

1 A bill to be entitled
2 An act relating to the Beverage Law; amending s.
3 561.221, F.S.; authorizing a manufacturer who
4 possesses a vendor's license to sell, transport, and
5 deliver malt beverages to vendors under certain
6 circumstances; providing applicability; revising
7 requirements for a vendor to be licensed as a
8 manufacturer; amending s. 561.411, F.S.; revising
9 alcoholic beverage inventory requirements for
10 warehouse space owned or leased by certain
11 distributors; revising the percentage of licensed
12 vendors a distributor must sell to in certain
13 locations to be presumed to be selling to licensed
14 vendors generally; amending s. 561.42, F.S.;
15 prohibiting certain entities and persons from directly
16 or indirectly assisting or providing specified items,
17 monies, or services to a licensed vendor; prohibiting
18 a licensed vendor from accepting specified items,
19 monies, or services from certain entities or persons;
20 authorizing the Division of Alcoholic Beverages and
21 Tobacco adopt rules and require reports to enforce,
22 and to impose administrative sanctions for a violation
23 of limitations established under the Beverage Law on
24 specified items, monies, or services; prohibiting a
25 vendor from displaying certain signs in the window or

26 windows of his or her licensed premises; authorizing
27 certain entities and persons to furnish, supply, sell,
28 rent, lend, or give certain advertising material to
29 certain vendors; defining the term "decalcomania";
30 providing exemptions relating to tied house evil for
31 certain sales and purchases of merchandise; providing
32 conditions for the exemptions; defining the term
33 "merchandise"; prohibiting the sale of certain
34 advertising specialties at a price higher than the
35 actual cost to the industry member; authorizing a
36 manufacturer or importer of malt beverages and a
37 vendor to enter into a written agreement for certain
38 purposes; providing requirements for such agreement;
39 defining the term "negotiated at arm's length";
40 specifying that a brand-naming rights agreement does
41 not obligate or place responsibility upon a
42 distributor; providing civil penalties; prohibiting
43 the division from imposing certain civil penalties;
44 amending s. 561.5101, F.S.; revising construction;
45 amending s. 561.57, F.S.; authorizing certain
46 manufacturers to transport malt beverages in vehicles
47 owned or leased by certain persons other than the
48 manufacturer; amending s. 563.022, F.S.; revising the
49 definition of the term "manufacturer"; revising
50 construction; authorizing a manufacturer to terminate

51 a contract with a distributor under certain
 52 circumstances; providing an effective date.

53

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

55

56 Section 1. Paragraph (d) of subsection (2) and paragraph
 57 (a) of subsection (3) of section 561.221, Florida Statutes, are
 58 amended, and paragraph (f) is added to subsection (2) of that
 59 section, to read:

60 561.221 Licensing of manufacturers and distributors as
 61 vendors and of vendors as manufacturers; conditions and
 62 limitations.—

63 (2)

64 (d) A manufacturer possessing a vendor's license under
 65 this subsection is not permitted to make deliveries under s.
 66 561.57(1), except as provided in paragraph (f).

67 (f) Notwithstanding other provisions of the Beverage Law,
 68 any manufacturer possessing a vendor's license under this
 69 subsection may sell, transport, and deliver to vendors, from the
 70 manufacturer's licensed premises, malt beverages that have been
 71 manufactured on its licensed premises if the manufacturer
 72 complies with applicable requirements of ss. 561.42 and 561.423
 73 to the same extent as if the manufacturer were a distributor.

74 1. The sale, transport, and delivery of malt beverages is
 75 limited to containers that hold 5.16 gallons, 7.75 gallons, or

76 15.5 gallons.

77 2. A delivery by a manufacturer to a vendor under this
 78 paragraph is subject to s. 561.57(2).

79 3. This paragraph does not apply to a manufacturer who:

80 a. Has a franchise agreement with a distributor pursuant
 81 to s. 563.022; or

82 b. Has a total production volume of more than 60,000
 83 barrels of malt beverages per year.

