1988

Session Law 88-021

Florida Senate & House of Representatives

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**Committee Records**

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**Other Documentation**

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FLORIDA LEGISLATURE

FINAL
LEGISLATIVE BILL
INFORMATION

1987 Special Sessions B, C, D
1988 Regular Session
1988 Special Sessions E, F

RE: CHAPTER 88-21
SB 902 (Passed)
HB 1028 (Similar)

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826 — 488-4371
S 904 (CONTINUED)
05/12/88 SENATE On Committee agenda—Commerce, 05/16/88, 2:00 pm, Room-A
05/13/88 SENATE Extension of time granted Committee Commerce
05/16/88 SENATE Comm Report CS by Commerce—SJ 352
05/18/88 SENATE CS read first time—SJ 312; Now in Appropriations—SJ 352
05/19/88 SENATE Extension of time granted Committee Appropriations
05/23/88 SENATE On Committee agenda—Appropriations, 05/24/88, 2:00 pm, Room-A
05/24/88 SENATE Comm Report CS/CS by Appropriations, placed on Calendar—SJ 405
05/26/88 SENATE CS read first time— SJ 427
05/30/88 SENATE Placed on Special Order Calendar—SJ 463, Amendments adopted—SJ 522; Iden./Sim. House Bill substituted—SJ 513; Laid on Table under Rule. Iden./Sim./Compare Bill passed, refer to CS/CS/CSB 1673 (Ch. 88-394) —SJ 356

S 905 GENERAL BILL by Maichon (Similar CS/CS/CS/S 904, Compare CS/H 1070)
Hazardous Materials—Right-to-Know: creates Fla. Hazardous Materials Emergency Response & Community Right-to-Know Act; provides powers & duties of Community Affairs Dept., creates Hazardous Materials Administration Trust Fund; provides for fees for certain registration, filing, & notification by employers, owners or operators of facilities where hazardous materials are produced, used, or stored, provides civil & criminal penalties, limits tort liability, etc. Creates 252.81-.89 Effective Date 10/01/88.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Natural Resources and Conservation, Economic, Community and Consumer Affairs; Finance, Taxation and Claims, Appropriations—SJ 113
04/19/88 SENATE Withdrawn from Natural Resources and Conservation, Economic, Community and Consumer Affairs, Finance, Taxation and Claims, Appropriations; Indefinitely postponed. Iden./Sim./Compare Bill passed, refer to CS/CS/CS/SB 964 (Ch. 88-200)—SJ 134

S 906 GENERAL BILL/CS by Judiciary-Civil; Thurman (Similar CS/H 158)
Abandoned Property/State Warrants, provides for disposition of state warrants which are not timely presented for payment; modifies notice requirements re abandoned property; deletes requirement for notice by mail to owners of such property Amendments Amends 172, 717 118. Effective Date 07/01/88 or upon becoming law, whichever occurs later.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Judiciary-Civil, Appropriations—SJ 113
04/29/88 SENATE Extension of time granted Committee Judiciary-Civil
05/13/88 SENATE Extension of time granted Committee Judiciary-Civil
05/16/88 SENATE On Committee agenda—Judiciary-Civil, 05/19/88, 9:15 am; Room-B—SJ 358
05/19/88 SENATE Comm Report CS by Judiciary-Civil—SJ 358
05/23/88 SENATE CS read first time—SJ 360, Now in Appropriations—SJ 358
05/30/88 SENATE Withdrawn from Appropriations—SJ 546; Laid on Calendar—SJ 358
06/02/88 SENATE Placed on Special Order Calendar—SJ 713 & SJ 715
06/03/88 SENATE Placed on Special Order Calendar—SJ 773 & SJ 787; Iden./Sim. House Bill substituted; Laid on Table under Rule. Iden./Sim./Compare Bill passed, refer to CS/CS/HSB 158 (Ch. 88-256)—SJ 866

S 907 GENERAL BILL/ENG by Weinstock
School Site Selection/Prohibition prohibits sites for educational facilities from being adjacent to prisons & jails when practicable. Amends 226, 717 118. Effective Date 07/01/88 or upon becoming law. Upon becoming law.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Education—SJ 113
04/29/88 SENATE Extension of time granted Committee Education
05/02/88 SENATE On Committee agenda—Education, 05/04/88, 9:00 am, Room-A
05/04/88 SENATE Comm Report Favorable by Education, placed on Calendar—SJ 258
05/11/88 SENATE Placed on Special Order Calendar—SJ 257
05/12/88 SENATE Placed on Special Order Calendar—SJ 267, Amendment adopted—SJ 387
05/17/88 SENATE Placed on Special Order Calendar—SJ 290 & SJ 291
05/25/88 SENATE Placed on Special Order Calendar—SJ 374, Passed as amended, YEAS 35 NAYS 0—SJ 403
05/06/88 HOUSE In Messages
05/07/88 HOUSE Received, placed on Calendar—SJ 821
05/10/88 HOUSE Died on Calendar

S 908 GENERAL BILL/ENG by Derasany and others (Similar H 1028)
Beef Distributions & Manufacturers: provides that persons who violate law governing relations between beer distributors & manufacturers shall not be exempt from specified criminal penalties, revokes language re unfair & prohibited acts, renews language re termination, cancellation, failure to renew, or discontinuance of agreement, requires reasonable effort to sales & distribution of manufacturer's products, etc Amends 563 022. Effective Date 03/04/88

S 909 GENERAL BILL by Thurman (Similar H 1320, Compare CS/ENG/H 1674)
Interchange Agreements/Unny System: allows beneficial extensions of agreements re faculty members of State University System, exempts interchanges between institutions from certain limitations on number of authorized positions, provides for retroactivity. Adds 112 24, Effective Date. Upon becoming law.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Personnel, Retirement and Collective Bargaining; Education; Appropriations—SJ 114
04/25/88 SENATE On Committee agenda—Personnel, Retirement and Collective Bargaining, 04/27/88, 2:00 pm, Room-C
04/29/88 SENATE Now in Education—SJ 214
05/13/88 SENATE Extension of time granted Committee Education
05/20/88 SENATE On Committee agenda—Education, 05/24/88, 9:00 am, Room-A—not heard
05/26/88 SENATE Withdrawn from Education—SJ 462, Now in Appropriations
06/07/88 SENATE Died in Committee on Appropriations

