

1 A bill to be entitled
2 An act relating to the Beverage Law; creating s. 561.585,
3 F.S.; authorizing certain direct shipments of wine;
4 requiring licensure of winery shippers; providing
5 requirements for licensure; providing prohibitions;
6 requiring that a winery shipper licensee file a surety
7 bond with the Division of Alcoholic Beverages and Tobacco
8 of the Department of Business and Professional Regulation;
9 requiring that each container of wine shipped directly be
10 labeled with a notice; providing signature and
11 identification requirements; providing limitations on the
12 amount of wine a winery shipper may ship or cause to be
13 shipped; limiting the size of wine containers; limiting
14 the amount of wine a purchaser can purchase or cause to be
15 shipped; providing age requirements for those purchasing
16 wine for direct shipment or receiving direct shipments of
17 wine; providing a defense to certain actions; requiring
18 monthly reports by winery shipper licensees; requiring the
19 collection, remittance, and payment of certain taxes by
20 direct shippers; requiring certain proceeds from
21 discretionary sales surtaxes to be deposited into an
22 account in the Discretionary Sales Surtax Clearing Trust
23 Fund; requiring that winery shippers maintain certain
24 records for a certain time period; providing for
25 jurisdiction; providing penalties; amending s. 561.14,
26 F.S.; classifying the winery shipper license; amending s.
27 561.54, F.S.; removing a provision requiring that the
28 licensee be aggrieved by a violation involving prohibited

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29 delivery from without the state to have standing to bring
30 an action; exempting from such prohibition shipment of
31 wine by a winery shipper licensee; amending s. 561.545,
32 F.S.; exempting applicability of the prohibition against
33 direct shipment of alcoholic beverages to the shipment of
34 wine by a winery shipper licensee; amending s. 561.57,
35 F.S.; providing that Internet orders shall be construed as
36 telephone orders; exempting common carriers, licensees, or
37 licensees utilizing common carriers as their agents from
38 certain report filing requirements; requiring common
39 carriers to verify the age of persons receiving shipments;
40 providing a defense to certain actions; providing criteria
41 for the defense; amending s. 599.004, F.S.; revising
42 qualifications for the certification of Florida Farm
43 Wineries; amending s. 561.24, F.S.; revising an effective
44 date; authorizing certain manufacturers of wine holding a
45 distributor's license to renew such license; removing
46 exemption of Florida Farm Wineries from prohibition
47 against manufacturer being licensed as distributor or
48 registered as exporter; providing for severability;
49 providing for nonimpairment of contracts; providing for
50 rulemaking authority; authorizing additional positions;
51 providing appropriations; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Section 561.585, Florida Statutes, is created
56 to read:

57 561.585 Direct shipment of wine for personal
 58 consumption.--

59 (1) WINERY SHIPPER LICENSURE REQUIREMENTS.--

60 (a) Wineries may not ship or cause to be shipped any wine
 61 to individual consumers in this state unless licensed under this
 62 section. Notwithstanding any provision of the Beverage Law or
 63 any rule to the contrary, a person, firm, corporation, or other
 64 entity that is licensed as a winery shipper under this section
 65 may ship wine directly to any person who is at least 21 years of
 66 age for personal use only and not for resale. To obtain or renew
 67 a winery shipper's license, an applicant must:

68 1. File an application with the division on forms
 69 prescribed by the division.

70 2. Qualify for licensure under ss. 561.15 and 561.17 or
 71 provide a true copy of a certification from the alcoholic
 72 beverage licensing authority of the Federal Government, or the
 73 state in which the winery is located, with license
 74 qualifications and procedures for that winery license that
 75 include, at a minimum, the following components:

76 a. Fingerprinting of applicants.
 77 b. Disqualification for applicants under 21 years of age.
 78 c. Disqualification for applicants convicted of the
 79 following:

80 (I) Within the past 5 years, any violation of the beverage
 81 laws of this state, the United States, or any other state;

82 (II) Within the past 15 years, any felony in this state or
 83 any other state of the United States; or

84 (III) Any criminal violation of the controlled substance

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85 act of this state, the United States, or any other state.

86 3. Obtain and maintain a current license as a primary
87 American source of supply as provided in s. 564.045.

88 4. Provide to the division a true copy of its current wine
89 manufacturer's license issued by this state or another state and
90 a true copy of its current federal basic permit as a wine
91 producer issued in accordance with the Federal Alcohol
92 Administration Act.

