

By Senator Saunders

37-00010B-08

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1 A bill to be entitled
2 An act relating to the Beverage Law; creating s. 561.585,
3 F.S.; authorizing certain direct shipments of wine;
4 requiring licensure of winery shippers; providing
5 requirements for licensure; providing prohibitions;
6 requiring that a winery shipper licensee file a surety
7 bond with the Division of Alcoholic Beverages and Tobacco
8 of the Department of Business and Professional Regulation;
9 requiring that each container of wine shipped directly be
10 labeled with a notice; providing signature and
11 identification requirements; providing limitations on the
12 amount of wine a winery shipper may ship or cause to be
13 shipped; limiting the size of wine containers; providing
14 age requirements for those purchasing wine for direct
15 shipment or receiving direct shipments of wine; providing
16 a defense to certain actions; requiring monthly reports by
17 winery shipper licensees; requiring the collection,
18 remittance, and payment of certain taxes by direct
19 shippers; requiring certain proceeds from discretionary
20 sales surtaxes to be deposited into an account in the
21 Discretionary Sales Surtax Clearing Trust Fund; requiring
22 that winery shippers maintain certain records for a
23 certain time period; providing for jurisdiction; providing
24 penalties; amending s. 561.14, F.S.; classifying the
25 winery shipper license; amending s. 561.54, F.S.; removing
26 a provision requiring that the licensee be aggrieved by a
27 violation involving prohibited delivery from without the
28 state to have standing to bring an action; exempting from
29 such prohibition shipment of wine by a winery shipper

37-00010B-08

20082608__

licensee; amending s. 561.545, F.S.; exempting applicability of the prohibition against direct shipment of alcoholic beverages to the shipment of wine by a winery shipper licensee; amending s. 561.57, F.S.; providing that Internet orders shall be construed as telephone orders; exempting common carriers, licensees, or licensees utilizing common carriers as their agents from certain report filing requirements; requiring common carriers to verify the age of persons receiving shipments; providing a defense to certain actions; providing criteria for the defense; amending s. 599.004, F.S.; revising qualifications for the certification of Florida Farm Wineries; amending s. 561.24, F.S.; revising an effective date; authorizing certain manufacturers of wine holding a distributor's license to renew such license; removing an exemption of Florida Farm Wineries from prohibition against the manufacturer being licensed as distributor or registered as the exporter; providing for severability; providing for nonimpairment of contracts; providing for rulemaking authority; authorizing additional positions; providing appropriations; providing an effective date.

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

Section 1. Section 561.585, Florida Statutes, is created to read:

561.585 Direct shipment of wine for personal consumption.--

(1) WINERY SHIPPER LICENSURE REQUIREMENTS.--

(a) Wineries may not ship or cause to be shipped any wine

37-00010B-08

20082608__

59 to individual consumers in this state unless licensed under this
60 section. Notwithstanding any provision of the Beverage Law or any
61 rule to the contrary, a person, firm, corporation, or other
62 entity that is licensed as a winery shipper under this section
63 may ship wine directly to any person who is at least 21 years of
64 age for personal use only and not for resale. To obtain or renew
65 a winery shipper's license, an applicant must:

66 1. File an application with the division on forms
67 prescribed by the division.

68 2. Qualify for licensure under ss. 561.15 and 561.17 or
69 provide a true copy of a certification from the alcoholic
70 beverage licensing authority of the Federal Government, or the
71 state in which the winery is located, with license qualifications
72 and procedures for that winery license that include, at a
73 minimum, the following components:

74 a. Fingerprinting of applicants.

75 b. Disqualification for applicants under 21 years of age.

76 c. Disqualification for applicants convicted of the
77 following:

78 (I) Within the past 5 years, any violation of the beverage
79 laws of this state, the United States, or any other state;

80 (II) Within the past 15 years, any felony in this state or
81 any other state of the United States; or

82 (III) Any criminal violation of the controlled substance
83 act of this state, the United States, or any other state.

84 3. Obtain and maintain a current license as a primary
85 American source of supply as provided in s. 564.045.

86 4. Provide to the division a true copy of its current wine
87 manufacturer's license issued by this state or another state and

37-00010B-08

20082608__

88 a true copy of its current federal basic permit as a wine
89 producer issued in accordance with the Federal Alcohol
90 Administration Act.

91 5. Pay an annual license fee in the amount of \$250.

