

ENROLLED
CS/HB 951

2008 Legislature

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.

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
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,

ENROLLED
CS/HB 951

2008 Legislature

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

ENROLLED
CS/HB 951

2008 Legislature

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

ENROLLED
CS/HB 951

2008 Legislature

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

ENROLLED
CS/HB 951

2008 Legislature

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

ENROLLED

CS/HB 951

2008 Legislature

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

ENROLLED
CS/HB 951

2008 Legislature

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.

ENROLLED
CS/HB 951

2008 Legislature

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.