

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative La Rosa offered the following:

Amendment to Amendment (267770) (with title amendment)

Between lines 138 and 139 of the amendment, insert:

Section 4. Present subsection (13) of section 561.42, Florida Statutes, is redesignated as subsection (14), subsections (1), (8), (11), and (12) and paragraph (b) of present subsection (14) of that section are amended, and new subsections (13) and (16) are added to that section, to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker,

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13 sales agent, or sales person thereof, prohibited; procedure for
14 enforcement; exception.—

15 (1) A ~~No~~ manufacturer, distributor, importer, primary
16 American source of supply, or brand owner or registrant of any
17 of the beverages herein referred to, whether licensed or
18 operating in this state or out-of-state, nor any broker, sales
19 agent, or sales person thereof, may not ~~shall~~ have any financial
20 interest, directly or indirectly, in the establishment or
21 business of any vendor licensed under the Beverage Law; nor may
22 ~~shall~~ such manufacturer, distributor, importer, primary American
23 source of supply, brand owner or brand registrant, or any
24 broker, sales agent, or sales person thereof, directly or
25 indirectly assist any vendor by furnishing, supplying, selling,
26 renting, lending, buying for, or giving to any vendor any
27 vehicles, equipment, furniture, fixtures, signs, supplies,
28 credit, fees, slotting fees of any kind, advertising or
29 cooperative advertising, services, ~~any~~ gifts or loans of money
30 or property of any description, or ~~by the giving of any~~ rebates
31 of any kind whatsoever. A ~~No~~ licensed vendor may not ~~shall~~
32 accept, directly or indirectly, any vehicles, equipment,
33 furniture, fixtures, signs, supplies, credit, fees, slotting
34 fees of any kind, advertising or cooperative advertising,
35 services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of
36 any description, or ~~any~~ rebates of any kind whatsoever from any
37 such manufacturer, distributor, importer, primary American

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38 source of supply, brand owner or brand registrant, or any
39 broker, sales agent, or sales person thereof; provided, however,
40 that this does not apply to any bottles, barrels, or other
41 containers necessary for the legitimate transportation of such
42 beverages or to advertising materials and does not apply to the
43 extension of credit, for liquors sold, made strictly in
44 compliance with ~~the provisions of~~ this section. A brand owner is
45 a person who is not a manufacturer, distributor, importer,
46 primary American source of supply, brand registrant, or broker,
47 sales agent, or sales person thereof, but who directly or
48 indirectly owns or controls any brand, brand name, or label of
49 alcoholic beverage. Nothing in this section shall prohibit the
50 ownership by vendors of any brand, brand name, or label of
51 alcoholic beverage.

52 (8) The division may adopt rules and require reports to
53 enforce, and may impose administrative sanctions for any
54 violation of, the limitations established under the Beverage Law
55 on vehicles, equipment, furniture, fixtures, signs, supplies,
56 credit, fees, advertising or cooperative advertising, services,
57 gifts or loans of money or property ~~in this section on credits,~~
58 coupons, and other forms of assistance.

59 (11) A vendor may display in the interior of his or her
60 licensed premises, including the window or windows thereof,
61 neon, electric, or other signs, including window painting and
62 decalcomanias applied to the surface of the interior or exterior

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63 of such windows; signs that require a power source; and
64 posters, placards, and other advertising material advertising
65 the brand or brands of alcoholic beverages sold by him or her,
66 whether visible or not from the outside of the licensed
67 premises, but a vendor may not shall display in the window or
68 windows of his or her licensed premises more than one neon,
69 electric, or similar sign that requires a power source;
70 advertising the product of any one brand of alcoholic beverage
71 manufacturer.

72 (12) Any manufacturer, distributor, importer, primary
73 American source of supply, or brand owner or registrant, or any
74 broker, sales agent, or sales person thereof, may give, lend,
75 furnish, or sell to a vendor who sells the products of such
76 manufacturer, distributor, importer, primary American source of
77 supply, or brand owner or registrant any of the following: neon,
78 ~~or~~ electric, or similar signs requiring a power source; signs,
79 window painting and decalcomanias applied to the surface of the
80 interior or exterior of windows; or, posters, placards, and
81 other advertising material herein authorized to be used or
82 displayed by the vendor in the interior of his or her licensed
83 premises. As used in subsection (11) and this subsection, the
84 term "decalcomania" means a picture, design, print, engraving,
85 or label made to be transferred onto a glass surface.

86 (13) Any manufacturer, distributor, importer, primary
87 American source of supply, or brand owner or registrant, or any

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88 broker, sales agent, or sales person thereof, who regularly
89 sells merchandise to vendors, or any vendor who purchases
90 merchandise from such a manufacturer, distributor, importer,
91 primary American source of supply, or brand owner or registrant,
92 or any broker, sales agent, or sales person thereof, does not
93 violate subsection (1) if:

94 (a) Such sale or purchase is not less than the fair market
95 value of the merchandise;

96 (b) Such sale or purchase is not combined with any sale or
97 purchase of alcoholic beverages;

98 (c) Such sale or purchase is separately itemized from the
99 sale or purchase of alcoholic beverages; and

100 (d) Both the seller and purchaser maintain records of any
101 such sale or purchase, including the price and any conditions
102 associated with such sale or purchase of the merchandise.