93 5. Pay an annual license fee in the amount of \$250.

94 6. File with the division a surety bond acceptable to the
95 division in the sum of \$5,000 as surety for the payment of all
96 taxes, provided that when, at the discretion of the division,
97 the amount of business done by the winery shipper licensee is
98 such volume that a bond of less than \$5,000 will be adequate,
99 the 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. Upon written request of the winery shipper, the
103 division shall review the total tax liability to the state by
104 the winery shipper and reduce the bond to 110 percent of the
105 prior year's total tax liability as a licensee under this
106 section but not less than \$1,000.

107 7. Sell no more than 250,000 gallons of wine per licensed
108 premises per year.

109 (b) Applicants under this section may obtain a temporary
110 initial license as authorized in s. 561.181.

111 (c) Winery shipper licensees may not ship or cause to be
112 shipped more than 18 cases of wine per calendar year per

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113 household. For purposes of this section, a case is defined as a
114 container or containers that contain no more than 9,000
115 milliliters of wine.

116 (d) Licensees shall comply with s. 564.05, which limits
117 the size of wine containers.

118 (e) Purchasers may not purchase or cause to be shipped
119 more than 18 cases of wine per calendar year per household.

120 (f) Each winery shipper licensee must verify the
121 purchaser's age at the point of purchase before completing any
122 transaction and must refuse sale of wine to any person under 21
123 years of age. Verification methods for purposes of this
124 paragraph must include receiving a copy, electronic or
125 otherwise, of a purchaser's driver's license or other acceptable
126 identification methods approved by the division. An alternative
127 verification method that may be used by the winery shippers
128 shall include asking and recording all purchasers' names, ages,
129 and dates of birth. Such recordings shall be kept for a minimum
130 of 3 years. Purchasers shall further be advised that they must
131 show the person making the delivery one of the acceptable
132 identification cards in subsection (3) prior to delivery.

133 (g) The division may not issue or renew a license under
134 this section if the applicant or licensee is owned by a winery
135 that sells more than 250,000 gallons of wine annually per
136 licensed premises.

137 (2) LABEL.--Each winery shipper licensee shall ensure that
138 the outside shipping label on each package is conspicuous and
139 includes the following components:

140 (a) This package contains alcohol.

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141 (b) An adult signature is required.

142 (c) The recipient must be at least 21 years of age.

143 (3) SIGNATURE.--

144 (a) Each winery shipper licensee and common carrier shall
145 require, prior to delivery, that the signature of the addressee
146 or other person at least 21 years of age is obtained after
147 presentation of a valid driver's license, an identification card
148 issued under the provisions of s. 322.051, or, if the person is
149 physically handicapped, a comparable identification card issued
150 by another state which indicates the person's age, a passport,
151 or a United States Uniformed Services identification card.

152 (b) A winery shipper licensee or common carrier who
153 violates this subsection shall have a complete defense to any
154 civil action therefor, except for any administrative action by
155 the division, if, at the time the alcoholic beverage was sold,
156 given, delivered, or transferred, the person falsely evidenced
157 that he or she was of legal age to purchase or consume the
158 alcoholic beverage and the appearance of the person was such
159 that an ordinarily prudent person would believe him or her to be
160 of legal age to purchase or consume the alcoholic beverage and
161 if the winery shipper licensee or common carrier acted in good
162 faith and in reliance upon the representation and appearance of
163 the person in the belief that he or she was of legal age to
164 purchase or consume the alcoholic beverage and carefully checked
165 one of the following forms of identification with respect to the
166 person: a valid driver's license, an identification card issued
167 under the provisions of s. 322.051, or, if the person is
168 physically handicapped, a comparable identification card issued

169 by another state which indicates the person's age, a passport,
 170 or a United States Uniformed Services identification card.

171 (4) MONTHLY REPORT.--

172 (a) Each winery shipper licensee shall report monthly to
 173 the division on forms prescribed by the division:

174 1. Whether any wine product was shipped into or within
 175 this state under this section during the preceding month.

176 2. The total amount of wine shipped into or within this
 177 state under this section during the preceding month.

178 3. The quantity and types of wine shipped into or within
 179 this state under this section during the preceding month.

180 4. The amount of excise tax paid to the division for
 181 shipments of wine into or within this state under this section
 182 during the preceding month.

