

HB 837

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

21  
 22   Be It Enacted by the Legislature of the State of Florida:

23  
 24           Section 1. Section 561.222, Florida Statutes, is created  
 25   to read:

26           561.222 Winery shipper's license.—

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

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

52 (2) LICENSE REQUIREMENTS.—

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

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57 manufactured by such winery to a resident of this state who is  
58 at least 21 years of age for that person's personal use, and not  
59 for resale, upon obtaining a winery shipper's license from the  
60 division. The manufacturer may obtain a winery shipper's license  
61 by:

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

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

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

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

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

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

79 b. A copy of its current state license to manufacture  
80 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  
 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 fee of \$250 to the division.

106 (b) The division may issue a license under this section  
 107 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

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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  
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 at least 1 year before applying for such  
122 license under this section.

123 (3) SHIPPING REQUIREMENTS.—

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

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  
135 cases containing no more than nine liters each of its wine per  
136 calendar year to any one household address and any household  
137 member's work address in this state. Consumers may not purchase,  
138 and winery shippers may not sell, ship, or cause to be shipped  
139 to a single household, more than 12 cases of no more than nine  
140 liters of wine per calendar year. A licensed winery shipper must

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141 make all of its deliveries under this section in vehicles owned  
142 or leased by such company or by common carrier. If such  
143 deliveries are made by common carrier, the licensed winery  
144 shipper shall require a common carrier contracting with the  
145 shipper for the delivery of the shipper's wine to obtain, before  
146 delivery, the signature of the addressee or other recipient who  
147 is at least 21 years of age after a valid driver's license,  
148 identification card issued by this state or another state,  
149 passport, or United States armed services identification card  
150 verifying the recipient's age is presented.

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

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

161 (4) TAXES.—A licensed winery shipper shall pay monthly to  
162 the Department of Revenue all sales taxes pursuant to s. 212.15  
163 and to the division all state excise taxes due for sales to  
164 persons in this state for the preceding month. Notwithstanding  
165 s. 212.0596, the amount of such taxes shall be calculated as if  
166 the sales took place at the location at which the delivery  
167 occurred in this state. The proceeds of the discretionary sales  
168 surtax imposed under s. 212.055 shall be deposited into 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 (5) MONTHLY REPORT.—

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

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

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

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

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

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

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

191 (6) RECORDS.—All licensed winery shippers shall maintain  
 192 the following records, electronically or otherwise, available  
 193 for inspection by the Department of Revenue or the division upon  
 194 request for a period of 3 years after the date of delivery, and  
 195 shall allow the Department of Revenue or the division to perform  
 196 an audit of the records, not to exceed the frequency of audits

197 of licensees under the Beverage Law generally, but at least once  
 198 per year. Upon such request, the licensee shall submit any  
 199 related documents to that agency within 30 days.

200 (a) The license issued under this section.

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

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

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

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

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

222 (c) Refuse delivery if the recipient appears to be younger  
 223 than 21 years of age; fails or refuses to present a valid  
 224 driver's license, an identification card issued by this state or



225 another state, a passport, or a United States armed services  
 226 identification card verifying age; or fails or refuses to sign  
 227 the signature form.

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

232 (8) PENALTIES.—In addition to any other penalty provided  
 233 in the Beverage Law, the division may suspend or revoke a winery  
 234 shipper license or impose fines on the winery shipper licensee  
 235 for any violation of this section under its authority in s.  
 236 561.29, as well as any other cause authorized in that section.

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

241 (b) Any common carrier, permit carrier, or other  
 242 commercial conveyance that delivers wine directly to any person  
 243 in this state who is younger than 21 years of age commits a  
 244 misdemeanor of the second degree, punishable as provided in s.  
 245 775.082 or s. 775.083.

246 (c) A person who obtains wine from a winery shipper  
 247 licensee in violation of this section commits a misdemeanor of  
 248 the second degree, punishable as provided in s. 775.082 or s.  
 249 775.083.

250 (d) A person who provides a winery shipper with a false  
 251 date of birth commits a misdemeanor of the second degree,  
 252 punishable as provided in s. 775.082 or s. 775.083.

253           (9) RULEMAKING.—The Department of Revenue and the division  
 254 may adopt rules to administer and enforce the applicable  
 255 provisions of this section.