84 (3) (a) Notwithstanding other provisions of the Beverage
 85 Law, any vendor licensed in this state may be licensed as a
 86 manufacturer of malt beverages upon a finding by the division
 87 that:

88 1. The vendor will be engaged in brewing malt beverages at
 89 a single location and in an amount which will not exceed 5,000
 90 barrels of malt beverages ~~10,000 kegs~~ per year. For purposes of
 91 this section ~~subsection~~, the term "barrel" "~~keg~~" means 31 15.5
 92 gallons.

93 2. The malt beverages so brewed will be sold to consumers
 94 for consumption on the vendor's licensed premises or on
 95 contiguous licensed premises owned by the vendor.

96 Section 2. Section 561.411, Florida Statutes, is amended
 97 to read:

98 561.411 Qualifications for distributors.—A ~~No~~
 99 distributor's license may not ~~shall~~ be issued to or held by any
 100 person or business that ~~which~~ does not meet and maintain the

101 following qualifications with respect to its warehouse inventory
 102 and sales:—

103 (1) The distributor must maintain warehouse space which is
 104 either owned or leased by the distributor, or dedicated to the
 105 distributor's use in a public warehouse, which is sufficient to
 106 store at one time:

107 (a) An inventory of alcoholic beverages which is equal to
 108 at least 5 ~~10~~ percent of the distributor's annual case sales to
 109 licensed vendors within this state or to licensed vendors within
 110 the malt beverage distributor's exclusive sales territory; or

111 (b) An inventory for which the cost of acquisition is not
 112 less than \$50,000 ~~\$100,000~~.

113 (2) The distributor must maintain at all times, in a
 114 warehouse which is either owned or leased by the distributor or
 115 in public warehouse space dedicated to the distributor's use, an
 116 inventory of alcoholic beverages:

117 (a) Which consists of not less than 5 percent of the
 118 distributor's annual sales to licensed vendors within this state
 119 or within the malt beverage distributor's exclusive sales
 120 territory; or

121 (b) For which the cost of acquisition is not less than
 122 \$50,000 ~~\$100,000~~. Such ~~The~~ inventory must ~~required herein shall~~
 123 be owned by the distributor, not held on consignment, and not
 124 acquired pursuant to a prior agreement to sell it to a specific
 125 licensee or licensees.

126 (c) For purposes of calculating inventory or percentage of
 127 annual sales as required by paragraphs (a) and (b), the
 128 calculation shall not include private label inventory whose
 129 label is owned by a vendor.

130 (3) The distributor must sell alcoholic beverages to
 131 licensed vendors generally rather than a selected few licensed
 132 vendors. For purposes of this section, a distributor shall be
 133 conclusively presumed to be selling to licensed vendors
 134 generally, if:

135 (a) The distributor sells to at least 10 ~~25~~ percent of the
 136 licensed vendors in the county wherein the distributor's
 137 warehouse is located or sells to at least 10 ~~25~~ percent of the
 138 licensed vendors in the malt beverage distributor's exclusive
 139 sales territory; or

140 (b) The distributor's total volume of sales to licensed
 141 vendors within the state or within the malt beverage
 142 distributor's exclusive sales territory during any ongoing 12-
 143 month period consists of at least 50 percent of individual sales
 144 which are in quantities of 10 cases or less.

145 Section 3. Subsections (13) and (14) of section 561.42,
 146 Florida Statutes, are renumbered as subsections (14) and (15),
 147 respectively, subsections (1), (8), (11), and (12) and paragraph
 148 (b) of present subsection (14) are amended, and new subsections
 149 (13) and (16) are added to that section, to read:

150 561.42 Tied house evil; financial aid and assistance to

151 vendor by manufacturer, distributor, importer, primary American
 152 source of supply, brand owner or registrant, or any broker,
 153 sales agent, or sales person thereof, prohibited; procedure for
 154 enforcement; exception.—

