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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/26/2008	.	
	.	
	.	

1 The Committee on Finance and Tax (Geller) recommended the
 2 following **amendment**:

3
 4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
 6 and insert:

7
 8 Section 1. Section 561.222, Florida Statutes, is created to
 9 read:

10 561.222 Winery shipper's license.--

11 (1) LEGISLATIVE INTENT.--The Legislature finds that the
 12 importation, distribution, and sale of alcoholic beverages
 13 require strict regulation in order to promote temperance by
 14 discouraging consumption by underage persons and abusive
 15 consumption by adults, to ensure orderly markets having
 16 transparent and accountable sales, and to facilitate the
 17 collection of excise and sales taxes critical to the fiscal

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18 health of the state. The Legislature finds that these purposes
19 are best achieved through the state's comprehensive system of
20 licensing and regulation, including the three-tier system of
21 alcohol distribution which has been the law of this state since
22 the repeal of Prohibition. The Legislature finds that the
23 limitations contained in this section for the uniform regulation
24 of direct shipping by small, in-state and out-of-state farm
25 wineries are the least discriminatory means of protecting the
26 public and state revenues. The Legislature continues to maintain
27 its interest in having the state exercise its police power,
28 ensure enforcement of the beverage laws, and thereby regulate the
29 transportation, importation, distribution, and sale of alcoholic
30 beverages to the maximum extent allowed by the state and federal
31 constitutions. The Legislature reaffirms its policy prohibiting
32 manufacturers from causing the direct shipment of beer and
33 spirits to individuals in this state and its intent to uphold and
34 preserve against constitutional challenge all of the laws of this
35 state relating to alcoholic beverages.

36 (2) LICENSE REQUIREMENTS.--

37 (a) A winery may directly ship wine to a resident of this
38 state only under a winery shipper's license. A manufacturer of
39 wine within this state or any other state who manufactures no
40 more than 250,000 gallons of wine per year may ship wines that
41 the winery manufactures to a resident of this state who is at
42 least 21 years of age for that person's personal use, and not for
43 resale, upon obtaining a winery shipper's license from the
44 division. The manufacturer may obtain a winery shipper's license
45 by:

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



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

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

53 4. Meeting the qualifications for licensure under s.
54 561.15.

55 5. Filing an application with the division in accordance
56 with s. 561.17. The information required by the division in the
57 application must be the same as the information required by the
58 division for licensure as a wine manufacturer. The applicant
59 shall also include with the application:

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

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

63 c. A copy of the appointment of a registered agent in this
64 state for the acceptance of service of process. Winery shippers
65 must maintain an appointed registered agent and must notify the
66 division of a change in appointment.

67 d. A copy of the applicant's sales tax registration number
68 issued by the Department of Revenue. An applicant must register
69 and maintain a current sales tax registration with the department
70 as a collector and remitter of state sales tax.

71 e. An affirmation that the applicant consents to the
72 jurisdiction of the courts of this state and its agencies for the
73 enforcement of this section and any related laws or rules,
74 including actions by third parties for violations of this
75 section.

76 6. Filing with the division a surety bond in the sum of
77 \$5,000 as surety for the payment of all taxes. If the division

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78 determines that the volume of business done by the manufacturer
79 is such that a bond of less than \$5,000 is adequate, the division
80 may accept a bond in a lesser sum, but not less than \$1,000. The
81 surety bond currently on file with the division for a winery
82 pursuant to s. 561.37 is deemed to comply with this requirement.

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

87 (b) The division may not issue or renew a license under
88 this section if the applicant or licensee:

89 1. Has violated the conditions of licensure, requirements,
90 or limitations of this section;

91 2. Produces more than 250,000 gallons of wine annually;

92 3. Has a subsidiary or is otherwise affiliated with a
93 winery whose production totals are greater than 250,000 gallons
94 per year; or

95 4. Has appointed a distributor in this state, unless the
96 applicant provides to the division a copy of the applicant's
97 contract with the applicant's appointed distributor showing terms
98 to the contrary or a copy of a written notice sent to the
99 distributor of the applicant's intent to obtain a winery
100 shipper's license 1 year before applying for such license under
101 this section.

102 (3) SHIPPING REQUIREMENTS.--

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

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



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108 2. Conspicuously label the outside of each box of wine
109 shipped with the following information:

110 a. The package contains alcohol.

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

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

113 d. The signature of the recipient is required.

114 3. Refuse to ship or cause to be shipped more than four
115 cases containing more than nine liters each of its wine per
116 calendar year to any one household address in this state.
117 Consumers may not purchase, and winery shippers may not sell,
118 ship, or cause to be shipped to a single household, more than
119 four cases of more than nine liters of wine per calendar year.

