

By Senator Negrón

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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 at least 21 years of age;  
 10          requiring proof of age of a recipient; providing for  
 11          the payment of taxes, a monthly report, and  
 12          recordkeeping by winery shippers; providing  
 13          requirements for common carriers that make deliveries  
 14          of wine; providing administrative and criminal  
 15          penalties for violations of the act; authorizing the  
 16          division and the Department of Revenue to adopt rules;  
 17          amending ss. 561.24, 561.54, 561.545, and 564.045,  
 18          F.S.; conforming provisions to changes made by the  
 19          act; amending s. 599.004, F.S.; revising requirements  
 20          for qualifying as a certified Florida Farm Winery;  
 21          providing for severability; providing an effective  
 22          date.

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

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

28           561.222 Winery shipper's license.—  
 29           (1) LEGISLATIVE INTENT.—The Legislature finds that the

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

54 (2) LICENSE REQUIREMENTS.—

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

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

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

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

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

71 4. Meeting the qualifications for licensure under s.  
72 561.15.

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

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

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

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

86 d. A copy of the applicant's sales tax registration number  
87 issued by the Department of Revenue. An applicant must register

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88 and maintain a current sales tax registration with the  
89 department as a collector and remitter of state sales tax.

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

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

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

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

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

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

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

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117 4. Has not appointed a distributor in this state, unless  
118 the applicant provides to the division a copy of the applicant's  
119 contract with the applicant's appointed distributor containing  
120 terms to the contrary or a copy of a written notice sent to the  
121 distributor of the applicant's intent to obtain a winery  
122 shipper's license at least 1 year before applying for such  
123 license under this section.

124 (3) SHIPPING REQUIREMENTS.-

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

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

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

132 a. The package contains alcohol.

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

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

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146 shipper for the delivery of the shipper's wine to obtain, before  
147 delivery, the signature of the addressee or other recipient who  
148 is at least 21 years of age after a valid driver's license,  
149 identification card issued by this state or another state,  
150 passport, or United States armed services identification card  
151 verifying the recipient's age is presented.

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

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

162 (4) TAXES.—A licensed winery shipper shall pay monthly to  
163 the Department of Revenue all sales taxes pursuant to s. 212.15  
164 and to the division all state excise taxes due for sales to  
165 persons in this state for the preceding month. Notwithstanding  
166 s. 212.0596, the amount of such taxes shall be calculated as if  
167 the sales took place at the location at which the delivery  
168 occurred in this state. The proceeds of the discretionary sales  
169 surtax imposed under s. 212.055 shall be deposited into the  
170 Discretionary Sales Surtax Clearing Trust Fund described in s.  
171 212.054(4)(c) and distributed as provided therein.

172 (5) MONTHLY REPORT.—

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

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175 division:

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

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

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

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

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

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

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

201 (a) The license issued under this section.

202 (b) A record of all wines ordered, sold, and shipped to  
203 residents of this state, including the name, address, and date

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204 of birth of the purchaser; the name and address of the person to  
205 whom the wine is shipped; and the date of shipment, quantity,  
206 and brands of wine shipped.

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

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

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

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

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

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



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233       (8) PENALTIES.—In addition to any other penalty provided in  
234 the Beverage Law, the division may suspend or revoke a winery  
235 shipper license or impose fines on the winery shipper licensee  
236 for any violation of this section under its authority in s.  
237 561.29, as well as any other cause authorized in that section.

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

242       (b) Any common carrier, permit carrier, or other commercial  
243 conveyance that delivers wine directly to any person in this  
244 state who is younger than 21 years of age commits a misdemeanor  
245 of the second degree, punishable as provided in s. 775.082 or s.  
246 775.083.

247       (c) A person who obtains wine from a winery shipper  
248 licensee in violation of this section commits a misdemeanor of  
249 the second degree, punishable as provided in s. 775.082 or s.  
250 775.083.

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

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

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

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

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262 (5) Notwithstanding any of the provisions of the foregoing  
 263 subsections, any corporation that ~~which~~ holds a license as a  
 264 distributor on June 3, 1947, is ~~shall be~~ entitled to a renewal  
 265 thereof, provided such corporation complies with all of the  
 266 provisions of the Beverage Law of Florida, as amended, and of  
 267 this section and establishes by satisfactory evidence to the  
 268 division that, during the 6-month period next preceding its  
 269 application for such renewal, of the total volume of its sales  
 270 of spirituous liquors, in either dollars or quantity, not more  
 271 than 40 percent of such spirituous liquors sold by it, in either  
 272 dollars or quantity, were manufactured, rectified, or distilled  
 273 by any corporation with which the applicant is affiliated,  
 274 directly or indirectly, including any corporation that ~~which~~  
 275 owns or controls in any way any stock in the applicant  
 276 corporation or any corporation that ~~which~~ is a subsidiary or  
 277 affiliate of the corporation so owning stock in the applicant  
 278 corporation. Any manufacturer of wine holding a license as a  
 279 distributor on July 1, 2011, is ~~the effective date of this act~~  
 280 ~~shall be~~ entitled to a renewal of such license notwithstanding  
 281 the provisions of subsections (1)-(5). ~~This section does not~~  
 282 ~~apply to any winery qualifying as a certified Florida Farm~~  
 283 ~~Winery under s. 599.004.~~

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

286 561.54 Certain deliveries of beverages prohibited.—

287 (1) ~~It is unlawful for~~ Common or permit carriers; it  
 288 operators of privately owned cars, trucks, buses, or other  
 289 conveyances; or out-of-state manufacturers or suppliers may not  
 290 ~~to~~ make delivery from outside ~~without~~ the state of any alcoholic

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291 beverage to any person, association of persons, or corporation  
292 within the state, except to qualified manufacturers,  
293 distributors, and exporters ~~of such beverages so delivered~~ and  
294 to qualified bonded warehouses in this state.

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

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

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

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

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

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

348           (3) A ~~Any~~ person found by the division to be in violation

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349 of subsection (1) shall be issued a notice, sent by certified  
350 mail, to show cause why a cease and desist order should not be  
351 issued. Any person who violates subsection (1) within 2 years  
352 after receiving a cease and desist order or within 2 years after  
353 a prior conviction for violating subsection (1) commits a felony  
354 of the third degree, punishable as provided in s. 775.082, s.  
355 775.083, or s. 775.084.

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

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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 winery  
401 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

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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.

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