

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; limiting the size of wine
12 containers; providing age requirements for those
13 purchasing wine for direct shipment or receiving direct
14 shipments of wine; providing a defense to certain actions;
15 requiring monthly reports by winery shipper licensees;
16 requiring the collection, remittance, and payment of
17 certain taxes by direct shippers; requiring certain
18 proceeds from discretionary sales surtaxes to be deposited
19 into an account in the Discretionary Sales Surtax Clearing
20 Trust Fund; requiring that winery shippers maintain
21 certain records for a certain period; providing for
22 jurisdiction; providing penalties; amending s. 561.14,
23 F.S.; classifying the winery shipper license; amending s.
24 561.54, F.S.; removing a provision requiring that the
25 licensee be aggrieved by a violation involving prohibited
26 delivery from without the state to have standing to bring
27 an action; exempting from such prohibition shipment of
28 wine by a winery shipper licensee; amending s. 561.545,

29 F.S.; exempting applicability of the prohibition against
 30 direct shipment of alcoholic beverages to the shipment of
 31 wine by a winery shipper licensee; amending s. 561.57,
 32 F.S.; requiring that Internet orders be construed as
 33 telephone orders; exempting common carriers, licensees, or
 34 licensees using common carriers as their agents from
 35 certain report filing requirements; requiring common
 36 carriers to verify the age of persons receiving shipments;
 37 providing a defense to certain actions; providing criteria
 38 for the defense; amending s. 599.004, F.S.; revising
 39 qualifications for the certification of Florida Farm
 40 Wineries; providing for severability; providing for
 41 nonimpairment of contracts; providing for rulemaking
 42 authority; providing an effective date.

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

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

48 561.585 Direct shipment of wine for personal
 49 consumption.--

50 (1) WINERY SHIPPER LICENSURE REQUIREMENTS.--

51 (a) Wineries may not ship or cause to be shipped any wine
 52 to individual consumers in this state unless licensed under this
 53 section. Notwithstanding any provision of the Beverage Law or
 54 any rule to the contrary, a person, firm, corporation, or other
 55 entity licensed as a winery shipper under this section may ship
 56 wine directly to any person who is at least 21 years of age for

57 personal use only and not for resale. To obtain or renew a
 58 winery shipper's license, an applicant must:

59 1. File an application with the division on forms
 60 prescribed by the division.

61 2. Qualify for licensure under ss. 561.15 and 561.17 or
 62 provide a true copy of a certification from the alcoholic
 63 beverage licensing authority of the Federal Government, or the
 64 state in which the winery is located, with license
 65 qualifications and procedures for that winery license which
 66 include, at a minimum:

67 a. Fingerprinting of applicants.

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

69 c. Disqualification for applicants convicted of:

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

72 (II) Within the past 15 years, any felony in this state or
 73 any other state; or

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

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

78 4. Provide to the division a true copy of its current wine
 79 manufacturer's license issued by this state or another state and
 80 a true copy of its current federal basic permit as a wine
 81 producer issued in accordance with the Federal Alcohol
 82 Administration Act.

83 5. Pay an annual license fee in the amount of \$100.

84 6. File with the division a surety bond acceptable to the

85 division in the sum of \$1,000 as surety for the payment of all
86 taxes; however, at the discretion of the division, when the
87 amount of business done by the winery shipper licensee is such
88 volume that a bond of less than \$1,000 will be adequate, the
89 division may accept a bond in a lesser sum but not less than
90 \$500. The surety bond currently on file with the division for a
91 winery pursuant to s. 561.37 is deemed to comply with this
92 requirement. Upon written request of the winery shipper, the
93 division shall review the total tax liability to the state by
94 the winery shipper and reduce the bond to 110 percent of the
95 prior year's total tax liability as a licensee under this
96 section but not less than \$500.

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

99 (c) Licensees shall comply with s. 564.05, which limits
100 the size of wine containers.

101 (d) Each winery shipper licensee must verify the
102 purchaser's age at the point of purchase before completing any
103 transaction and must refuse the sale of wine to any person under
104 21 years of age. Verification methods for purposes of this
105 paragraph may include receiving a copy, electronic or otherwise,
106 of a purchaser's driver's license or other acceptable
107 identification methods approved by the division.

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

111 (a) This package contains alcohol.

112 (b) An adult signature is required.

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

114 (3) SIGNATURE.--

115 (a) Each winery shipper licensee and common carrier shall
116 require, before delivery, that the signature of the addressee or
117 other person at least 21 years of age is obtained after
118 presentation of a valid driver's license, an identification card
119 issued under the provisions of s. 322.051, or, if the person is
120 physically handicapped, a comparable identification card issued
121 by another state which indicates the person's age, a passport,
122 or a United States Uniformed Services identification card.