S 910 GENERAL BILL by W.D. Childers (Identical H 1198, Compare H 1148, CS/S 868)
Dog-Racing/Pari-mutuel Pools: THIS BILL COMBINED IN CS/S 868-242,369,910 reduces tax on amount of contributions made to pari-mutuel pools at dog racing events; requires that total amount paid in purses at dog racing events be minimum percentage of pari-mutuel pools Amends 550.09,162. Effective Date. 10/01/88.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Commerce, Finance, Taxation and Claims, Appropriations—SJ 114
04/29/88 SENATE Extension of time granted Committee Commerce
05/03/88 SENATE On Committee agenda—Commerce, 05/05/88, 1:00 pm, Room-B—SJ 341
05/05/88 SENATE CS combines this bill and 868, 242 & 359, Comm. Report. CS by Commerce—SJ 246
05/10/88 SENATE Original bill laid on Table under Rule, refer to combined CS/ SB 466 (Died in Senate Appropriations Committee)—SJ 249

S 911 GENERAL BILL by Woodson (Similar H 1120, Compare S 232)
Emergency Medical Services/Funds: modifies definition of "emergency medical services" to include "prehospital care system", revises distribution of funds from Emergency Medical Services Trust Fund, provides formulas for distribution of funds to agencies constituting prehospital care system, eliminates matching grants Amends 401 107.113. Effective Date 10/01/88.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Health and Rehabilitative Services; Appropriations—SJ 114
04/29/88 SENATE Extension of time granted Committee Health and Rehabilitative Services
05/13/88 SENATE Extension of time granted Committee Health and Rehabilitative Services
05/27/88 SENATE Extension of time granted Committee Health and Rehabilitative Services
06/07/88 SENATE Died in Committee on Health and Rehabilitative Services

S 912 GENERAL BILL/ENG by Thurman and others
Equine Industry Advisory Council establishes council in Agriculture & Consumer Services Dept., provides for appointment & terms of members; provides for expenditure per diem & removal of members, provides for quorum & meetings; provides power & duty of council, provides for future review & repeal. Effective Date. 10/01/88.
04/06/88 SENATE Filed
04/18/88 SENATE Introduced, referred to Agriculture—SJ 114
04/19/88 SENATE On Committee agenda—Agriculture, 04/21/88, 8:00 am, Room-B
04/21/88 SENATE Comm Report Favorable by Agriculture, placed on Calendar—SJ 166

(continued on next page)


FLORIDA LEGISLATURE—REGULAR SESSION—1988

HISTORY OF HOUSE BILLS

H 1026 (CONTINUED)

04/29/88 HOUSE Comm Report Favorable by Regulated Industries & Licensing

05/23/88 HOUSE Subreferred to Subcommittee on General Government, On committee agenda—Appropriations, 05/24/88, 8:00 am, Morris Hall—For ratification of subreferral

06/07/88 HOUSE Died in Committee on Appropriations

H 1027 GENERAL BILL by Jennings (Identical S 503)

Families With Dependent Children/Adult authorizes distance to families when parent who is principal wage earner is unemployed Amends 409 255 Effective Date

05/23/88 HOUSE Died in Committee on Appropriations

H 1029 GENERAL BILL by Maffett (Similar ENG/S 908)

Beer Distributors & Manufacturers, provides that persons who violate law governing relations between beer distributors & manufacturers shall not be subject to specified criminal penalties, revokes language re unfair or prohibited acts; revokes language re termination, cancellation, failure to renew, or discontinuance of agreement, requires reconciliation of a dispute & distribution of manufacturer's products, etc. Amends 563 022 Effective Date: Upon becoming law

05/05/88 HOUSE Filed

06/08/88 HOUSE Introduced, referred to Health & Rehabilitative Services, Appropriations—HJ 97

04/14/88 HOUSE Subcommittee Recommendation pending ratification by full Committee, Favorable with 1 amendment. On Committee agenda, pending subcommittee action—Health & Rehabilitative Services, 04/14/88, 8:00 am, 21-HOB—Not considered

04/18/88 HOUSE Subcommittee agenda—Health & Rehabilitative Services, 04/20/88, 30 pm, 314-HOB

04/20/88 HOUSE Preliminary Committee Action by Health & Rehabilitative Services: Favorable with 1 amendment

04/25/88 HOUSE Comm Report Favorable with 1 amendment(s) by Health & Rehabilitative Services—HJ 250, Now in Appropriations—HJ 250

05/23/88 HOUSE On Committee agenda—Appropriations, 05/24/88, 8:00 am, Morris Hall—For ratification of subreferral

06/07/88 HOUSE Withdrawn from Committee on Appropriations

H 1030 GENERAL BILL by Jamerson; Logan and other (Similar ENG/S 178)

Viral Hepatitis Fellowship Scholarship: authorizes continuation of said scholarships for certain law students, authorizes restriction of scholarships, defines minimum for purposes of student financial assistance & admission to Florida institutions Creates 240.4069 Effective Date: Upon becoming law

04/05/88 HOUSE Filed

04/08/88 HOUSE Introduced, referred to Higher Education, Appropriations—HJ 97

04/15/88 HOUSE On Committee agenda—Higher Education, 04/19/88, 3:30 pm, 212-HOB—For subreferral

04/19/88 HOUSE Subreferred to Subcommittee on Planning and Programs; On committee agenda—Higher Education, 04/19/88, 4:00 pm, 415-HOB, Subcommittee Recommendation pending ratification by full Committee Favorable. On Committee agenda, pending subcommittee action—Higher Education, 04/21/88, 8:00 am, 212-HOB


05/13/88 HOUSE On Committee agenda—Appropriations, 05/17/88, 3:30 pm, Morris Hall

05/17/88 HOUSE Preliminary Committee Action by Appropriations. Favorable

05/18/88 HOUSE Comm Report Favorable by Appropriations, placed on Calendar—HJ 589

05/25/88 HOUSE Placed on Special Order Calendar

05/28/88 HOUSE Idem. /Sim Bill substituted, Land on Table under Rule, Idem./Sim./Compare Bill passed, refer to SB 178 (Ch 88-99) —HJ 752

H 1031 GENERAL BILL/CS/ENG by Regulatory Reform; Tobin; Bloom; Ascher; Rochlin and others (Similar CS/CS/CS/S 560)

Travel Agency/Regulation: provides for registration of sellers of travel & registration fees, provides for submittal of documents by sellers of travel & by promoters, provides for recordkeeping, suspension or revocation of registration, & prescribes acts or omissions which constitute violations, prescribes criminal & civil penalties, provides for registration by registrants; provides for future review & repeal, etc. Creates 559 927 Effective Date 10/01/88

