

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 at
 9 least 21 years of age; requiring proof of age and the
 10 signature of a recipient; providing for the payment of
 11 taxes, a monthly report, and recordkeeping by winery
 12 shippers; requiring licensed winery shippers to make
 13 deliveries in company-owned or company-leased vehicles or
 14 by common carrier; providing requirements for common
 15 carriers that make deliveries of wine; providing
 16 administrative and criminal penalties for violations of
 17 the act; authorizing the division and the Department of
 18 Revenue to adopt rules; amending ss. 561.24, 561.54,
 19 561.545, and 564.045, F.S.; conforming provisions to
 20 changes made by the act; amending s. 599.004, F.S.;
 21 revising requirements for qualifying as a certified
 22 Florida Farm Winery; providing for severability; providing
 23 an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 561.222, Florida Statutes, is created
 28 to read:

29 561.222 Winery shipper's license.--
 30 (1) LEGISLATIVE INTENT.--The Legislature finds that the
 31 importation, distribution, and sale of alcoholic beverages
 32 require strict regulation in order to promote temperance by
 33 discouraging consumption by underage persons and abusive
 34 consumption by adults, to ensure orderly markets having
 35 transparent and accountable sales, and to facilitate the
 36 collection of excise and sales taxes critical to the fiscal
 37 health of the state. The Legislature finds that these purposes
 38 are best achieved through the state's comprehensive system of
 39 licensing and regulation, including the three-tier system of
 40 alcohol distribution which has been the law of this state since
 41 the repeal of Prohibition. The Legislature finds that the
 42 limitations contained in this section for the uniform regulation
 43 of direct shipping by small, in-state and out-of-state farm
 44 wineries are the least discriminatory means of protecting the
 45 public and state revenues. The Legislature continues to maintain
 46 its interest in having the state exercise its police power,
 47 ensure enforcement of the beverage laws, and thereby regulate
 48 the transportation, importation, distribution, and sale of
 49 alcoholic beverages to the maximum extent allowed by the state
 50 and federal constitutions. The Legislature reaffirms its policy
 51 prohibiting manufacturers from causing the direct shipment of
 52 beer and spirits to individuals in this state and its intent to
 53 uphold and preserve against constitutional challenge all of the
 54 laws of this state relating to alcoholic beverages.

55 (2) LICENSE REQUIREMENTS.--

56 (a) A winery may directly ship wine to a resident of this

HB 245

2009

57 state only under a winery shipper's license. A manufacturer of
58 wine within this state or any other state which produces or
59 sells less than 250,000 gallons of wine per year may ship wines
60 manufactured by such winery to a resident of this state who is
61 at least 21 years of age for that person's personal use, and not
62 for resale, upon obtaining a winery shipper's license from the
63 division. The manufacturer may obtain a winery shipper's license
64 by:

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

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

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

72 4. Meeting the qualifications for licensure under s.
73 561.15.

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

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

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

84 c. A copy of the appointment of a registered agent in this

85 state for the acceptance of service of process. Winery shippers
 86 must maintain an appointed registered agent and must notify the
 87 division of a change in appointment.

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

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

97 6. Filing with the division a surety bond in the sum of
 98 \$5,000 as surety for the payment of all taxes. If the division
 99 determines that the volume of business done by the manufacturer
 100 is such that a bond of less than \$5,000 is adequate, the
 101 division may accept a bond in a lesser sum, but not less than
 102 \$1,000. The surety bond currently on file with the division for
 103 a winery pursuant to s. 561.37 is deemed to comply with this
 104 requirement.

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 issue or renew a license under this
 110 section only if the applicant or licensee:

111 1. Has not violated the conditions of licensure or the
 112 requirements or limitations of this section;

HB 245

2009

113 2. Produces or sells less than 250,000 gallons of wine
114 annually;

115 3. Does not have a subsidiary winery and is not otherwise
116 affiliated with another winery, unless such subsidiary winery or
117 affiliated winery produces or sells less than 250,000 gallons of
118 wine annually; and

119 4. Has not appointed a distributor in this state, unless
120 the applicant provides to the division a copy of the applicant's
121 contract with the applicant's appointed distributor containing
122 terms to the contrary or a copy of a written notice sent to the
123 distributor of the applicant's intent to obtain a winery
124 shipper's license at least 1 year before applying for such
125 license under this section.

