

## CHAPTER 97-213

### Committee Substitute for Committee Substitute for House Bill No. 725

An act relating to alcoholic beverages; repealing s. 561.501, F.S., relating to the surcharge on the sale of alcoholic beverages for consumption on the premises, contingent upon certain conditions being met; amending s. 561.025, F.S.; conforming provisions contingent upon the repeal of s. 561.501, F.S.; amending s. 561.121, F.S.; conforming provisions contingent upon the repeal of s. 561.501, F.S.; providing for a portion of funds from the excise taxes on alcoholic beverages to be transferred to the Children and Adolescents Substance Abuse Trust Fund; amending s. 561.24, F.S.; including manufacturers of wine within a group of manufacturers who may not be licensed as distributors or registered exporters; providing exceptions; amending s. 561.501, F.S.; providing for a surcharge on cider; creating s. 561.5101, F.S.; requiring all malt beverages to come to rest at a wholesaler's licensed premises prior to sale; providing exceptions; providing penalties; amending s. 561.01, F.S.; providing definitions; amending s. 561.54, F.S.; providing for injunctive relief; providing for confiscation and destruction of certain alcoholic beverages; providing for treble damages; providing for costs and attorney's fees; creating s. 561.545, F.S.; providing legislative intent; prohibiting the direct shipment of alcoholic beverages to any person in the state other than a licensed manufacturer or wholesaler, registered exporter, or state bonded warehouse; providing penalties; providing exceptions; amending s. 561.68, F.S., relating to the licensure of salesmen of spirituous or vinous beverages; providing an exception; providing an effective date.

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

Section 1. No later than March 1, 1999, the Department of Business and Professional Regulation shall certify to the President of the Senate and the Speaker of the House of Representatives the amount of taxes due and paid during calendar year 1998 under sections 563.05, 564.06, and 565.12, Florida Statutes, and payments made to the state pursuant to section 561.54, Florida Statutes. If this amount is greater than \$535 million, then, effective July 1, 1999, section 561.501, Florida Statutes, is repealed.

Section 2. Contingent upon the repeal of section 561.501, Florida Statutes, section 561.025, Florida Statutes, is amended to read:

561.025 Alcoholic Beverage and Tobacco Trust Fund.—There is created within the State Treasury the Alcoholic Beverage and Tobacco Trust Fund. All funds collected by the division under ss. 210.15, 210.40, or under s. 569.003 and the Beverage Law with the exception of state funds collected pursuant to ss. ~~561.501~~, 563.05, 564.06, and 565.12 shall be deposited in the State Treasury to the credit of the trust fund, notwithstanding any other provision of law to the contrary. Moneys deposited to the credit of the trust

fund shall be used to operate the division and to provide a proportionate share of the operation of the office of the secretary and the Division of Administration of the Department of Business and Professional Regulation; except that:

(1) The revenue transfer provisions of ss. 561.32 and 561.342(1) and (2) shall continue in full force and effect, and the division shall cause such revenue to be returned to the municipality or county in the manner provided for in s. 561.32 or s. 561.342(1) and (2); and

(2) Ten percent of the revenues derived from retail tobacco products dealer permit fees collected under s. 569.003 shall be transferred to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children, pursuant to s. 233.067(4).

Section 3. Contingent upon the repeal of section 561.501, Florida Statutes, section 561.121, Florida Statutes, is amended to read:

561.121 Deposit of revenue.—

(1) All state funds collected pursuant to ss. 563.05, 564.06, and 565.12 shall be paid into the State Treasury and disbursed in the following manner:

(a) Two percent of monthly collections of the excise taxes on alcoholic beverages established in ss. 563.05, 564.06, and 565.12 shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund to meet the division's appropriation for the state fiscal year.

(b) Ten million dollars annually shall be transferred to the Children and Adolescents Substance Abuse Trust Fund, which shall remain with the Department of Children and Family Services for the purpose of funding programs directed at reducing and eliminating substance abuse problems among children and adolescents.

~~(c)~~(b) The remainder of collection shall be credited to the General Revenue Fund.

(2) The unencumbered balance in the Alcoholic Beverage and Tobacco Trust Fund at the close of each fiscal year may not exceed \$2 million. These funds shall be held in reserve for use in the event that trust fund revenues are unable to meet the division's appropriation for the next fiscal year. In the event of a revenue shortfall, these funds shall be spent pursuant to subsection (3). Notwithstanding subsection (1), if the unencumbered balance on June 30 in any fiscal year is less than \$2 million, the department is authorized to retain the difference between the June 30 unencumbered balance in the trust fund and \$2 million from the July collections of state funds collected pursuant to ss. 563.05, 564.06, and 565.12. Any unencumbered funds in excess of reserve funds shall be transferred unallocated to the General Revenue Fund by August 31 of the next fiscal year.

(3) Funds deposited into the Alcoholic Beverage and Tobacco Trust Fund pursuant to subsection (1) shall be used for administration and enforcement of chapters 210, 561, 562, 563, 564, 565, 567, 568, and 569.

~~(4) State funds collected pursuant to s. 561.501 shall be paid into the State Treasury and credited to the following accounts:~~

~~(a) Nine and eight-tenths of the surcharge on the sale of alcoholic beverages for consumption on premises shall be transferred to the Children and Adolescents Substance Abuse Trust Fund, which shall remain with the Department of Health and Rehabilitative Services for the purpose of funding programs directed at reducing and eliminating substance abuse problems among children and adolescents.~~

~~(b) The remainder of collections shall be credited to the General Revenue Fund.~~

Section 4. Subsections (1), (2), (3), (4), and (5) of section 561.24, Florida Statutes, are amended to read:

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

(1) A manufacturer, rectifier, or distiller that manufactures, rectifies, or distills spirituous liquors or wine may not be granted a license as a distributor and may not register as an exporter.