103
104 For purposes of this subsection, the term "merchandise" means
105 commodities, supplies, fixtures, furniture, or equipment. The
106 term does not include alcoholic beverages or a motor vehicle or
107 trailer requiring registration under chapter 320.

108 (15)-(14) The division shall adopt reasonable rules
109 governing promotional displays and advertising, which rules
110 shall not conflict with or be more stringent than the federal
111 regulations pertaining to such promotional displays and
112 advertising furnished to vendors by distributors, manufacturers,

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113 importers, primary American sources of supply, or brand owners
114 or registrants, or any sales agent or sales person thereof;
115 however:

116 (b) Without limitation in total dollar value of such items
117 provided to a vendor, a manufacturer, distributor, importer,
118 brand owner, or brand registrant of malt beverage, or any sales
119 agent or sales person thereof, may rent, loan without charge for
120 an indefinite duration, or sell durable retailer advertising
121 specialties such as clocks, pool table lights, and the like,
122 which bear advertising matter. If sold, such items may not be
123 sold at a price less than the actual cost to the industry member
124 who initially purchased the items.

125 (16) (a) Notwithstanding any other provision of this
126 section, a manufacturer or importer of malt beverages and a
127 vendor may enter into a written agreement for brand-naming
128 rights and associated cooperative advertising, negotiated at
129 arm's length for no more than fair market value if:

130 1. The vendor operates places of business where
131 consumption on the premises is permitted, the premises are
132 located within a theme park complex consisting of at least 25
133 contiguous acres owned and controlled by the same business
134 entity, and the complex contains permanent exhibitions and a
135 variety of recreational activities and has a minimum of 1
136 million visitors annually through a controlled entrance to and
137 exit from the theme park complex;

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138 2. Such agreement does not involve, either in whole or in
139 part, the sale or distribution of malt beverages between the
140 manufacturer or importer, or the manufacturer's or importer's
141 distributor, and a vendor;

142 3. The vendor, as a result of such agreement, does not
143 give preferential treatment to the alcoholic beverage brand or
144 brands of the manufacturer or importer with whom the vendor has
145 entered into such agreement;

146 4. Such agreement does not limit, either directly or
147 indirectly, the sale of alcoholic beverages of another
148 manufacturer or importer, or distributor; and

149 5. Within 10 days after execution of such agreement, the
150 vendor files with the division a description of the agreement
151 which includes the location, dates, and the name of the
152 manufacturer or importer that entered into the agreement.

153
154 As used in this paragraph, the term "negotiated at arm's length"
155 means the negotiation of a business transaction by independent
156 parties acting in each party's own individual self-interest and
157 conducted as if the parties were strangers, so that no conflict
158 of interest may arise.

159 (b) A manufacturer or importer of malt beverages which is
160 a party to a brand-naming rights agreement may not, either
161 directly or indirectly, solicit or receive from any of its
162 distributors any portion of the payment due from the

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163 manufacturer or importer of malt beverages to the vendor
164 pursuant to such agreement. Such agreement exists solely between
165 the manufacturer and the vendor and does not, directly or
166 indirectly, in any way obligate or place responsibility,
167 financial or otherwise, upon a distributor.

168 (c) Notwithstanding s. 561.29(3) and (4), a manufacturer
169 of malt beverages, an importer of malt beverages, or a vendor
170 who violates this subsection is subject to:

171 1. A civil penalty of not more than \$25,000, for a first
172 violation.

173 2. A civil penalty of not more than \$100,000 for a second
174 violation occurring within 36 months after the date of the first
175 violation.

176 3. At the discretion of the division, in lieu of or in
177 addition to a civil penalty imposed under subparagraph 2.,
178 suspension or revocation of the alcoholic beverage license for a
179 third or subsequent violation occurring within 36 months after
180 the date of the first violation.

181
182 A violation occurring more than 36 months after a first
183 violation is deemed a first violation under this paragraph. When
184 imposing a civil penalty within the ranges provided in
185 subparagraphs 1. and 2., the division may not impose a civil
186 penalty in an amount greater than the financial value of the
187 brand-naming rights agreement.

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T I T L E A M E N D M E N T

Between lines 171 and 172 of the amendment, insert:
amending s. 561.42, F.S.; prohibiting certain entities
and persons from directly or indirectly assisting any
vendor in certain ways; prohibiting a licensed vendor
from accepting certain items and services; authorizing
the Division of Alcoholic Beverages and Tobacco to
impose administrative sanctions for a violation of
certain limitations established in the Beverage Law;
prohibiting a vendor from displaying certain signs in
the window or windows of his or her licensed premises;
authorizing certain entities and persons to give,
lend, furnish, or sell certain advertising material to
certain vendors; defining the term "decalcomania";
providing exemptions relating to tied house evil for
certain sales and purchases of merchandise; providing
conditions for the exemptions; defining the term
"merchandise"; prohibiting a manufacturer or importer
of malt beverages from soliciting or receiving any
portion of certain payments from its distributors;
defining the term "negotiated at arm's length";
specifying that a brand-naming rights agreement does
not obligate or place responsibility upon a

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213 distributor; providing civil penalties for violations
214 by manufacturers or importers of malt beverages or
215 vendors; providing applicability; prohibiting the
216 division from imposing certain civil penalties that
217 are greater than the financial value of a brand-naming
218 rights agreement;

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