183 (b) The report required by this subsection is not required
 184 from a winery shipper licensee who files a monthly report
 185 pursuant to s. 561.55 that contains all the information required
 186 in paragraph (a). The division is authorized to prescribe the
 187 format for submission of this information in order that
 188 duplicate filings are eliminated.

189 (5) TAXES.--

190 (a) Each winery shipper licensee shall collect and remit
 191 monthly to the Department of Revenue all sales taxes and pay to
 192 the division all excise taxes due on sales to persons in this
 193 state for the preceding month. Notwithstanding s. 212.0596, the
 194 amount of such taxes shall be calculated as if the sale took
 195 place at the location where the delivery occurred in this state.
 196 The proceeds of the discretionary sales surtaxes imposed under

197 s. 212.055 shall be deposited into an account in the
 198 Discretionary Sales Surtax Clearing Trust Fund described in s.
 199 212.054(4)(c) and distributed as provided therein.

200 (b) Each winery shipper licensee shall maintain for at
 201 least 3 years after the date of delivery records of its
 202 shipments into or within this state pursuant to this section,
 203 including the names, addresses, amounts, and dates of all
 204 shipments to persons in this state, and shall allow the
 205 Department of Revenue or the division, upon request, to perform
 206 an audit of such records.

207 (c) The cost of performing an audit under paragraph (b)
 208 shall be assigned to the agency requesting the audit unless the
 209 winery shipper licensee is found to be in material violation of
 210 this subsection, in which case the cost of the audit shall be
 211 assigned to the licensee.

212 (6) JURISDICTION.--Each winery shipper licensee is deemed
 213 to have consented to the jurisdiction of the division or any
 214 other state agency or local law enforcement agency and the
 215 courts of this state concerning enforcement of this section and
 216 any related laws or rules.

217 (7) PENALTIES.--

218 (a) In addition to any other penalty provided in the
 219 Beverage Law, the division may suspend or revoke a winery
 220 shipper license or impose fines on the winery shipper licensee
 221 in an amount not to exceed \$1,000 per violation for any
 222 violation of this section.

223 (b) A winery shipper licensee that knowingly and
 224 intentionally ships, or causes to be shipped, wine to any person

225 in this state who is under 21 years of age commits a felony of
 226 the third degree, punishable as provided in s. 775.082, s.
 227 775.083, or s. 775.084.

228 (c) Any common carrier, permit carrier, or other
 229 commercial conveyance that knowingly and intentionally delivers
 230 wine directly to any person in this state who is under 21 years
 231 of age commits a misdemeanor of the second degree, punishable as
 232 provided in s. 775.082 or s. 775.083.

233 (d) A person who knowingly and intentionally obtains wine
 234 from a winery shipper licensee in violation of this section
 235 commits a misdemeanor of the second degree, punishable as
 236 provided in s. 775.082 or s. 775.083.

237 Section 2. Subsection (8) is added to section 561.14,
 238 Florida Statutes, to read:

239 561.14 License and registration classification.--Licenses
 240 and registrations referred to in the Beverage Law shall be
 241 classified as follows:

242 (8) Wineries licensed as winery shippers under s. 561.585.

243 Section 3. Section 561.54, Florida Statutes, is amended to
 244 read:

245 561.54 Certain deliveries of beverages prohibited.--

246 (1) It is unlawful for common or permit carriers,
 247 operators of privately owned cars, trucks, buses, or other
 248 conveyances or out-of-state manufacturers or suppliers to make
 249 delivery from without the state of any alcoholic beverage to any
 250 person, association of persons, or corporation within the state,
 251 except to qualified manufacturers, distributors, and exporters
 252 of such beverages so delivered and to qualified bonded

253 | warehouses in this state.

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

273 | (3) This section does not apply to the shipment of wine by
 274 | a winery shipper licensee to a person who is at least 21 years
 275 | of age in accordance with s. 561.585.

276 | Section 4. Section 561.545, Florida Statutes, is amended
 277 | to read:

278 | 561.545 Certain shipments of beverages prohibited;
 279 | penalties; exceptions.--The Legislature finds that the direct
 280 | shipment of alcoholic beverages by persons in the business of

281 selling alcoholic beverages to residents of this state in
282 violation of the Beverage Law poses a serious threat to the
283 public health, safety, and welfare; to state revenue
284 collections; and to the economy of the state. The Legislature
285 further finds that the penalties for illegal direct shipment of
286 alcoholic beverages to residents of this state should be made
287 adequate to ensure compliance with the Beverage Law and that the
288 measures provided for in this section are fully consistent with
289 the powers conferred upon the state by the Twenty-first
290 Amendment to the United States Constitution.

