

By Senator Geller

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1 A bill to be entitled

2 An act relating to the Beverage Law; creating s. 561.222,  
3 F.S.; authorizing the direct shipment of wine into this  
4 state for personal consumption; requiring licensure of  
5 winery shippers; providing eligibility requirements for  
6 licensure; requiring that recipients be at least 21 years  
7 of age; requiring proof of age and signature of recipient;  
8 requiring monthly reports by winery shippers; requiring  
9 payment of taxes by winery shippers; providing for  
10 jurisdiction; providing administrative and criminal  
11 penalties; amending ss. 561.24, 561.54, 561.545, 564.045,  
12 and 599.004, F.S., to conform to the provisions of s.  
13 561.222, F.S.; providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. Section 561.222, Florida Statutes, is created to  
18 read:

19 561.222 Winery shipments for personal consumption.--

20 (1) LEGISLATIVE INTENT.--It is the intent of the  
21 Legislature that this section apply only to the sale and  
22 distribution of wine produced by wineries that manufacture no  
23 more than 250,000 gallons of wine per year. The Legislature finds  
24 a rational basis for the limitations contained herein as the  
25 least discriminatory means of protecting the public and state  
26 revenues through equivalent regulation of farm wineries. It is  
27 the intent of the Legislature that the state continue to maintain  
28 and enforce laws regulating the importation, distribution, and  
29 sale of alcoholic beverages. The Legislature finds that the

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30 importation, distribution, and sale of alcoholic beverages  
31 require strict regulation of orderly markets with transparent and  
32 accountable distribution and sale to promote temperance by  
33 discouraging consumption by underage persons and abusive  
34 consumption by adults and by the collection of excise and sales  
35 taxes critical to the fiscal health of the state. The Legislature  
36 finds that this is best achieved by a comprehensive system of  
37 licensed and regulated importation into and distribution and sale  
38 within the state, including the three-tier system. The  
39 Legislature continues to maintain its interest in the state  
40 exercising its proper police power, ensuring enforcement of the  
41 Beverage Law, and regulating the transportation, importation,  
42 distribution, and sale of alcoholic beverages to the maximum  
43 extent allowed by the State and United States Constitutions. The  
44 Legislature reaffirms its intent that the direct shipment of beer  
45 and spirits to residents of this state remains prohibited and  
46 reaffirms its intent to uphold and preserve the laws of this  
47 state relating to alcoholic beverages against constitutional  
48 challenges.

49 (2) LICENSURE REQUIREMENTS.--

50 (a) Notwithstanding any provision of law to the contrary, a  
51 wine manufacturer in any state who holds a wine producer basic  
52 permit issued pursuant to the Federal Alcohol Administration Act  
53 and a current wine manufacturer's license from the state in which  
54 it is domiciled and who manufactures no more than 250,000 gallons  
55 of wine per year may ship those wines to a resident of this state  
56 who is at least 21 years of age for that resident's personal use  
57 and not for resale, upon obtaining a winery shipper license from  
58 the division. To obtain a winery shipper license, an applicant

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59 must file the following with the division:

60 1. An application on forms prescribed by the division  
61 pursuant to s. 561.17, providing information that is identical to  
62 the information required for licensure as a wine manufacturer in  
63 this state, a copy of its current basic permit as a wine producer  
64 issued under the Federal Alcohol Administration Act, and a copy  
65 of a current license to manufacture wine from the state in which  
66 it is domiciled;

67 2. Evidence that it qualifies for licensure under s.  
68 561.15;

69 3. An affirmation that it consents to the jurisdiction of  
70 the courts and agencies of this state for enforcement of the  
71 Beverage Law, including actions by third parties for violations  
72 of this section;

73 4. A copy of its appointment of a registered agent in this  
74 state for acceptance of service of process. It must also notify  
75 the division upon a change in registered agents;

76 5. Evidence that it has registered all brands shipped and  
77 has obtained licensure as a primary American source of supply  
78 pursuant to s. 564.045;

79 6. Evidence of a \$5,000 surety bond acceptable to the  
80 division as surety for the payment of all taxes. However, if the  
81 division determines a smaller bond is adequate, based on the  
82 volume of business done by the applicant, it may accept a bond in  
83 a lesser amount, but not less than \$1,000;

84 7. A copy of its registration number from the Department of  
85 Revenue as a collector and remitter of state sales tax and  
86 evidence that its registration is current; and

87 8. A license fee of \$250. The license must be renewed

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88 before August 1 of each year by paying a renewal fee of \$250.