126 (3) SHIPPING REQUIREMENTS.--

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

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

132 2. Conspicuously label the outside of each box of wine
133 shipped with the following information:

134 a. The package contains alcohol.

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

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

137 d. The signature of the recipient is required.

138 3. Refuse to ship or cause to be shipped more than 12
139 cases containing no more than nine liters each of its wine per
140 calendar year to any one household address in this state.

141 Consumers may not purchase, and winery shippers may not sell,
 142 ship, or cause to be shipped to a single household, more than 12
 143 cases of no more than nine liters of wine per calendar year.

144 (b) A licensed winery shipper shall be required to make
 145 all of its deliveries under this section in company-owned or
 146 company-leased vehicles or by common carrier. If such deliveries
 147 are made by a common carrier, the licensed winery shipper shall
 148 require the common carrier contracting with the shipper for the
 149 delivery of the shipper's wine to obtain, before delivery, the
 150 signature of the addressee or other recipient who is at least 21
 151 years of age after a valid driver's license, an identification
 152 card issued by this state or another state, a passport, or a
 153 United States Armed Services identification card verifying age
 154 is presented. The signature form must inform the recipient that
 155 his or her signature is an acknowledgment that such wine is for
 156 personal or household consumption and not for resale.

157 (c) A licensed winery shipper must obtain from a common
 158 carrier contracting for the delivery of the shipper's wine the
 159 common carrier's written policy declaring that the common
 160 carrier shall, before delivering any wine, adhere to the
 161 requirements of paragraph (b).

162 (d) A licensed winery shipper must offer to its
 163 distributor for purchase and sale per calendar year the same
 164 brands and quantities of wine shipped per calendar year under
 165 this section, unless its contract with its appointed distributor
 166 contains terms to the contrary.

167 (4) TAXES.--A licensed winery shipper shall pay monthly to
 168 the Department of Revenue all sales taxes and to the division

169 all state excise taxes due on sales to persons in this state for
 170 the preceding month. The amount of the taxes shall be calculated
 171 as if the sale took place in this state.

172 (5) MONTHLY REPORT.--

173 (a) A licensed winery shipper shall report to the
 174 division, by the 10th day of each month, on forms prescribed by
 175 the division:

176 1. Whether any wine was shipped to residents of this state
 177 during the preceding month.

178 2. The quantity and brands of wine shipped to residents of
 179 this state during the preceding month.

180 3. The total price of wine shipped to residents of this
 181 state during the preceding month.

182 4. The amount of excise tax paid to the division for the
 183 shipments of wine to residents of this state during the
 184 preceding month.

185 5. Any other information that the division determines
 186 necessary to enforce this section.

187 (b) The report required by this subsection is not required
 188 from a winery shipper licensee who files a monthly report
 189 pursuant to s. 561.55. The division may prescribe the format for
 190 submitting this information for the purpose of eliminating
 191 duplicate filings.

192 (6) RECORDS.--All licensed winery shippers shall maintain
 193 the following records, electronically or otherwise, available
 194 for inspection by the Department of Revenue or the division upon
 195 request for a period of 3 years after the date of delivery, and
 196 shall allow the Department of Revenue or the division to perform

197 an audit of the records, not to exceed the frequency of audits
 198 of licensees under the Beverage Law generally, but at least once
 199 per year. Upon such request, the licensee shall submit any
 200 related documents to that agency within 30 days.

201 (a) The license issued under this section.

202 (b) A record of all wines ordered, sold, and shipped to
 203 residents of this state, including the name, address, and date
 204 of birth of the purchaser; the name and address of the person to
 205 whom the wine is shipped; and the date of shipment, quantity,
 206 and brands of wine shipped.

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

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

212 (a) Register with the division and acknowledge the
 213 requirements contained in this section for the direct shipment
 214 of wine and the carrier's intent to deliver wines in accordance
 215 with this section.