92 6. File with the division a surety bond acceptable to the
93 division in the sum of \$5,000 as surety for the payment of all
94 taxes, provided that when, at the discretion of the division, the
95 amount of business done by the winery shipper licensee is such
96 volume that a bond of less than \$5,000 will be adequate, the
97 division may accept a bond in a lesser sum but not less than
98 \$1,000. The surety bond currently on file with the division for a
99 winery pursuant to s. 561.37 is deemed to comply with this
100 requirement. Upon written request of the winery shipper, the
101 division shall review the total tax liability to the state by the
102 winery shipper and reduce the bond to 110 percent of the prior
103 year's total tax liability as a licensee under this section but
104 not less than \$1,000.

105 (b) Applicants under this section may obtain a temporary
106 initial license as authorized in s. 561.181.

107 (c) Winery shipper licensees may not ship or cause to be
108 shipped more than 18 cases of wine per calendar year per
109 household. For purposes of this section, a case is defined as a
110 container or containers that contain no more than 9,000
111 milliliters of wine.

112 (d) Licensees shall comply with s. 564.05, which limits the
113 size of wine containers.

114 (e) Purchasers may not purchase or cause to be shipped more
115 than 18 cases of wine per calendar year per household.

116 (f) Each winery shipper licensee must verify the

37-00010B-08

20082608__

117 purchaser's age at the point of purchase before completing any
118 transaction and must refuse sale of wine to any person under 21
119 years of age. Verification methods for purposes of this paragraph
120 must include receiving a copy, electronic or otherwise, of a
121 purchaser's driver's license or other acceptable identification
122 methods approved by the division. An alternative verification
123 method that may be used by the winery shippers shall include
124 asking and recording all purchasers' names, ages, and dates of
125 birth. Such recordings shall be kept for a minimum of 3 years.
126 Purchasers shall further be advised that they must show the
127 person making the delivery one of the acceptable identification
128 cards in subsection (3) prior to delivery.

129 (2) LABEL.--Each winery shipper licensee shall ensure that
130 the outside shipping label on each package is conspicuous and
131 includes the following components:

132 (a) This package contains alcohol.

133 (b) An adult signature is required.

134 (c) The recipient must be at least 21 years of age.

135 (3) SIGNATURE.--

136 (a) Each winery shipper licensee and common carrier shall
137 require, prior to delivery, that the signature of the addressee
138 or other person at least 21 years of age is obtained after
139 presentation of a valid driver's license, an identification card
140 issued under the provisions of s. 322.051, or, if the person is
141 physically handicapped, a comparable identification card issued
142 by another state which indicates the person's age, a passport, or
143 a United States Uniformed Services identification card.

144 (b) A winery shipper licensee or common carrier who
145 violates this subsection shall have a complete defense to any

37-00010B-08

20082608__

146 civil action therefor, except for any administrative action by
147 the division, if, at the time the alcoholic beverage was sold,
148 given, delivered, or transferred, the person falsely evidenced
149 that he or she was of legal age to purchase or consume the
150 alcoholic beverage and the appearance of the person was such that
151 an ordinarily prudent person would believe him or her to be of
152 legal age to purchase or consume the alcoholic beverage and if
153 the winery shipper licensee or common carrier acted in good faith
154 and in reliance upon the representation and appearance of the
155 person in the belief that he or she was of legal age to purchase
156 or consume the alcoholic beverage and carefully checked one of
157 the following forms of identification with respect to the person:
158 a valid driver's license, an identification card issued under the
159 provisions of s. 322.051, or, if the person is physically
160 handicapped, a comparable identification card issued by another
161 state which indicates the person's age, a passport, or a United
162 States Uniformed Services identification card.

163 (4) MONTHLY REPORT.--

164 (a) Each winery shipper licensee shall report monthly to
165 the division on forms prescribed by the division:

166 1. Whether any wine product was shipped into or within this
167 state under this section during the preceding month.

168 2. The total amount of wine shipped into or within this
169 state under this section during the preceding month.

170 3. The quantity and types of wine shipped into or within
171 this state under this section during the preceding month.

172 4. The amount of excise tax paid to the division for
173 shipments of wine into or within this state under this section
174 during the preceding month.

37-00010B-08

20082608__

175 (b) 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 that contains all the information required
178 in paragraph (a). The division is authorized to prescribe the
179 format for submission of this information in order that duplicate
180 filings are eliminated.

