

By Senator Pruitt

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1                   A bill to be entitled  
2           An act relating to the production and shipment of  
3           wine; creating s. 561.222, F.S.; authorizing the  
4           direct shipment of wine into and within this state for  
5           personal consumption only; providing legislative  
6           intent; requiring licensure of winery shippers by the  
7           Division of Alcoholic Beverages and Tobacco; providing  
8           license requirements; requiring recipients of a direct  
9           shipment of wine to be 21 years of age; requiring  
10          proof of age and the signature of a recipient;  
11          providing for the payment of taxes, a monthly report,  
12          and recordkeeping by winery shippers; providing  
13          requirements for common carriers that make deliveries  
14          of wine; providing administrative penalties for  
15          violations of the act; authorizing the division and  
16          the Department of Revenue to adopt rules; amending ss.  
17          561.24, 561.54, 561.545, and 564.045, F.S.; conforming  
18          provisions to changes made by the act; amending s.  
19          599.004, F.S.; revising requirements for qualifying as  
20          a certified Florida Farm Winery; providing for  
21          severability; providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1. Section 561.222, Florida Statutes, is created to  
26 read:

27           561.222 Winery shipper's license.—

28           (1) LEGISLATIVE INTENT.—The Legislature finds that the  
29 importation, distribution, and sale of alcoholic beverages

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

53 (2) LICENSE REQUIREMENTS.—

54 (a) A winery may directly ship wine to a resident of this  
55 state only under a winery shipper's license. A manufacturer of  
56 wine within this state or any other state which produces or  
57 sells less than 250,000 gallons of wine per year may ship wines  
58 manufactured by such winery to a resident of this state who is

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59 at least 21 years of age for that person's personal use, and not  
60 for resale, upon obtaining a winery shipper's license from the  
61 division. The manufacturer may obtain a winery shipper's license  
62 by:

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

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

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

70 4. Meeting the qualifications for licensure under s.  
71 561.15.

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

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

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

81 c. A copy of the appointment of a registered agent in this  
82 state for the acceptance of service of process. Winery shippers  
83 must maintain an appointed registered agent and must notify the  
84 division of a change in appointment.

85 d. A copy of the applicant's sales tax registration number  
86 issued by the Department of Revenue. An applicant must register  
87 and maintain a current sales tax registration with the

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88 department as a collector and remitter of state sales tax.

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

94 6. Filing with the division a surety bond in the sum of  
95 \$5,000 as surety for the payment of all taxes. If the division  
96 determines that the volume of business done by the manufacturer  
97 is such that a bond of less than \$5,000 is adequate, the  
98 division may accept a bond in a lesser sum, but not less than  
99 \$1,000. The surety bond currently on file with the division for  
100 a winery pursuant to s. 561.37 is deemed to comply with this  
101 requirement.

102 7. Paying a license fee of \$250 to the division. Winery  
103 shippers must maintain a current license as provided in this  
104 section which must be renewed annually by August 1 by paying a  
105 renewal fee of \$250 to the division.

106 (b) The division may issue or renew a license under this  
107 section only if the applicant or licensee:

108 1. Has not violated the conditions of licensure or the  
109 requirements or limitations of this section;

110 2. Produces or sells less than 250,000 gallons of wine  
111 annually;

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

116 4. Has not appointed a distributor in this state, unless

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117 the applicant provides to the division a copy of the applicant's  
118 contract with the applicant's appointed distributor containing  
119 terms to the contrary or a copy of a written notice sent to the  
120 distributor of the applicant's intent to obtain a winery  
121 shipper's license 1 year before applying for such license under  
122 this section.

123 (3) SHIPPING REQUIREMENTS.—

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

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

129 2. Conspicuously label the outside of each box of wine  
130 shipped with the following information:

131 a. The package contains alcohol.

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

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

134 d. The signature of the recipient is required.

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

138 Consumers may not purchase, and winery shippers may not sell,  
139 ship, or cause to be shipped to a single household, more than 12  
140 cases of no more than nine liters of wine per calendar year. A  
141 licensed winery shipper must make all of its deliveries under  
142 this section in vehicles owned or leased by such company or by  
143 common carrier. If such deliveries are made by common carrier,  
144 the licensed winery shipper shall require a common carrier  
145 contracting with the shipper for the delivery of the shipper's

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146 wine to obtain, before delivery, the signature of the addressee  
147 or other recipient who is at least 21 years of age after a valid  
148 driver's license, identification card issued by this state or  
149 another state, passport, or United States armed services  
150 identification card verifying the recipient's age is presented.  
151 The signature form must inform the recipient that his or her  
152 signature is an acknowledgement that such wine is for personal  
153 or household consumption and not for resale.

