

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Commerce Committee
 2 Representative La Rosa offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

12 561.42 Tied house evil; financial aid and assistance to
 13 vendor by manufacturer, distributor, importer, primary American
 14 source of supply, brand owner or registrant, or any broker,
 15 sales agent, or sales person thereof, prohibited; procedure for
 16 enforcement; exception.-

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

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

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

61 (11) A vendor may display in the interior of his or her
62 licensed premises, including the window or windows thereof,
63 neon, electric, or other signs, including window painting and
64 decalcomanias applied to the surface of the interior or exterior
65 of such windows; signs that require a power source; and
66 posters, placards, and other advertising material advertising

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67 the brand or brands of alcoholic beverages sold by him or her,
68 whether visible or not from the outside of the licensed
69 premises, but a ~~ne~~ vendor may not shall display in the window or
70 windows of his or her licensed premises more than one neon,
71 electric, or similar sign that requires a power source,
72 advertising the product of any one brand of alcoholic beverage
73 manufacturer.

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

88 (13) Any manufacturer, distributor, importer, primary
89 American source of supply, or brand owner or registrant, or any
90 broker, sales agent, or sales person thereof, who regularly
91 sells merchandise to vendors, or any vendor who purchases

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92 merchandise from such a manufacturer, distributor, importer,
93 primary American source of supply, or brand owner or registrant,
94 or any broker, sales agent, or sales person thereof, does not
95 violate subsection (1) if:

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

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

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

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

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

110 (15)-(14) The division shall adopt reasonable rules
111 governing promotional displays and advertising, which rules
112 shall not conflict with or be more stringent than the federal
113 regulations pertaining to such promotional displays and
114 advertising furnished to vendors by distributors, manufacturers,
115 importers, primary American sources of supply, or brand owners

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116 or registrants, or any sales agent or sales person thereof;
117 however:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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192 -----

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

194 Remove everything before the enacting clause and insert:

195 A bill to be entitled

196 An act relating to the Beverage Law; amending s. 561.42, F.S.;

197 prohibiting certain entities and persons from directly or

198 indirectly assisting any vendor in certain ways; prohibiting a

199 licensed vendor from accepting certain items and services;

200 authorizing the Division of Alcoholic Beverages and Tobacco to

201 impose administrative sanctions for a violation of certain

202 limitations established in the Beverage Law; prohibiting a

203 vendor from displaying certain signs in the window or windows of

204 his or her licensed premises; authorizing certain entities and

205 persons to give, lend, furnish, or sell certain advertising

206 material to certain vendors; defining the term "decalcomania";

207 providing exemptions relating to tied house evil for certain

208 sales and purchases of merchandise; providing conditions for the

209 exemptions; defining the term "merchandise"; prohibiting a

210 manufacturer or importer of malt beverages from soliciting or

211 receiving any portion of certain payments from its distributors;

212 defining the term "negotiated at arm's length"; specifying that

213 a brand-naming rights agreement does not obligate or place

214 responsibility upon a distributor; providing civil penalties for

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215 | violations by manufacturers or importers of malt beverages or
216 | vendors; providing applicability; prohibiting the division from
217 | imposing certain civil penalties that are greater than the
218 | financial value of a brand-naming rights agreement; providing an
219 | effective date.