120 (b) A licensed winery shipper shall require a common
121 carrier contracting with the shipper for the delivery of the
122 shipper's wine to obtain, before delivery, the signature of the
123 addressee or other recipient who is at least 21 years of age
124 after a valid driver's license, an identification card issued by
125 this state or another state, a passport, or a United States armed
126 services identification card verifying age is presented. The
127 signature form must inform the recipient that his or her
128 signature is an acknowledgment that such wine is for personal or
129 household consumption and not for resale.

130 (c) A licensed winery shipper must obtain from a common
131 carrier contracting for the delivery of the shipper's wine the
132 common carrier's written policy declaring that the common carrier
133 shall, before delivering any wine, adhere to the requirements of
134 paragraph (b).

135 (d) A licensed winery shipper must offer to its distributor
136 for purchase and sale per calendar year the same brands and
137 quantities of wine shipped per calendar year under this section,

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138 unless its contract with its appointed distributor contains terms
139 to the contrary.

140 (4) TAXES.--A licensed winery shipper shall pay monthly to
141 the Department of Revenue all sales taxes and to the division all
142 state excise taxes due on sales to persons in this state for the
143 preceding month. The amount of the taxes shall be calculated as
144 if the sale took place in this state.

145 (5) MONTHLY REPORT.--A licensed winery shipper shall report
146 to the division, by the 10th day of each month, on forms
147 prescribed by the division:

148 (a) Whether any wine was shipped to residents of this state
149 during the preceding month.

150 (b) The quantity and brands of wine shipped to residents of
151 this state during the preceding month.

152 (c) The total price of wine shipped to residents of this
153 state during the preceding month.

154 (d) The amount of excise tax paid to the division for the
155 shipments of wine to residents of this state during the preceding
156 month.

157 (e) Any other information that the division determines
158 necessary to enforce this section.

159 (f) The report required by this subsection is not required
160 from a winery shipper licensee who files a monthly report
161 pursuant to s. 561.55 containing all information required in
162 paragraph (a). The division is authorized to prescribe the format
163 for submission of this information for the purpose of eliminating
164 duplicate filings.

165 (6) RECORDS.--All licensed winery shippers shall maintain
166 the following records, electronically or otherwise, available for
167 inspection by the Department of Revenue or the division upon



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168 request for a period of 3 years after the date of delivery, and
169 shall allow the Department of Revenue or the division to perform
170 an audit of the records, not to exceed the frequency of audits of
171 licensees of the Beverage Law generally, but at least once per
172 year. Upon such request, the licensee shall submit any related
173 documents to that agency within 30 days.

174 (a) The license issued under this section.

175 (b) A record of all wines ordered, sold, or shipped to
176 residents of this state including the name, address, and date of
177 birth of the purchaser, the name and address of the person to
178 whom the wine is shipped, and the date of shipment, quantity, and
179 brands of wine shipped.

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

183 (7) COMMON CARRIERS.--Each common carrier making deliveries
184 of wine under this section shall:

185 (a) Register with the division and acknowledge the
186 requirements contained in this section for the direct shipment of
187 wine and the carrier's intent to deliver wines in accordance with
188 this section.

189 (b) Maintain a written wine-delivery policy stating that
190 the common carrier shall, before delivering any wine, obtain the
191 signature of the recipient after a valid driver's license, an
192 identification card issued by this state or another state, a
193 passport, or a United States armed services identification card
194 is presented verifying that the recipient is 21 years of age or
195 older.

196 (c) Refuse delivery if the recipient appears to be younger
197 than 21 years of age; fails or refuses to present a valid



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198 driver's license, an identification card issued by this state or
199 another state, a passport, or a United States armed services
200 identification card verifying age; or fails or refuses to sign
201 the signature form.

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

208 (8) PENALTIES.--In addition to the penalties provided by s.
209 561.545, knowingly or intentionally shipping, causing to be
210 shipped, or delivering wine to a person younger than 21 years of
211 age is a third-degree felony, punishable as provided in s.
212 775.082, s. 775.083, or s. 775.084. The division may suspend or
213 revoke the license of a winery shipper or impose fines against a
214 winery shipper for any violation of this section. If the division
215 has reasonable cause to believe that a winery shipper has acted
216 in violation of this section, the division may issue a cease and
217 desist order requiring the winery to cease shipments. The
218 division may impose a civil penalty of up to \$50,000 against a
219 winery who knowingly violates a cease and desist order issued
220 under this section.

221 (9) RULEMAKING.--The Department of Revenue and the division
222 may adopt rules to administer and enforce the applicable
223 provisions of this section.