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

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

164 (4) TAXES.—A licensed winery shipper shall pay monthly to  
165 the Department of Revenue all sales taxes and to the division  
166 all state excise taxes due on sales to persons in this state for  
167 the preceding month. The amount of the taxes shall be calculated  
168 as if the sale took place in this state.

169 (5) MONTHLY REPORT.—

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

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

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

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

179       4. The amount of excise tax paid to the division for the  
180 shipments of wine to residents of this state during the  
181 preceding month.

182       5. Any other information that the division determines  
183 necessary to enforce this section.

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

189       (6) RECORDS.—All licensed winery shippers shall maintain  
190 the following records, electronically or otherwise, available  
191 for inspection by the Department of Revenue or the division upon  
192 request for a period of 3 years after the date of delivery, and  
193 shall allow the Department of Revenue or the division to perform  
194 an audit of the records, not to exceed the frequency of audits  
195 of licensees under the Beverage Law generally, but at least once  
196 per year. Upon such request, the licensee shall submit any  
197 related documents to that agency within 30 days.

198       (a) The license issued under this section.

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

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

207 (7) COMMON CARRIERS.—Each common carrier making deliveries  
208 of wine under this section shall:

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

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

220 (c) Refuse delivery if the recipient appears to be younger  
221 than 21 years of age; fails or refuses to present a valid  
222 driver's license, an identification card issued by this state or  
223 another state, a passport, or a United States armed services  
224 identification card verifying age; or fails or refuses to sign  
225 the signature form.

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

232 (8) PENALTIES.—The division may suspend or revoke the



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233 license of a winery shipper or impose fines against a winery  
234 shipper for any violation of this section. If the division has  
235 reasonable cause to believe that a winery shipper has acted in  
236 violation of this section, the division may issue a cease and  
237 desist order requiring the winery to cease shipments. The  
238 division may impose a civil penalty of up to \$50,000 against a  
239 winery who knowingly violates a cease and desist order issued  
240 under this section.

241 (9) RULEMAKING.—The Department of Revenue and the division  
242 may adopt rules to administer and enforce the applicable  
243 provisions of this section.

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

246 561.24 Licensing manufacturers as distributors or  
247 registered exporters prohibited; procedure for issuance and  
248 renewal of distributors' licenses and exporters' registrations.—

249 (5) Notwithstanding any of the provisions of the foregoing  
250 subsections, any corporation which holds a license as a  
251 distributor on June 3, 1947, shall be entitled to a renewal  
252 thereof, provided such corporation complies with all of the  
253 provisions of the Beverage Law of Florida, as amended, and of  
254 this section and establishes by satisfactory evidence to the  
255 division that, during the 6-month period next preceding its  
256 application for such renewal, of the total volume of its sales  
257 of spirituous liquors, in either dollars or quantity, not more  
258 than 40 percent of such spirituous liquors sold by it, in either  
259 dollars or quantity, were manufactured, rectified, or distilled  
260 by any corporation with which the applicant is affiliated,  
261 directly or indirectly, including any corporation which owns or

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262 controls in any way any stock in the applicant corporation or  
263 any corporation which is a subsidiary or affiliate of the  
264 corporation so owning stock in the applicant corporation. Any  
265 manufacturer of wine holding a license as a distributor on July  
266 1, 2009, ~~is the effective date of this act shall be entitled to~~  
267 a renewal of such license notwithstanding the provisions of  
268 subsections (1)-(5). ~~This section does not apply to any winery~~  
269 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

270 Section 3. Section 561.54, Florida Statutes, is amended to  
271 read:

272 561.54 Certain deliveries of beverages prohibited.—

273 (1) ~~It is unlawful for~~ Common or permit carriers; ;  
274 operators of privately owned cars, trucks, buses, or other  
275 conveyances; ; or out-of-state manufacturers or suppliers may not  
276 ~~to~~ make delivery from outside ~~without~~ the state of any alcoholic  
277 beverage to any person, association of persons, or corporation  
278 within the state, except to qualified manufacturers,  
279 distributors, and exporters ~~of such beverages so delivered~~ and  
280 to qualified bonded warehouses in this state.

