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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/8/2008	.	
	.	
	.	

1 The Committee on Regulated Industries (King) recommended the  
 2 following **amendment**:

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

5 Delete everything after the enacting clause  
 6 and insert:

7 Section 1. Section 561.42, Florida Statutes, is amended to  
 8 read:

9 561.42 Tied house evil; financial aid and assistance to  
 10 vendor by manufacturer, ~~or~~ distributor, importer, Primary  
 11 American source of supply, brand owner or registrant, or any  
 12 broker, sales agent or sales person thereof, prohibited;  
 13 procedure for enforcement; exception.--

14 (1) No ~~licensed~~ manufacturer ~~or~~, distributor, importer,  
 15 Primary American source of supply, or brand owner or registrant  
 16 of any of the beverages herein referred to, whether licensed or  
 17 operating in this state or out-of-state, nor any broker, sales

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18 agent or sales person thereof, shall have any financial interest,  
19 directly or indirectly, in the establishment or business of any  
20 vendor licensed under the Beverage Law; nor shall such ~~licensed~~  
21 manufacturer, ~~or~~ distributor, importer, Primary American source  
22 of supply, brand owner or brand registrant, or any broker, sales  
23 agent or sales person thereof, assist any vendor by any gifts or  
24 loans of money or property of any description or by the giving of  
25 any rebates of any kind whatsoever. No licensed vendor shall  
26 accept, directly or indirectly, any gift or loan of money or  
27 property of any description or any rebates from any such ~~licensed~~  
28 manufacturer, ~~or~~ distributor, importer, Primary American source  
29 of supply, brand owner or brand registrant, or any broker, sales  
30 agent or sales person thereof; provided, however, that this does  
31 not apply to any bottles, barrels, or other containers necessary  
32 for the legitimate transportation of such beverages or to  
33 advertising materials and does not apply to the extension of  
34 credit, for liquors sold, made strictly in compliance with the  
35 provisions of this section. A brand owner is a person who is not  
36 a manufacturer, distributor, importer, primary American source of  
37 supply, brand registrant, or broker, sales agent, or sales person  
38 thereof, but who directly or indirectly owns or controls any  
39 brand, brand name, or label of alcoholic beverage. Nothing in  
40 this section shall prohibit the ownership by vendors of any  
41 brand, brand name, or label of alcoholic beverage.

42 (2) Credit for the sale of liquors may be extended to any  
43 vendor up to, but not including, the 10th day after the calendar  
44 week within which such sale was made.

45 (3) In cases when payment for sales to a vendor is not made  
46 by the 10th day succeeding the calendar week in which such sale  
47 was made, the distributor who made such sale shall, within 3

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48 | days, notify the division in writing of such fact; and the  
49 | division, upon receipt of such notice, shall, after compliance  
50 | with the proceedings hereinafter mentioned, declare in writing to  
51 | such vendor and to all manufacturers and distributors within the  
52 | state that all further sales to such vendor are prohibited until  
53 | such time as the division certifies in writing that such vendor  
54 | has fully paid for all liquors previously purchased. However, if  
55 | a distributor received payment within the 3-day period following  
56 | the 10th day succeeding the calendar week in which the sale was  
57 | made, the distributor, if notification to the division has not  
58 | already been made, is not required to notify the division.  
59 | Payments so made within the 3-day period do not constitute a  
60 | violation of this section.

61 |       (4) Before the division shall so declare and prohibit such  
62 | sales to such vendor, it shall, within 2 days after receipt of  
63 | such notice, give written notice to such vendor by mail of the  
64 | receipt by the division of such notification of delinquency and  
65 | such vendor shall be directed to forthwith make payment thereof  
66 | or, upon failure to do so, to show cause before the division why  
67 | further sales to such vendor shall not be prohibited. Good and  
68 | sufficient cause to prevent such action by the division may be  
69 | made by showing payment, failure of consideration, or any other  
70 | defense which would be considered sufficient in a common-law  
71 | action. The vendor shall have 5 days after receipt of such notice  
72 | within which to show such cause, and he or she may demand a  
73 | hearing thereon, provided he or she does so in writing within  
74 | said 5 days, such written demand to be delivered to the division  
75 | either in person or by due course of mail within such 5 days. If  
76 | no such demand for hearing is made, the division shall thereupon  
77 | declare in writing to such vendor and to all manufacturers and

