

By the Committee on Regulated Industries; and Senator King

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1 A bill to be entitled

2 An act relating to the Beverage Law; amending s. 561.42,
3 F.S.; extending to importers and primary American sources
4 of supply, brand owners, and brand registrants, and
5 brokers, sales agents, and sales persons thereof, the
6 prohibition against providing certain financial
7 assistance to retail vendors; defining the term "brand
8 owner"; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 561.42, Florida Statutes, is amended to
13 read:

14 561.42 Tied house evil; financial aid and assistance to
15 vendor by manufacturer, ~~or~~ distributor, importer, Primary
16 American source of supply, brand owner or registrant, or any
17 broker, sales agent, or sales person thereof, prohibited;
18 procedure for enforcement; exception.--

19 (1) No ~~licensed~~ manufacturer, ~~or~~ distributor, importer,
20 primary American source of supply, or brand owner or registrant
21 of any of the beverages herein referred to, whether licensed or
22 operating in this state or out-of-state, nor any broker, sales
23 agent, or sales person thereof, shall have any financial
24 interest, directly or indirectly, in the establishment or
25 business of any vendor licensed under the Beverage Law; nor shall
26 such ~~licensed~~ manufacturer, ~~or~~ distributor, importer, primary
27 American source of supply, brand owner or brand registrant, or
28 any broker, sales agent, or sales person thereof, assist any
29 vendor by any gifts or loans of money or property of any

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30 description or by the giving of any rebates of any kind
31 whatsoever. No licensed vendor shall accept, directly or
32 indirectly, any gift or loan of money or property of any
33 description or any rebates from any such ~~licensed~~ manufacturer,
34 ~~or distributor, importer, primary American source of supply,~~
35 brand owner or brand registrant, or any broker, sales agent, or
36 sales person thereof; provided, however, that this does not apply
37 to any bottles, barrels, or other containers necessary for the
38 legitimate transportation of such beverages or to advertising
39 materials and does not apply to the extension of credit, for
40 liquors sold, made strictly in compliance with the provisions of
41 this section. A brand owner is a person who is not a
42 manufacturer, distributor, importer, primary American source of
43 supply, brand registrant, or broker, sales agent, or sales person
44 thereof, but who directly or indirectly owns or controls any
45 brand, brand name, or label of alcoholic beverage. Nothing in
46 this section shall prohibit the ownership by vendors of any
47 brand, brand name, or label of alcoholic beverage.

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

51 (3) In cases when payment for sales to a vendor is not made
52 by the 10th day succeeding the calendar week in which such sale
53 was made, the distributor who made such sale shall, within 3
54 days, notify the division in writing of such fact; and the
55 division, upon receipt of such notice, shall, after compliance
56 with the proceedings hereinafter mentioned, declare in writing to
57 such vendor and to all manufacturers and distributors within the
58 state that all further sales to such vendor are prohibited until

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59 | such time as the division certifies in writing that such vendor
60 | has fully paid for all liquors previously purchased. However, if
61 | a distributor received payment within the 3-day period following
62 | the 10th day succeeding the calendar week in which the sale was
63 | made, the distributor, if notification to the division has not
64 | already been made, is not required to notify the division.
65 | Payments so made within the 3-day period do not constitute a
66 | violation of this section.

67 | (4) Before the division shall so declare and prohibit such
68 | sales to such vendor, it shall, within 2 days after receipt of
69 | such notice, give written notice to such vendor by mail of the
70 | receipt by the division of such notification of delinquency and
71 | such vendor shall be directed to forthwith make payment thereof
72 | or, upon failure to do so, to show cause before the division why
73 | further sales to such vendor shall not be prohibited. Good and
74 | sufficient cause to prevent such action by the division may be
75 | made by showing payment, failure of consideration, or any other
76 | defense which would be considered sufficient in a common-law
77 | action. The vendor shall have 5 days after receipt of such notice
78 | within which to show such cause, and he or she may demand a
79 | hearing thereon, provided he or she does so in writing within
80 | said 5 days, such written demand to be delivered to the division
81 | either in person or by due course of mail within such 5 days. If
82 | no such demand for hearing is made, the division shall thereupon
83 | declare in writing to such vendor and to all manufacturers and
84 | distributors within the state that all further sales to such
85 | vendor are prohibited until such time as the division certifies
86 | in writing that such vendor has fully paid for all liquors
87 | previously purchased. In the event such prohibition of sales and

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88 | declaration thereof to the vendor, manufacturers, and
89 | distributors is ordered by the division, the vendor may seek
90 | review of such decision by the Department of Business and
91 | Professional Regulation within 5 days. In the event application
92 | for such review is filed within such time, such prohibition of
93 | sales shall not be made, published, or declared until final
94 | disposition of such review by the department.

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

109 | (6) Nothing herein shall be taken to forbid the giving of
110 | trade discounts in the usual course of business upon wine and
111 | liquor sales.

112 | (7) The extension or receiving of credits in violation of
113 | this section shall be considered as an arrangement for financial
114 | assistance and shall constitute a violation of the Beverage Law
115 | and any maneuver, shift, or device of any kind by which credit is
116 | extended contrary to the provisions of this section shall be

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117 considered a violation of the Beverage Law.

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

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

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

136 (11) A vendor may display in the interior of his or her
137 licensed premises, including the window or windows thereof, neon,
138 electric, or other signs, including window painting and
139 decalcomanias applied to the surface of the interior or exterior
140 of such windows, and posters, placards, and other advertising
141 material advertising the brand or brands of alcoholic beverages
142 sold by him or her, whether visible or not from the outside of
143 the licensed premises, but no vendor shall display in the window
144 or windows of his or her licensed premises more than one neon,
145 electric, or similar sign, advertising the product of any one

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146 manufacturer.

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

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

172 (b) Without limitation in total dollar value of such items
173 provided to a vendor, a manufacturer, ~~or distributor,~~ importer,
174 brand owner, or brand registrant of malt beverage, or any broker,

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175 sales agent, or sales person thereof, may rent, loan without
176 charge for an indefinite duration, or sell durable retailer
177 advertising specialties such as clocks, pool table lights, and
178 the like, which bear advertising matter.

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

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

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

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

199 (g) Manufacturers, ~~and distributors,~~ importers, brand
200 owners, or brand registrants of beer, and any broker, sales
201 agent, or sales person thereof, ~~of beer~~ shall not engage in
202 cooperative advertising with vendors.

203 (h) Distributors of beer may sell to vendors draft

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204 equipment and tapping accessories at a price not less than the
205 cost to the industry member who initially purchased them, except
206 there is no required charge, and a distributor may exchange any
207 parts which are not compatible with a competitor's system and are
208 necessary to dispense the distributor's brands. A distributor of
209 beer may furnish to a vendor at no charge replacement parts of
210 nominal intrinsic value, including, but not limited to, washers,
211 gaskets, tail pieces, hoses, hose connections, clamps, plungers,
212 and tap markers.

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