89 (b) The division may not issue or renew a license to an  
90 applicant or licensee who:

91 1. Has violated the provisions of this section;

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

93 3. Has subsidiary or affiliated wineries whose individual  
94 production totals are greater than 250,000 gallons per year; or

95 4. Has appointed a distributor in this state, unless the  
96 applicant provides to the division a copy of written notice to  
97 that distributor of its application as a winery shipper at least  
98 1 year before applying for a license.

99 (3) SHIPPING REQUIREMENTS AND LIMITATIONS.--

100 (a) Before shipping wine to a resident of this state, a  
101 winery shipper must:

102 1. Require the person to state that he or she is 21 years  
103 of age or older;

104 2. Conspicuously post a label on the outside of each wine  
105 box disclosing that the package contains alcohol, that the  
106 recipient must be at least 21 years of age, and that the  
107 signature of a person at least 21 years of age is required for  
108 delivery; and

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

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

116 (c) Each common carrier shall provide, before delivering

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117 wine, a written policy to that winery that the common carrier  
118 will obtain the information required by paragraph (b). The  
119 signature form must inform the recipient that his or her  
120 signature acknowledges that the wine is for personal or household  
121 use and is not for resale.

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

125 (4) TAXES.--

126 (a) Each winery shipper shall monthly pay all sales taxes  
127 to the Department of Revenue, and to the division all state  
128 excise taxes due on sales to persons in this state for the  
129 preceding month. The taxes shall be calculated as if the sales  
130 took place in this state.

131 (b) Each winery shipper shall maintain records of its  
132 direct shipments to this state, including the names, addresses,  
133 amounts, and dates of shipments for at least 3 years after the  
134 date of delivery, and shall allow the Department of Revenue or  
135 the division, upon request, to audit such records, not to exceed  
136 the frequency of audits of licensees of the Beverage Law  
137 generally, but no less than once per year. The winery shipper  
138 shall furnish any documents within 30 days after a request is  
139 made.

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

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

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

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

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

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

149 (6) RECORDKEEPING.--All winery shippers must maintain the  
150 following records, electronic or otherwise, available for  
151 inspection by the Department of Revenue or the division upon  
152 request for a period of 3 years after the date of delivery:

153 (a) A license issued under this section;

154 (b) Records of all wines ordered, sold, or shipped to  
155 residents of this state and the names, addresses, and date of  
156 birth of the buyers, as well as the quantities and brands of wine  
157 shipped and the name of the common carrier for each shipment; and

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

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

162 (a) Register with the division and acknowledge their intent  
163 to deliver wines and acknowledge the requirements for delivery of  
164 such shipments;

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

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

172 (8) PENALTIES.--The Department of Revenue shall enforce the  
173 collection of sales tax under this section. The division shall  
174 enforce the other requirements of this section. In addition to

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175 the penalties provided by s. 561.545, knowingly or intentionally  
176 shipping or delivering wine to a person under 21 years of age is  
177 a third-degree felony, punishable as provided in s. 775.082, s.  
178 775.083, or s. 775.084. The division may suspend or revoke the  
179 license of or impose a fine against a winery shipper for any  
180 violation of this section. If the division has reasonable cause  
181 to believe that a winery shipper has violated this section, the  
182 division may issue a cease and desist order requiring the winery  
183 shipper to cease shipments. The division may impose a civil  
184 penalty of not more than \$50,000 against a winery shipper who  
185 knowingly violates a cease and desist order.

