

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

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1 A bill to be entitled
2 An act relating to the Beverage Law; amending s.
3 561.42, F.S.; prohibiting certain entities and persons
4 from directly or indirectly assisting any vendor in
5 certain ways; prohibiting a licensed vendor from
6 accepting certain items and services; authorizing the
7 Division of Alcoholic Beverages and Tobacco to impose
8 administrative sanctions for a violation of certain
9 limitations established in the Beverage Law;
10 prohibiting a vendor from displaying certain signs in
11 the window or windows of his or her licensed premises;
12 authorizing certain entities and persons to give,
13 lend, furnish, or sell certain advertising material to
14 certain vendors; defining the term "decalcomania";
15 providing exemptions relating to tied house evil for
16 certain sales and purchases of merchandise; providing
17 conditions for the exemptions; defining the term
18 "merchandise"; prohibiting a manufacturer or importer
19 of malt beverages from soliciting or receiving any
20 portion of certain payments from its distributors;
21 defining the term "negotiated at arm's length";
22 specifying that a brand-naming rights agreement does
23 not obligate or place responsibility upon a
24 distributor; providing civil penalties for violations
25 by manufacturers or importers of malt beverages or
26 vendors; providing applicability; prohibiting the
27 division from imposing certain civil penalties that
28 are greater than the financial value of a brand-naming
29 rights agreement; providing an effective date.

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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 ~~No~~ 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 ~~shall~~ have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor may ~~shall~~ 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

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59 or property of any description, ~~or by the giving of any rebates~~
60 of any kind whatsoever. A ~~No~~ licensed vendor may not shall
61 accept, directly or indirectly, any vehicles, equipment,
62 furniture, fixtures, signs, supplies, credit, fees, slotting
63 fees of any kind, advertising or cooperative advertising,
64 services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of
65 any description, ~~or any rebates~~ of any kind whatsoever from any
66 such manufacturer, distributor, importer, primary American
67 source of supply, brand owner or brand registrant, or any
68 broker, sales agent, or sales person thereof; provided, however,
69 that this does not apply to any bottles, barrels, or other
70 containers necessary for the legitimate transportation of such
71 beverages or to advertising materials and does not apply to the
72 extension of credit, for liquors sold, made strictly in
73 compliance with ~~the provisions of~~ this section. A brand owner is
74 a person who is not a manufacturer, distributor, importer,
75 primary American source of supply, brand registrant, or broker,
76 sales agent, or sales person thereof, but who directly or
77 indirectly owns or controls any brand, brand name, or label of
78 alcoholic beverage. Nothing in this section shall prohibit the
79 ownership by vendors of any brand, brand name, or label of
80 alcoholic beverage.

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

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

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

115 (13) Any manufacturer, distributor, importer, primary
116 American source of supply, or brand owner or registrant, or any

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117 broker, sales agent, or sales person thereof, who regularly
118 sells merchandise to vendors, or any vendor who purchases
119 merchandise from such a manufacturer, distributor, importer,
120 primary American source of supply, or brand owner or registrant,
121 or any broker, sales agent, or sales person thereof, does not
122 violate subsection (1) if:

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

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

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

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

132
133 For purposes of this subsection, the term "merchandise" means
134 commodities, supplies, fixtures, furniture, or equipment. The
135 term does not include alcoholic beverages or a motor vehicle or
136 trailer requiring registration under chapter 320.

137 (15)~~(14)~~ The division shall adopt reasonable rules
138 governing promotional displays and advertising, which rules
139 shall not conflict with or be more stringent than the federal
140 regulations pertaining to such promotional displays and
141 advertising furnished to vendors by distributors, manufacturers,
142 importers, primary American sources of supply, or brand owners
143 or registrants, or any sales agent or sales person thereof;
144 however:

145 (b) Without limitation in total dollar value of such items

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146 provided to a vendor, a manufacturer, distributor, importer,
147 brand owner, or brand registrant of malt beverage, or any sales
148 agent or sales person thereof, may rent, loan without charge for
149 an indefinite duration, or sell durable retailer advertising
150 specialties such as clocks, pool table lights, and the like,
151 which bear advertising matter. If sold, such items may not be
152 sold at a price less than the actual cost to the industry member
153 who initially purchased the items.

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

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

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

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

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

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

182
183 As used in this paragraph, the term "negotiated at arm's length"
184 means the negotiation of a business transaction by independent
185 parties acting in each party's own individual self-interest and
186 conducted as if the parties were strangers, so that no conflict
187 of interest may arise.

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

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

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

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

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204 violation.

205 3. At the discretion of the division, in lieu of or in
206 addition to a civil penalty imposed under subparagraph 2.,
207 suspension or revocation of the alcoholic beverage license for a
208 third or subsequent violation occurring within 36 months after
209 the date of the first violation.

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211 A violation occurring more than 36 months after a first
212 violation is deemed a first violation under this paragraph. When
213 imposing a civil penalty within the ranges provided in
214 subparagraphs 1. and 2., the division may not impose a civil
215 penalty in an amount greater than the financial value of the
216 brand-naming rights agreement.

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