181 (5) TAXES.--

182 (a) Each winery shipper licensee shall collect and remit
183 monthly to the Department of Revenue all sales taxes and pay to
184 the division all excise taxes due on sales to persons in this
185 state for the preceding month. Notwithstanding s. 212.0596, the
186 amount of such taxes shall be calculated as if the sale took
187 place at the location where the delivery occurred in this state.
188 The proceeds of the discretionary sales surtaxes imposed under s.
189 212.055 shall be deposited into an account in the Discretionary
190 Sales Surtax Clearing Trust Fund described in s. 212.054(4)(c)
191 and distributed as provided therein.

192 (b) Each winery shipper licensee shall maintain for at
193 least 3 years after the date of delivery records of its shipments
194 into or within this state pursuant to this section, including the
195 names, addresses, amounts, and dates of all shipments to persons
196 in this state, and shall allow the Department of Revenue or the
197 division, upon request, to perform an audit of such records.

198 (c) The cost of performing an audit under paragraph (b)
199 shall be assigned to the agency requesting the audit unless the
200 winery shipper licensee is found to be in material violation of
201 this subsection, in which case the cost of the audit shall be
202 assigned to the licensee.

203 (6) JURISDICTION.--Each winery shipper licensee is deemed

37-00010B-08

20082608__

204 to have consented to the jurisdiction of the division or any
205 other state agency or local law enforcement agency and the courts
206 of this state concerning enforcement of this section and any
207 related laws or rules.

208 (7) PENALTIES.--

209 (a) In addition to any other penalty provided in the
210 Beverage Law, the division may suspend or revoke a winery shipper
211 license or impose fines on the winery shipper licensee in an
212 amount not to exceed \$1,000 per violation for any violation of
213 this section.

214 (b) A winery shipper licensee that knowingly and
215 intentionally ships, or causes to be shipped, wine to any person
216 in this state who is under 21 years of age commits a felony of
217 the third degree, punishable as provided in s. 775.082, s.
218 775.083, or s. 775.084.

219 (c) Any common carrier, permit carrier, or other commercial
220 conveyance that knowingly and intentionally delivers wine
221 directly to any person in this state who is under 21 years of age
222 commits a misdemeanor of the second degree, punishable as
223 provided in s. 775.082 or s. 775.083.

224 (d) A person who knowingly and intentionally obtains wine
225 from a winery shipper licensee in violation of this section
226 commits a misdemeanor of the second degree, punishable as
227 provided in s. 775.082 or s. 775.083.

228 Section 2. Subsection (8) is added to section 561.14,
229 Florida Statutes, to read:

230 561.14 License and registration classification.--Licenses
231 and registrations referred to in the Beverage Law shall be
232 classified as follows:

37-00010B-08

20082608__

233 (8) Wineries licensed as winery shippers under s. 561.585.

234 Section 3. Section 561.54, Florida Statutes, is amended to
235 read:

236 561.54 Certain deliveries of beverages prohibited.--

237 (1) It is unlawful for common or permit carriers, operators
238 of privately owned cars, trucks, buses, or other conveyances or
239 out-of-state manufacturers or suppliers to make delivery from
240 without the state of any alcoholic beverage to any person,
241 association of persons, or corporation within the state, except
242 to qualified manufacturers, distributors, and exporters of such
243 beverages so delivered and to qualified bonded warehouses in this
244 state.

245 (2) Any licensee ~~aggrieved by a violation of this section~~
246 may bring an action in any court of competent jurisdiction to
247 recover for the state all moneys obtained by common carriers or
248 permit carriers; obtained by operators of privately owned cars,
249 trucks, buses, or other conveyances; or obtained by out-of-state
250 manufacturers or suppliers as a result of the delivery of
251 alcoholic beverages in violation of this section, and may obtain
252 a declaratory judgment that an act or practice violates this
253 section and enjoin any person from violating this section. In
254 addition to such relief, the court may order the confiscation and
255 destruction of any alcoholic beverages delivered in violation of
256 this section. In assessing damages, the court shall enter
257 judgment against a defendant for three times the amount of the
258 delivery charges proved or the fair market value of merchandise
259 unlawfully brought into the state. Payment or satisfaction of any
260 judgment under this section, other than for costs and attorney's
261 fees, shall be made in its entirety to the state. In any

37-00010B-08

20082608__

262 successful action under this section, the court shall award the
263 plaintiff costs and reasonable attorney's fees.

