

A bill to be entitled

An act relating to licensure as an American source of supply; amending ss. 564.045 and 565.095, F.S.; revising a definition; defining the term "licensee"; conforming provisions to changes made by the act; prohibiting a person from altering the trademark of a manufacturer, rectifier, bottler, or brand owner on products shipped into this state; amending ss. 561.14, 561.42, and 562.46, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 564.045, Florida Statutes, is amended to read:

564.045 Licensure as ~~primary~~ American source of supply.—

(1) DEFINITIONS ~~DEFINITION.~~ As used in this section, the term:

(a) "Licensed "Primary American source of supply" means a ~~the~~ manufacturer, vintner, winery, or bottler, or a licensee who has lawfully purchased the product directly from such sources within or outside this state ~~their legally authorized exclusive agent,~~ who, if the product cannot be secured directly from the manufacturer by a licensed ~~an American~~ distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by a licensed ~~an American~~

27 distributor, or who, if the product can be secured directly from  
 28 the manufacturer by a licensed ~~an American~~ distributor, is the  
 29 manufacturer.

30 (b) "Licensee" means a person or entity licensed by a  
 31 federal, state, or municipal agency located within or outside  
 32 this state to sell or resell wine ~~It shall also include any~~  
 33 ~~applicant who directly purchases vinous beverages from a~~  
 34 ~~manufacturer, vintner, winery, or bottler who represents that~~  
 35 ~~there is no primary American source of supply for the brand and~~  
 36 ~~such applicant must petition the division for approval of~~  
 37 ~~licensure.~~

38 (2) TAX CONTROL LICENSURE REQUIRED.—For purposes of tax  
 39 revenue control, a ~~no~~ person, a firm, a corporation, or any  
 40 other entity that ~~which~~ is a licensed ~~the primary~~ American  
 41 source of supply ~~as defined herein~~ may not sell, offer for sale,  
 42 accept orders for sale, ship, or cause to be shipped into this  
 43 state any vinous beverages to any distributor or importer within  
 44 the state without having first obtained licensure as a licensed  
 45 ~~primary~~ American source of supply on forms provided by, and in  
 46 such manner as prescribed by, the division. Applicants for  
 47 licensure as a licensed ~~primary~~ American source of supply shall  
 48 be exempt from the requirements and qualification standards set  
 49 forth in ss. 561.15 and 561.17.

50 (3) LICENSE FEES.—Licensure as a licensed ~~primary~~ American  
 51 source of supply authorizes the shipment of vinous beverages  
 52 manufactured within and outside ~~without~~ the state to licensed

53 distributors, importers, manufacturers, bonded warehouses, and  
 54 registered exporters within the state. The annual license fee  
 55 for a licensed ~~primary~~ American source of supply is \$15 for each  
 56 brand that requires a federal label approval and is scheduled  
 57 for shipment to a licensed distributor or importer within this  
 58 state for the purpose of being sold within the state. The annual  
 59 license fee shall be submitted with the application for initial  
 60 licensure. This license shall be renewed each year, and the  
 61 renewal fee shall be \$15 for each brand shipped into the state  
 62 during the preceding year.

63 (4) CERTAIN INTERSTATE AND FOREIGN SHIPMENTS PROHIBITED.—A  
 64 ~~No~~ holder of a distributor's license or importer's license as  
 65 classified by s. 561.14(2) may not ship or cause to be shipped  
 66 into this state, or accept delivery from another state or a  
 67 foreign country of, any vinous beverages except directly from a  
 68 licensed ~~primary~~ American source of supply.

69 (5) PRIVATE LABELS.—This section does not ~~Nothing herein~~  
 70 ~~shall~~ prohibit the ownership by vendors of brand names of  
 71 distilled spirits and vinous beverages commonly known as private  
 72 labels if; ~~provided that~~ such ownership and use thereof do not  
 73 otherwise violate the Beverage Law.

74 (6) TRADEMARK ALTERATION.—A person may not alter the  
 75 trademark of a manufacturer, rectifier, bottler, or brand owner  
 76 on products shipped into this state.

77 (7) ~~(6)~~ RULEMAKING AUTHORITY.—The division shall adopt  
 78 ~~promulgate~~ rules as necessary to carry out the purpose of this

79 section.

