

By Senator Dockery

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

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30 wine by a winery shipper licensee; amending s.  
31 561.545, F.S.; exempting applicability of the  
32 prohibition against direct shipment of alcoholic  
33 beverages to the shipment of wine by a winery shipper  
34 licensee; amending s. 561.57, F.S.; requiring that  
35 Internet orders be construed as telephone orders;  
36 exempting common carriers, licensees, or licensees  
37 using common carriers as their agents from certain  
38 report filing requirements; requiring common carriers  
39 to verify the age of persons receiving shipments;  
40 providing a defense to certain actions; providing  
41 criteria for the defense; amending s. 599.004, F.S.;  
42 revising qualifications for the certification of  
43 Florida Farm Wineries; providing for severability;  
44 providing for nonimpairment of contracts; providing  
45 for rulemaking authority; providing an effective date.

46  
47 Be It Enacted by the Legislature of the State of Florida:

48  
49 Section 1. Section 561.585, Florida Statutes, is created to  
50 read:

51 561.585 Direct shipment of wine for personal consumption.-

52 (1) WINERY SHIPPER LICENSURE REQUIREMENTS.-

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

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

61 1. File an application with the division on forms  
62 prescribed by the division.

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

69 a. Fingerprinting of applicants.

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

71 c. Disqualification for applicants convicted of:

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

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

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

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

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

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

86 6. File with the division a surety bond acceptable to the  
87 division in the sum of \$1,000 as surety for the payment of all

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

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

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

103 (d) Each winery shipper licensee must verify the  
104 purchaser's age at the point of purchase before completing any  
105 transaction and must refuse the sale of wine to any person under  
106 21 years of age. Verification methods for purposes of this  
107 paragraph may include receiving a copy, electronic or otherwise,  
108 of a purchaser's driver's license or other acceptable  
109 identification methods approved by the division, or recording  
110 all purchasers' names, ages, and dates of birth. Such recordings  
111 shall be kept for a minimum of 3 years. Purchasers shall further  
112 be advised that purchasers must show to the person making the  
113 delivery one of the acceptable identification cards listed in  
114 paragraph (3) (a) before delivery.

115 (2) LABEL.—Each winery shipper licensee shall ensure that  
116 the outside shipping label on each package is conspicuous and

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117 includes the following components:

118 (a) This package contains alcohol.

119 (b) An adult signature is required.

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

121 (3) SIGNATURE.—

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

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

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146 physically handicapped, a comparable identification card issued  
147 by another state which indicates the person's age, a passport,  
148 or a United States Uniformed Services identification card.

149 (4) MONTHLY REPORT.—

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

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

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

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

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

161 (b) The report required by this subsection is not required  
162 from a winery shipper licensee who files a monthly report  
163 pursuant to s. 561.55 containing all the information required in  
164 paragraph (a). The division may prescribe the format for  
165 submission of this information in order that duplicate filings  
166 are eliminated.

167 (5) TAXES.—

168 (a) Each winery shipper licensee shall collect and remit  
169 monthly to the Department of Revenue all sales taxes and pay to  
170 the division all excise taxes due on sales to persons in this  
171 state for the preceding month. Notwithstanding s. 212.0596, the  
172 amount of such taxes shall be calculated as if the sale took  
173 place at the location where the delivery occurred in this state.  
174 The proceeds of the discretionary sales surtaxes imposed under

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175 s. 212.055 shall be deposited into an account in the  
176 Discretionary Sales Surtax Clearing Trust Fund described in s.  
177 212.054(4)(c) and distributed as provided therein.

178 (b) Each winery shipper licensee shall maintain for at  
179 least 3 years after the date of delivery records of its  
180 shipments into or within this state pursuant to this section,  
181 including the names, addresses, amounts, and dates of all  
182 shipments to persons in this state, and shall allow the  
183 Department of Revenue or the division, upon request, to perform  
184 an audit of such records.

185 (c) The cost of performing an audit under paragraph (b)  
186 shall be assigned to the agency requesting the audit unless the  
187 winery shipper licensee is found to be in material violation of  
188 this subsection, in which case the cost of the audit shall be  
189 assigned to the licensee.

190 (6) JURISDICTION.—Each winery shipper licensee is deemed to  
191 have consented to the jurisdiction of the division or any other  
192 state agency or local law enforcement agency and the courts of  
193 this state concerning enforcement of this section and any  
194 related laws or rules.

195 (7) PENALTIES.—

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

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

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204 of the first degree, punishable as provided in s. 775.082 or s.  
205 775.083.

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

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

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

217 561.14 License and registration classification.—Licenses  
218 and registrations referred to in the Beverage Law shall be  
219 classified as follows:

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

221 Section 3. Section 561.54, Florida Statutes, is amended to  
222 read:

223 561.54 Certain deliveries of beverages prohibited.—

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

232 (2) Any licensee ~~aggrieved by a violation of this section~~



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

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

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

256 561.545 Certain shipments of beverages prohibited;  
257 penalties; exceptions.—The Legislature finds that the direct  
258 shipment of alcoholic beverages by persons in the business of  
259 selling alcoholic beverages to residents of this state in  
260 violation of the Beverage Law poses a serious threat to the  
261 public health, safety, and welfare; to state revenue

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262 collections; and to the economy of the state. The Legislature  
263 further finds that the penalties for illegal direct shipment of  
264 alcoholic beverages to residents of this state should be made  
265 adequate to ensure compliance with the Beverage Law and that the  
266 measures provided for in this section are fully consistent with  
267 the powers conferred upon the state by the Twenty-first  
268 Amendment to the United States Constitution.

269 (5) This section does not apply to:

270 (a) The direct shipment of sacramental alcoholic beverages  
271 to bona fide religious organizations as authorized by the  
272 division;

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

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

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

278 561.57 Deliveries by licensees.—

279 (1) Vendors shall be permitted to make deliveries away from  
280 their places of business of sales actually made at the licensed  
281 place of business; provided, telephone or mail orders received  
282 at vendor's licensed place of business shall be construed as a  
283 sale actually made at the vendor's licensed place of business.  
284 For purposes of this section, Internet orders shall be construed  
285 as telephone orders.

286 (6) Common carriers are not required to have vehicle  
287 permits to transport alcoholic beverages. This section does not  
288 prohibit any licensee from using a common carrier as his or her  
289 agent to make deliveries of alcoholic beverages within the  
290 state. Deliveries of alcoholic beverages by licensees or common

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

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

318 599.004 Florida Farm Winery Program; registration; logo;  
319 fees.—

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

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

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

332 2. Maintain a minimum of 10 acres of owned or managed  
333 vineyards in Florida.

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

336 4. Make annual application to the department for  
337 recognition as a Florida Farm Winery, on forms provided by the  
338 department.

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

340 (b) To maintain certification and recognition as a Florida  
341 Farm Winery, a winery must comply with the qualifications  
342 provided in this section. The Commissioner of Agriculture is  
343 authorized to officially recognize a certified Florida Farm  
344 Winery as a state tourist attraction.

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

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349           Section 8. Notwithstanding the provisions of s. 561.585,  
350 Florida Statutes, contracts not otherwise prohibited by the  
351 Beverage Law shall not be impaired.

352           Section 9. The Division of Alcoholic Beverages and Tobacco  
353 of the Department of Business and Professional Regulation and  
354 the Department of Revenue may adopt rules pursuant to ss.  
355 120.536(1) and 120.54, Florida Statutes, to implement and  
356 administer this act.

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