

## Council Substitute for House Bill No. 951

An act relating to the Beverage Law; amending s. 561.42, F.S.; extending to importers and primary American sources of supply, brand owners, and brand registrants, and brokers, sales agents, and sales persons thereof, the prohibition against providing certain financial assistance to retail vendors; defining the term "brand owner"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, ~~or 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) No ~~licensed manufacturer, or 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,~~ shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer, ~~or distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof,~~ assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer, ~~or 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.

(2) Credit for the sale of liquors may be extended to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

(3) In cases when payment for sales to a vendor is not made by the 10th day succeeding the calendar week in which such sale was made, the distributor who made such sale shall, within 3 days, notify the division in writing

of such fact; and the division, upon receipt of such notice, shall, after compliance with the proceedings hereinafter mentioned, declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division certifies in writing that such vendor has fully paid for all liquors previously purchased. However, if a distributor received payment within the 3-day period following the 10th day succeeding the calendar week in which the sale was made, the distributor, if notification to the division has not already been made, is not required to notify the division. Payments so made within the 3-day period do not constitute a violation of this section.

(4) Before the division shall so declare and prohibit such sales to such vendor, it shall, within 2 days after receipt of such notice, give written notice to such vendor by mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to forthwith make payment thereof or, upon failure to do so, to show cause before the division why further sales to such vendor shall not be prohibited. Good and sufficient cause to prevent such action by the division may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common-law action. The vendor shall have 5 days after receipt of such notice within which to show such cause, and he or she may demand a hearing thereon, provided he or she does so in writing within said 5 days, such written demand to be delivered to the division either in person or by due course of mail within such 5 days. If no such demand for hearing is made, the division shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division certifies in writing that such vendor has fully paid for all liquors previously purchased. In the event such prohibition of sales and declaration thereof to the vendor, manufacturers, and distributors is ordered by the division, the vendor may seek review of such decision by the Department of Business and Professional Regulation within 5 days. In the event application for such review is filed within such time, such prohibition of sales shall not be made, published, or declared until final disposition of such review by the department.

(5) Upon receipt by the division from the distributor of the notice of nonpayment provided for by subsection (3), the division shall forthwith notify such delinquent vendor and all distributors in the state that no further purchases or sales of liquor by or to such vendor, except for cash, shall be made until good cause is shown by such vendor as heretofore provided for. No liquor shall be purchased by such vendor or sold to him or her by any distributor, except for cash, from and after such notification by the division and until such cause is shown as is provided for in subsection (4). In the event no good cause is shown, then all further sales, for cash or credit, are hereby prohibited after such declaration in writing by the division is sent to such vendor and distributors and until all delinquent accounts have been paid.

(6) Nothing herein shall be taken to forbid the giving of trade discounts in the usual course of business upon wine and liquor sales.

(7) The extension or receiving of credits in violation of this section shall be considered as an arrangement for financial assistance and shall consti-

tute a violation of the Beverage Law and any maneuver, shift, or device of any kind by which credit is extended contrary to the provisions of this section shall be considered a violation of the Beverage Law.

(8) The division may establish rules and require reports to enforce the herein-established limitation upon credits and other forms of assistance. Nothing herein shall be taken to affect the provisions of s. 563.08, but shall govern all other sales of intoxicating liquors.

(9) The term "advertising materials" as used in this section does not include outside signs so located as to be connected with or appertaining to the vendor's licensed premises.

(10) No manufacturer, or distributor, importer, primary American source of supply, brand owner, or brand registrant of the beverages referred to herein, or any broker, sales agent, or sales person thereof, shall directly or indirectly give, lend, rent, sell, or in any other manner furnish to a vendor any outside sign, printed, painted, electric, or otherwise; nor shall any vendor display any sign advertising any brand of alcoholic beverages on the outside of his or her licensed premises, on any lot of ground of which the licensed premises are situate, or on any building of which the licensed premises are a part.

(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, 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 no vendor shall 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 manufacturer.

(12) Any manufacturer, or 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, or distributor, importer, primary American source of supply, or brand owner or registrant any of the following: neon or electric signs, window painting and decalcomanias, 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. The division shall make 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, and manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any broker, sales agent, or sales person thereof; provided, however, that:

(a) If a manufacturer, or distributor, importer, brand owner, or brand registrant of malt beverage, or any broker, sales agent, or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items shall be sold at a price not less than the actual

cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, or distributor, importer, brand owner, or brand registrant of malt beverage, or any broker, 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.

(c) If a manufacturer, or distributor, importer, brand owner, or brand registrant of malt beverage, or any broker, sales agent, or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items shall be sold at a price not less than the actual cost to the industry member who initially purchased them, but may be sold without limitation in total value of such items sold to a vendor.

(d) A manufacturer, or distributor, importer, brand owner, or brand registrant of malt beverage, or any broker, sales agent, or sales person thereof, may provide consumer advertising specialties described in paragraph (c) to consumers on any vendor's licensed premises.

(e) Coupons redeemable by vendors shall not be furnished by distributors of beer to consumers.

(f) Manufacturers, or distributors, importers, brand owners, or brand registrants of beer, and any broker, sales agent, or sales person thereof, of beer shall not conduct any sampling activities that include tasting of their product at a vendor's premises licensed for off-premises sales only.

(g) Manufacturers, and distributors, importers, brand owners, or brand registrants of beer, and any broker, sales agent, or sales person thereof, of beer shall not engage in cooperative advertising with vendors.

(h) Distributors of beer may sell to vendors draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and a distributor may exchange any parts which are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of beer may furnish to a vendor at no charge replacement parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers.

Section 2. This act shall take effect July 1, 2008.

Approved by the Governor June 25, 2008.

Filed in Office Secretary of State June 25, 2008.