04/08/88 HOUSE Filed

04/08/88 HOUSE Introduced, referred to Regulatory Reform, Finance & Taxation, Appropriations—HJ 97

04/11/88 HOUSE Subreferred to Subcommittee on Technical and Consumer Resources, On committee agenda—Regulatory Reform, 04/13/88, 8:00 am, 24-HOB

04/13/88 HOUSE Subreferred to Subcommittee pending ratification by full Committee, Favorable with 1 amendment. On Committee agenda, pending subcommittee action—Regulatory Reform, 04/14/88, 3:30 pm, Morris Hall

04/14/88 HOUSE Preliminary Committee Action by Regulatory Reform. Favorable as a Committee Substitute

04/25/88 HOUSE Comm Report CS by Regulatory Reform—HJ 250, CS read first time—HJ 249; Now in Finance & Taxation—HJ 250

04/28/88 HOUSE Withdrawn from Finance & Taxation—HJ 279, Now in Appropriations—HJ 279

05/17/88 HOUSE On Committee agenda—Appropriations, 05/19/88, 1:15 pm, Morris Hall

05/19/88 HOUSE Preliminary Committee Action by Appropriations. Favorable with 2 amendments

05/23/88 HOUSE Comm Report Favorable with 2 amendment(s) by Appropriations, placed on Calendar—HJ 633

05/31/88 HOUSE Placed on Special Order Calendar

06/01/88 HOUSE Read second time. Amendments adopted. Read third time. YEAS 110 NAYS 0—HJ 1108

06/01/88 HOUSE In Messages, Received—SJ 618, Substituted for CS/CS/CS/SB 560, CS passed, YEAS 37 NAYS 0—SJ 711

06/01/88 HOUSE Ordered enrolled

06/02/88 Signed by Officers and presented to Governor

07/06/88 Approved by Governor, Chapter No 86-363

H 1032 LOCAL BILL by Hawkins

Golden Gate Fire Control District: (Collier Co.) includes authorization of use & imposition of impact fees for capital improvement on new construction within Golden Gate Fire Control & Rescue District, provides for referendum Effective Date: Contingent

04/06/88 HOUSE Filed

04/08/88 HOUSE Introduced, referred to Community Affairs, Finance & Taxation—HJ 97

05/25/88 HOUSE On Committee agenda—Community Affairs, 05/26/88, 8:00 am, 212-HOB

05/26/88 HOUSE Preliminary Committee Action by Community Affairs Favorable

05/27/88 HOUSE Comm Report Favorable by Community Affairs—HJ 906, Now in Finance & Taxation—HJ 906

06/30/88 HOUSE Withdrawn from Finance & Taxation—HJ 826, Placed on Calendar

(CONTINUED ON NEXT PAGE)
By Senators Deratany and Kiser

A bill to be entitled
An act relating to relations between beer
distributors and manufacturers; amending s.
563.022, F.S.; redefining the terms "designated
member," "manufacturer," and "reasonable
qualifications"; defining the term "good
faith"; providing that persons who violate the
section shall not be subject to specified
criminal penalties; revising language with
respect to unfair and prohibited acts;
redefining the term "good cause"; revising
language with respect to termination,
cancellation, failure to renew, or
discontinuance of an agreement; requiring
reasonable effort to the sales and distribution
of the manufacturer's products; revising
language with respect to prohibited interests
of the manufacturer; defining the terms
"ancillary business" and "controlling
stockholder" or "controlling partner"; revising
language with respect to remedies; revising
language with respect to repurchase of
inventory upon termination; requiring written
notice with respect to indemnification;
repealing section 5 of chapter 87-63, Laws of
Florida, relating to written contracts in
existence on May 29, 1987, to proved that such
contracts shall be governed by certain
provisions of the chapter law; providing an
effective date.

CODING: Words stricken are deletions; words underlined are additions.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (g), and (i) of subsection (2), subsections (4) and (5), paragraphs (b) and (e) of subsection (7), subsections (10), (12), and (14), paragraph (a) of subsection (17), paragraphs (a), (c), and (g) of subsection (18), paragraphs (a) and (b) of subsection (20), and subsection (21) of section 563.022, Florida Statutes, are amended, a new paragraph (g) is added to subsection (21) of said section, and present paragraphs (g), (h), (i), (j), (k), and (l) of said subsection are redesignated as paragraphs (h), (i), (j), (k), (l), and (m), respectively, to read:

563.022 Relations between beer distributors and manufacturers.--

(2) DEFINITIONS.--In construing this section, unless the context otherwise requires, the word, phrase, or term:

(a) "Designated member" means the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a distributor, who is entitled to inherit the deceased individual's ownership interest in the distributor under the terms of the deceased individual's will, or other testamentary device who has otherwise been designated in writing by the deceased individual to succeed the deceased individual in the distributor's business, or who is entitled to inherit such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual owning an ownership interest in a distributor, the term means the person appointed by a court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary
trustee of a deceased individual owning an ownership interest
in a distributor.

(g) "Good faith" means honesty in fact in the conduct
or transaction concerned as defined and interpreted under s.
671.201(19).

(b) "Manufacturer" means any person who
manufactures or imports licensed-to-manufacture-or-import beer
for distribution to distributors licensed in Florida.

(l) "Reasonable qualifications" means the standard
of the reasonable criteria established and consistently used
by the respective manufacturer for Florida distributors that
entered into, continued, or renewed an agreement with the
manufacturer during a period of 24 months prior to the
proposed transfer of the distributor's business, or for
Florida distributors that have changed managers or designated
managers during a period of 24 months prior to the proposed
change in manager or successor manager of the distributor's
business the-average-standard-of-the-criteria-used-by-the
respective-manufacturer-for-distributors-that-entered-into-or
renewed-an-agreement-with-the-manufacturer-during-a-period-of
24-months-prior-to-the-proposed-transfer-of-the-distributor's
business.

(4) UNLAWFUL ACTS AND PRACTICES.—Unfair methods of
competition and unfair or deceptive acts or practices in the
conduct of the manufacturing, importing, distribution, sale,
wholesaling, and franchising of beer, as defined in subsection
(5) this section, are declared to be unlawful. Any person who
violates any provision of this section shall not be subject to
the criminal penalties set forth in the Beverage Law on
account of such violation.

(5) UNFAIR AND PROHIBITED ACTS.—
(a) It shall be deemed a violation of subsection (4) for any manufacturer or distributor to engage in any action which is arbitrary or unconscionable and which causes damage in terms of law or equity to any of the parties or to the public.