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

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

190 561.24 Licensing manufacturers as distributors or  
191 registered exporters prohibited; procedure for issuance and  
192 renewal of distributors' licenses and exporters' registrations.--

193 (5) Notwithstanding any of the provisions of the foregoing  
194 subsections, any corporation which holds a license as a  
195 distributor on June 3, 1947, shall be entitled to a renewal  
196 thereof, provided such corporation complies with all of the  
197 provisions of the Beverage Law of Florida, as amended, and of  
198 this section and establishes by satisfactory evidence to the  
199 division that, during the 6-month period next preceding its  
200 application for such renewal, of the total volume of its sales of  
201 spirituous liquors, in either dollars or quantity, not more than  
202 40 percent of such spirituous liquors sold by it, in either  
203 dollars or quantity, were manufactured, rectified, or distilled

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204 by any corporation with which the applicant is affiliated,  
205 directly or indirectly, including any corporation which owns or  
206 controls in any way any stock in the applicant corporation or any  
207 corporation which is a subsidiary or affiliate of the corporation  
208 so owning stock in the applicant corporation. Any manufacturer of  
209 wine holding a license as a distributor on the effective date of  
210 this act shall be entitled to a renewal of such license  
211 notwithstanding the provisions of subsections (1)-(5). The  
212 division may not issue a winery shipper license to a manufacturer  
213 who is licensed as a distributor or vendor in any state. ~~This~~  
214 ~~section does not apply to any winery qualifying as a certified~~  
215 ~~Florida Farm Winery under s. 599.004.~~

216 Section 3. Section 561.54, Florida Statutes, is amended to  
217 read:

218 561.54 Certain deliveries of beverages prohibited.--

219 (1) It is unlawful for common or permit carriers, operators  
220 of privately owned cars, trucks, buses, or other conveyances or  
221 out-of-state manufacturers or suppliers to make delivery from  
222 without the state of any alcoholic beverage to any person,  
223 association of persons, or corporation within the state, except  
224 to qualified manufacturers, distributors, and exporters of such  
225 beverages so delivered and to qualified bonded warehouses in this  
226 state.

227 (2) Any licensee aggrieved by a violation of this section  
228 may bring an action in any court of competent jurisdiction to  
229 recover for the state all moneys obtained by common carriers or  
230 permit carriers; obtained by operators of privately owned cars,  
231 trucks, buses, or other conveyances; or obtained by out-of-state  
232 manufacturers or suppliers as a result of the delivery of



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233 alcoholic beverages in violation of this section, and may obtain  
234 a declaratory judgment that an act or practice violates this  
235 section and enjoin any person from violating this section. In  
236 addition to such relief, the court may order the confiscation and  
237 destruction of any alcoholic beverages delivered in violation of  
238 this section. In assessing damages, the court shall enter  
239 judgment against a defendant for three times the amount of the  
240 delivery charges proved or the fair market value of merchandise  
241 unlawfully brought into the state. Payment or satisfaction of  
242 any judgment under this section, other than for costs and  
243 attorney's fees, shall be made in its entirety to the state. In  
244 any successful action under this section, the court shall award  
245 the plaintiff costs and reasonable attorney's fees.

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

250 Section 4. Section 561.545, Florida Statutes, is amended to  
251 read:

252 561.545 Certain shipments of beverages prohibited;  
253 penalties; exceptions.--The Legislature finds that the direct  
254 shipment of malt or spirituous ~~alcoholic~~ beverages by persons in  
255 the business of selling malt or spirituous ~~alcoholic~~ beverages to  
256 residents of this state in violation of the Beverage Law poses a  
257 serious threat to the public health, safety, and welfare; to  
258 state revenue collections; and to the economy of the state. The  
259 Legislature further finds that the penalties for illegal direct  
260 shipment of malt or spirituous ~~alcoholic~~ beverages to residents  
261 of this state should be made adequate to ensure compliance with

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262 | the Beverage Law and that the measures provided for in this  
263 | section are fully consistent with the powers conferred upon the  
264 | state by the Twenty-first Amendment to the United States  
265 | Constitution.