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

258           561.24 Licensing manufacturers as distributors or  
 259 registered exporters prohibited; procedure for issuance and  
 260 renewal of distributors' licenses and exporters' registrations.—

261           (5) Notwithstanding any of the provisions of the foregoing  
 262 subsections, any corporation that ~~which~~ holds a license as a  
 263 distributor on June 3, 1947, is ~~shall be~~ entitled to a renewal  
 264 thereof, provided such corporation complies with all of the  
 265 provisions of the Beverage Law of Florida, as amended, and of  
 266 this section and establishes by satisfactory evidence to the  
 267 division that, during the 6-month period next preceding its  
 268 application for such renewal, of the total volume of its sales  
 269 of spirituous liquors, in either dollars or quantity, not more  
 270 than 40 percent of such spirituous liquors sold by it, in either  
 271 dollars or quantity, were manufactured, rectified, or distilled  
 272 by any corporation with which the applicant is affiliated,  
 273 directly or indirectly, including any corporation that ~~which~~  
 274 owns or controls in any way any stock in the applicant  
 275 corporation or any corporation that ~~which~~ is a subsidiary or  
 276 affiliate of the corporation so owning stock in the applicant  
 277 corporation. Any manufacturer of wine holding a license as a  
 278 distributor on July 1, 2011, ~~is the effective date of this act~~  
 279 ~~shall be~~ entitled to a renewal of such license notwithstanding  
 280 the provisions of subsections (1)-(5). ~~This section does not~~

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281 ~~apply to any winery qualifying as a certified Florida Farm~~  
 282 ~~Winery under s. 599.004.~~

283 Section 3. Section 561.54, Florida Statutes, is amended to  
 284 read:

285 561.54 Certain deliveries of beverages prohibited.—

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

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

309 satisfaction of a ~~any~~ judgment under this section, other than  
 310 for costs and attorney's fees, shall be made in its entirety to  
 311 the state. In a ~~any~~ successful action under this section, the  
 312 court shall award the plaintiff costs and reasonable attorney's  
 313 fees.

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

317 Section 4. Section 561.545, Florida Statutes, is amended  
 318 to read:

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

332 (1) A ~~Any~~ person in the business of selling alcoholic  
 333 beverages who knowingly and intentionally ships, or causes to be  
 334 shipped, any alcoholic beverage from an out-of-state location  
 335 directly to any person in this state who does not hold a valid  
 336 manufacturer's or wholesaler's license or exporter's

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337 | registration ~~issued by the division of Alcoholic Beverages and~~  
 338 | ~~Tobacco~~ or who is not a state-bonded warehouse is in violation  
 339 | of this section.

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

347 |       (3) A ~~Any~~ person found by the division to be in violation  
 348 | of subsection (1) shall be issued a notice, sent by certified  
 349 | mail, to show cause why a cease and desist order should not be  
 350 | issued. Any person who violates subsection (1) within 2 years  
 351 | after receiving a cease and desist order or within 2 years after  
 352 | a prior conviction for violating subsection (1) commits a felony  
 353 | of the third degree, punishable as provided in s. 775.082, s.  
 354 | 775.083, or s. 775.084.

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

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365 felony of the third degree, punishable as provided in s.  
 366 775.082, s. 775.083, or s. 775.084.

367 (5) This section does not apply to the direct shipment of  
 368 wine by a licensed winery shipper to a person 21 years of age or  
 369 older for household consumption, to the direct shipment of  
 370 sacramental alcoholic beverages to bona fide religious  
 371 organizations as authorized by the division, or to possession of  
 372 alcoholic beverages in accordance with s. 562.15(2).

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

375 564.045 Licensure as primary American source of supply.—

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

390 Section 6. Paragraph (a) of subsection (1) of section  
 391 599.004, Florida Statutes, is amended to read:

392 599.004 Florida Farm Winery Program; registration; logo;

393 fees.—

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

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

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

406 2. Maintain a minimum of 10 acres of owned or managed land  
 407 ~~vineyards~~ in Florida which produces commodities used in the  
 408 production of wine.

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

411 4. Make annual application to the department for  
 412 recognition as a Florida Farm Winery, on forms provided by the  
 413 department.

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

415 Section 7. If any provision of this act or its application  
 416 to any person or circumstance is held invalid, the invalidity  
 417 does not affect other provisions or applications of the act  
 418 which can be given effect without the invalid provision or  
 419 application, and to this end the provisions of this act are  
 420 severable.

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Section 8. This act shall take effect July 1, 2011.