216 (b) Maintain a written wine-delivery policy stating that
 217 the common carrier shall, before delivering any wine, obtain the
 218 signature of the recipient after a valid driver's license, an
 219 identification card issued by this state or another state, a
 220 passport, or a United States Armed Services identification card
 221 is presented verifying that the recipient is 21 years of age or
 222 older.

223 (c) Refuse delivery if the recipient appears to be younger
 224 than 21 years of age; fails or refuses to present a valid

225 driver's license, an identification card issued by this state or
 226 another state, a passport, or a United States Armed Services
 227 identification card verifying age; or fails or refuses to sign
 228 the signature form.

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

235 (8) PENALTIES.--In addition to the penalties provided by
 236 ss. 561.545 and 562.11, shipping, causing to be shipped, or
 237 delivering wine to a person younger than 21 years of age is a
 238 misdemeanor of the second degree, punishable as provided in s.
 239 775.082 or s. 775.083. The division may suspend or revoke the
 240 license of a winery shipper or impose fines against a winery
 241 shipper for any violation of this section. If the division has
 242 reasonable cause to believe that a winery shipper has acted in
 243 violation of this section, the division may issue a cease and
 244 desist order requiring the winery to cease shipments. The
 245 division may impose a civil penalty of up to \$50,000 against a
 246 winery who knowingly violates a cease and desist order issued
 247 under this section.

248 (9) RULEMAKING.--The Department of Revenue and the
 249 division may adopt rules to administer and enforce the
 250 applicable provisions of this section.

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

253 561.24 Licensing manufacturers as distributors or
 254 registered exporters prohibited; procedure for issuance and
 255 renewal of distributors' licenses and exporters'
 256 registrations.--

257 (5) Notwithstanding any of the provisions of the foregoing
 258 subsections, any corporation which holds a license as a
 259 distributor on June 3, 1947, shall be entitled to a renewal
 260 thereof, provided such corporation complies with all of the
 261 provisions of the Beverage Law of Florida, as amended, and of
 262 this section and establishes by satisfactory evidence to the
 263 division that, during the 6-month period next preceding its
 264 application for such renewal, of the total volume of its sales
 265 of spirituous liquors, in either dollars or quantity, not more
 266 than 40 percent of such spirituous liquors sold by it, in either
 267 dollars or quantity, were manufactured, rectified, or distilled
 268 by any corporation with which the applicant is affiliated,
 269 directly or indirectly, including any corporation which owns or
 270 controls in any way any stock in the applicant corporation or
 271 any corporation which is a subsidiary or affiliate of the
 272 corporation so owning stock in the applicant corporation. Any
 273 manufacturer of wine holding a license as a distributor on July
 274 1, 2009, is ~~the effective date of this act shall be~~ entitled to
 275 a renewal of such license notwithstanding the provisions of
 276 subsections (1)-(5). ~~This section does not apply to any winery~~
 277 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

278 Section 3. Section 561.54, Florida Statutes, is amended to
 279 read:

280 561.54 Certain deliveries of beverages prohibited.--

281 (1) ~~It is unlawful for~~ Common or permit carriers;it
 282 operators of privately owned cars, trucks, buses, or other
 283 conveyances; or out-of-state manufacturers or suppliers may not
 284 ~~to~~ make delivery from outside ~~without~~ the state of any alcoholic
 285 beverage to any person, association of persons, or corporation
 286 within the state, except to qualified manufacturers,
 287 distributors, and exporters ~~of such beverages so delivered~~ and
 288 to qualified bonded warehouses in this state.

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

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

312 Section 4. Section 561.545, Florida Statutes, is amended
 313 to read:

314 561.545 Certain shipments of beverages prohibited;
 315 penalties; exceptions.--The Legislature finds that the direct
 316 shipment of alcoholic beverages by persons in the business of
 317 selling alcoholic beverages to residents of this state in
 318 violation of the Beverage Law poses a serious threat to the
 319 public health, safety, and welfare; to state revenue
 320 collections; and to the economy of the state. The Legislature
 321 further finds that the penalties for illegal direct shipment of
 322 alcoholic beverages to residents of this state should be made
 323 adequate to ensure compliance with the Beverage Law and that the
 324 measures provided for in this section are fully consistent with
 325 the powers conferred upon the state by the Twenty-first
 326 Amendment to the United States Constitution.