(b) It shall be deemed a violation of subsection (4) for a manufacturer or officer, agent, or other representative thereof:

1. To coerce or compel, or attempt to coerce or compel, any beer distributor to order or accept delivery of any beer or any other commodity or commodities which such beer distributor has not voluntarily ordered.

2. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of the distributor's order to any distributor having a franchise or contractual agreement for the distribution and sale of beer sold by such manufacturer, beer covered by such franchise or contract. However, the failure to deliver any such beer shall not be considered a violation of this section if such failure is due to prudent and reasonable restriction on extension of credit by the manufacturer to the distributor, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the manufacturer, or any agent thereof, shall have no control whatsoever.

3. To coerce or compel, or attempt to coerce or compel, a beer distributor to enter into any agreement, whether written or oral, supplementary to an existing franchise with such manufacturer or officer, agent, or other representative thereof, or to do any other act prejudicial to such distributor, by threatening to cancel any franchise or
any contractual agreement existing between such manufacturer
and such distributor. However, notice in good faith to a beer
distributor of such distributor's violation or breach of any
terms or provisions of such franchise or contractual agreement
shall not constitute a violation of this section if such
notice is in writing, is mailed by registered or certified
mail to such distributor at his current business address, and
contains the specific facts as to the distributor's violation
or breach of such franchise or contractual agreement.

4. To terminate, cancel, fail to renew, or refuse to
continue the franchise or selling agreement of any such
distributor without good cause, as defined in subsections (7)
and (10). The nonrenewal of a franchise or selling agreement
without good cause shall constitute an unfair termination or
cancellation, regardless of the specified time period of such
franchise or selling agreement.

5. To offer to sell or to sell any beer to any other
Florida distributor at a lower actual price therefor than the
actual price offered to any other Florida distributor for the
same product or to utilize any device, including but not
limited to sales promotion plans or programs which result in
such lesser actual price or result in a fixed price
predetermined solely by the manufacturer.

5.6. To willfully discriminate, either directly or
indirectly, in price, programs, or terms of sale offered to
franchisees, where the effect of such discrimination is likely
may-be to substantially lessen competition or to give to one
holder of a franchise any economic business or competitive
advantage not offered to all holders of the same or similar
franchise.
To prevent or attempt to prevent, by contract or otherwise, any beer distributor from changing the capital structure of his distributorship or the means by or through which he finances the operation of his distributorship, provided that the distributor at all times meets any reasonable capital standards which are reasonable in light of generally accepted capital standards within the manufacturer's beer distribution system. Nothing in this subparagraph diminishes the right of a manufacturer to prohibit public ownership of its franchises agreed-to-between-the-distributor and-the-manufacturer.

To prevent or attempt to prevent, by contract or otherwise, any beer distributor or any officer, member partner, or stockholder of any beer distributor from selling or transferring any part of the interest of any of them to any other person or persons or party or parties. However, no distributor, officer, partner, or stockholder shall have the right to sell, transfer, or assign the franchise or power of management or control thereunder without the written consent of the manufacturer, distributor, or wholesaler, except that such consent shall not be unreasonably withheld.

a. No manufacturer shall unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock of a distributor or of all or any portion of a distributor's assets, distributor's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling a distributor, including the distributor's rights and obligations under the terms of an agreement, whenever the person or persons to be substituted meet reasonable qualifications. Upon the death of one of the partners of a
partnership operating the business of a distributor, no
manufacturer shall deny the surviving partner or partners of
such partnership the right to become a successor-in-interest
to the agreement between the manufacturer and such
partnership, provided that the survivor has been active in the
management of the partnership and is otherwise capable of
carrying on the business of the partnership, and provided
further that such right is consistent with the rights and
desires of the heirs or devises of the deceased partner.

b. Notwithstanding the provisions of subparagraph a.,
upon the death of a distributor, no manufacturer shall deny
approval for any transfer of ownership to a designated member
of the family of an owner of a distributor; provided, however,
that any such subsequent transfer of such ownership by such
designated member shall thereafter be subject to the
provisions of subparagraph a.

8. To obtain money, goods, services, anything of
value, or any other benefit from any person in exchange for
having coerced or compelled a beer distributor to do business
with such other person.

9.--To obtain money, goods, services, anything of
value, or any other benefit from any other person with whom
the beer distributor does business or employs on account of or
in relation to the transactions between the distributor and
such other person;

9. To require a beer distributor to assent to a
release, assignment, novation, waiver, or estoppel which would
relieve any person from liability imposed by this section.

10. To restrict or inhibit, directly or indirectly,
the right of free association among manufacturers and
distributors of beer for any lawful purpose.

CODING: Words stricken are deletions; words underlined are additions.
11.127 To fix or maintain the price at which a distributor may resell beer.
12.127 To coerce, or attempt to coerce, any distributor to accept delivery of any beer or other commodity ordered by a distributor if the order was properly canceled by the distributor in accordance with the procedures agreed upon by the manufacturer and distributor.
13.127 To change a distributor's quota of a brand or brands if the change is not made in good faith.
14.127 To require a distributor, by any means, to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a manufacturer.
15.127 To take any retaliatory action against a distributor that files a complaint regarding an alleged violation by the manufacturer of state or federal law or an administrative rule.
16.127 To require or prohibit, without good cause provided in writing, any change in the manager or successor manager of any distributor who has been approved by the manufacturer as of June 4, 1987. Should a distributor change an approved manager or successor manager, a manufacturer shall not require or prohibit the change unless the person fails to meet the reasonable written standards for Florida distributors of the manufacturer, which standards have been provided to the distributor.

GOOD CAUSE.--Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under paragraph (6)(c) when all of the following occur:

CODING: Words stricken are deletions, words underlined are additions.
(b) The manufacturer first acquired knowledge of the
default described in paragraph (a) not more than 18 months
before the date notification was given pursuant to
subsection (6).

(e) The distributor has been afforded 30 days in which
to submit a plan of corrective action to comply with the
agreement and an additional 90 days to cure such noncompliance
in accordance with the plan or to sell his distributorship
consistent with the provisions of this section.

(10) CONDITIONS AND NOTICE REQUIRED.--Notwithstanding
subsections (6) and (9), a manufacturer may terminate, cancel,
fail to renew, or discontinue an agreement for good cause,
after upon not less than 15 days' written notice given in the
manner and containing the information required by subsection
(9), if any of the following occur:

(a) Insolvency of the distributor, the filing of any
petition by or against the distributor under any bankruptcy or
receivership law, or the dissolution or liquidation of the
wholesaler which materially affects the distributor's ability
to remain in business.

