

1                                   A bill to be entitled  
2           An act relating to the Beverage Law; amending s.  
3           561.42, F.S.; prohibiting certain entities and persons  
4           from directly or indirectly assisting any vendor in  
5           certain ways; prohibiting a licensed vendor from  
6           accepting certain items and services; authorizing the  
7           Division of Alcoholic Beverages and Tobacco to impose  
8           administrative sanctions for a violation of certain  
9           limitations established in the Beverage Law;  
10          prohibiting a vendor from displaying certain signs in  
11          the window or windows of his or her licensed premises;  
12          authorizing certain entities and persons to give,  
13          lend, furnish, or sell certain advertising material to  
14          certain vendors; defining the term "decalcomania";  
15          providing exemptions relating to tied house evil for  
16          certain sales and purchases of merchandise; providing  
17          conditions for the exemptions; defining the term  
18          "merchandise"; prohibiting a manufacturer or importer  
19          of malt beverages from soliciting or receiving any  
20          portion of certain payments from its distributors;  
21          defining the term "negotiated at arm's length";  
22          specifying that a brand-naming rights agreement does  
23          not obligate or place responsibility upon a  
24          distributor; providing civil penalties for violations  
25          by manufacturers or importers of malt beverages or

26 vendors; providing applicability; prohibiting the  
 27 division from imposing certain civil penalties that  
 28 are greater than the financial value of a brand-naming  
 29 rights agreement; providing an effective date.

30

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

32

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

39 561.42 Tied house evil; financial aid and assistance to  
 40 vendor by manufacturer, distributor, importer, primary American  
 41 source of supply, brand owner or registrant, or any broker,  
 42 sales agent, or sales person thereof, prohibited; procedure for  
 43 enforcement; exception.—

44 (1) A ~~No~~ manufacturer, distributor, importer, primary  
 45 American source of supply, or brand owner or registrant of any  
 46 of the beverages herein referred to, whether licensed or  
 47 operating in this state or out-of-state, nor any broker, sales  
 48 agent, or sales person thereof, may not ~~shall~~ have any financial  
 49 interest, directly or indirectly, in the establishment or  
 50 business of any vendor licensed under the Beverage Law; nor may

51 ~~shall~~ such manufacturer, distributor, importer, primary American  
 52 source of supply, brand owner or brand registrant, or any  
 53 broker, sales agent, or sales person thereof, directly or  
 54 indirectly assist any vendor by furnishing, supplying, selling,  
 55 renting, lending, buying for, or giving to any vendor any  
 56 vehicles, equipment, furniture, fixtures, signs, supplies,  
 57 credit, fees, slotting fees of any kind, advertising or  
 58 cooperative advertising, services, ~~any~~ gifts or loans of money  
 59 or property of any description, ~~or by the giving of any~~ rebates  
 60 of any kind whatsoever. A ~~No~~ licensed vendor may not ~~shall~~  
 61 accept, directly or indirectly, any vehicles, equipment,  
 62 furniture, fixtures, signs, supplies, credit, fees, slotting  
 63 fees of any kind, advertising or cooperative advertising,  
 64 services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of  
 65 any description, ~~or any~~ rebates of any kind whatsoever from any  
 66 such manufacturer, distributor, importer, primary American  
 67 source of supply, brand owner or brand registrant, or any  
 68 broker, sales agent, or sales person thereof; provided, however,  
 69 that this does not apply to any bottles, barrels, or other  
 70 containers necessary for the legitimate transportation of such  
 71 beverages or to advertising materials and does not apply to the  
 72 extension of credit, for liquors sold, made strictly in  
 73 compliance with ~~the provisions of~~ this section. A brand owner is  
 74 a person who is not a manufacturer, distributor, importer,  
 75 primary American source of supply, brand registrant, or broker,

76 sales agent, or sales person thereof, but who directly or  
77 indirectly owns or controls any brand, brand name, or label of  
78 alcoholic beverage. Nothing in this section shall prohibit the  
79 ownership by vendors of any brand, brand name, or label of  
80 alcoholic beverage.

81 (8) The division may adopt rules and require reports to  
82 enforce, and may impose administrative sanctions for any  
83 violation of, the limitations established under the Beverage Law  
84 on vehicles, equipment, furniture, fixtures, signs, supplies,  
85 credit, fees, advertising or cooperative advertising, services,  
86 gifts or loans of money or property ~~in this section on credits,~~  
87 coupons, and other forms of assistance.

88 (11) A vendor may display in the interior of his or her  
89 licensed premises, including the window or windows thereof,  
90 neon, electric, or other signs, including window painting and  
91 decalcomanias applied to the surface of the interior or exterior  
92 of such windows; signs that require a power source;~~7~~ and  
93 posters, placards, and other advertising material advertising  
94 the brand or brands of alcoholic beverages sold by him or her,  
95 whether visible or not from the outside of the licensed  
96 premises, but a ~~no~~ vendor may not ~~shall~~ display in the window or  
97 windows of his or her licensed premises more than one neon,  
98 electric, or similar sign that requires a power source;~~7~~  
99 advertising the product of any one brand of alcoholic beverage  
100 manufacturer.