80 Section 2. Section 565.095, Florida Statutes, is amended  
81 to read:

82 565.095 Licensure as ~~primary~~ American source of supply.-

83 (1) DEFINITIONS ~~DEFINITION.~~ As used in this section, the  
84 term:

85 (a) "Licensed ~~"Primary~~ American source of supply" means a  
86 the manufacturer, rectifier, or bottler, or a licensee who has  
87 lawfully purchased the product directly from such sources within  
88 or outside this state ~~their legally authorized exclusive agent,~~  
89 who, if the product cannot be secured directly from the  
90 manufacturer by a licensed ~~an American~~ distributor, is the  
91 source closest to the manufacturer in the channel of commerce  
92 from whom the product can be secured by a licensed ~~an American~~  
93 distributor, or who, if the product can be secured directly from  
94 the manufacturer by a licensed ~~an American~~ distributor, is the  
95 manufacturer.

96 (b) "Licensee" means a person or entity licensed by a  
97 federal, state, or municipal agency located within or outside  
98 this state to sell or resell liquor, distilled spirits,  
99 spirituous liquors, spirituous beverages, or distilled  
100 spirituous liquors ~~It shall also include any applicant who~~  
101 ~~directly purchases spirituous liquors from a manufacturer,~~  
102 ~~rectifier, or bottler who represents that there is no primary~~  
103 ~~American source of supply for the brand, and such applicant must~~  
104 ~~petition the division for approval of licensure.~~

105 (2) TAX CONTROL LICENSURE REQUIRED.—For purposes of tax  
 106 revenue control, a ~~no~~ person, a firm, a corporation, or any  
 107 other entity that ~~which~~ is a licensed ~~the primary~~ American  
 108 source of supply ~~as defined herein~~ may not sell, offer for sale,  
 109 accept orders for sale, ship, or cause to be shipped into this  
 110 state any spirituous liquors to any distributor or importer  
 111 within the state without having first obtained licensure as a  
 112 licensed ~~primary~~ American source of supply on forms provided by,  
 113 and in such manner as prescribed by, the division. Applicants  
 114 for licensure as a licensed ~~primary~~ American source of supply  
 115 shall be exempt from the requirements and qualification  
 116 standards set forth in ss. 561.15 and 561.17.

117 (3) LICENSE FEES.—Licensure as a licensed ~~primary~~ American  
 118 source of supply authorizes the shipment of distilled spirits  
 119 manufactured within and outside ~~without~~ the state to licensed  
 120 distributors, importers, manufacturers, bonded warehouses, and  
 121 registered exporters within the state. The annual license fee  
 122 for a licensed ~~primary~~ American source of supply is \$30 for each  
 123 brand that requires a federal label approval and is scheduled  
 124 for shipment to a licensed distributor or importer within this  
 125 state for the purpose of being sold within the state. The annual  
 126 license fee shall be submitted with the application for initial  
 127 licensure. This license shall be renewed each year, and the  
 128 renewal fee shall be \$30 for each brand shipped into the state  
 129 during the preceding year.

130 (4) CERTAIN INTERSTATE AND FOREIGN SHIPMENTS PROHIBITED.—A

131 ~~No~~ holder of a distributor's license or importer's license as  
 132 classified by s. 561.14(2) may not ship or cause to be shipped  
 133 into this state, or accept delivery of from another state or a  
 134 foreign country, any spirituous liquors except directly from a  
 135 licensed primary American source of supply.

136 (5) PRIVATE LABELS.—This section does not ~~Nothing herein~~  
 137 ~~shall~~ prohibit the ownership by vendors of brand names of  
 138 distilled spirits and vinous beverages commonly known as private  
 139 labels if; provided, ~~that~~ such ownership and use thereof does  
 140 not otherwise violate the Beverage Law.

141 (6) TRADEMARK ALTERATION.—A person may not alter the  
 142 trademark of a manufacturer, rectifier, bottler, or brand owner  
 143 on products shipped into this state.

144 (7) ~~(6)~~ RULEMAKING AUTHORITY.—The division shall adopt  
 145 ~~promulgate~~ rules as necessary to carry out the purpose of this  
 146 section.

147 Section 3. Subsection (4) of section 561.14, Florida  
 148 Statutes, is amended to read:

149 561.14 License and registration classification.—Licenses  
 150 and registrations referred to in the Beverage Law shall be  
 151 classified as follows:

152 (4) Brokers or sales agents, whether resident or  
 153 nonresident, licensed to sell, or to cause to be sold, shipped,  
 154 and invoiced, alcoholic beverages to licensed manufacturers or  
 155 licensed distributors, and to no one else, in this state. Such  
 156 licensed brokers or sales agents, except as related ~~relates~~ to

157 malt beverages, ~~only~~ shall represent only licensed ~~one or more~~  
 158 ~~primary~~ American sources of supply, registered as such with the  
 159 division, and may be compensated on a commission or remuneration  
 160 basis and may not ~~shall~~ have a ~~no~~ direct or indirect affiliation  
 161 with any vendor licensed in this state. This license  
 162 classification does not include manufacturers' representatives  
 163 who are registered with the division under ~~the provisions of~~ ss.  
 164 564.045(1) and (2) and 565.095(1) and (2).

