

By the Committee on Commerce and Tourism; and Senator Negron

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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 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 must 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 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
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 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 cases
135 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
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

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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 distributor
157 for purchase and sale per calendar year the same brands and
158 quantities of wine shipped per calendar year under this section,
159 unless its contract with its appointed distributor contains
160 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 and collected by licensed winery
169 shippers located outside this state 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; ;
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.