

By the Committees on Commerce and Tourism; and Regulated Industries; and Senator Hutson

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1 A bill to be entitled
2 An act relating to the Beverage Law; amending s.
3 561.42, F.S.; prohibiting certain entities and persons
4 from directly or indirectly assisting any vendor in
5 certain ways; prohibiting a licensed vendor from
6 accepting certain items and services; authorizing the
7 Division of Alcoholic Beverages and Tobacco to impose
8 administrative sanctions for a violation of certain
9 limitations established in the Beverage Law;
10 prohibiting a vendor from displaying certain signs in
11 the window or windows of his or her licensed premises;
12 authorizing certain entities and persons to give,
13 lend, furnish, or sell certain advertising material to
14 certain vendors; defining the term "decalcomania";
15 providing exemptions relating to tied house evil for
16 certain sales and purchases of merchandise; providing
17 conditions for the exemptions; defining the term
18 "merchandise"; prohibiting a manufacturer or importer
19 of malt beverages from soliciting or receiving any
20 portion of certain payments from its distributors;
21 defining the term "negotiated at arm's length";
22 specifying that a brand-naming rights agreement does
23 not obligate or place responsibility upon a
24 distributor; providing civil penalties for violations
25 by manufacturers or importers of malt beverages or
26 vendors; providing applicability; requiring the
27 division to consider the comparative financial value
28 of a brand-naming rights agreement when determining
29 the amount of a civil penalty; providing an effective

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30 date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Present subsection (13) of section 561.42,
35 Florida Statutes, is redesignated as subsection (14),
36 subsections (1), (8), (11), and (12) and paragraph (b) of
37 present subsection (14) of that section are amended, and a new
38 subsection (13) and subsection (16) are added to that section,
39 to read:

40 561.42 Tied house evil; financial aid and assistance to
41 vendor by manufacturer, distributor, importer, primary American
42 source of supply, brand owner or registrant, or any broker,
43 sales agent, or sales person thereof, prohibited; procedure for
44 enforcement; exception.—

45 (1) A ~~No~~ manufacturer, distributor, importer, primary
46 American source of supply, or brand owner or registrant of any
47 of the beverages herein referred to, whether licensed or
48 operating in this state or out-of-state, nor any broker, sales
49 agent, or sales person thereof, may not ~~shall~~ have any financial
50 interest, directly or indirectly, in the establishment or
51 business of any vendor licensed under the Beverage Law; nor may
52 ~~shall~~ such manufacturer, distributor, importer, primary American
53 source of supply, brand owner or brand registrant, or any
54 broker, sales agent, or sales person thereof, directly or
55 indirectly assist any vendor by furnishing, supplying, selling,
56 renting, lending, buying for, or giving to any vendor any
57 vehicles, equipment, furniture, fixtures, signs, supplies,
58 credit, fees, slotting fees of any kind, advertising or

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59 cooperative advertising, services, any gifts or loans of money
60 or property of any description, ~~or by the giving of any rebates~~
61 of any kind whatsoever. ~~A~~ ~~Ne~~ licensed vendor may not shall
62 accept, directly or indirectly, any vehicles, equipment,
63 furniture, fixtures, signs, supplies, credit, fees, slotting
64 fees of any kind, advertising or cooperative advertising,
65 services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of
66 any description, ~~or any rebates~~ of any kind whatsoever from any
67 such manufacturer, distributor, importer, primary American
68 source of supply, brand owner or brand registrant, or any
69 broker, sales agent, or sales person thereof; provided, however,
70 that this does not apply to any bottles, barrels, or other
71 containers necessary for the legitimate transportation of such
72 beverages or to advertising materials and does not apply to the
73 extension of credit, for liquors sold, made strictly in
74 compliance with ~~the provisions of~~ this section. A brand owner is
75 a person who is not a manufacturer, distributor, importer,
76 primary American source of supply, brand registrant, or broker,
77 sales agent, or sales person thereof, but who directly or
78 indirectly owns or controls any brand, brand name, or label of
79 alcoholic beverage. Nothing in this section shall prohibit the
80 ownership by vendors of any brand, brand name, or label of
81 alcoholic beverage.

82 (8) The division may adopt rules and require reports to
83 enforce, and may impose administrative sanctions for any
84 violation of, the limitations established under the Beverage Law
85 on vehicles, equipment, furniture, fixtures, signs, supplies,
86 credit, fees, advertising or cooperative advertising, services,
87 gifts or loans of money or property ~~in this section on credits,~~

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88 coupons, and other forms of assistance.

89 (11) A vendor may display in the interior of his or her
90 licensed premises, including the window or windows thereof,
91 neon, electric, or other signs, including window painting and
92 decalcomanias applied to the surface of the interior or exterior
93 of such windows; signs that require a power source; ~~and~~
94 posters, placards, and other advertising material advertising
95 the brand or brands of alcoholic beverages sold by him or her,
96 whether visible or not from the outside of the licensed
97 premises, but a ~~no~~ vendor may not shall display in the window or
98 windows of his or her licensed premises more than one neon,
99 electric, or similar sign that requires a power source; ~~and~~
100 advertising the product of any one brand of alcoholic beverage
101 manufacturer.

102 (12) Any manufacturer, distributor, importer, primary
103 American source of supply, or brand owner or registrant, or any
104 broker, sales agent, or sales person thereof, may give, lend,
105 furnish, or sell to a vendor who sells the products of such
106 manufacturer, distributor, importer, primary American source of
107 supply, or brand owner or registrant any of the following: neon,
108 ~~or~~ electric, or similar signs requiring a power source; signs,
109 window painting and decalcomanias applied to the surface of the
110 interior or exterior of windows; or, posters, placards, and
111 other advertising material herein authorized to be used or
112 displayed by the vendor in the interior of his or her licensed
113 premises. As used in subsection (11) and this subsection, the
114 term "decalcomania" means a picture, design, print, engraving,
115 or label made to be transferred onto a glass surface.