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

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226 561.24 Licensing manufacturers as distributors or
227 registered exporters prohibited; procedure for issuance and
228 renewal of distributors' licenses and exporters' registrations.--

229 (5) Notwithstanding any other provision of this section ~~of~~
230 ~~the provisions of the foregoing subsections, a~~ any corporation
231 licensed which holds a license as a distributor on June 3, 1947,
232 is shall be entitled to a renewal of such license if the thereof,
233 ~~provided such~~ corporation is in compliance ~~complies~~ with all
234 applicable ~~of the~~ provisions of the Beverage Law ~~of Florida, as~~
235 ~~amended, and of this section~~ and establishes by satisfactory
236 evidence to the division that, during the 6-month period ~~next~~
237 preceding its application for ~~such~~ renewal, of the total volume
238 of its sales of spirituous liquors, in either dollars or
239 quantity, not more than 40 percent ~~of such spirituous liquors~~
240 ~~sold by it, in either dollars or quantity,~~ were manufactured,
241 rectified, or distilled by a any corporation with which the
242 applicant is affiliated, directly or indirectly, including a any
243 corporation that ~~which~~ owns or controls in any way ~~any~~ stock in
244 the applicant corporation or a any corporation that ~~which~~ is a
245 subsidiary or affiliate of the corporation ~~so~~ owning stock in the
246 applicant corporation. Notwithstanding any other provision of
247 this section, a Any manufacturer of wine licensed holding a
248 license as a distributor on July 1, 2008, is ~~the effective date~~
249 ~~of this act shall be~~ entitled to a renewal of such license
250 ~~notwithstanding the provisions of subsections (1) (5).~~ However, a
251 manufacturer who is licensed as a distributor or vendor may not
252 also hold a winery shipper's license. ~~This section does not apply~~
253 ~~to any winery qualifying as a certified Florida Farm Winery under~~
254 ~~s. 599.004.~~

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255 Section 3. Section 561.54, Florida Statutes, is amended to
256 read:

257 561.54 Certain deliveries of beverages prohibited.--

258 (1) ~~It is unlawful for~~ Common or permit carriers, operators
259 of privately owned cars, trucks, buses, or other conveyances or
260 out-of-state manufacturers or suppliers may not ~~to~~ make delivery
261 from outside ~~without~~ the state of any alcoholic beverage to any
262 person, association of persons, or corporation within the state,
263 except to qualified manufacturers, distributors, and exporters ~~of~~
264 ~~such beverages so delivered~~ and to qualified bonded warehouses in
265 this state.

266 (2) Any licensee aggrieved by a violation of this section
267 may bring an action ~~in any court of competent jurisdiction~~ to
268 recover for the state all moneys obtained by common carriers or
269 permit carriers; ~~obtained~~ by operators of privately owned cars,
270 trucks, buses, or other conveyances; or ~~obtained~~ by out-of-state
271 manufacturers or suppliers as a result of the delivery of
272 alcoholic beverages in violation of this section, and may obtain
273 a declaratory judgment that an act or practice violates this
274 section and enjoin any person from violating this section. In
275 addition to such relief, the court may order the confiscation and
276 destruction of any alcoholic beverages delivered in violation of
277 this section. In assessing damages, the court shall enter
278 judgment against a defendant for three times the amount of the
279 delivery charges proved or the fair market value of merchandise
280 unlawfully brought into the state. Payment or satisfaction of a
281 ~~any~~ judgment under this section, other than for costs and
282 attorney's fees, shall be made in its entirety to the state. In a
283 ~~any~~ successful action under this section, the court shall award
284 the plaintiff costs and reasonable attorney's fees.



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

288 Section 4. Section 561.545, Florida Statutes, is amended to
289 read:

290 561.545 Certain shipments of beverages prohibited;
291 penalties; exceptions.--The Legislature finds that the direct
292 shipment of alcoholic beverages by persons in the business of
293 selling alcoholic beverages to residents of this state in
294 violation of the Beverage Law poses a serious threat to the
295 public health, safety, and welfare; to state revenue collections;
296 and to the economy of the state. The Legislature further finds
297 that the penalties for illegal direct shipment of alcoholic
298 beverages to residents of this state should be made adequate to
299 ensure compliance with the Beverage Law and that the measures
300 provided for in this section are fully consistent with the powers
301 conferred upon the state by the Twenty-first Amendment to the
302 United States Constitution.

303 (1) A ~~Any~~ person in the business of selling alcoholic
304 beverages who knowingly and intentionally ships, or causes to be
305 shipped, any alcoholic beverage from an out-of-state location
306 directly to any person in this state who does not hold a valid
307 manufacturer's or wholesaler's license or exporter's registration
308 ~~issued by the division of Alcoholic Beverages and Tobacco~~ or who
309 is not a state-bonded warehouse is in violation of this section.