155 (1) A ~~Ne~~ manufacturer, distributor, importer, primary
 156 American source of supply, or brand owner or registrant of any
 157 of the beverages herein referred to, whether licensed or
 158 operating in this state or out-of-state, or ~~nor~~ any broker,
 159 sales agent, or sales person thereof, may not ~~shall~~ have any
 160 financial interest, directly or indirectly, in the establishment
 161 or business of any vendor licensed under the Beverage Law; nor
 162 may ~~shall~~ such manufacturer, distributor, importer, primary
 163 American source of supply, brand owner or brand registrant, or
 164 any broker, sales agent, or sales person thereof, directly or
 165 indirectly, assist any vendor by furnishing, supplying, selling,
 166 renting, lending, buying for, or giving to any vendor any
 167 vehicles, equipment, furniture, fixtures, signs, supplies,
 168 credit, fees, slotting fees of any kind, advertising or
 169 cooperative advertising, services, ~~any~~ gifts or loans of money
 170 or property of any description, or ~~by the giving of any~~ rebates
 171 of any kind whatsoever. A ~~Ne~~ licensed vendor may not ~~shall~~
 172 accept, directly or indirectly, any vehicles, equipment,
 173 furniture, fixtures, signs, supplies, credit, fees, slotting
 174 fees of any kind, advertising or cooperative advertising,
 175 services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of

176 any description, ~~or any rebates~~ of any kind whatsoever from any
 177 such manufacturer, distributor, importer, primary American
 178 source of supply, brand owner or brand registrant, or any
 179 broker, sales agent, or sales person thereof; provided, however,
 180 that this does not apply to any bottles, barrels, or other
 181 containers necessary for the legitimate transportation of such
 182 beverages or to advertising materials and does not apply to the
 183 extension of credit, for liquors sold, made strictly in
 184 compliance with ~~the provisions of~~ this section. A brand owner is
 185 a person who is not a manufacturer, distributor, importer,
 186 primary American source of supply, brand registrant, or broker,
 187 sales agent, or sales person thereof, but who directly or
 188 indirectly owns or controls any brand, brand name, or label of
 189 alcoholic beverage. ~~Nothing in~~ This section does not shall
 190 prohibit the ownership by vendors of any brand, brand name, or
 191 label of alcoholic beverage.

192 (8) The division may adopt rules and require reports to
 193 enforce, and may impose administrative sanctions for any
 194 violation of, the limitations established under the Beverage Law
 195 on any vehicles, equipment, furniture, fixtures, signs,
 196 supplies, credit, fees, slotting fees of any kind, advertising
 197 or cooperative advertising, services, gifts or loans of money or
 198 property of any description, rebates of any kind whatsoever ~~in~~
 199 ~~this section on credits,~~ coupons, and other forms of assistance.

200 (11) A vendor may display in the interior of his or her

201 licensed premises, including the window or windows thereof,
202 neon, electric, or other signs that require a power source;
203 ~~including~~ window painting and decalcomanias applied to the
204 surface of the interior or exterior of such windows; and and
205 posters, placards, and other advertising material advertising
206 the brand or brands of alcoholic beverages sold by him or her,
207 whether visible or not from the outside of the licensed
208 premises. However, a, ~~but no~~ vendor may not shall display in the
209 window or windows of his or her licensed premises more than one
210 neon, electric, or similar sign that requires a power source,
211 advertising the product of any one brand of alcoholic beverage
212 manufacturer.

213 (12) Any manufacturer, distributor, importer, primary
214 American source of supply, or brand owner or registrant, or any
215 broker, sales agent, or sales person thereof, may give, lend,
216 furnish, or sell to a vendor who sells the products of such
217 manufacturer, distributor, importer, primary American source of
218 supply, or brand owner or registrant any of the following: neon,
219 ~~or~~ electric, or other signs requiring a power source; signs,
220 window painting and decalcomanias applied to the surface of the
221 interior or exterior of windows; and, posters, placards, and
222 other advertising material ~~herein~~ authorized to be used or
223 displayed by the vendor in the interior of his or her licensed
224 premises. As used in this section, the term "decalcomania" means
225 a picture, design, print, engraving, or label made to be

226 transferred onto a glass surface.

