

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 assistance  
 7           to retail vendors; defining the term "brand owner";  
 8           providing an effective date.

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

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 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  
 26   shall such ~~licensed~~ manufacturer, ~~or~~ distributor, importer,  
 27   primary American source of supply, brand owner or brand  
 28   registrant, or any broker, sales agent, or sales person thereof,

29 assist any vendor by any gifts or loans of money or property of  
30 any 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  
37 apply to any bottles, barrels, or other containers necessary for  
38 the legitimate transportation of such beverages or to  
39 advertising materials and does not apply to the extension of  
40 credit, for liquors sold, made strictly in compliance with the  
41 provisions of this section. A brand owner is a person who is not  
42 a manufacturer, distributor, importer, primary American source  
43 of supply, brand registrant, or broker, sales agent, or sales  
44 person thereof, but who directly or indirectly owns or controls  
45 any brand, brand name, or label of alcoholic beverage. Nothing  
46 in 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  
52 made by the 10th day succeeding the calendar week in which such  
53 sale was made, the distributor who made such sale shall, within  
54 3 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

57 | to such vendor and to all manufacturers and distributors within  
58 | the state that all further sales to such vendor are prohibited  
59 | until such time as the division certifies in writing that such  
60 | vendor has fully paid for all liquors previously purchased.  
61 | However, if a distributor received payment within the 3-day  
62 | period following the 10th day succeeding the calendar week in  
63 | which the sale was made, the distributor, if notification to the  
64 | division has not already been made, is not required to notify  
65 | the division. Payments so made within the 3-day period do not  
66 | constitute a 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  
78 | notice within which to show such cause, and he or she may demand  
79 | a 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  
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  
100 until good cause is shown by such vendor as heretofore provided  
101 for. No liquor shall be purchased by such vendor or sold to him  
102 or her by 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  
 116 | is extended contrary to the provisions of this section shall be  
 117 | considered a violation of the Beverage Law.

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

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

138 |         (11) A vendor may display in the interior of his or her  
 139 | licensed premises, including the window or windows thereof,  
 140 | neon, electric, or other signs, including window painting and

141 decalcomanias applied to the surface of the interior or exterior  
 142 of such windows, and posters, placards, and other advertising  
 143 material advertising the brand or brands of alcoholic beverages  
 144 sold by him or her, whether visible or not from the outside of  
 145 the licensed premises, but no vendor shall display in the window  
 146 or windows of his or her licensed premises more than one neon,  
 147 electric, or similar sign, advertising the product of any one  
 148 manufacturer.

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

166 (a) If a manufacturer, ~~or~~ distributor, importer, brand  
 167 owner, or brand registrant of malt beverage, or any broker,  
 168 sales agent, or sales person thereof, provides a vendor with

169 expendable retailer advertising specialties such as trays,  
 170 coasters, mats, menu cards, napkins, cups, glasses,  
 171 thermometers, and the like, such items shall be sold at a price  
 172 not less than the actual cost to the industry member who  
 173 initially purchased them, without limitation in total dollar  
 174 value of such items sold to a vendor.

175 (b) Without limitation in total dollar value of such items  
 176 provided to a vendor, a manufacturer, ~~or~~ distributor, importer,  
 177 brand owner, or brand registrant of malt beverage, or any  
 178 broker, sales agent, or sales person thereof, may rent, loan  
 179 without charge for an indefinite duration, or sell durable  
 180 retailer advertising specialties such as clocks, pool table  
 181 lights, and the like, which bear advertising matter.

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

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

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

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

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

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

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