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78 distributors within the state that all further sales to such  
79 vendor are prohibited until such time as the division certifies  
80 in writing that such vendor has fully paid for all liquors  
81 previously purchased. In the event such prohibition of sales and  
82 declaration thereof to the vendor, manufacturers, and  
83 distributors is ordered by the division, the vendor may seek  
84 review of such decision by the Department of Business and  
85 Professional Regulation within 5 days. In the event application  
86 for such review is filed within such time, such prohibition of  
87 sales shall not be made, published, or declared until final  
88 disposition of such review by the department.

89 (5) Upon receipt by the division from the distributor of  
90 the notice of nonpayment provided for by subsection (3), the  
91 division shall forthwith notify such delinquent vendor and all  
92 distributors in the state that no further purchases or sales of  
93 liquor by or to such vendor, except for cash, shall be made until  
94 good cause is shown by such vendor as heretofore provided for. No  
95 liquor shall be purchased by such vendor or sold to him or her by  
96 any distributor, except for cash, from and after such  
97 notification by the division and until such cause is shown as is  
98 provided for in subsection (4). In the event no good cause is  
99 shown, then all further sales, for cash or credit, are hereby  
100 prohibited after such declaration in writing by the division is  
101 sent to such vendor and distributors and until all delinquent  
102 accounts have been paid.

103 (6) Nothing herein shall be taken to forbid the giving of  
104 trade discounts in the usual course of business upon wine and  
105 liquor sales.

106 (7) The extension or receiving of credits in violation of  
107 this section shall be considered as an arrangement for financial



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108 assistance and shall constitute a violation of the Beverage Law  
109 and any maneuver, shift, or device of any kind by which credit is  
110 extended contrary to the provisions of this section shall be  
111 considered a violation of the Beverage Law.

112 (8) The division may establish rules and require reports to  
113 enforce the herein-established limitation upon credits and other  
114 forms of assistance. Nothing herein shall be taken to affect the  
115 provisions of s. 563.08, but shall govern all other sales of  
116 intoxicating liquors.

117 (9) The term "advertising materials" as used in this  
118 section does not include outside signs so located as to be  
119 connected with or appertaining to the vendor's licensed premises.

120 (10) No manufacturer, ~~or~~ distributor, importer, Primary  
121 American source of supply, brand owner or brand registrant of the  
122 beverages referred to herein, or any broker, sales agent or sales  
123 person thereof, shall directly or indirectly give, lend, rent,  
124 sell, or in any other manner furnish to a vendor any outside  
125 sign, printed, painted, electric, or otherwise; nor shall any  
126 vendor display any sign advertising any brand of alcoholic  
127 beverages on the outside of his or her licensed premises, on any  
128 lot of ground of which the licensed premises are situate, or on  
129 any building of which the licensed premises are a part.

130 (11) A vendor may display in the interior of his or her  
131 licensed premises, including the window or windows thereof, neon,  
132 electric, or other signs, including window painting and  
133 decalcomanias applied to the surface of the interior or exterior  
134 of such windows, and posters, placards, and other advertising  
135 material advertising the brand or brands of alcoholic beverages  
136 sold by him or her, whether visible or not from the outside of  
137 the licensed premises, but no vendor shall display in the window

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138 or windows of his or her licensed premises more than one neon,  
139 electric, or similar sign, advertising the product of any one  
140 manufacturer.