116 (13) Any manufacturer, distributor, importer, primary

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117 American source of supply, or brand owner or registrant, or any
118 broker, sales agent, or sales person thereof, who regularly
119 sells merchandise to vendors, or any vendor who purchases
120 merchandise from such a manufacturer, distributor, importer,
121 primary American source of supply, or brand owner or registrant,
122 or any broker, sales agent, or sales person thereof, does not
123 violate subsection (1) if:

124 (a) Such sale or purchase is not less than the fair market
125 value of the merchandise;

126 (b) Such sale or purchase is not combined with any sale or
127 purchase of alcoholic beverages;

128 (c) Such sale or purchase is separately itemized from the
129 sale or purchase of alcoholic beverages; and

130 (d) Both the seller and purchaser maintain records of any
131 such sale or purchase, including the price and any conditions
132 associated with such sale or purchase of the merchandise.

133

134 For purposes of this subsection, the term "merchandise" means
135 commodities, supplies, fixtures, furniture, or equipment. The
136 term does not include alcoholic beverages or a motor vehicle or
137 trailer requiring registration under chapter 320.

138 (15)~~(14)~~ The division shall adopt reasonable rules
139 governing promotional displays and advertising, which rules
140 shall not conflict with or be more stringent than the federal
141 regulations pertaining to such promotional displays and
142 advertising furnished to vendors by distributors, manufacturers,
143 importers, primary American sources of supply, or brand owners
144 or registrants, or any sales agent or sales person thereof;
145 however:

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146 (b) Without limitation in total dollar value of such items
147 provided to a vendor, a manufacturer, distributor, importer,
148 brand owner, or brand registrant of malt beverage, or any sales
149 agent or sales person thereof, may rent, loan without charge for
150 an indefinite duration, or sell durable retailer advertising
151 specialties such as clocks, pool table lights, and the like,
152 which bear advertising matter. If sold, such items may not be
153 sold at a price less than the actual cost to the industry member
154 who initially purchased the items.

155 (16) (a) Notwithstanding any other provision of this
156 section, a manufacturer or importer of malt beverages and a
157 vendor may enter into a written agreement for brand-naming
158 rights and associated cooperative advertising, negotiated at
159 arm's length for no more than fair market value if:

160 1. The vendor operates places of business where consumption
161 on the premises is permitted, the premises are located within a
162 theme park complex consisting of at least 25 contiguous acres
163 owned and controlled by the same business entity, and the
164 complex contains permanent exhibitions and a variety of
165 recreational activities and has a minimum of 1 million visitors
166 annually through a controlled entrance to and exit from the
167 theme park complex;

168 2. Such agreement does not involve, either in whole or in
169 part, the sale or distribution of malt beverages between the
170 manufacturer or importer, or the manufacturer's or importer's
171 distributor, and a vendor;

172 3. The vendor, as a result of such agreement, does not give
173 preferential treatment to the alcoholic beverage brand or brands
174 of the manufacturer or importer with whom the vendor has entered

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175 into such agreement;

176 4. Such agreement does not limit, either directly or
177 indirectly, the sale of alcoholic beverages of another
178 manufacturer or importer, or distributor; and

179 5. Within 10 days after execution of such agreement, the
180 vendor files with the division a description of the agreement
181 which includes the location, dates, and the name of the
182 manufacturer or importer that entered into the agreement.

183
184 As used in this paragraph, the term "negotiated at arm's length"
185 means the negotiation of a business transaction by independent
186 parties acting in each party's own individual self-interest and
187 conducted as if the parties were strangers, so that no conflict
188 of interest may arise.

189 (b) A manufacturer or importer of malt beverages which is a
190 party to a brand-naming rights agreement may not, either
191 directly or indirectly, solicit or receive from any of its
192 distributors any portion of the payment due from the
193 manufacturer or importer of malt beverages to the vendor
194 pursuant to such agreement. Such agreement exists solely between
195 the manufacturer and the vendor and does not, directly or
196 indirectly, in any way obligate or place responsibility,
197 financial or otherwise, upon a distributor.

198 (c) Notwithstanding s. 561.29(3) and (4), a manufacturer of
199 malt beverages, an importer of malt beverages, or a vendor who
200 violates this subsection is subject to:

201 1. A civil penalty of at least \$5,000, but not more than
202 \$25,000, for a first violation.

203 2. A civil penalty of at least \$25,000, but not more than

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204 \$50,000, for a second violation occurring within 36 months after
205 the date of the first violation.

206 3. A civil penalty of at least \$50,000, but not more than
207 \$100,000, for a third or subsequent violation occurring within
208 36 months after the date of the first violation.

209 4. At the discretion of the division, in lieu of or in
210 addition to a civil penalty imposed under subparagraph 3.,
211 suspension or revocation of the alcoholic beverage license for a
212 fourth or subsequent violation occurring within 36 months after
213 the date of the first violation.

214
215 A violation occurring more than 36 months after a first
216 violation is deemed a first violation under this paragraph. When
217 imposing a civil penalty within the ranges provided in
218 subparagraphs 1.-3., the division shall consider the comparative
219 financial value of the brand-naming rights agreement as a factor
220 in assigning the amount of the civil penalty.

221 Section 2. This act shall take effect July 1, 2018.