(b) Revocation of the distributor's license by the
subscription or by the Federal Bureau of Alcohol, Tobacco and
Firearms whereby the distributor cannot distribute beer for
more than 60 days.

(c) The distributor, or a partner or an individual who
owns 10 percent or more of the partnership or stock of a
corporate distributor, has been convicted of a felony under
the United States Code or the laws of any state which
reasonably may adversely affect the good will or interest of
the distributor or manufacturer. However, an existing
stockholder or stockholders, or partner or partners, or a

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designated member or members, or the distributor itself, if
incorporated, shall have, subject to the provisions of this
section, the right to purchase the partnership interest or the
stock of the offending partner or stockholder, and if the sale
is completed within 15 days of the conviction of the offending
partner or stockholder, the right of termination,
cancellation, nonrenewal, or discontinuance of the
distributorship agreement shall not apply. The distributor-or
an individual who owns more than 10 percent of the stock of a
corporate distributor has been convicted of a felony. As used
in this paragraph, "felony" means a felony under the United
States Code or the Florida Statutes. However, an existing
approved stockholder or stockholders shall have the right to
purchase the stock of the offending stockholder within 15 days
of the conviction of the offending stockholder, and if the
sale is completed within said 15-day period, the provisions of
this paragraph shall not apply.
(d) There was fraudulent conduct on the part of the
distributor relating to a material matter in dealings with the
manufacturer or its products.
(e) The principal of the distributor intentionally and
willfully sells the manufacturer's products to a retailer or
retailers located outside a distributor's territory, but only
if the manufacturer has assigned exclusive territories to its
distributors in Florida.
(f) The distributor fails to pay for the
manufacturer's products ordered and delivered in accordance
with terms established with the manufacturer and has continued
to fail to make payment within 15 business days after receipt
of notice of the delinquency and demand for immediate payment.

CODING: Words stricken are deletions; words underlined are additions.
(g) The distributor sells, transfers, or assigns the franchise or control thereunder without the written consent of the manufacturer.

(12) REASONABLE EFFORT REQUIRED.--The distributor shall devote such reasonable efforts and resources, as required in the agreement between the distributor and the manufacturer, to sales and distribution of all the manufacturer's products which the distributor has been granted the right and has agreed to sell and distribute so long as such requirements are reasonable. In the absence of such an agreement, the distributor shall devote reasonable efforts and resources.

(14) MANUFACTURER; PROHIBITED INTERESTS.--

(a) This subsection applies to:

1. A manufacturer holder-of-a-manufacturer's-license;

2. Any officer, director, agent, or employee of a manufacturer holder-of-a-manufacturer's-license; or

3. An affiliate of any manufacturer holder-of-a-manufacturer's-license, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) Except as provided in paragraph (c) no entity or person specified in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor.

(c) Any entity described in paragraph (a) may financially assist a proposed distributor in acquiring ownership of the distributorship through participation in a limited partnership arrangement in which the entity described in paragraph (a) is a limited partner and the proposed distributor seeking to acquire ownership of the distributorship is the general partner. Such limited

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partnership arrangements may exist for no longer than 8 years
from their creation and shall not be extended or renewed by
means of a transfer of full ownership to an entity described
in paragraph (a) followed by the creation of a new limited
partnership, or by any other means. In any such arrangement
for financial assistance, the federal basic permit and
distributor's license issued by the division shall be issued
in the name of the distributor and not in the name of an
entity described in paragraph (a). If, after the creation of
a limited partnership pursuant to this paragraph, an entity
described in paragraph (a) acquires title to the
distributorship which was the subject of the limited
partnership, the entity described in paragraph (a) shall
divest itself of the distributorship within 180 days, and the
distributorship shall be ineligible for limited partnership
financing for 20 years thereafter. No entity described in
paragraph (a) may enter into a limited partnership
arrangement with a licensed distributor whose distributorship
existed and was operated prior to the creation of such limited
partnership arrangement.

(d) Nothing in the Beverage Law shall be construed to
prohibit a manufacturer from shipping products to or between
its breweries without a distributor's license.

(e) Notwithstanding the provisions of paragraph (b),
any entity named in paragraph (a) may have an interest in the
distributor, business, assets, or corporate stock of a licensed
distributor for a maximum of 180 consecutive days as the
result of a judgment of foreclosure against the distributor or
for 180 consecutive days after acquiring title pursuant to the
written request of the licensed distributor. Under either of
these circumstances, manufacturer ownership of an interest in
the license, business, assets, or corporate stock of a
licensed distributor shall only be for 180 days and only for
the purpose of facilitating an orderly transfer of the
distributorship to an owner not affiliated with a
manufacturer.

(f) Notwithstanding the provisions of paragraph (b),
any entity named in paragraph (a) may have a security interest
in the inventory or property of its licensed distributors to
secure payment for said inventory or other loans for other
purposes.

(17) REASONABLE COMPENSATION.—Upon termination:
(a) Any manufacturer which, without good cause,
cancels, terminates, or fails to renew any agreement, or
lawfully denies approval of, or unreasonably withholds consent
to, any assignment, transfer, or sale of a distributor's
business assets or voting stock or other equity securities,
shall pay such distributor with whom it has a written contract
reasonable compensation for the diminished value of the
distributor's business or of any ancillary business or both
which has been negatively affected by the act of the
manufacturer. "Ancillary business" means a business owned by
a wholesaler, a controlling stockholder of a wholesaler, or a
controlling partner of a wholesaler, the assets of which are
primarily used in transporting, storing, or marketing the
brand or brands of malt beverage of the supplier with whom the
wholesaler has an agreement; or a business owned by
wholesaler, a controlling stockholder of a wholesaler, or a
controlling partner of a wholesaler which recycles returnable
beverage containers; or any other business owned by a
wholesaler, a controlling stockholder of a wholesaler, or a
controlling partner of a wholesaler, which business is
primarily operated to benefit the wholesaler's ability to handle the brand or brands of malt beverage of the supplier with whom the wholesaler has an agreement. "Controlling stockholder" of "controlling partner" shall mean a person with an ownership interest in the wholesaler of 50 percent or more. The value of the distributor's business or ancillary business shall include, but not be limited to, its goodwill.

(18) REMEDIES.--

(a) During the 90-day period provided in subsection (9) or during the 15-day period provided in subsection (10), either party, in appropriate circumstances, may bring action in the appropriate circuit court of this state to shorten modify the notice period so provided or to extend it pending a final determination of such proceedings on the merits.

