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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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:



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11 561.42 Tied house evil; financial aid and assistance to
12 vendor by manufacturer, distributor, importer, primary American
13 source of supply, brand owner or registrant, or any broker,
14 sales agent, or sales person thereof, prohibited; procedure for
15 enforcement; exception.-

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



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

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

60 (11) A vendor may display in the interior of his or her
61 licensed premises, including the window or windows thereof,
62 neon, electric, or other signs, including window painting and
63 decalcomanias applied to the surface of the interior or exterior
64 of such windows; signs that require a power source;⁷ and
65 posters, placards, and other advertising material advertising
66 the brand or brands of alcoholic beverages sold by him or her,
67 whether visible or not from the outside of the licensed
68 premises, but a ~~no~~ vendor may not shall display in the window or



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69 windows of his or her licensed premises more than one neon,
70 electric, or similar sign that requires a power source,
71 advertising the product of any one brand of alcoholic beverage
72 manufacturer.

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

87 (13) Any manufacturer, distributor, importer, primary
88 American source of supply, or brand owner or registrant, or any
89 broker, sales agent, or sales person thereof, who regularly
90 sells merchandise to vendors, or any vendor who purchases
91 merchandise from such a manufacturer, distributor, importer,
92 primary American source of supply, or brand owner or registrant,
93 or any broker, sales agent, or sales person thereof, does not
94 violate subsection (1) if:

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

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



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98 purchase of alcoholic beverages;

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

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

104
105 For purposes of this subsection, the term "merchandise" means
106 commodities, supplies, fixtures, furniture, or equipment. The
107 term does not include alcoholic beverages or a motor vehicle or
108 trailer requiring registration under chapter 320.

109 (15) ~~(14)~~ The division shall adopt reasonable rules
110 governing promotional displays and advertising, which rules
111 shall not conflict with or be more stringent than the federal
112 regulations pertaining to such promotional displays and
113 advertising furnished to vendors by distributors, manufacturers,
114 importers, primary American sources of supply, or brand owners
115 or registrants, or any sales agent or sales person thereof;
116 however:

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

126 (16) (a) Notwithstanding any other provision of this



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

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

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

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

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

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

154
155 As used in this paragraph, the term "negotiated at arm's length"



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156 means the negotiation of a business transaction by independent
157 parties acting in each party's own individual self-interest and
158 conducted as if the parties were strangers, so that no conflict
159 of interest may arise.

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

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

172 1. A civil penalty of at least \$5,000, but not more than
173 \$25,000, for a first violation.

174 2. A civil penalty of at least \$25,000, but not more than
175 \$50,000, for a second violation occurring within 36 months after
176 the date of the first violation.

177 3. A civil penalty of at least \$50,000, but not more than
178 \$100,000, for a third or subsequent violation occurring within
179 36 months after the date of the first violation.

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



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

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

193
194 ===== T I T L E A M E N D M E N T =====

195 And the title is amended as follows:

196 Delete everything before the enacting clause
197 and insert:

198 A bill to be entitled

199 An act relating to the Beverage Law; amending s.
200 561.42, F.S.; prohibiting certain entities and persons
201 from directly or indirectly assisting any vendor in
202 certain ways; prohibiting a licensed vendor from
203 accepting certain items and services; authorizing the
204 Division of Alcoholic Beverages and Tobacco to impose
205 administrative sanctions for a violation of certain
206 limitations established in the Beverage Law;
207 prohibiting a vendor from displaying certain signs in
208 the window or windows of his or her licensed premises;
209 authorizing certain entities and persons to give,
210 lend, furnish, or sell certain advertising material to
211 certain vendors; defining the term "decalomania";
212 providing exemptions relating to tied house evil for
213 certain sales and purchases of merchandise; providing



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214 conditions for the exemptions; defining the term
215 "merchandise"; prohibiting a manufacturer or importer
216 of malt beverages from soliciting or receiving any
217 portion of certain payments from its distributors;
218 defining the term "negotiated at arm's length";
219 specifying that a brand-naming rights agreement does
220 not obligate or place responsibility upon a
221 distributor; providing civil penalties for violations
222 by manufacturers or importers of malt beverages or
223 vendors; providing applicability; requiring the
224 division to consider the comparative financial value
225 of a brand-naming rights agreement when determining
226 the amount of a civil penalty; providing an effective
227 date.