227 (13) Any manufacturer, distributor, importer, primary
228 American source of supply, or brand owner or registrant, or any
229 broker, sales agent, or sales person thereof, who regularly
230 sells merchandise to vendors, or any vendor who purchases
231 merchandise from such manufacturer, distributor, importer,
232 primary American source of supply, or brand owner or registrant,
233 or any broker, sales agent, or sales person thereof, does not
234 violate subsection (1) if:

235 (a) Such sale or purchase is equal to or greater than the
236 fair market value of the merchandise; not combined with any sale
237 or purchase of alcoholic beverages; separately itemized from the
238 sale or purchase of alcoholic beverages; and

239 (b) Both the seller and purchaser maintain records of any
240 such sale or purchase, including the price and any conditions
241 associated with such sale or purchase of the merchandise.

242
243 For purposes of this subsection, the term "merchandise" means
244 commodities, supplies, fixtures, furniture, or equipment. The
245 term does not include alcoholic beverages or a motor vehicle or
246 trailer requiring registration under chapter 320.

247 (15)~~(14)~~ The division shall adopt reasonable rules
248 governing promotional displays and advertising. Such rules may
249 not conflict with or be more stringent than the federal
250 regulations pertaining to such promotional displays and

251 advertising furnished to vendors by distributors, manufacturers,
 252 importers, primary American sources of supply, or brand owners
 253 or registrants, or any broker, sales agent, or sales person
 254 thereof; however:

255 (b) Without limitation in total dollar value of such items
 256 provided to a vendor, a manufacturer, distributor, importer,
 257 primary American source of supply, or brand owner, or ~~brand~~
 258 registrant of malt beverage, or any broker, sales agent, or
 259 sales person thereof, may rent, loan without charge for an
 260 indefinite duration, or sell durable retailer advertising
 261 specialties such as clocks, pool table lights, and the like,
 262 which bear advertising matter. If sold, such items may not be
 263 sold at a price less than the actual cost to the industry member
 264 who initially purchased the items.

265 (16) (a) Notwithstanding other provisions of this section,
 266 a manufacturer or importer of malt beverages and a vendor may
 267 enter into a written agreement for brand-naming rights and
 268 associated cooperative advertising, negotiated at arm's length,
 269 for no more than fair market value if all of the following
 270 conditions are met:

271 1. The vendor operates places of business where
 272 consumption on the premises is permitted and the premises:

273 a. Are located within a theme park complex consisting of
 274 at least 25 contiguous acres owned and controlled by the same
 275 business entity;

276 b. Contain permanent exhibitions and a variety of
277 recreational activities; and

278 c. Has a minimum of 1 million visitors annually with a
279 controlled entrance to, and exit from, the enclosed area.

280 2. Such agreement does not involve, either in whole or in
281 part, the sale or distribution of malt beverages between the
282 manufacturer or importer, or the manufacturer's or importer's
283 distributor, and a vendor.

284 3. The vendor, as a result of such agreement, does not
285 give preferential treatment to the alcoholic beverage brand or
286 brands of the manufacturer or importer with whom the vendor has
287 entered into such agreement.

288 4. Such agreement does not directly or indirectly limit
289 the sale of alcoholic beverages of another manufacturer or
290 importer, or distributor.

291 5. Within 10 days after execution of such agreement, the
292 vendor files with the division a description of the agreement
293 which includes the location, dates, and the name of the
294 manufacturer or importer that entered into the agreement.

295
296 As used in this paragraph, the term "negotiated at arm's length"
297 means the negotiation of a business transaction by independent
298 parties acting in each party's own individual self-interest and
299 conducted as if the parties were strangers, so that no conflict
300 of interest may arise.

301 (b) A manufacturer or importer of malt beverages who is a
 302 party to a brand-naming rights agreement may not, directly or
 303 indirectly, solicit or receive from any of its distributors any
 304 portion of the payment due from the manufacturer or importer of
 305 malt beverages to the vendor pursuant to such agreement. Such
 306 agreement exists solely between the manufacturer and the vendor
 307 and does not, directly or indirectly, in any way obligate or
 308 place responsibility, financial or otherwise, upon a
 309 distributor.