(2) A manufacturer, rectifier, or distiller that manufactures, rectifies, or distills spirituous liquors or wine may not be granted a renewal of a license or registration previously held as a distributor or exporter.

(3) If the applicant for a distributor's license or exporter's registration, or renewal thereof, is an individual or copartnership, such individual or copartnership is within the provisions of subsection (1) or subsection (2), as the case may be, if the individual or any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged directly or indirectly or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (4), in manufacturing, rectifying, or distilling spirituous liquors or wine. If any individual or any member of such copartnership within 6 months next preceding the making of an application hereunder has been interested or connected as provided by this subsection, such individual or such member of the copartnership shall be prima facie presumed to be so interested or connected with such corporation at the time of the making of the application, and such prima facie presumption shall continue until overcome by the applicant.

(4) If the applicant for a distributor's license or exporter's registration, or for the renewal thereof, is a corporation, such corporation is within the provisions of subsections (1) and (2), as the case may be, if such corporation is affiliated with, directly or indirectly, any other corporation which is engaged in manufacturing, rectifying, or distilling spirituous liquors or wine or if such applicant corporation is controlled by, or the majority of stock therein is owned by, another corporation, which latter corporation is engaged, directly or indirectly, in manufacturing, rectifying, or distilling spirituous liquors or wine.

(5) Notwithstanding any of the provisions of the foregoing subsections, any corporation which holds a license as a distributor on June 3, 1947, shall be entitled to a renewal thereof, provided such corporation complies with all of the provisions of the Beverage Law of Florida, as amended, and of this section and establishes by satisfactory evidence to the division board of county commissioners of the county wherein the original license was issued that, during the 6-month period next preceding its application for such renewal, of the total volume of its sales of spirituous liquors, in either dollars or quantity, not more than 40 percent of such spirituous liquors sold by it, in either dollars or quantity, were manufactured, rectified, or distilled by any corporation with which the applicant is affiliated, directly or indirectly, including any corporation which owns or controls in any way any stock in the applicant corporation or any corporation which is a subsidiary or affiliate of the corporation so owning stock in the applicant corporation. Any manufacturer of wine holding a license as a distributor on the effective date of this act shall be entitled to a renewal of such license notwithstanding the provisions of subsections (1) through (5). This section does not apply to any winery qualifying as a certified Florida Farm Winery under s. 599.004.

Section 5. Subsection (1) of section 561.501, Florida Statutes, is amended to read:

561.501 Surcharge on sale of alcoholic beverages for consumption on the premises; penalty.—

(1) Notwithstanding s. 561.50 or any other provision of the Beverage Law, a surcharge of 10 cents is imposed upon each ounce of liquor and each 4 ounces of wine, a surcharge of 6 cents is imposed on each 12 ounces of cider, and a surcharge of 4 cents is imposed on each 12 ounces of beer sold at retail for consumption on premises licensed by the division as an alcoholic beverage vendor.

Section 6. Section 561.5101, Florida Statutes, is created to read:

561.5101 Come-to-rest requirement; exceptions; penalties.—

(1) For purposes of inspection and tax-revenue control, all malt beverages, except those manufactured and sold pursuant to s. 561.221(3), must come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The prohibition contained in this subsection does not apply to the shipment of malt beverages commonly known as private labels. The prohibition contained in this subsection shall not prevent a manufacturer from shipping malt beverages for storage at a bonded warehouse facility, provided that such malt beverages are distributed as provided in this subsection or to an out-of-state entity.

(2) Any person who is in the business of selling alcoholic beverages and who knowingly and intentionally sells malt beverages in a manner inconsistent with the requirements of subsection (1), whether to a vendor or to an ultimate consumer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Subsections (18) and (19) are added to section 561.01, Florida Statutes, to read:

561.01 Definitions.—As used in the Beverage Law:

(18) “Common carrier” means any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges.

(19) “Permit carrier” means a licensee authorized to make deliveries as provided in s. 561.57.

Section 8. Section 561.54, Florida Statutes, is amended to read:

561.54 Certain deliveries of beverages prohibited.—

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

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

Section 9. Section 561.545, Florida Statutes, is created to read:

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

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

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

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

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

(5) This section does not apply to the direct shipment of sacramental alcoholic beverages to bona fide religious organizations as authorized by the division or to possession of alcoholic beverages in accordance with s. 562.15(2).

Section 10. Paragraph (a) of subsection (1) of section 561.68, Florida Statutes, is amended to read:

561.68 Licensure; distributor's salesmen.—

(1)(a) Before any person may solicit or sell to vendors or become employed as a salesman of spirituous or vinous beverages for a licensed Florida distributor in accordance with the provisions of this section, such person shall file with the district supervisor of the district of the Division of Alcoholic Beverage and Tobacco in which the distributor's premises is located a sworn application for a license on forms provided by the division. Prior to any application being approved, the division shall require the applicant to file a fee of \$50 and file a set of fingerprints on regular United States Department of Justice forms. The licensure requirement provided in this paragraph does not apply to the solicitation or sale of cider.

Section 11. This act shall take effect upon becoming a law.  
Became a law without the Governor's approval May 30, 1997.  
Filed in Office Secretary of State May 29, 1997.