264 (3) This section does not apply to the shipment of wine by
265 a winery shipper licensee to a person who is at least 21 years of
266 age in accordance with s. 561.585.

267 Section 4. Section 561.545, Florida Statutes, is amended to
268 read:

269 561.545 Certain shipments of beverages prohibited;
270 penalties; exceptions.--The Legislature finds that the direct
271 shipment of alcoholic beverages by persons in the business of
272 selling alcoholic beverages to residents of this state in
273 violation of the Beverage Law poses a serious threat to the
274 public health, safety, and welfare; to state revenue collections;
275 and to the economy of the state. The Legislature further finds
276 that the penalties for illegal direct shipment of alcoholic
277 beverages to residents of this state should be made adequate to
278 ensure compliance with the Beverage Law and that the measures
279 provided for in this section are fully consistent with the powers
280 conferred upon the state by the Twenty-first Amendment to the
281 United States Constitution.

282 (1) Any person in the business of selling alcoholic
283 beverages who knowingly and intentionally ships, or causes to be
284 shipped, any alcoholic beverage from an out-of-state location
285 directly to any person in this state who does not hold a valid
286 manufacturer's or wholesaler's license or exporter's registration
287 issued by the Division of Alcoholic Beverages and Tobacco or who
288 is not a state-bonded warehouse is in violation of this section.

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

37-00010B-08

20082608__

291 knowingly and intentionally transports any alcoholic beverage
292 from an out-of-state location directly to any person in this
293 state who does not hold a valid manufacturer's or wholesaler's
294 license or exporter's registration or who is not a state-bonded
295 warehouse is in violation of this section.

296 (3) Any person found by the division to be in violation of
297 subsection (1) shall be issued a notice, by certified mail, to
298 show cause why a cease and desist order should not be issued. Any
299 person who violates subsection (1) within 2 years after receiving
300 a cease and desist order or within 2 years after a prior
301 conviction for violating subsection (1) commits a felony of the
302 third degree, punishable as provided in s. 775.082, s. 775.083,
303 or s. 775.084.

304 (4) Any common carrier or permit carrier, or any operator
305 of a privately owned car, truck, bus, or other conveyance found
306 by the division to be in violation of subsection (2) as a result
307 of a second or subsequent delivery from the same source and
308 location, within a 2-year period after the first delivery shall
309 be issued a notice, by certified mail, to show cause why a cease
310 and desist order should not be issued. Any person who violates
311 subsection (2) within 2 years after receiving the cease and
312 desist order or within 2 years after a prior conviction for
313 violating subsection (2) commits a felony of the third degree,
314 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

315 (5) This section does not apply to:

316 (a) The direct shipment of sacramental alcoholic beverages
317 to bona fide religious organizations as authorized by the
318 division;

319 (b) The ~~or to~~ possession of alcoholic beverages in

37-00010B-08

20082608__

320 accordance with s. 562.15(2); or
321 (c) The shipment of wine in accordance with s. 561.585.
322 Section 5. Subsections (1) and (6) of section 561.57,
323 Florida Statutes, are amended to read:
324 561.57 Deliveries by licensees.--
325 (1) Vendors shall be permitted to make deliveries away from
326 their places of business of sales actually made at the licensed
327 place of business; provided, telephone or mail orders received at
328 vendor's licensed place of business shall be construed as a sale
329 actually made at the vendor's licensed place of business. For
330 purposes of this section, Internet orders shall be construed as
331 telephone orders.
332 (6) Common carriers are not required to have vehicle
333 permits to transport alcoholic beverages. Nothing in this section
334 shall prohibit any licensee from utilizing a common carrier as
335 his or her agent to make deliveries of alcoholic beverages within
336 the state. Deliveries of alcoholic beverages by licensees or
337 common carriers utilized by licensees under this section are
338 exempt from the report filing requirements in s. 562.20. All
339 common carriers making deliveries under this section shall verify
340 that any person receiving alcoholic beverages is at least 21
341 years of age upon the delivery of such alcoholic beverages, as
342 prescribed in division rules. Compliance with the prescribed age
343 verification measures in s. 561.585(3) shall give the common
344 carrier and the licensee a complete defense to any civil action
345 thereof, except for any administrative action by the division,
346 if, at the time the alcoholic beverage was sold, given,
347 delivered, or transferred, the person falsely evidenced that he
348 or she was of legal age to purchase or consume the alcoholic