141 (12) Any manufacturer, ~~or~~ distributor, importer, Primary  
142 American source of supply, or brand owner or registrant, or any  
143 broker, sales agent or sales person thereof, may give, lend,  
144 furnish, or sell to a vendor who sells the products of such  
145 manufacturer, ~~or~~ distributor, importer, Primary American source  
146 of supply, or brand owner or registrant any of the following:  
147 neon or electric signs, window painting and decalcomanias,  
148 posters, placards, and other advertising material herein  
149 authorized to be used or displayed by the vendor in the interior  
150 of his or her licensed premises. The division shall make  
151 reasonable rules governing promotional displays and advertising,  
152 which rules shall not conflict with or be more stringent than the  
153 federal regulations pertaining to such promotional displays and  
154 advertising furnished to vendors by distributors, ~~and~~  
155 manufacturers, importer, Primary American source of supply, or  
156 brand owner or registrant, or any broker, sales agent or sales  
157 person thereof; provided, however, that:

158 (a) If a manufacturer, ~~or~~ distributor, importer, brand  
159 owner, or brand registrant of malt beverage, or any broker, sales  
160 agent or sales person thereof, provides a vendor with expendable  
161 retailer advertising specialties such as trays, coasters, mats,  
162 menu cards, napkins, cups, glasses, thermometers, and the like,  
163 such items shall be sold at a price not less than the actual cost  
164 to the industry member who initially purchased them, without  
165 limitation in total dollar value of such items sold to a vendor.

166 (b) Without limitation in total dollar value of such items  
167 provided to a vendor, a manufacturer, ~~or~~ distributor, importer,

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168 brand owner, or brand registrant of malt beverage, or any broker,  
169 sales agent or sales person thereof, may rent, loan without  
170 charge for an indefinite duration, or sell durable retailer  
171 advertising specialties such as clocks, pool table lights, and  
172 the like, which bear advertising matter.

173 (c) If a manufacturer, ~~or~~ distributor, importer, brand  
174 owner, or brand registrant of malt beverage, or any broker, sales  
175 agent or sales person thereof, provides a vendor with consumer  
176 advertising specialties such as ashtrays, T-shirts, bottle  
177 openers, shopping bags, and the like, such items shall be sold at  
178 a price not less than the actual cost to the industry member who  
179 initially purchased them, but may be sold without limitation in  
180 total value of such items sold to a vendor.

181 (d) A manufacturer, ~~or~~ distributor, importer, brand owner,  
182 or brand registrant of malt beverage, or any broker, sales agent  
183 or sales person thereof, may provide consumer advertising  
184 specialties described in paragraph (c) to consumers on any  
185 vendor's licensed premises.

186 (e) Coupons redeemable by vendors shall not be furnished by  
187 distributors of beer to consumers.

188 (f) Manufacturers, ~~or~~ distributors, importers, brand  
189 owners, or brand registrants, of beer and any broker, sales agent  
190 or sales person thereof, ~~of beer~~ shall not conduct any sampling  
191 activities that include tasting of their product at a vendor's  
192 premises licensed for off-premises sales only.

193 (g) Manufacturers, ~~and~~ distributors, importers, brand  
194 owners, or brand registrants, of beer and any broker, sales agent  
195 or sales person thereof, ~~of beer~~ shall not engage in cooperative  
196 advertising with vendors.



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197 (h) Distributors of beer may sell to vendors draft  
 198 equipment and tapping accessories at a price not less than the  
 199 cost to the industry member who initially purchased them, except  
 200 there is no required charge, and a distributor may exchange any  
 201 parts which are not compatible with a competitor's system and are  
 202 necessary to dispense the distributor's brands. A distributor of  
 203 beer may furnish to a vendor at no charge replacement parts of  
 204 nominal intrinsic value, including, but not limited to, washers,  
 205 gaskets, tail pieces, hoses, hose connections, clamps, plungers,  
 206 and tap markers.

207 Section 2. This act shall take effect July 1, 2008.

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210 ===== T I T L E A M E N D M E N T =====

211 And the title is amended as follows:

212 Delete everything before the enacting clause  
213 and insert:

214 A bill to be entitled  
 215 An act relating to the Beverage Law; amending s.561.42;  
 216 extending to importers and Primary American sources of  
 217 supply, brand owners and brand registrants, and brokers,  
 218 sales agents and sales persons thereof, the prohibition  
 219 against providing certain financial assistance to retail  
 220 vendors; defining the term "brand owner;" providing an  
 221 effective date.