310 (2) A ~~Any~~ common carrier or permit carrier or any operator
311 of a privately owned car, truck, bus, or other conveyance who
312 knowingly and intentionally transports any alcoholic beverage
313 from an out-of-state location directly to any person in this
314 state who does not hold a valid manufacturer's or wholesaler's

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315 license or exporter's registration or who is not a state-bonded
316 warehouse is in violation of this section.

317 (3) A ~~Any~~ person found by the division to be in violation
318 of subsection (1) shall be issued a notice, sent by certified
319 mail, to show cause why a cease and desist order should not be
320 issued. Any person who violates subsection (1) within 2 years
321 after receiving a cease and desist order or within 2 years after
322 a prior conviction for violating subsection (1) commits a felony
323 of the third degree, punishable as provided in s. 775.082, s.
324 775.083, or s. 775.084.

325 (4) A ~~Any~~ common carrier or permit carrier, or ~~any~~ operator
326 of a privately owned car, truck, bus, or other conveyance found
327 by the division to be in violation of subsection (2) as a result
328 of a second or subsequent delivery from the same source and
329 location, within a 2-year period after the first delivery shall
330 be issued a notice, sent by certified mail, to show cause why a
331 cease and desist order should not be issued. A ~~Any~~ person who
332 violates subsection (2) within 2 years after receiving the cease
333 and desist order or within 2 years after a prior conviction for
334 violating subsection (2) commits a felony of the third degree,
335 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

336 (5) This section does not apply to the direct shipment of
337 wine by a licensed winery shipper to a person 21 years of age or
338 older for household consumption, the direct shipment of
339 sacramental alcoholic beverages to bona fide religious
340 organizations as authorized by the division, or to possession of
341 alcoholic beverages in accordance with s. 562.15(2).

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

344 564.045 Licensure as primary American source of supply.--



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345 (2) TAX CONTROL LICENSURE REQUIRED.--For purposes of tax
346 revenue control, a ~~ne~~ person, firm, corporation, or other entity
347 that which is the primary American source of supply ~~as defined~~
348 ~~herein~~ may not sell, offer for sale, accept orders for the sale
349 of, ship, or cause to be shipped into this state any vinous
350 beverages to any distributor, ~~or~~ importer, or person for
351 household consumption, as provided in s. 561.222, within this the
352 state without having first obtained licensure as a primary
353 American source of supply on forms provided by, and in such
354 manner as prescribed by, the division. Except for applicants for
355 a winery shipper's license, applicants for licensure as a primary
356 American source of supply are ~~shall be~~ exempt from ~~the~~
357 ~~requirements and qualification standards set forth in ss. 561.15~~
358 and 561.17.

359 Section 6. Paragraph (a) of subsection (1) of section
360 599.004, Florida Statutes, is amended to read:

361 599.004 Florida Farm Winery Program; registration; logo;
362 fees.--

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

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

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



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375 2. Maintain a minimum of 10 acres of owned or managed
376 vineyards in this state ~~Florida~~.

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

379 4. Make annual application to the department for
380 recognition as a Florida Farm Winery, on forms provided by the
381 department.

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

383 Section 7. If any provision of this act or its application
384 to any person or circumstance is held invalid, the invalidity
385 does not affect other provisions or applications of the act which
386 can be given effect without the invalid provision or application,
387 and to this end the provisions of this act are severable.

388 Section 8. This act shall take effect July 1, 2008.

389
390 ===== T I T L E A M E N D M E N T =====

391 And the title is amended as follows:

392 Delete everything before the enacting clause
393 and insert:

394 A bill to be entitled
395 An act relating to the production and shipment of wine;
396 creating s. 561.222, F.S.; authorizing the direct shipment
397 of wine into and within this state for personal
398 consumption only; providing legislative intent; requiring
399 licensure of winery shippers by the Division of Alcoholic
400 Beverages and Tobacco; providing license requirements;
401 requiring recipients of a direct shipment of wine to be 21
402 years of age; requiring proof of age and the signature of
403 a recipient; providing for the payment of taxes, a monthly
404 report, and recordkeeping by winery shippers; providing

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405 requirements for common carriers that make deliveries of
406 wine; providing administrative and criminal penalties for
407 violations of the act; authorizing the division and the
408 Department of Revenue to adopt rules; amending ss. 561.24,
409 561.54, 561.545, and 564.045, F.S.; conforming provisions
410 to changes made by the act; amending s. 599.004, F.S.;
411 revising requirements for qualifying as a certified
412 Florida Farm Winery; providing for severability; providing
413 an effective date.