281 (2) Any licensee aggrieved by a violation of this section  
282 may bring an action ~~in any court of competent jurisdiction~~ to  
283 recover for the state all moneys obtained by common carriers or  
284 permit carriers; ~~obtained~~ by operators of privately owned cars,  
285 trucks, buses, or other conveyances; or ~~obtained~~ by out-of-state  
286 manufacturers or suppliers as a result of the delivery of  
287 alcoholic beverages in violation of this section, and may obtain  
288 a declaratory judgment that an act or practice violates this  
289 section and enjoin any person from violating this section. In  
290 addition to such relief, the court may order the confiscation

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291 and destruction of any alcoholic beverages delivered in  
292 violation of this section. In assessing damages, the court shall  
293 enter judgment against a defendant for three times the amount of  
294 the delivery charges proved or the fair market value of  
295 merchandise unlawfully brought into the state. Payment or  
296 satisfaction of a ~~any~~ judgment under this section, other than  
297 for costs and attorney's fees, shall be made in its entirety to  
298 the state. In a ~~any~~ successful action under this section, the  
299 court shall award the plaintiff costs and reasonable attorney's  
300 fees.

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

304 Section 4. Section 561.545, Florida Statutes, is amended to  
305 read:

306 561.545 Certain shipments of beverages prohibited;  
307 penalties; exceptions.—The Legislature finds that the direct  
308 shipment of alcoholic beverages by persons in the business of  
309 selling alcoholic beverages to residents of this state in  
310 violation of the Beverage Law poses a serious threat to the  
311 public health, safety, and welfare; to state revenue  
312 collections; and to the economy of the state. The Legislature  
313 further finds that the penalties for illegal direct shipment of  
314 alcoholic beverages to residents of this state should be made  
315 adequate to ensure compliance with the Beverage Law and that the  
316 measures provided for in this section are fully consistent with  
317 the powers conferred upon the state by the Twenty-first  
318 Amendment to the United States Constitution.

319 (1) A ~~Any~~ person in the business of selling alcoholic

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320 beverages who knowingly and intentionally ships, or causes to be  
321 shipped, any alcoholic beverage from an out-of-state location  
322 directly to any person in this state who does not hold a valid  
323 manufacturer's or wholesaler's license or exporter's  
324 registration ~~issued by the division of Alcoholic Beverages and~~  
325 ~~Tobacco~~ or who is not a state-bonded warehouse is in violation  
326 of this section.

327 (2) A ~~Any~~ common carrier or permit carrier or any operator  
328 of a privately owned car, truck, bus, or other conveyance who  
329 knowingly and intentionally transports any alcoholic beverage  
330 from an out-of-state location directly to any person in this  
331 state who does not hold a valid manufacturer's or wholesaler's  
332 license or exporter's registration or who is not a state-bonded  
333 warehouse is in violation of this section.

334 (3) A ~~Any~~ person found by the division to be in violation  
335 of subsection (1) shall be issued a notice, sent by certified  
336 mail, to show cause why a cease and desist order should not be  
337 issued. Any person who violates subsection (1) within 2 years  
338 after receiving a cease and desist order or within 2 years after  
339 a prior conviction for violating subsection (1) commits a felony  
340 of the third degree, punishable as provided in s. 775.082, s.  
341 775.083, or s. 775.084.

342 (4) A ~~Any~~ common carrier or permit carrier, or ~~any~~ operator  
343 of a privately owned car, truck, bus, or other conveyance, found  
344 by the division to be in violation of subsection (2) as a result  
345 of a second or subsequent delivery from the same source and  
346 location, within a 2-year period after the first delivery shall  
347 be issued a notice, sent by certified mail, to show cause why a  
348 cease and desist order should not be issued. A ~~Any~~ person who

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349 violates subsection (2) within 2 years after receiving the cease  
350 and desist order or within 2 years after a prior conviction for  
351 violating subsection (2) commits a felony of the third degree,  
352 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

353 (5) This section does not apply to the direct shipment of  
354 wine by a licensed winery shipper to a person 21 years of age or  
355 older for household consumption, to the direct shipment of  
356 sacramental alcoholic beverages to bona fide religious  
357 organizations as authorized by the division, or to possession of  
358 alcoholic beverages in accordance with s. 562.15(2).

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

361 564.045 Licensure as primary American source of supply.—

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

376 Section 6. Paragraph (a) of subsection (1) of section  
377 599.004, Florida Statutes, is amended to read:

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378 599.004 Florida Farm Winery Program; registration; logo;  
379 fees.—

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

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

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

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

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

396 4. Make annual application to the department for  
397 recognition as a Florida Farm Winery, on forms provided by the  
398 department.

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

400 Section 7. If any provision of this act or its application  
401 to any person or circumstance is held invalid, the invalidity  
402 does not affect other provisions or applications of the act  
403 which can be given effect without the invalid provision or  
404 application, and to this end the provisions of this act are  
405 severable.

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