123 (b) A winery shipper licensee or common carrier who
124 violates this subsection has a complete defense to any civil
125 action therefor, except for any administrative action by the
126 division, if, at the time the alcoholic beverage was sold,
127 given, delivered, or transferred, the person falsely evidenced
128 that he or she was of legal age to purchase or consume the
129 alcoholic beverage and the appearance of the person was such
130 that an ordinarily prudent person would believe him or her to be
131 of legal age to purchase or consume the alcoholic beverage and
132 if the winery shipper licensee or common carrier acted in good
133 faith and in reliance upon the representation and appearance of
134 the person in the belief that he or she was of legal age to
135 purchase or consume the alcoholic beverage and carefully checked
136 one of the following forms of identification with respect to the
137 person: a valid driver's license, an identification card issued
138 under the provisions of s. 322.051, or, if the person is
139 physically handicapped, a comparable identification card issued
140 by another state which indicates the person's age, a passport,

141 or a United States Uniformed Services identification card.

142 (4) MONTHLY REPORT.--

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

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

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

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

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

154 (b) The report required by this subsection is not required
 155 from a winery shipper licensee who files a monthly report
 156 pursuant to s. 561.55 containing all the information required in
 157 paragraph (a). The division may prescribe the format for
 158 submission of this information in order that duplicate filings
 159 are eliminated.

160 (5) TAXES.--

161 (a) Each winery shipper licensee shall collect and remit
 162 monthly to the Department of Revenue all sales taxes and pay to
 163 the division all excise taxes due on sales to persons in this
 164 state for the preceding month. Notwithstanding s. 212.0596, the
 165 amount of such taxes shall be calculated as if the sale took
 166 place at the location where the delivery occurred in this state.
 167 The proceeds of the discretionary sales surtaxes imposed under
 168 s. 212.055 shall be deposited into an account in the

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169 Discretionary Sales Surtax Clearing Trust Fund described in s.
170 212.054(4)(c) and distributed as provided therein.

171 (b) Each winery shipper licensee shall maintain for at
172 least 3 years after the date of delivery records of its
173 shipments into or within this state pursuant to this section,
174 including the names, addresses, amounts, and dates of all
175 shipments to persons in this state, and shall allow the
176 Department of Revenue or the division, upon request, to perform
177 an audit of such records.

178 (c) The cost of performing an audit under paragraph (b)
179 shall be assigned to the agency requesting the audit unless the
180 winery shipper licensee is found to be in material violation of
181 this subsection, in which case the cost of the audit shall be
182 assigned to the licensee.

183 (6) JURISDICTION.--Each winery shipper licensee is deemed
184 to have consented to the jurisdiction of the division or any
185 other state agency or local law enforcement agency and the
186 courts of this state concerning enforcement of this section and
187 any related laws or rules.

188 (7) PENALTIES.--

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

194 (b) A winery shipper licensee that knowingly and
195 intentionally ships, or causes to be shipped, wine to any person
196 in this state who is under 21 years of age commits a misdemeanor

197 of the first degree, punishable as provided in s. 775.082 or s.
 198 775.083.

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

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

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

210 561.14 License and registration classification.--Licenses
 211 and registrations referred to in the Beverage Law shall be
 212 classified as follows:

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

214 Section 3. Section 561.54, Florida Statutes, is amended to
 215 read:

216 561.54 Certain deliveries of beverages prohibited.--

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

225 (2) Any licensee ~~aggrieved by a violation of this section~~
 226 may bring an action in any court of competent jurisdiction to
 227 recover for the state all moneys obtained by common carriers or
 228 permit carriers; obtained by operators of privately owned cars,
 229 trucks, buses, or other conveyances; or obtained by out-of-state
 230 manufacturers or suppliers as a result of the delivery of
 231 alcoholic beverages in violation of this section, and may obtain
 232 a declaratory judgment that an act or practice violates this
 233 section and enjoin any person from violating this section. In
 234 addition to such relief, the court may order the confiscation
 235 and destruction of any alcoholic beverages delivered in
 236 violation of this section. In assessing damages, the court shall
 237 enter judgment against a defendant for three times the amount of
 238 the delivery charges proved or the fair market value of
 239 merchandise unlawfully brought into the state. Payment or
 240 satisfaction of any judgment under this section, other than for
 241 costs and attorney's fees, shall be made in its entirety to the
 242 state. In any successful action under this section, the court
 243 shall award the plaintiff costs and reasonable attorney's fees.

