

By Senator Perry

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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 of malt beverages; amending s. 561.411,
9 F.S.; revising alcoholic beverage inventory
10 requirements for warehouse space owned or leased by
11 certain distributors; revising the percentage of
12 licensed 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 moneys, or services to a licensed vendor; prohibiting
18 a licensed vendor from accepting specified items,
19 moneys, or services from certain entities or persons;
20 authorizing the Division of Alcoholic Beverages and
21 Tobacco to 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, moneys, 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 lend, or give certain advertising material to certain
29 vendors; defining the term "decalcomania"; providing

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30 exemptions relating to tied house evil for certain
31 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 less 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.; providing 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

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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 this
65 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 kegs or similar containers that hold 5.16 gallons,
76 7.75 gallons, or 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 to
81 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:

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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 to
97 read:

98 561.411 Qualifications for distributors.—A ~~No~~ distributor's
99 license may not ~~shall~~ be issued to or held by any person or
100 business that ~~which~~ does not meet and maintain the following
101 qualifications with respect to its warehouse inventory and
102 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:

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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. Present subsections (13) and (14) of section

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

151 561.42 Tied house evil; financial aid and assistance to
152 vendor by manufacturer, distributor, importer, primary American
153 source of supply, brand owner or registrant, or any broker,
154 sales agent, or sales person thereof, prohibited; procedure for
155 enforcement; exception.—

156 (1) A ~~No~~ manufacturer, distributor, importer, primary
157 American source of supply, or brand owner or registrant of any
158 of the beverages herein referred to, whether licensed or
159 operating in this state or out-of-state, or ~~nor~~ any broker,
160 sales agent, or sales person thereof, may not shall have any
161 financial interest, directly or indirectly, in the establishment
162 or business of any vendor licensed under the Beverage Law; nor
163 may shall such manufacturer, distributor, importer, primary
164 American source of supply, brand owner or brand registrant, or
165 any broker, sales agent, or sales person thereof, directly or
166 indirectly, assist any vendor by furnishing, supplying, selling,
167 renting, lending, buying for, or giving to any vendor any
168 vehicles, equipment, furniture, fixtures, signs, supplies,
169 credit, fees, slotting fees of any kind, advertising or
170 cooperative advertising, services, any gifts or loans of money
171 or property of any description, or by the giving of any rebates
172 of any kind whatsoever. A ~~No~~ licensed vendor may not shall
173 accept, directly or indirectly, any vehicles, equipment,
174 furniture, fixtures, signs, supplies, credit, fees, slotting

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

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

201 (11) A vendor may display in the interior of his or her
 202 licensed premises, including the window or windows thereof,
 203 neon, electric, or other signs that require a power source;

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

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

228 (13) Any manufacturer, distributor, importer, primary
229 American source of supply, or brand owner or registrant, or any
230 broker, sales agent, or sales person thereof, who regularly
231 sells merchandise to vendors, or any vendor who purchases
232 merchandise from such manufacturer, distributor, importer,

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233 primary American source of supply, or brand owner or registrant,
234 or any broker, sales agent, or sales person thereof, does not
235 violate subsection (1) if:

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

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

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

248 (15)~~(14)~~ The division shall adopt reasonable rules
249 governing promotional displays and advertising. Such rules may
250 not conflict with or be more stringent than the federal
251 regulations pertaining to such promotional displays and
252 advertising furnished to vendors by distributors, manufacturers,
253 importers, primary American sources of supply, or brand owners
254 or registrants, or any broker, sales agent, or sales person
255 thereof; however:

256 (b) Without limitation in total dollar value of such items
257 provided to a vendor, a manufacturer, distributor, importer,
258 primary American sources of supply, or brand owner, or brand
259 registrant of malt beverage, or any broker, sales agent, or
260 sales person thereof, may rent, loan without charge for an
261 indefinite duration, or sell durable retailer advertising

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262 specialties such as clocks, pool table lights, and the like,
263 which bear advertising matter. If sold, such items may not be
264 sold at a price less than the actual cost to the industry member
265 who initially purchased the items.

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

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

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

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

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

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

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

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

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291 or distributor.

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

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

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

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

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

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

319 3. At the discretion of the division, in lieu of or in

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320 addition to the penalty imposed under subparagraph 2.,
321 suspension or revocation of the alcoholic beverage license for a
322 third or subsequent violation occurring within 36 months after
323 the date of the first violation.

324

325 A violation occurring more than 36 months after a first
326 violation is deemed a first violation under this paragraph. When
327 imposing a civil penalty within the ranges provided in
328 subparagraphs 1. and 2., the division may not impose a civil
329 penalty in an amount greater than the financial value of the
330 brand-naming rights agreement.

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

333 561.5101 Come-to-rest requirement; exceptions; penalties.-

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

348 Section 5. Subsection (2) of section 561.57, Florida

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349 Statutes, is amended to read:

350 561.57 Deliveries by licensees.—

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

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

371 563.022 Relations between beer distributors and
372 manufacturers.—

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

375 (h) "Manufacturer" means any person who manufactures more
376 than 60,000 barrels of malt beverage a year or imports beer for
377 distribution to distributors licensed in Florida.

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378 (14) MANUFACTURER; PROHIBITED INTERESTS.—

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

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

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