165 Section 4. Section 561.42, Florida Statutes, is amended to  
 166 read:

167 561.42 Tied house evil; financial aid and assistance to  
 168 vendor by manufacturer, distributor, importer, licensed ~~primary~~  
 169 American source of supply, brand owner or registrant, or any  
 170 broker, sales agent, or sales person thereof, prohibited;  
 171 procedure for enforcement; exception.-

172 (1) A ~~No~~ manufacturer, distributor, importer, licensed  
 173 ~~primary~~ American source of supply, or brand owner or registrant  
 174 of any of the beverages herein referred to, whether licensed or  
 175 operating in this state or out of state ~~out-of-state~~, or a ~~nor~~  
 176 ~~any~~ broker, sales agent, or sales person thereof, may not ~~shall~~  
 177 have a ~~any~~ financial interest, directly or indirectly, in the  
 178 establishment or business of any vendor licensed under the  
 179 Beverage Law., ~~nor shall~~ Such manufacturer, distributor,  
 180 importer, licensed ~~primary~~ American source of supply, or brand  
 181 owner or brand registrant, or any broker, sales agent, or sales  
 182 person thereof, may not assist any vendor by any gifts or loans

183 of money or property of any description or by the giving of any  
 184 rebates of any kind ~~whatsoever~~. A ~~No~~ licensed vendor may not  
 185 ~~shall~~ accept, directly or indirectly, any gift or loan of money  
 186 or property of any description or any rebates from any such  
 187 manufacturer, distributor, importer, licensed ~~primary~~ American  
 188 source of supply, or brand owner or brand registrant, or any  
 189 broker, sales agent, or sales person thereof; ~~provided~~, however,  
 190 ~~that~~ this does not apply to any bottles, barrels, or other  
 191 containers necessary for the legitimate transportation of such  
 192 beverages or to advertising materials and does not apply to the  
 193 extension of credit, for liquors sold, made strictly in  
 194 compliance with ~~the provisions of~~ this section. A brand owner is  
 195 a person who is not a manufacturer, distributor, importer,  
 196 licensed ~~primary~~ American source of supply, or brand registrant,  
 197 or a broker, sales agent, or sales person thereof, but who  
 198 directly or indirectly owns or controls any brand, brand name,  
 199 or label of alcoholic beverage. ~~Nothing in~~ This section does not  
 200 ~~shall~~ prohibit the ownership by vendors of any brand, brand  
 201 name, or label of alcoholic beverage.

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

205 (3) In cases when payment for sales to a vendor is not  
 206 made by the 10th day after ~~succeeding~~ the calendar week in which  
 207 such sale was made, the distributor who made such sale shall,  
 208 within 3 days, notify the division in writing of such fact; and



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209 the division, upon receipt of such notice, shall, after  
210 compliance with the proceedings hereinafter mentioned, declare  
211 in writing to such vendor and to all manufacturers and  
212 distributors within the state that all further sales to such  
213 vendor are prohibited until such time as the division certifies  
214 in writing that such vendor has fully paid for all liquors  
215 previously purchased. However, if a distributor received payment  
216 within the 3-day period following the 10th day after ~~succeeding~~  
217 the calendar week in which the sale was made, the distributor,  
218 if notification to the division has not already been made, is  
219 not required to notify the division. Payments so made within the  
220 3-day period do not constitute a violation of this section.

221 (4) Before the division declares and prohibits ~~shall so~~  
222 ~~declare and prohibit~~ such sales to such vendor, it shall, within  
223 2 days after receipt of such notice, give written notice to such  
224 vendor by mail of the receipt by the division of such  
225 notification of delinquency and such vendor shall be directed to  
226 forthwith make payment thereof or, upon failure to do so, to  
227 show cause before the division why further sales to such vendor  
228 may ~~shall~~ not be prohibited. Good and sufficient cause to  
229 prevent such action by the division may be made by showing  
230 payment, failure of consideration, or any other defense which  
231 would be considered sufficient in a common-law action. The  
232 vendor shall have 5 days after receipt of such notice within  
233 which to show such cause, and he or she may demand a hearing  
234 thereon, provided he or she does so in writing within said 5