37-00010B-08

20082608__

349 beverage and the appearance of the person was such that an
350 ordinarily prudent person would believe him or her to be of legal
351 age to purchase or consume the alcoholic beverage and if the
352 licensee or common carrier acted in good faith and in reliance
353 upon the representation and appearance of the person in the
354 belief that he or she was of legal age to purchase or consume the
355 alcoholic beverage and carefully checked one of the following
356 forms of identification with respect to the person: a valid
357 driver's license, an identification card issued under the
358 provisions of s. 322.051, or, if the person is physically
359 handicapped, a comparable identification card issued by another
360 state which indicates the person's age, a passport, or a United
361 States Uniformed Services identification card.

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

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

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

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

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

37-00010B-08

20082608__

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

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

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

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

386 (b) To maintain certification and recognition as a Florida
387 Farm Winery, a winery must comply with the qualifications
388 provided in this section. The Commissioner of Agriculture is
389 authorized to officially recognize a certified Florida Farm
390 Winery as a state tourist attraction.

391 Section 7. Subsection (5) of section 561.24, Florida
392 Statutes, is amended to read:

393 561.24 Licensing manufacturers as distributors or
394 registered exporters prohibited; procedure for issuance and
395 renewal of distributors' licenses and exporters' registrations.--

396 (5) Notwithstanding any of the provisions of the foregoing
397 subsections, any corporation which holds a license as a
398 distributor on June 3, 1947, shall be entitled to a renewal
399 thereof, provided such corporation complies with all of the
400 provisions of the Beverage Law of Florida, as amended, and of
401 this section and establishes by satisfactory evidence to the
402 division that, during the 6-month period next preceding its
403 application for such renewal, of the total volume of its sales of
404 spirituous liquors, in either dollars or quantity, not more than
405 40 percent of such spirituous liquors sold by it, in either
406 dollars or quantity, were manufactured, rectified, or distilled

37-00010B-08

20082608__

407 | by any corporation with which the applicant is affiliated,
408 | directly or indirectly, including any corporation which owns or
409 | controls in any way any stock in the applicant corporation or any
410 | corporation which is a subsidiary or affiliate of the corporation
411 | so owning stock in the applicant corporation. Any manufacturer of
412 | wine holding a license as a distributor on July 1, 2008, ~~the~~
413 | ~~effective date of this act~~ shall be entitled to a renewal of such
414 | license notwithstanding the provisions of subsections (1)-(5).
415 | ~~This section does not apply to any winery qualifying as a~~
416 | ~~certified Florida Farm Winery under s. 599.004.~~

417 | Section 8. Should any portion of this act be held
418 | unconstitutional, it is the intent of the Legislature that the
419 | courts disturb only as much of the regulatory system of this
420 | state as is necessary to enforce the United States Constitution.

421 | Section 9. Notwithstanding the provisions of s. 561.585,
422 | Florida Statutes, contracts not otherwise prohibited by the
423 | Beverage Law shall not be impaired.

424 | Section 10. The Division of Alcoholic Beverages and Tobacco
425 | of the Department of Business and Professional Regulation and the
426 | Department of Revenue may adopt rules pursuant to ss. 120.536(1)
427 | and 120.54, Florida Statutes, to implement and administer this
428 | act.

429 | Section 11. For fiscal year 2008-2009, six full-time
430 | equivalent positions and \$164,577 in associated salary rate are
431 | authorized, and the sums of \$332,422 in recurring funds and
432 | \$59,664 in nonrecurring funds from the Alcoholic Beverage and
433 | Tobacco Trust Fund of the Department of Business and Professional
434 | Regulation are hereby appropriated for the purpose of carrying
435 | out the regulatory activities provided in this act. In addition,

37-00010B-08

20082608__

436 for fiscal year 2008-2009, two full-time equivalent positions,
437 with associated salary rate of \$106,106, are authorized, and the
438 sums of \$212,165 in recurring funds and \$11,901 in nonrecurring
439 funds from the Administrative Trust Fund of the Department of
440 Business and Professional Regulation are hereby appropriated for
441 the purpose of carrying out the central-service administrative
442 support functions related to the regulatory activities provided
443 in this act.

444 Section 12. This act shall take effect upon becoming a law.