101           (12) Any manufacturer, distributor, importer, primary  
102 American source of supply, or brand owner or registrant, or any  
103 broker, sales agent, or sales person thereof, may give, lend,  
104 furnish, or sell to a vendor who sells the products of such  
105 manufacturer, distributor, importer, primary American source of  
106 supply, or brand owner or registrant any of the following: neon,  
107 ~~or electric,~~ or similar signs requiring a power source; signs,  
108 window painting and decalcomanias applied to the surface of the  
109 interior or exterior of windows; or, posters, placards, and  
110 other advertising material herein authorized to be used or  
111 displayed by the vendor in the interior of his or her licensed  
112 premises. As used in subsection (11) and this subsection, the  
113 term "decalcomania" means a picture, design, print, engraving,  
114 or label made to be transferred onto a glass surface.

115           (13) Any manufacturer, distributor, importer, primary  
116 American source of supply, or brand owner or registrant, or any  
117 broker, sales agent, or sales person thereof, who regularly  
118 sells merchandise to vendors, or any vendor who purchases  
119 merchandise from such a manufacturer, distributor, importer,  
120 primary American source of supply, or brand owner or registrant,  
121 or any broker, sales agent, or sales person thereof, does not  
122 violate subsection (1) if:

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

125           (b) Such sale or purchase is not combined with any sale or

126 | purchase of alcoholic beverages;

127 |       (c) Such sale or purchase is separately itemized from the  
 128 | sale or purchase of alcoholic beverages; and

129 |       (d) Both the seller and purchaser maintain records of any  
 130 | such sale or purchase, including the price and any conditions  
 131 | associated with such sale or purchase of the merchandise.

132 |  
 133 | For purposes of this subsection, the term "merchandise" means  
 134 | commodities, supplies, fixtures, furniture, or equipment. The  
 135 | term does not include alcoholic beverages or a motor vehicle or  
 136 | trailer requiring registration under chapter 320.

137 |       ~~(15)-(14)~~ The division shall adopt reasonable rules  
 138 | governing promotional displays and advertising. Such rules may  
 139 | not conflict with or be more stringent than the federal  
 140 | regulations pertaining to such promotional displays and  
 141 | advertising furnished to vendors by distributors, manufacturers,  
 142 | importers, primary American sources of supply, or brand owners  
 143 | or registrants, or any sales agent or sales person thereof;  
 144 | however:

145 |       (b) Without limitation in total dollar value of such items  
 146 | provided to a vendor, a manufacturer, distributor, importer,  
 147 | brand owner, or brand registrant of malt beverage, or any sales  
 148 | agent or sales person thereof, may rent, loan without charge for  
 149 | an indefinite duration, or sell durable retailer advertising  
 150 | specialties such as clocks, pool table lights, and the like,

151 which bear advertising matter. If sold, such items may not be  
152 sold at a price less than the actual cost to the industry member  
153 who initially purchased the items.

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

159 1. The vendor operates places of business where  
160 consumption on the premises is permitted, the premises are  
161 located within a theme park complex consisting of at least 25  
162 contiguous acres owned and controlled by the same business  
163 entity, and the complex contains permanent exhibitions and a  
164 variety of recreational activities and has a minimum of 1  
165 million visitors annually through a controlled entrance to and  
166 exit from the theme park complex;

167 2. Such agreement does not involve, either in whole or in  
168 part, the sale or distribution of malt beverages between the  
169 manufacturer or importer, or the manufacturer's or importer's  
170 distributor, and a vendor;

171 3. The vendor, as a result of such agreement, does not  
172 give preferential treatment to the alcoholic beverage brand or  
173 brands of the manufacturer or importer with whom the vendor has  
174 entered into such agreement;

175 4. Such agreement does not limit, either directly or

176 indirectly, the sale of alcoholic beverages of another  
177 manufacturer or importer, or distributor; and

178 5. Within 10 days after execution of such agreement, the  
179 vendor files with the division a description of the agreement  
180 which includes the location, dates, and the name of the  
181 manufacturer or importer that entered into the agreement.

182  
183 As used in this paragraph, the term "negotiated at arm's length"  
184 means the negotiation of a business transaction by independent  
185 parties acting in each party's own individual self-interest and  
186 conducted as if the parties were strangers, so that no conflict  
187 of interest may arise.

188 (b) A manufacturer or importer of malt beverages which is  
189 a party to a brand-naming rights agreement may not, either  
190 directly or indirectly, solicit or receive from any of its  
191 distributors any portion of the payment due from the  
192 manufacturer or importer of malt beverages to the vendor  
193 pursuant to such agreement. Such agreement exists solely between  
194 the manufacturer and the vendor and does not, directly or  
195 indirectly, in any way obligate or place responsibility,  
196 financial or otherwise, upon a distributor.

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

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



201 violation.

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

205 3. At the discretion of the division, in lieu of or in  
206 addition to a civil penalty imposed under subparagraph 2.,  
207 suspension or revocation of the alcoholic beverage license for a  
208 third or subsequent violation occurring within 36 months after  
209 the date of the first violation.

210

211 A violation occurring more than 36 months after a first  
212 violation is deemed a first violation under this paragraph. When  
213 imposing a civil penalty within the ranges provided in  
214 subparagraphs 1. and 2., the division may not impose a civil  
215 penalty in an amount greater than the financial value of the  
216 brand-naming rights agreement.

217 Section 2. This act shall take effect July 1, 2019.