235 days, such written demand to be delivered to the division either  
236 in person or by due course of mail within such 5 days. If no  
237 such demand for hearing is made, the division shall thereupon  
238 declare in writing to such vendor and to all manufacturers and  
239 distributors within the state that all further sales to such  
240 vendor are prohibited until such time as the division certifies  
241 in writing that such vendor has fully paid for all liquors  
242 previously purchased. In the event such prohibition of sales and  
243 declaration thereof to the vendor, manufacturers, and  
244 distributors is ordered by the division, the vendor may seek  
245 review of such decision by the Department of Business and  
246 Professional Regulation within 5 days. In the event application  
247 for such review is filed within such time, such prohibition of  
248 sales may ~~shall~~ not be made, published, or declared until final  
249 disposition of such review by the department.

250 (5) Upon receipt by the division from the distributor of  
251 the notice of nonpayment provided for by subsection (3), the  
252 division shall forthwith notify such delinquent vendor and all  
253 distributors in the state that no further purchases or sales of  
254 liquor by or to such vendor, except for cash, shall be made  
255 until good cause is shown by such vendor as heretofore provided  
256 for. ~~No~~ Liquor may not ~~shall~~ be purchased by such vendor or sold  
257 to him or her by any distributor, except for cash, from and  
258 after such notification by the division and until such cause is  
259 shown as is provided for in subsection (4). In the event no good  
260 cause is shown, ~~then~~ all further sales, for cash or credit, are

261 hereby prohibited after such declaration in writing by the  
262 division is sent to such vendor and distributors and until all  
263 delinquent accounts have been paid.

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

267 (7) The extension or receiving of credits in violation of  
268 this section shall be considered as an arrangement for financial  
269 assistance and shall constitute a violation of the Beverage Law  
270 and any maneuver, shift, or device of any kind by which credit  
271 is extended contrary to the provisions of this section shall be  
272 considered a violation of the Beverage Law.

273 (8) The division may adopt rules and require reports to  
274 enforce, and may impose administrative sanctions for any  
275 violation of, the limitations established in this section on  
276 credits, coupons, and other forms of assistance.

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

281 (10) A ~~No~~ manufacturer, distributor, importer, licensed  
282 ~~primary~~ American source of supply, brand owner, or brand  
283 registrant of the beverages referred to herein, or any broker,  
284 sales agent, or sales person thereof, may not ~~shall~~ directly or  
285 indirectly give, lend, rent, sell, or in any other manner  
286 furnish to a vendor any outside sign, printed, painted,

287 electric, or otherwise. A; ~~nor shall any~~ vendor may not display  
288 any sign advertising any brand of alcoholic beverages on the  
289 outside of his or her licensed premises, on any lot of ground of  
290 which the licensed premises are situated ~~situate~~, or on any  
291 building of which the licensed premises are a part.

292 (11) A vendor may display in the interior of his or her  
293 licensed premises, including the window or windows thereof,  
294 neon, electric, or other signs, including window painting and  
295 decalcomanias applied to the surface of the interior or exterior  
296 of such windows, and posters, placards, and other advertising  
297 material advertising the brand or brands of alcoholic beverages  
298 sold by him or her, whether visible or not from the outside of  
299 the licensed premises, but a ~~no~~ vendor may not ~~shall~~ display in  
300 the window or windows of his or her licensed premises more than  
301 one neon, electric, or similar sign, advertising the product of  
302 any one manufacturer.

303 (12) Any manufacturer, distributor, importer, licensed  
304 ~~primary~~ American source of supply, or brand owner or registrant,  
305 or any broker, sales agent, or sales person thereof, may give,  
306 lend, furnish, or sell to a vendor who sells the products of  
307 such manufacturer, distributor, importer, licensed ~~primary~~  
308 American source of supply, or brand owner or registrant any of  
309 the following: neon or electric signs, window painting and  
310 decalcomanias, posters, placards, and other advertising material  
311 herein authorized to be used or displayed by the vendor in the  
312 interior of his or her licensed premises.

313 (13) A licensee under the Beverage Law may not possess or  
 314 use, in physical or electronic format, any type of malt beverage  
 315 coupon or malt beverage cross-merchandising coupon in this  
 316 state, where:

317 (a) The coupon is produced, sponsored, or furnished,  
 318 whether directly or indirectly, by an alcohol beverage  
 319 manufacturer, distributor, importer, brand owner, or brand  
 320 registrant or any broker, sales agent, or sales person thereof;  
 321 and

322 (b) The coupon is or purports to be redeemable by a vendor  
 323 or other person who sells malt beverages to consumers in the  
 324 state.

