

By Senator Evers

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1 A bill to be entitled
 2 An act relating to licensure as an American source of
 3 supply; amending ss. 564.045 and 565.095, F.S.;
 4 defining terms; conforming cross-references and
 5 conforming provisions to changes made by the act;
 6 prohibiting a person from altering the trademark of a
 7 manufacturer, rectifier, bottler, or brand owner on
 8 products shipped into this state; amending ss. 561.14,
 9 561.42, and 562.46, F.S.; conforming cross-references
 10 and conforming provisions to changes made by the act;
 11 providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 564.045, Florida Statutes, is amended to
 16 read:

17 564.045 Licensure as ~~primary~~ American source of supply.—

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

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

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30 manufacturer.

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

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

51 (3) LICENSE FEES.—Licensure as a licensed ~~primary~~ American
52 source of supply authorizes the shipment of vinous beverages
53 manufactured within and outside ~~without~~ the state to licensed
54 distributors, importers, manufacturers, bonded warehouses, and
55 registered exporters within the state. The annual license fee
56 for a licensed ~~primary~~ American source of supply is \$15 for each
57 brand that requires a federal label approval and is scheduled
58 for shipment to a licensed distributor or importer within this

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59 state for the purpose of being sold within the state. The annual
60 license fee shall be submitted with the application for initial
61 licensure. This license shall be renewed each year, and the
62 renewal fee shall be \$15 for each brand shipped into the state
63 during the preceding year.

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

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

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

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

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

83 565.095 Licensure as ~~primary~~ American source of supply.—

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

86 (a) "Licensed ~~Primary~~ American source of supply" means the
87 manufacturer, rectifier, or bottler, or any licensee who has

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88 lawfully purchased the product directly from such sources within
89 or outside this state ~~their legally authorized exclusive agent,~~
90 who, if the product cannot be secured directly from the
91 manufacturer by a licensed ~~an American~~ distributor, is the
92 source closest to the manufacturer in the channel of commerce
93 from whom the product can be secured by a licensed ~~an American~~
94 distributor, or who, if the product can be secured directly from
95 the manufacturer by a licensed ~~an American~~ distributor, is the
96 manufacturer.

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

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

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117 standards set forth in ss. 561.15 and 561.17.

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

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

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

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

145 (7) ~~(6)~~ RULEMAKING AUTHORITY.—The division shall adopt

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146 promulgate rules as necessary to carry out the purpose of this
147 section.

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

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

153 (4) Brokers or sales agents, whether resident or
154 nonresident, licensed to sell, or to cause to be sold, shipped,
155 and invoiced, alcoholic beverages to licensed manufacturers or
156 licensed distributors, and to no one else, in this state. Such
157 licensed brokers or sales agents, except as related ~~relates~~ to
158 malt beverages, ~~only~~ shall represent only licensed ~~one or more~~
159 ~~primary~~ American sources of supply, registered as such with the
160 division, and may be compensated on a commission or remuneration
161 basis and may not ~~shall~~ have a no direct or indirect affiliation
162 with any vendor licensed in this state. This license
163 classification does not include manufacturers' representatives
164 who are registered with the division under ~~the provisions of~~ ss.
165 564.045(1) and (2) and 565.095(1) and (2).

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

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

173 (1) A ~~No~~ manufacturer, distributor, importer, licensed
174 ~~primary~~ American source of supply, or brand owner or registrant