327 (1) A ~~Any~~ person in the business of selling alcoholic
 328 beverages who knowingly and intentionally ships, or causes to be
 329 shipped, any alcoholic beverage from an out-of-state location
 330 directly to any person in this state who does not hold a valid
 331 manufacturer's or wholesaler's license or exporter's
 332 registration ~~issued by the division of Alcoholic Beverages and~~
 333 ~~Tobacco~~ or who is not a state-bonded warehouse is in violation
 334 of this section.

335 (2) A ~~Any~~ common carrier or permit carrier or any operator
 336 of a privately owned car, truck, bus, or other conveyance who

337 knowingly and intentionally transports any alcoholic beverage
 338 from an out-of-state location directly to any person in this
 339 state who does not hold a valid manufacturer's or wholesaler's
 340 license or exporter's registration or who is not a state-bonded
 341 warehouse is in violation of this section.

342 (3) A ~~Any~~ person found by the division to be in violation
 343 of subsection (1) shall be issued a notice, sent by certified
 344 mail, to show cause why a cease and desist order should not be
 345 issued. A ~~Any~~ person who violates subsection (1) within 2 years
 346 after receiving a cease and desist order or within 2 years after
 347 a prior conviction for violating subsection (1) commits a felony
 348 of the third degree, punishable as provided in s. 775.082, s.
 349 775.083, or s. 775.084.

350 (4) A ~~Any~~ common carrier or permit carrier, or ~~any~~
 351 operator of a privately owned car, truck, bus, or other
 352 conveyance, found by the division to be in violation of
 353 subsection (2) as a result of a second or subsequent delivery
 354 from the same source and location, within a 2-year period after
 355 the first delivery shall be issued a notice, sent by certified
 356 mail, to show cause why a cease and desist order should not be
 357 issued. A ~~Any~~ person who violates subsection (2) within 2 years
 358 after receiving the cease and desist order or within 2 years
 359 after a prior conviction for violating subsection (2) commits a
 360 felony of the third degree, punishable as provided in s.
 361 775.082, s. 775.083, or s. 775.084.

362 (5) This section does not apply to the direct shipment of
 363 wine by a licensed winery shipper to a person 21 years of age or
 364 older for household consumption, to the direct shipment of

365 sacramental alcoholic beverages to bona fide religious
 366 organizations as authorized by the division, or to possession of
 367 alcoholic beverages in accordance with s. 562.15(2).

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

370 564.045 Licensure as primary American source of supply.--

371 (2) TAX CONTROL LICENSURE REQUIRED.--For purposes of tax
 372 revenue control, a ~~no~~ person, firm, corporation, or other entity
 373 that ~~which~~ is the primary American source of supply ~~as defined~~
 374 ~~herein~~ may not sell, offer for sale, accept orders for the sale
 375 of, ship, or cause to be shipped into this state any vinous
 376 beverages to any distributor, ~~or~~ importer, or person for
 377 household consumption, as provided in s. 561.222, within this
 378 ~~the~~ state without having first obtained licensure as a primary
 379 American source of supply on forms provided by, and in such
 380 manner as prescribed by, the division. Except for applicants for
 381 a winery shipper's license, applicants for licensure as a
 382 primary American source of supply are ~~shall be~~ exempt from ~~the~~
 383 ~~requirements and qualification standards set forth in ss. 561.15~~
 384 and 561.17.

385 Section 6. Paragraph (a) of subsection (1) of section
 386 599.004, Florida Statutes, is amended to read:

387 599.004 Florida Farm Winery Program; registration; logo;
 388 fees.--

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

HB 245

2009

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

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

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

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

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

405 4. Make annual application to the department for
 406 recognition as a Florida Farm Winery, on forms provided by the
 407 department.

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

409 Section 7. If any provision of this act or its application
 410 to any person or circumstance is held invalid, the invalidity
 411 does not affect other provisions or applications of the act
 412 which can be given effect without the invalid provision or
 413 application, and to this end the provisions of this act are
 414 severable.

415 Section 8. This act shall take effect July 1, 2009.