325 (14) The division shall adopt reasonable rules governing  
 326 promotional displays and advertising, which rules may ~~shall~~ not  
 327 conflict with or be more stringent than the federal regulations  
 328 pertaining to such promotional displays and advertising  
 329 furnished to vendors by distributors, manufacturers, importers,  
 330 licensed primary American sources of supply, or brand owners or  
 331 registrants, or any broker, sales agent, or sales person  
 332 thereof; however:

333 (a) If a manufacturer, distributor, importer, brand owner,  
 334 or brand registrant of malt beverage, or any broker, sales  
 335 agent, or sales person thereof, provides a vendor with  
 336 expendable retailer advertising specialties such as trays,  
 337 coasters, mats, menu cards, napkins, cups, glasses,  
 338 thermometers, and the like, such items shall be sold at a price

339 not less than the actual cost to the industry member who  
 340 initially purchased them, without limitation in total dollar  
 341 value of such items sold to a vendor.

342 (b) Without limitation in total dollar value of such items  
 343 provided to a vendor, a manufacturer, distributor, importer,  
 344 brand owner, or brand registrant of malt beverage, or any  
 345 broker, sales agent, or sales person thereof, may rent, loan  
 346 without charge for an indefinite duration, or sell durable  
 347 retailer advertising specialties such as clocks, pool table  
 348 lights, and the like, which bear advertising matter.

349 (c) If a manufacturer, distributor, importer, brand owner,  
 350 or brand registrant of malt beverage, or any broker, sales  
 351 agent, or sales person thereof, provides a vendor with consumer  
 352 advertising specialties such as ashtrays, T-shirts, bottle  
 353 openers, shopping bags, and the like, such items shall be sold  
 354 at a price not less than the actual cost to the industry member  
 355 who initially purchased them, but may be sold without limitation  
 356 in total value of such items sold to a vendor.

357 (d) A manufacturer, distributor, importer, brand owner, or  
 358 brand registrant of malt beverage, or any broker, sales agent,  
 359 or sales person thereof, may provide consumer advertising  
 360 specialties described in paragraph (c) to consumers on any  
 361 vendor's licensed premises.

362 (e) A manufacturer, distributor, importer, brand owner, or  
 363 brand registrant of beer, or any broker, sales agent, or sales  
 364 person thereof, may ~~Manufacturers, distributors, importers,~~

365 ~~brand owners, or brand registrants of beer, and any broker,~~  
 366 ~~sales agent, or sales person thereof, shall not conduct any~~  
 367 ~~sampling activities that include tasting of their product at a~~  
 368 ~~vendor's premises licensed for off-premises sales only.~~

369 (f) A manufacturer, distributor, importer, brand owner, or  
 370 brand registrant of beer, or any broker, sales agent, or sales  
 371 person thereof, may ~~Manufacturers, distributors, importers,~~  
 372 ~~brand owners, or brand registrants of beer, and any broker,~~  
 373 ~~sales agent, or sales person thereof, shall not engage in~~  
 374 cooperative advertising with vendors.

375 (g) A distributor ~~Distributors~~ of beer may sell to vendors  
 376 draft equipment and tapping accessories at a price not less than  
 377 the cost to the industry member who initially purchased them,  
 378 except there is no required charge, and a distributor may  
 379 exchange any parts which are not compatible with a competitor's  
 380 system and are necessary to dispense the distributor's brands. A  
 381 distributor of beer may furnish to a vendor at no charge  
 382 replacement parts of nominal intrinsic value, including, but not  
 383 limited to, washers, gaskets, tail pieces, hoses, hose  
 384 connections, clamps, plungers, and tap markers.

385 Section 5. Section 562.46, Florida Statutes, is amended to  
 386 read:

387 562.46 Legal remedies not impaired. ~~It is the declared~~  
 388 ~~legislative intention that no provision or provisions of The~~  
 389 Beverage Law does not ~~shall in any manner~~ limit, modify, or  
 390 preclude a ~~any~~ person from instituting legal proceedings in

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391 courts of competent jurisdiction for the adjudication of any  
392 rights that such person may have under the Federal and State  
393 Constitutions and under laws now existing, or laws that ~~which~~  
394 may be hereinafter enacted; further, an action involving a  
395 contractual dispute between a licensed distributor and its  
396 registered licensed ~~primary~~ American source of supply, as  
397 defined in s. 564.045 or s. 565.095, may be filed in the courts  
398 of this state.

399 Section 6. This act shall take effect July 1, 2014.