(c) In addition to temporary, preliminary, or final injunctive relief, any person who shall be aggrieved or injured in his business or property by reason of anything forbidden in this section may bring an action therefor in the appropriate circuit court of this state and, if successful, shall recover the damages sustained and the costs of such action, including a reasonable attorney's fee.

(g) The remedies provided in this subsection shall be in addition to any other civil remedies provided by law or in equity. Nothing contained in this subsection shall give rise to or foreclose any claim which would otherwise exist against the manufacturer or distributor by any proposed purchaser of the distributor's business.

(20) REPURCHASE OF INVENTORY UPON TERMINATION.--

(a) Whenever any beer distributor enters into a franchise agreement with a manufacturer wherein the distributor agrees to maintain an inventory of beer and the
franchise is subsequently terminated in accordance with this section and any circuit court injunction requested by the distributor has been denied or dissolved, the manufacturer shall repurchase the inventory as provided in this section.

The distributor may keep the inventory if he desires. If the distributor has any outstanding debts to the manufacturer, then the repurchase amount may be credited to the distributor's account.

(b) If the distributor decides not to keep the inventory, the manufacturer shall repurchase that inventory previously purchased from him and held by the distributor on the date of termination of the contract. The manufacturer shall pay 100 percent of the actual distributor cost, including freight and reasonable storage and handling costs, of all unsold beer.

(21) INDEMNIFICATION. -- A manufacturer shall fully indemnify and hold harmless its distributor against any losses, including, but not limited to, court costs and reasonable attorney's fees or damages arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or express or implied warranty where the complaint, claim, or lawsuit relates to the manufacture or packaging of beer or other functions by the manufacturer which are beyond the control of the distributor. The distributor must mail written notice to the manufacturer on a prompt and timely basis after receipt of notice of a complaint, claim, or lawsuit in order for the manufacturer to be liable under this subsection with respect to such complaint, claim, or lawsuit.

Section 2. Section 5 of chapter 87-63, Laws of Florida, is hereby repealed.
Section 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 4. This act shall take effect upon becoming a law.

ROUSE SUMMARY

Revises state law governing relations between beer distributors and manufacturers to:

1. Provide that any person who violates the statute governing such relations shall not be subject to the criminal penalties of the Beverage Law.
2. Revise language with respect to unfair and prohibital acts.
3. Add criteria for the termination, cancellation, failure to renew, or discontinuance of an agreement for good cause by a manufacturer.
4. Revise language with respect to prohibited interests of a manufacturer.
5. Repeal a provision of law relating to written contracts in effect on May 29, 1987, to provide that the provisions requiring a license fee for certain manufacturers shall apply to such contracts.

See bill for details

CODING: Words strucken are deletions; words underlined are additions.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

SUBJECT:
Relations between beer distributors and manufacturers

I. SUMMARY:

A. Present Situation and Effect of Proposed Changes:

Last year the Legislature enacted s. 563.022, F.S., which sets comprehensive standards to govern the relations between beer manufacturers and distributors.

This bill makes numerous modifications in the law governing the relations between beer manufacturers and distributors.

Presently, s. 563.022, F.S., prohibits a manufacturer from unreasonably withholding its approval of the sale of a distributorship if the new owner meets "reasonable qualifications." This bill changes the definition of these "reasonable qualifications" from one reflecting an average industry standard to one reflecting the manufacturer's average reasonable standard for Florida distributors over the latest 24-month period.

The bill clarifies that the definition of manufacturer is intended to encompass all persons manufacturing or importing beer for distribution in Florida. It also provides that persons who violate the provisions of s. 563.022, F.S., are not subject to the criminal penalties set forth in the Beverage Law.

SB 908 eliminates the prohibition against a manufacturer of offering different prices, programs, or terms of sale to any of its Florida distributors. However, a manufacturer is still prohibited from willfully discriminating, either directly or indirectly, in the price offered to its distributors when the effect is likely to substantially lessen competition.

The bill provides that the capital standards which a manufacturer can require of a distributor must be reasonable. Reasonableness is based upon the manufacturer's standards which are present in its current distribution system. The present provision, which requires determination of reasonable industry wide standards, is eliminated. This provision should not be construed to prevent a manufacturer from prohibiting public ownership of its distributorships.

The restrictions against a manufacturer receiving benefits from a third party, with whom its distributor does business, are moderated. Under the bill, benefits are only prohibited where the manufacturer has coerced the distributor into doing business with the third party.

SB 908 eliminates the inability of a manufacturer to change an approved manager of any distributor. Under the bill, the manufacturer could make a managerial change if the change is with good cause and is provided in writing.
An area of substantive change involves an expansion of the permissible reasons for which a manufacturer may revoke a distributorship. This bill specifies that under the following additional conditions a manufacturer may revoke a distributorship:

1. where the distributor has failed to pay the manufacturer in a timely manner for products ordered and delivered and has continued the failure for 15 additional days after receipt of demand for payment;
2. where there is fraudulent conduct on a material matter by the distributor in the distributor's dealings with the manufacturer;
3. where the distributor intentionally sells the manufacturer's product in the exclusive territory of another; and
4. where the distributor transfers the franchise without the written consent of the manufacturer. However, as noted above, this consent may not be unreasonably withheld.

One of the present specified reasons for which a manufacturer may terminate a distributorship is if the state Division of Alcoholic Beverages and Tobacco revokes the distributor's license so that the distributor cannot sell beer for more than 60 days. This bill would provide the same option to the manufacturer when a revocation action is taken by the federal Bureau of Alcohol, Tobacco, and Firearms. In addition, the time within which a manufacturer may notify a distributor of a failure, constituting cause for termination, is extended from 12 to 18 months.

Furthermore, SB 908 now specifies that during the time distributors may pursue corrective action concerning an insolvency, they can sell the distributorship to avoid forfeiture of the franchise.

The definition of what constitutes a disqualifying felony has been modified. Felonies under the laws of other states will be considered, but no felony conviction which does not adversely affect the good will or interest of the manufacturer or distributor will be disqualifying.

Section 563.022, F.S., presently requires that a distributor devote "reasonable efforts" and resources to the sale of a manufacturer's products. This bill adds that where an agreement addressing this issue exists between the parties, "reasonable efforts" will be considered to be those efforts required by the agreement.