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175 of any of the beverages herein referred to, whether licensed or
176 operating in this state or out of state ~~out-of-state, or a~~ nor
177 ~~any~~ broker, sales agent, or sales person thereof, may not ~~shall~~
178 have a ~~any~~ financial interest, directly or indirectly, in the
179 establishment or business of any vendor licensed under the
180 Beverage Law, ~~nor shall~~ Such manufacturer, distributor,
181 importer, licensed ~~primary~~ American source of supply, or brand
182 owner or brand registrant, or any broker, sales agent, or sales
183 person thereof, may not assist any vendor by any gifts or loans
184 of money or property of any description or by the giving of any
185 rebates of any kind ~~whatsoever~~. A ~~No~~ licensed vendor may not
186 ~~shall~~ accept, directly or indirectly, any gift or loan of money
187 or property of any description or any rebates from any such
188 manufacturer, distributor, importer, licensed ~~primary~~ American
189 source of supply, or brand owner or brand registrant, or any
190 broker, sales agent, or sales person thereof; ~~provided~~, however,
191 ~~that~~ this does not apply to any bottles, barrels, or other
192 containers necessary for the legitimate transportation of such
193 beverages or to advertising materials and does not apply to the
194 extension of credit, for liquors sold, made strictly in
195 compliance with ~~the provisions of~~ this section. A brand owner is
196 a person who is not a manufacturer, distributor, importer,
197 licensed ~~primary~~ American source of supply, or brand registrant,
198 or a broker, sales agent, or sales person thereof, but who
199 directly or indirectly owns or controls any brand, brand name,
200 or label of alcoholic beverage. ~~Nothing in~~ This section does not
201 ~~shall~~ prohibit the ownership by vendors of any brand, brand
202 name, or label of alcoholic beverage.

203 (2) Credit for the sale of liquors may be extended to any

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204 vendor up to, but not including, the 10th day after the calendar
205 week within which such sale was made.

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

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

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

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

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

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

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

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

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

282 (10) A ~~No~~ manufacturer, distributor, importer, licensed
283 ~~primary~~ American source of supply, brand owner, or brand
284 registrant of the beverages referred to herein, or any broker,
285 sales agent, or sales person thereof, may not ~~shall~~ directly or
286 indirectly give, lend, rent, sell, or in any other manner
287 furnish to a vendor any outside sign, printed, painted,
288 electric, or otherwise. A; ~~nor shall any~~ vendor may not display
289 any sign advertising any brand of alcoholic beverages on the
290 outside of his or her licensed premises, on any lot of ground of

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291 which the licensed premises are situated ~~situate~~, or on any
292 building of which the licensed premises are a part.

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

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

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

318 (a) The coupon is produced, sponsored, or furnished,
319 whether directly or indirectly, by an alcohol beverage

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320 manufacturer, distributor, importer, brand owner, or brand
321 registrant or any broker, sales agent, or sales person thereof;
322 and

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

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

334 (a) If a manufacturer, distributor, importer, brand owner,
335 or brand registrant of malt beverage, or any broker, sales
336 agent, or sales person thereof, provides a vendor with
337 expendable retailer advertising specialties such as trays,
338 coasters, mats, menu cards, napkins, cups, glasses,
339 thermometers, and the like, such items shall be sold at a price
340 not less than the actual cost to the industry member who
341 initially purchased them, without limitation in total dollar
342 value of such items sold to a vendor.

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

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349 lights, and the like, which bear advertising matter.

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

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

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

368 (f) Manufacturers, distributors, importers, brand owners,
369 or brand registrants of beer, and any broker, sales agent, or
370 sales person thereof, may ~~shall~~ not engage in cooperative
371 advertising with vendors.

372 (g) Distributors of beer may sell to vendors draft
373 equipment and tapping accessories at a price not less than the
374 cost to the industry member who initially purchased them, except
375 there is no required charge, and a distributor may exchange any
376 parts which are not compatible with a competitor's system and
377 are necessary to dispense the distributor's brands. A

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378 distributor of beer may furnish to a vendor at no charge
379 replacement parts of nominal intrinsic value, including, but not
380 limited to, washers, gaskets, tail pieces, hoses, hose
381 connections, clamps, plungers, and tap markers.

382 Section 5. Section 562.46, Florida Statutes, is amended to
383 read:

384 562.46 Legal remedies not impaired. ~~It is the declared~~
385 ~~legislative intention that no provision or provisions of The~~
386 Beverage Law does not ~~shall in any manner~~ limit, modify, or
387 preclude a ~~any~~ person from instituting legal proceedings in
388 courts of competent jurisdiction for the adjudication of any
389 rights that such person may have under the Federal and State
390 Constitutions and under laws now existing, or laws that ~~which~~
391 may be hereinafter enacted; further, an action involving a
392 contractual dispute between a licensed distributor and its
393 registered licensed ~~primary~~ American source of supply, as
394 defined in s. 564.045 or s. 565.095, may be filed in the courts
395 of this state.

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