291 (1) Any person in the business of selling alcoholic
292 beverages who knowingly and intentionally ships, or causes to be
293 shipped, any alcoholic beverage from an out-of-state location
294 directly to any person in this state who does not hold a valid
295 manufacturer's or wholesaler's license or exporter's
296 registration issued by the Division of Alcoholic Beverages and
297 Tobacco or who is not a state-bonded warehouse is in violation
298 of this section.

299 (2) Any common carrier or permit carrier or any operator
300 of a privately owned car, truck, bus, or other conveyance who
301 knowingly and intentionally transports any alcoholic beverage
302 from an out-of-state location directly to any person in this
303 state who does not hold a valid manufacturer's or wholesaler's
304 license or exporter's registration or who is not a state-bonded
305 warehouse is in violation of this section.

306 (3) Any person found by the division to be in violation of
307 subsection (1) shall be issued a notice, by certified mail, to
308 show cause why a cease and desist order should not be issued.

309 Any person who violates subsection (1) within 2 years after
 310 receiving a cease and desist order or within 2 years after a
 311 prior conviction for violating subsection (1) commits a felony
 312 of the third degree, punishable as provided in s. 775.082, s.
 313 775.083, or s. 775.084.

314 (4) Any common carrier or permit carrier, or any operator
 315 of a privately owned car, truck, bus, or other conveyance found
 316 by the division to be in violation of subsection (2) as a result
 317 of a second or subsequent delivery from the same source and
 318 location, within a 2-year period after the first delivery shall
 319 be issued a notice, by certified mail, to show cause why a cease
 320 and desist order should not be issued. Any person who violates
 321 subsection (2) within 2 years after receiving the cease and
 322 desist order or within 2 years after a prior conviction for
 323 violating subsection (2) commits a felony of the third degree,
 324 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

325 (5) This section does not apply to:

326 (a) The direct shipment of sacramental alcoholic beverages
 327 to bona fide religious organizations as authorized by the
 328 division;

329 (b) The ~~or to~~ possession of alcoholic beverages in
 330 accordance with s. 562.15(2); or

331 (c) The shipment of wine in accordance with s. 561.585.

332 Section 5. Subsections (1) and (6) of section 561.57,
 333 Florida Statutes, are amended to read:

334 561.57 Deliveries by licensees.--

335 (1) Vendors shall be permitted to make deliveries away
 336 from their places of business of sales actually made at the

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337 licensed place of business; provided, telephone or mail orders
338 received at vendor's licensed place of business shall be
339 construed as a sale actually made at the vendor's licensed place
340 of business. For purposes of this section, Internet orders shall
341 be construed as telephone orders.

342 (6) Common carriers are not required to have vehicle
343 permits to transport alcoholic beverages. Nothing in this
344 section shall prohibit any licensee from utilizing a common
345 carrier as his or her agent to make deliveries of alcoholic
346 beverages within the state. Deliveries of alcoholic beverages by
347 licensees or common carriers utilized by licensees under this
348 section are exempt from the report filing requirements in s.
349 562.20. All common carriers making deliveries under this section
350 shall verify that any person receiving alcoholic beverages is at
351 least 21 years of age upon the delivery of such alcoholic
352 beverages, as prescribed in division rules. Compliance with the
353 prescribed age verification measures in s. 561.585(3) shall give
354 the common carrier and the licensee a complete defense to any
355 civil action thereof, except for any administrative action by
356 the division, if, at the time the alcoholic beverage was sold,
357 given, delivered, or transferred, the person falsely evidenced
358 that he or she was of legal age to purchase or consume the
359 alcoholic beverage and the appearance of the person was such
360 that an ordinarily prudent person would believe him or her to be
361 of legal age to purchase or consume the alcoholic beverage and
362 if the licensee or common carrier acted in good faith and in
363 reliance upon the representation and appearance of the person in
364 the belief that he or she was of legal age to purchase or

365 consume the alcoholic beverage and carefully checked one of the
 366 following forms of identification with respect to the person: a
 367 valid driver's license, an identification card issued under the
 368 provisions of s. 322.051, or, if the person is physically
 369 handicapped, a comparable identification card issued by another
 370 state which indicates the person's age, a passport, or a United
 371 States Uniformed Services identification card.

