limitations of this section;  
 113        2. Produces more than 250,000 gallons of wine annually;  
 114        3. Has a subsidiary or is otherwise affiliated with a  
 115 winery whose production totals are greater than 250,000 gallons  
 116 per year; or  
 117        4. Has appointed a distributor in this state, unless the  
 118 applicant provides to the division a copy of a written notice  
 119 sent to the distributor of intent to obtain a winery shipper's  
 120 license 1 year before applying for a winery shipper's license  
 121 under this section.

122        (3) SHIPPING REQUIREMENTS.--

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

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

128        2. Conspicuously label the outside of each box of wine  
 129 shipped with the following information:

- 130        a. The package contains alcohol.  
 131        b. The recipient must be at least 21 years of age.  
 132        c. The wine is for personal use only and not for resale.  
 133        d. The signature of the recipient is required.

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

137 Consumers may not purchase, and winery shippers may not sell,

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138 ship, or cause to be shipped to a single household, more than  
139 four cases of more than nine liters of wine per calendar year.

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

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

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

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

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

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

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

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

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

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

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

187           (a) The license issued under this section.

188           (b) A record of all wines ordered, sold, or shipped to  
 189 residents of this state including the name, address, and date of  
 190 birth of the purchaser, the name and address of the person to

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191 whom the wine is shipped, and the date of shipment, quantity,  
192 and brands of wine shipped.

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

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

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

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

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

215 (d) Obtain the recipient's name and address and signed  
216 acknowledgement of personal consumption for each wine delivery  
217 as required in this section; maintain such records and the  
218 shipping order, including the name and address of the person to



219 whom the wine is shipped, for 3 years; and make the records  
 220 available for inspection upon request by the division.

221 (8) PENALTIES.--In addition to the penalties provided by  
 222 s. 561.545, knowingly or intentionally shipping, causing to be  
 223 shipped, or delivering wine to a person younger than 21 years of  
 224 age is a third-degree felony, punishable as provided in s.  
 225 775.082, s. 775.083, or s. 775.084. The division may suspend or  
 226 revoke the license of a winery shipper or impose fines against a  
 227 winery shipper for any violation of this section. If the  
 228 division has reasonable cause to believe that a winery shipper  
 229 has acted in violation of this section, the division may issue a  
 230 cease and desist order requiring the winery to cease shipments.  
 231 The division may impose a civil penalty of up to \$50,000 against  
 232 a winery who knowingly violates a cease and desist order issued  
 233 under this section.

234 (9) RULEMAKING.--The Department of Revenue and the  
 235 division may adopt rules to administer and enforce the  
 236 applicable provisions of this section.

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

239 561.24 Licensing manufacturers as distributors or  
 240 registered exporters prohibited; procedure for issuance and  
 241 renewal of distributors' licenses and exporters'  
 242 registrations.--

243 (5) Notwithstanding any of the provisions of the foregoing  
 244 subsections, any corporation which holds a license as a  
 245 distributor on June 3, 1947, shall be entitled to a renewal  
 246 thereof, provided such corporation complies with all of the

247 provisions of the Beverage Law of Florida, as amended, and of  
 248 this section and establishes by satisfactory evidence to the  
 249 division that, during the 6-month period next preceding its  
 250 application for such renewal, of the total volume of its sales  
 251 of spirituous liquors, in either dollars or quantity, not more  
 252 than 40 percent of such spirituous liquors sold by it, in either  
 253 dollars or quantity, were manufactured, rectified, or distilled  
 254 by any corporation with which the applicant is affiliated,  
 255 directly or indirectly, including any corporation which owns or  
 256 controls in any way any stock in the applicant corporation or  
 257 any corporation which is a subsidiary or affiliate of the  
 258 corporation so owning stock in the applicant corporation. Any  
 259 manufacturer of wine holding a license as a distributor on July  
 260 1, 2008, ~~the effective date of this act~~ shall be entitled to a  
 261 renewal of such license notwithstanding the provisions of  
 262 subsections (1)-(5). ~~This section does not apply to any winery~~  
 263 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

264 Section 3. Section 561.54, Florida Statutes, is amended to  
 265 read:

266 561.54 Certain deliveries of beverages prohibited.--

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

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

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

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

300 561.545 Certain shipments of beverages prohibited;  
 301 penalties; exceptions.--The Legislature finds that the direct  
 302 shipment of alcoholic beverages by persons in the business of

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

313 (1) A ~~Any~~ person in the business of selling alcoholic  
 314 beverages who knowingly and intentionally ships, or causes to be  
 315 shipped, any alcoholic beverage from an out-of-state location  
 316 directly to any person in this state who does not hold a valid  
 317 manufacturer's or wholesaler's license or exporter's  
 318 registration ~~issued by the division of Alcoholic Beverages and~~  
 319 ~~Tobacco~~ or who is not a state-bonded warehouse is in violation  
 320 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~~  
 337 operator of a privately owned car, truck, bus, or other  
 338 conveyance found by the division to be in violation of  
 339 subsection (2) as a result of a second or subsequent delivery  
 340 from the same source and location, within a 2-year period after  
 341 the first delivery shall be issued a notice, sent by certified  
 342 mail, to show cause why a cease and desist order should not be  
 343 issued. A ~~Any~~ person who violates subsection (2) within 2 years  
 344 after receiving the cease and desist order or within 2 years  
 345 after a prior conviction for violating subsection (2) commits a  
 346 felony of the third degree, punishable as provided in s.  
 347 775.082, s. 775.083, or s. 775.084.

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

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

356 564.045 Licensure as primary American source of supply.--

357 (2) TAX CONTROL LICENSURE REQUIRED.--For purposes of tax  
 358 revenue control, a ~~no~~ person, firm, corporation, or other entity

359 that ~~which~~ is the primary American source of supply ~~as defined~~  
 360 ~~herein~~ may not sell, offer for sale, accept orders for the sale  
 361 of, ship, or cause to be shipped into this state any vinous  
 362 beverages to any distributor, ~~or~~ importer, or person for  
 363 household consumption, as provided in s. 561.222, within this  
 364 ~~the~~ state without having first obtained licensure as a primary  
 365 American source of supply on forms provided by, and in such  
 366 manner as prescribed by, the division. Except for applicants for  
 367 a winery shipper's license, applicants for licensure as a  
 368 primary American source of supply are ~~shall be~~ exempt from ~~the~~  
 369 ~~requirements and qualification standards set forth in ss. 561.15~~  
 370 and 561.17.

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

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

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

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

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

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- 387           2. Maintain a minimum of 10 acres of owned or managed  
388 vineyards in this state ~~Florida~~.
- 389           3. Be open to the public for tours, tastings, and sales at  
390 least 30 hours each week.
- 391           4. Make annual application to the department for  
392 recognition as a Florida Farm Winery, on forms provided by the  
393 department.
- 394           5. Pay an annual application and registration fee of \$100.  
395           Section 7. This act shall take effect July 1, 2008.