266 |       (1) Any person in the business of selling malt or  
267 | spirituous ~~alcoholic~~ beverages who knowingly and intentionally  
268 | ships, or causes to be shipped, any malt or spirituous ~~alcoholic~~  
269 | beverage from an out-of-state location directly to any person in  
270 | this state who does not hold a valid manufacturer's or  
271 | wholesaler's license or exporter's registration issued by the  
272 | Division of Alcoholic Beverages and Tobacco or who is not a  
273 | state-bonded warehouse is in violation of this section.

274 |       (2) Any common carrier or permit carrier or any operator of  
275 | a privately owned car, truck, bus, or other conveyance who  
276 | knowingly and intentionally transports any malt or spirituous  
277 | ~~alcoholic~~ beverage from an out-of-state location directly to any  
278 | person in this state who does not hold a valid manufacturer's or  
279 | wholesaler's license or exporter's registration or who is not a  
280 | state-bonded warehouse is in violation of this section.

281 |       (3) Any person found by the division to be in violation of  
282 | subsection (1) shall be issued a notice, by certified mail, to  
283 | show cause why a cease and desist order should not be issued. Any  
284 | person who violates subsection (1) within 2 years after receiving  
285 | a cease and desist order or within 2 years after a prior  
286 | conviction for violating subsection (1) commits a felony of the  
287 | third degree, punishable as provided in s. 775.082, s. 775.083,  
288 | or s. 775.084.

289 |       (4) Any common carrier or permit carrier, or any operator  
290 | of a privately owned car, truck, bus, or other conveyance found

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291 | by the division to be in violation of subsection (2) as a result  
292 | of a second or subsequent delivery from the same source and  
293 | location, within a 2-year period after the first delivery shall  
294 | be issued a notice, by certified mail, to show cause why a cease  
295 | and desist order should not be issued. Any person who violates  
296 | subsection (2) within 2 years after receiving the cease and  
297 | desist order or within 2 years after a prior conviction for  
298 | violating subsection (2) commits a felony of the third degree,  
299 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

300 | (5) This section does not apply to the direct shipment of  
301 | sacramental alcoholic beverages to bona fide religious  
302 | organizations as authorized by the division or to possession of  
303 | alcoholic beverages in accordance with s. 562.15(2).

304 | Section 5. Subsection (2) of section 564.045, Florida  
305 | Statutes, is amended to read:

306 | 564.045 Licensure as primary American source of supply.--

307 | (2) TAX CONTROL LICENSURE REQUIRED.--For purposes of tax  
308 | revenue control, a ~~no~~ person, firm, corporation, or other entity  
309 | that ~~which~~ is the primary American source of supply as defined  
310 | herein may not sell, offer for sale, accept orders for sale,  
311 | ship, or cause to be shipped into this state any vinous beverages  
312 | to any distributor, or importer, or resident for household  
313 | consumption under s. 561.222 within the state without having  
314 | first obtained licensure as a primary American source of supply  
315 | on forms provided by, and in such manner as prescribed by, the  
316 | division. Applicants for licensure as a primary American source  
317 | of supply are ~~shall be~~ exempt from the requirements and  
318 | qualification standards set forth in ss. 561.15 and 561.17,  
319 | except applicants for winery shipper licenses under s. 561.222.

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320 Section 6. Paragraph (a) of subsection (1) of section  
321 599.004, Florida Statutes, is amended to read:

322 599.004 Florida Farm Winery Program; registration; logo;  
323 fees.--

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

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

332 1. Produce or sell less than 250,000 gallons of wine  
333 annually, of which 60 percent of the wine produced must be made  
334 from agricultural products produced in this state. The  
335 Commissioner of Agriculture may waive this requirement in times  
336 of hardship.

337 2. Maintain a minimum of 10 acres of owned or managed  
338 vineyards in Florida.

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

341 4. Make annual application to the department for  
342 recognition as a Florida Farm Winery, on forms provided by the  
343 department.

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

345 Section 7. This act shall take effect July 1, 2008.