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

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

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

318 3. At the discretion of the division, in lieu of or in
 319 addition to the penalty imposed under subparagraph 2.,
 320 suspension or revocation of the alcoholic beverage license for a
 321 third or subsequent violation occurring within 36 months after
 322 the date of the first violation.

323
 324 A violation occurring more than 36 months after a first
 325 violation is deemed a first violation under this paragraph. When

326 imposing a civil penalty within the ranges provided in
 327 subparagraphs 1. and 2., the division may not impose a civil
 328 penalty in an amount greater than the financial value of the
 329 brand-naming rights agreement.

330 Section 4. Subsection (1) of section 561.5101, Florida
 331 Statutes, is amended to read:

332 561.5101 Come-to-rest requirement; exceptions; penalties.—

333 (1) For purposes of inspection and tax-revenue control,
 334 all malt beverages, except those manufactured and sold by the
 335 same licensee, pursuant to s. 561.221(2) or (3), must come to
 336 rest at the licensed premises of an alcoholic beverage
 337 wholesaler in this state before being sold to a vendor by the
 338 wholesaler. The prohibition contained in this subsection does
 339 not apply to the shipment of malt beverages commonly known as
 340 private labels. The prohibition contained in this subsection
 341 shall not prevent a manufacturer from shipping malt beverages
 342 for storage at a bonded warehouse facility, provided that such
 343 malt beverages are distributed as provided in this subsection or
 344 to an out-of-state entity. This subsection does not prohibit a
 345 manufacturer from delivering alcoholic beverages to a licensed
 346 vendor as provided in s. 561.221(2)(f).

347 Section 5. Subsection (2) of section 561.57, Florida
 348 Statutes, is amended to read:

349 561.57 Deliveries by licensees.—

350 (2) Deliveries made by a manufacturer or distributor away

351 from his or her place of business may be made only in vehicles
352 that are owned or leased by the licensee. However, a
353 manufacturer authorized to make deliveries under s.
354 561.221(2)(f) to the licensed premises of a vendor may transport
355 malt beverages in a vehicle owned or leased by the manufacturer
356 or any person who has been disclosed on a license application
357 filed by the manufacturer and approved by the division. By
358 acceptance of an alcoholic beverage license and the use of such
359 vehicles, the licensee agrees that such vehicle shall always be
360 subject to be inspected and searched without a search warrant,
361 for the purpose of ascertaining that all provisions of the
362 alcoholic beverage laws are complied with, by authorized
363 employees of the division and also by sheriffs, deputy sheriffs,
364 and police officers during business hours or other times the
365 vehicle is being used to transport or deliver alcoholic
366 beverages.

367 Section 6. Paragraph (h) of subsection (2) and paragraph
368 (d) of subsection (14) of section 563.022, Florida Statutes, are
369 amended, and subsection (22) is added to that section, to read:

370 563.022 Relations between beer distributors and
371 manufacturers.—

372 (2) DEFINITIONS.—In construing this section, unless the
373 context otherwise requires, the word, phrase, or term:

374 (h) "Manufacturer" means any person who manufactures more
375 than 60,000 barrels of malt beverage a year or imports beer for

376 distribution to distributors licensed in Florida.

377 (14) MANUFACTURER; PROHIBITED INTERESTS.—

378 (d) ~~Nothing in~~ The Beverage Law does not shall be
379 ~~construed to~~ prohibit a manufacturer from shipping products to
380 or between its breweries, or between its breweries and the
381 licensed premises of a vendor as provided in s. 561.221(2)(f),
382 without a distributor's license.

383 (22) TERMINATION OF CONTRACTS.—Notwithstanding this
384 section, a manufacturer may terminate a contract with a
385 distributor after at least 120 days' written notice if the sale
386 of products to the distributor by the manufacturer does not
387 exceed 5 percent of the distributor's total alcoholic beverage
388 sales in the prior calendar year.

389 Section 7. This act shall take effect July 1, 2020.