

By the Committee on Regulated Industries; and Senators Pruitt
and Fasano

580-02944-09

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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 of a recipient; providing for the payment
11 of taxes, a monthly report, and recordkeeping by
12 winery shippers; providing requirements for common
13 carriers that make deliveries of wine; providing
14 administrative and criminal penalties for violations
15 of the act; authorizing the division and the
16 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

580-02944-09

2009764c1

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

580-02944-09

2009764c1

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

580-02944-09

2009764c1

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

580-02944-09

2009764c1

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 signature of the recipient is required.

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

137 Consumers may not purchase, and winery shippers may not sell,
138 ship, or cause to be shipped to a single household, more than 12

139 cases of no more than nine liters of wine per calendar year. A

140 licensed winery shipper must make all of its deliveries under

141 this section in vehicles owned or leased by such company or by

142 common carrier. If such deliveries are made by common carrier,

143 the licensed winery shipper shall require a common carrier

144 contracting with the shipper for the delivery of the shipper's

145 wine to obtain, before delivery, the signature of the addressee

580-02944-09

2009764c1

146 or other recipient who is at least 21 years of age after a valid
147 driver's license, identification card issued by this state or
148 another state, passport, or United States armed services
149 identification card verifying the recipient's age is presented.

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

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

160 (4) TAXES.—A licensed winery shipper shall pay monthly to
161 the Department of Revenue all sales taxes pursuant to s. 212.15
162 and to the division all state excise taxes due for sales to
163 persons in this state for the preceding month. Notwithstanding
164 s. 212.0596, the amount of such taxes shall be calculated as if
165 the sales took place at the location at which the delivery
166 occurred in this state. The proceeds of the discretionary sales
167 surtax imposed under s. 212.055 shall be deposited into the
168 Discretionary Sales Surtax Clearing Trust Fund described in s.
169 212.054(4)(c) and distributed as provided therein.

170 (5) MONTHLY REPORT.—

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

174 1. Whether any wine was shipped to residents of this state

580-02944-09

2009764c1

175 during the preceding month.

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

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

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

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

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

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

199 (a) The license issued under this section.

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

580-02944-09

2009764c1

204 and brands of wine shipped.

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

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

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

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

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

227 (d) Obtain the recipient's name; maintain such records and
228 the shipping order, including the name and address of the person
229 to whom the wine is shipped, for 3 years; and make the records
230 available for inspection upon request by the division.

231 (8) PENALTIES.—In addition to any other penalty provided in
232 the Beverage Law, the division may suspend or revoke a winery

580-02944-09

2009764c1

233 shipper license or impose fines on the winery shipper licensee
234 for any violation of this section.

235 (a) A winery shipper licensee that ships, or causes to be
236 shipped, wine to any person in this state who is under 21 years
237 of age commits a misdemeanor of the first degree, punishable as
238 provided in s. 775.082 or s. 775.083.

239 (b) Any common carrier, permit carrier, or other commercial
240 conveyance that delivers wine directly to any person in this
241 state who is under 21 years of age commits a misdemeanor of the
242 first degree, punishable as provided in s. 775.082 or s.
243 775.083.

244 (c) A person who obtains wine from a winery shipper
245 licensee in violation of this section commits a misdemeanor of
246 the second degree, punishable as provided in s. 775.082 or s.
247 775.083.

248 (9) RULEMAKING.—The Department of Revenue and the division
249 may adopt rules to administer and enforce the applicable
250 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' registrations.—

256 (5) Notwithstanding any of the provisions of the foregoing
257 subsections, any corporation which holds a license as a
258 distributor on June 3, 1947, shall be entitled to a renewal
259 thereof, provided such corporation complies with all of the
260 provisions of the Beverage Law of Florida, as amended, and of
261 this section and establishes by satisfactory evidence to the

580-02944-09

2009764c1

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

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

279 561.54 Certain deliveries of beverages prohibited.—

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

288 (2) Any licensee aggrieved by a violation of this section
289 may bring an action ~~in any court of competent jurisdiction~~ to
290 recover for the state all moneys obtained by common carriers or

580-02944-09

2009764c1

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

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

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

313 561.545 Certain shipments of beverages prohibited;
314 penalties; exceptions.—The Legislature finds that the direct
315 shipment of alcoholic beverages by persons in the business of
316 selling alcoholic beverages to residents of this state in
317 violation of the Beverage Law poses a serious threat to the
318 public health, safety, and welfare; to state revenue
319 collections; and to the economy of the state. The Legislature

580-02944-09

2009764c1

320 further finds that the penalties for illegal direct shipment of
321 alcoholic beverages to residents of this state should be made
322 adequate to ensure compliance with the Beverage Law and that the
323 measures provided for in this section are fully consistent with
324 the powers conferred upon the state by the Twenty-first
325 Amendment to the United States Constitution.

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

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

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

580-02944-09

2009764c1

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

360 (5) This section does not apply to the direct shipment of
361 wine by a licensed winery shipper to a person 21 years of age or
362 older for household consumption, to the direct shipment of
363 sacramental alcoholic beverages to bona fide religious
364 organizations as authorized by the division, or to possession of
365 alcoholic beverages in accordance with s. 562.15(2).

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

368 564.045 Licensure as primary American source of supply.—

369 (2) TAX CONTROL LICENSURE REQUIRED.—For purposes of tax
370 revenue control, a ~~no~~ person, firm, corporation, or other entity
371 that ~~which~~ is the primary American source of supply ~~as defined~~
372 ~~herein~~ may not sell, offer for sale, accept orders for the sale
373 of, ship, or cause to be shipped into this state any vinous
374 beverages to any distributor, ~~or~~ importer, or person for
375 household consumption, as provided in s. 561.222, within this
376 ~~the~~ state without having first obtained licensure as a primary
377 American source of supply on forms provided by, and in such

580-02944-09

2009764c1

378 manner as prescribed by, the division. Except for applicants for
379 a winery shipper's license, applicants for licensure as a
380 primary American source of supply are ~~shall be~~ exempt from the
381 ~~requirements and qualification standards set forth in~~ ss. 561.15
382 and 561.17.

383 Section 6. Paragraph (a) of subsection (1) of section
384 599.004, Florida Statutes, is amended to read:

385 599.004 Florida Farm Winery Program; registration; logo;
386 fees.—

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

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

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

399 2. Maintain a minimum of 10 acres of owned or managed land
400 ~~vineyards~~ in Florida which produces commodities used in the
401 production of wine.

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

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

580-02944-09

2009764c1

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

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

414 Section 8. This act shall take effect October 1, 2009.