SB 908 permits manufacturers to financially assist a new distributorship by participating in a limited partnership for a period not to exceed 8 years. Under the bill, a manufacturer may obtain a security interest in the inventory or property of its distributors. However, if the manufacturer is required to foreclose on the distributorship, it must divest itself of the distributorship within 180 days. In addition, the bill's provisions allow a manufacturer to ship products to or between its breweries without a distributor's license.

Present law provides that when a manufacturer cancels a distributorship without good cause the distributor can collect damages for the diminished value of the distributorship and any ancillary business. SB 908 defines ancillary business for the purposes of s. 563.022, F.S.

The law also currently provides that a party aggrieved by a violation of these provisions may bring an action in circuit court and recover costs and attorney fees, in addition to
damages. This bill clarifies that attorney fees and court costs may only be recovered if the aggrieved party prevails in the court case.

Furthermore, the bill provides that if a manufacturer lawfully terminates a franchise the distributor will no longer be permitted to keep the remaining inventory. However, in addition to reimbursing the distributor for 100 percent of its product cost, including freight, as it now must do, the manufacturer must also pay the distributor reasonable storage and handling costs for the unsold inventory.

Finally, the bill adds that for a manufacturer to be liable to the distributor under the indemnity requirements, the distributor must have provided the manufacturer with prompt and timely notice of the claim or suit.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

By addressing some of the omissions of the law enacted last year, this bill should improve the ability of manufacturers to keep their distribution systems strong.

Additionally, both distributors and manufacturers will benefit from having a more certain understanding of their respective rights and responsibilities as a result of the clarifications and technical corrections contained in this bill. This in turn should tend to minimize litigation between parties which might otherwise result from unclear statutory provisions.

B. Government:

This bill should not have a significant economic impact upon the governmental sector.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation and Effect of Proposed Changes:

Last year the Legislature enacted s. 563.022, F.S., which sets comprehensive standards to govern the relations between beer manufacturers and distributors.

This bill makes numerous modifications in the law governing the relations between beer manufacturers and distributors.

Presently, s. 563.022, F.S., prohibits a manufacturer from unreasonably withholding its approval of the sale of a distributorship if the new owner meets "reasonable qualifications." This bill changes the definition of these "reasonable qualifications" from one reflecting an average industry standard to one reflecting the manufacturer's average reasonable standard for Florida distributors over the latest 24-month period.

The bill clarifies that the definition of manufacturer is intended to encompass all persons manufacturing or importing beer for distribution in Florida. It also provides that persons who violate the provisions of s. 563.022, F.S., are not subject to the criminal penalties set forth in the Beverage Law.

SB 908 eliminates the prohibition against a manufacturer of offering different prices, programs, or terms of sale to any of its Florida distributors. However, a manufacturer is still prohibited from willfully discriminating, either directly or indirectly, in the price offered to its distributors when the effect is likely to substantially lessen competition.

The bill provides that the capital standards which a manufacturer can require of a distributor must be reasonable. Reasonableness is based upon the manufacturer's standards which are present in its current distribution system. The present provision, which requires determination of reasonable industry wide standards, is eliminated. This provision should not be construed to prevent a manufacturer from prohibiting public ownership of its distributorships.

The restrictions against a manufacturer receiving benefits from a third party, with whom its distributor does business, are moderated. Under the bill, benefits are only prohibited where the manufacturer has coerced the distributor into doing business with the third party.

SB 908 eliminates the inability of a manufacturer to change an approved manager of any distributor. Under the bill, the manufacturer could make a managerial change if the change is with good cause and is provided in writing.
An area of substantive change involves an expansion of the permissible reasons for which a manufacturer may revoke a distributorship. This bill specifies that under the following additional conditions a manufacturer may revoke a distributorship:

1. where the distributor has failed to pay the manufacturer in a timely manner for products ordered and delivered and has continued the failure for 15 additional days after receipt of demand for payment;

2. where there is fraudulent conduct on a material matter by the distributor in the distributor's dealings with the manufacturer;

3. where the distributor intentionally sells the manufacturer's product in the exclusive territory of another; and

4. where the distributor transfers the franchise without the written consent of the manufacturer. However, as noted above, this consent may not be unreasonably withheld.

One of the present specified reasons for which a manufacturer may terminate a distributorship is if the state Division of Alcoholic Beverages and Tobacco revokes the distributor's license so that the distributor cannot sell beer for more than 60 days. This bill would provide the same option to the manufacturer when a revocation action is taken by the federal Bureau of Alcohol, Tobacco, and Firearms. In addition, the time within which a manufacturer may notify a distributor of a failure, constituting cause for termination, is extended from 12 to 18 months.

Furthermore, SB 908 now specifies that during the time distributors may pursue corrective action concerning an insolvency, they can sell the distributorship to avoid forfeiture of the franchise.

The definition of what constitutes a disqualifying felony has been modified. Felonies under the laws of other states will be considered, but no felony conviction which does not adversely affect the good will or interest of the manufacturer or distributor will be disqualifying.

Section 563.022, F.S., presently requires that a distributor devote "reasonable efforts" and resources to the sale of a manufacturer's products. This bill adds that where an agreement addressing this issue exists between the parties, "reasonable efforts" will be considered to be those efforts required by the agreement.

SB 908 permits manufacturers to financially assist a new distributorship by participating in a limited partnership for a period not to exceed 8 years. Under the bill, a manufacturer may obtain a security interest in the inventory or property of its distributors. However, if the manufacturer is required to foreclose on the distributorship, it must divest itself of the distributorship within 180 days. In addition, the bill's provisions allow a manufacturer to ship products to or between its breweries without a distributor's license.

Present law provides that when a manufacturer cancels a distributorship without good cause the distributor can collect damages for the diminished value of the distributorship and any ancillary business. SB 908 defines ancillary business for the purposes of s. 563.022, F.S.

The law also currently provides that a party aggrieved by a violation of these provisions may bring an action in circuit court and recover costs and attorney fees, in addition to
damages. This bill clarifies that attorney fees and court costs may only be recovered if the aggrieved party prevails in the court case.

Furthermore, the bill provides that if a manufacturer lawfully terminates a franchise the distributor will no longer be permitted to keep the remaining inventory. However, in addition to reimbursing the distributor for 100 percent of its product cost, including freight, as it now must do, the manufacturer must also pay the distributor reasonable storage and handling costs for the unsold inventory.

Finally, the bill adds that for a manufacturer to be liable to the distributor under the indemnity requirements, the distributor must have provided the manufacturer with prompt and timely notice of the claim or suit.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

By addressing some of the omissions of the law enacted last year, this bill should improve the ability of manufacturers to keep their distribution systems strong.