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

247 Section 4. Subsection (5) of section 561.545, Florida
 248 Statutes, is amended to read:

249 561.545 Certain shipments of beverages prohibited;
 250 penalties; exceptions.--The Legislature finds that the direct
 251 shipment of alcoholic beverages by persons in the business of
 252 selling alcoholic beverages to residents of this state in

253 violation of the Beverage Law poses a serious threat to the
 254 public health, safety, and welfare; to state revenue
 255 collections; and to the economy of the state. The Legislature
 256 further finds that the penalties for illegal direct shipment of
 257 alcoholic beverages to residents of this state should be made
 258 adequate to ensure compliance with the Beverage Law and that the
 259 measures provided for in this section are fully consistent with
 260 the powers conferred upon the state by the Twenty-first
 261 Amendment to the United States Constitution.

262 (5) This section does not apply to:

263 (a) The direct shipment of sacramental alcoholic beverages
 264 to bona fide religious organizations as authorized by the
 265 division;

266 (b) The ~~or to~~ possession of alcoholic beverages in
 267 accordance with s. 562.15(2); or

268 (c) The shipment of wine in accordance with s. 561.585.

269 Section 5. Subsections (1) and (6) of section 561.57,
 270 Florida Statutes, are amended to read:

271 561.57 Deliveries by licensees.--

272 (1) Vendors shall be permitted to make deliveries away
 273 from their places of business of sales actually made at the
 274 licensed place of business; provided, telephone or mail orders
 275 received at vendor's licensed place of business shall be
 276 construed as a sale actually made at the vendor's licensed place
 277 of business. For purposes of this section, Internet orders shall
 278 be construed as telephone orders.

279 (6) Common carriers are not required to have vehicle
 280 permits to transport alcoholic beverages. This section does not

281 prohibit any licensee from using a common carrier as his or her
282 agent to make deliveries of alcoholic beverages within the
283 state. Deliveries of alcoholic beverages by licensees or common
284 carriers used by licensees under this section are exempt from
285 the report filing requirements in s. 562.20. All common carriers
286 making deliveries under this section shall verify that any
287 person receiving alcoholic beverages is at least 21 years of age
288 upon the delivery of such alcoholic beverages, as prescribed in
289 division rules. Compliance with the prescribed age verification
290 measures in s. 561.585(3) gives the common carrier and the
291 licensee a complete defense to any civil action thereof, except
292 for any administrative action by the division, if, at the time
293 the alcoholic beverage was sold, given, delivered, or
294 transferred, the person falsely evidenced that he or she was of
295 legal age to purchase or consume the alcoholic beverage and the
296 appearance of the person was such that an ordinarily prudent
297 person would believe him or her to be of legal age to purchase
298 or consume the alcoholic beverage and if the licensee or common
299 carrier acted in good faith and in reliance upon the
300 representation and appearance of the person in the belief that
301 he or she was of legal age to purchase or consume the alcoholic
302 beverage and carefully checked one of the following forms of
303 identification with respect to the person: a valid driver's
304 license, an identification card issued under the provisions of
305 s. 322.051, or, if the person is physically handicapped, a
306 comparable identification card issued by another state which
307 indicates the person's age, a passport, or a United States
308 Uniformed Services identification card.

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

311 599.004 Florida Farm Winery Program; registration; logo;
 312 fees.--

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

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

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

325 2. Maintain a minimum of 10 acres of owned or managed
 326 vineyards in Florida.

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

329 4. Make annual application to the department for
 330 recognition as a Florida Farm Winery, on forms provided by the
 331 department.

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

333 (b) To maintain certification and recognition as a Florida
 334 Farm Winery, a winery must comply with the qualifications
 335 provided in this section. The Commissioner of Agriculture is
 336 authorized to officially recognize a certified Florida Farm

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337 Winery as a state tourist attraction.

338 Section 7. If any portion of this act is held
339 unconstitutional, it is the intent of the Legislature that the
340 courts disturb only as much of the regulatory system of this
341 state as is necessary to enforce the United States Constitution.

342 Section 8. Notwithstanding the provisions of s. 561.585,
343 Florida Statutes, contracts not otherwise prohibited by the
344 Beverage Law shall not be impaired.

345 Section 9. The Division of Alcoholic Beverages and Tobacco
346 of the Department of Business and Professional Regulation and
347 the Department of Revenue may adopt rules pursuant to ss.
348 120.536(1) and 120.54, Florida Statutes, to implement and
349 administer this act.

350 Section 10. This act shall take effect upon becoming a
351 law.