By the Committees on Commerce and Tourism; and Regulated Industries; and Senator Hutson

A bill to be entitled
An act relating to the Beverage Law; 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 related 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 distributor; providing civil penalties for violations by manufacturers or importers of malt beverages or vendors; providing applicability; requiring the division to consider the comparative financial value of a brand-naming rights agreement when determining the amount of a civil penalty; providing an effective
Be It Enacted by the Legislature of the State of Florida:

Section 1. 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 a new subsection (13) and subsection (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, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(1) A manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, nor any broker, sales agent, or sales person thereof, may not have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor may such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, directly or indirectly assist any vendor by furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or
cooperative advertising, services, any gifts or loans of money or property of any description, or by the giving of any rebates of any kind whatsoever. A distributed vendor shall not accept, directly or indirectly, any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts or loans of money or property of any description, or any rebates of any kind whatsoever from any such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. A brand owner is a person who is not a manufacturer, distributor, importer, primary American source of supply, brand registrant, or broker, sales agent, or sales person thereof, but who directly or indirectly owns or controls any brand, brand name, or label of alcoholic beverage. Nothing in this section shall prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

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

(11) A vendor may display in the interior of his or her licensed premises, including the window or windows thereof, neon, electric, or other signs, including window painting and decalcomanias applied to the surface of the interior or exterior of such windows; signs that require a power source; and posters, placards, and other advertising material advertising the brand or brands of alcoholic beverages sold by him or her, whether visible or not from the outside of the licensed premises, but a vendor may not display in the window or windows of his or her licensed premises more than one neon, electric, or similar sign advertising the product of any one brand of alcoholic beverage manufacturer.

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

(13) Any manufacturer, distributor, importer, primary

CODING: Words stricken are deletions; words underlined are additions.
American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, who regularly sells merchandise to vendors, or any vendor who purchases merchandise from such a manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, does not violate subsection (1) if:

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

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

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

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

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

(15) The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof; however:

CODING: Words stricken are deletions; words underlined are additions.
(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter. If sold, such items may not be sold at a price less than the actual cost to the industry member who initially purchased the items.

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

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

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

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

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

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

As used in this paragraph, the term “negotiated at arm’s length” means the negotiation of a business transaction by independent parties acting in each party’s own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

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

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

1. A civil penalty of at least $5,000, but not more than $25,000, for a first violation.

2. A civil penalty of at least $25,000, but not more than
$50,000, for a second violation occurring within 36 months after the date of the first violation.

3. A civil penalty of at least $50,000, but not more than $100,000, for a third or subsequent violation occurring within 36 months after the date of the first violation.

4. At the discretion of the division, in lieu of or in addition to a civil penalty imposed under subparagraph 3., suspension or revocation of the alcoholic beverage license for a fourth or subsequent violation occurring within 36 months after the date of the first violation.

A violation occurring more than 36 months after a first violation is deemed a first violation under this paragraph. When imposing a civil penalty within the ranges provided in subparagraphs 1.-3., the division shall consider the comparative financial value of the brand-naming rights agreement as a factor in assigning the amount of the civil penalty.

Section 2. This act shall take effect July 1, 2018.