372 Section 6. Subsection (1) of section 599.004, Florida
 373 Statutes, is amended to read:

374 599.004 Florida Farm Winery Program; registration; logo;
 375 fees.--

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

382 (a) To qualify as a certified Florida Farm Winery, a
 383 winery shall meet the following standards:

384 1. ~~Produce or~~ Sell less than 250,000 gallons of wine
 385 annually of which at least 60 percent must be made from
 386 agricultural products produced in this state. The Commissioner
 387 of Agriculture may waive this requirement in times of hardship.

388 2. Maintain a minimum of 10 acres of owned or managed
 389 vineyards in Florida.

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

392 4. Make annual application to the department for

393 recognition as a Florida Farm Winery, on forms provided by the
 394 department.

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

396 (b) To maintain certification and recognition as a Florida
 397 Farm Winery, a winery must comply with the qualifications
 398 provided in this section. The Commissioner of Agriculture is
 399 authorized to officially recognize a certified Florida Farm
 400 Winery as a state tourist attraction.

401 Section 7. Subsection (5) of section 561.24, Florida
 402 Statutes, is amended to read:

403 561.24 Licensing manufacturers as distributors or
 404 registered exporters prohibited; procedure for issuance and
 405 renewal of distributors' licenses and exporters'
 406 registrations.--

407 (5) Notwithstanding any of the provisions of the foregoing
 408 subsections, any corporation which holds a license as a
 409 distributor on June 3, 1947, shall be entitled to a renewal
 410 thereof, provided such corporation complies with all of the
 411 provisions of the Beverage Law of Florida, as amended, and of
 412 this section and establishes by satisfactory evidence to the
 413 division that, during the 6-month period next preceding its
 414 application for such renewal, of the total volume of its sales
 415 of spirituous liquors, in either dollars or quantity, not more
 416 than 40 percent of such spirituous liquors sold by it, in either
 417 dollars or quantity, were manufactured, rectified, or distilled
 418 by any corporation with which the applicant is affiliated,
 419 directly or indirectly, including any corporation which owns or
 420 controls in any way any stock in the applicant corporation or

421 any corporation which is a subsidiary or affiliate of the
422 corporation so owning stock in the applicant corporation. Any
423 manufacturer of wine holding a license as a distributor on July
424 1, 2008, ~~the effective date of this act~~ shall be entitled to a
425 renewal of such license notwithstanding the provisions of
426 subsections (1)-(5). ~~This section does not apply to any winery~~
427 ~~qualifying as a certified Florida Farm Winery under s. 599.004.~~

428 Section 8. Should any portion of this act be held
429 unconstitutional, it is the intent of the Legislature that the
430 courts disturb only as much of the regulatory system of this
431 state as is necessary to enforce the United States Constitution.

432 Section 9. Notwithstanding the provisions of s. 561.585,
433 Florida Statutes, contracts not otherwise prohibited by the
434 Beverage Law shall not be impaired.

435 Section 10. The Division of Alcoholic Beverages and
436 Tobacco of the Department of Business and Professional
437 Regulation and the Department of Revenue may adopt rules
438 pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to
439 implement and administer this act.

440 Section 11. For fiscal year 2008-2009, six full-time
441 equivalent positions and \$164,577 in associated salary rate are
442 authorized, and the sums of \$332,422 in recurring funds and
443 \$59,664 in nonrecurring funds from the Alcoholic Beverage and
444 Tobacco Trust Fund of the Department of Business and
445 Professional Regulation are hereby appropriated for the purpose
446 of carrying out the regulatory activities provided in this act.
447 In addition, for fiscal year 2008-2009, two full-time equivalent
448 positions, with associated salary rate of \$106,106, are

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449 authorized, and the sums of \$212,165 in recurring funds and
450 \$11,901 in nonrecurring funds from the Administrative Trust Fund
451 of the Department of Business and Professional Regulation are
452 hereby appropriated for the purpose of carrying out the central-
453 service administrative support functions related to the
454 regulatory activities provided in this act.

455 Section 12. This act shall take effect upon becoming a
456 law.