Additionally, both distributors and manufacturers will benefit from having a more certain understanding of their respective rights and responsibilities as a result of the clarifications and technical corrections contained in this bill. This in turn should tend to minimize litigation between parties which might otherwise result from unclear statutory provisions.

B. Government:

This bill should not have a significant economic impact upon the governmental sector.

III. COMMENTS:

None.

IV. AMENDMENTS:

#1 by Commerce:
Technical title amendment.
SENATE COMMITTEE AMENDMENT

SB 908
HB ___
No. 1 (reported favorably)

The Committee on Commerce recommended the following amendment which was moved by Senator and adopted:

and failed:

Senate Amendment

In title, on page 1, line 27, strike the word "proved"

If amendment is text from another bill insert:

Bill No. Draft No. With Changes? Yes

and insert:

provide

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* Amendment No. __, taken up by committee: 4/20/88 Adopted x *
* Offered by Senator Childers Failed *

(Amendment No. ___ Adopted ___ Failed ___ Date ___/___/___)
I. SUMMARY:

In 1987 the Legislature enacted a comprehensive law setting standards to govern the relations between beer manufacturers and distributors. This bill is for the most part the product of negotiations between the major manufacturers and Florida's beer distributors to modify various provisions of the law passed last year. Some of these modifications involve clarification of existing provisions and some involve substantive changes.

A. PRESENT SITUATION:

Last year the Legislature enacted Section 563.022, F.S., which sets comprehensive standards to govern the relations between beer manufacturers and distributors. After the initial period of operation under this law, both the major manufacturers and the distributors have agreed that certain modifications in the law are desirable.

B. EFFECT OF PROPOSED CHANGES:

This bill makes numerous modifications in the law governing the relations between beer manufacturers and distributors.

The law presently prohibits a manufacturer from unreasonably withholding its approval of the sale of a distributorship if the new owner meets "reasonable qualifications". This bill changes the definition of these "reasonable qualifications" from one
reflecting the average industry wide standard over the latest 24 months to one reflecting only that manufacturer's average reasonable standard for distributors over this period.

The bill clarifies that the definition of manufacturer is intended to encompass all persons manufacturing or importing beer for distribution in Florida.

It provides that persons who violate its provisions are not subject to the criminal penalties set forth in the Beverage Law.

It eliminates the prohibition upon a manufacturer offering different prices, programs, or terms of sale to any of its Florida distributors. However, a manufacturer will be prohibited from willfully discriminating, either directly or indirectly, in the price offered to its distributors when the effect of such discrimination is likely to substantially lessen competition.

This bill provides that the capital standards which a manufacturer can require of a distributor must be reasonable in view of the standards within its present distribution system, deleting the present provision which requires determination of reasonable industry wide standards. A sentence is added which states that this provision should not be construed to prevent a manufacturer from prohibiting public ownership of its distributorships.

The restrictions upon a manufacturer receiving benefits from a party with whom its distributor does business are moderated, and benefits will now be prohibited only to the extent that they are the result of the manufacturer having coerced the distributor to do business with the third party.

The prohibition upon a manufacturer attempting to require or prohibit a change in the manager of a distributor approved prior to June 4, 1987, is lifted where the manufacturer provides good cause in writing.

One of the primary areas of substantive change involves an expansion in the listing of the permissible reasons for which a manufacturer may revoke a distributorship. This bill specifies that under the following additional conditions a manufacturer may take such action:

1. Where the distributor has failed to pay the manufacturer in a timely manner for products ordered and delivered and has continued the failure for 15 additional days after receipt of demand for payment.

2. Where there is fraudulent conduct in a material matter on the part of the distributor in his dealings with the manufacturer.
3. Where the retailer intentionally sells the manufacturer's product in the exclusive territory of another.

4. Where the distributor transfers the franchise without the written consent of the manufacturer. However, as noted above, this consent may not be unreasonably withheld.

One of the present specified reasons for which a manufacturer may terminate a distributorship is if the state Division of Alcoholic Beverages and Tobacco revokes the distributor's license so that the distributor cannot sell beer for more than 60 days. This bill provides the same when the federal Bureau of Alcohol, Tobacco, and Firearms takes such action.

The time within which a manufacturer may notify a distributor of a failure alleged to constitute good cause for termination is extended from 12 to 18 months.

The bill specifies that during the time allowed distributors for corrective action they will be permitted sell the distributorship to avoid forfeiture of the franchise.

The definition of what constitutes a disqualifying felony is modified. Felonies under the laws of other states will now be considered, but no felony conviction which does not adversely affect the good will or interest of the manufacturer or distributor will be disqualifying.

The law presently requires that a distributor devote reasonable efforts and resources to the sale of a manufacturer's products. This bill adds that where an agreement addressing this exists between the parties, reasonable efforts will be considered to be those reasonable efforts specified in the agreement.

Manufacturers will be permitted to financially assist a new distributorship by participating in a limited partnership for a period not to exceed 8 years, and may obtain a security interest in the inventory or property of its distributors. If the manufacturer is required to foreclose on the distributorship itself, it must divest itself of the distributorship within 180 days.

Manufacturers will be permitted to ship products to or between its breweries without a distributor's license.

Present law provides that when a manufacturer cancels a distributorship without good cause the distributor can collect damages for the diminished value of the distributorship and any ancillary business. This bill defines ancillary business.

The law currently provides that a party aggrieved by a violation of these provisions may bring an action in circuit court and recover costs and attorney fees, in addition to damages. This bill
clarifies that attorney fees and court costs may only be recovered if the aggrieved party prevails in the court case.

The bill provides that if a manufacturer terminates a franchise in accordance with lawful requirements the distributor will no longer be permitted to keep his inventory. It also provides that when this occurs, in addition to reimbursing the distributor for 100% of its product cost, including freight, as it now must do, the manufacturer will also pay the distributor its reasonable storage and handling costs for the unsold inventory.

The bill adds that for a manufacturer to be liable to the distributor under present indemnity provisions, the distributor must have provided the manufacturer with prompt and timely notice of the claim or suit.

Finally, the bill prohibits a manufacturer from selling directly to a retailer, other than a "Busch Gardens" type licensee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.

4. Appropriations Consequences:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None.

2. Recurring or Annualized Continuation Effects:
   None.

3. Long Run Effects Other Than Normal Growth:
   None.
III. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   They should be minimal, if any.

2. Direct Private Sector Benefits:
   By addressing some of the omissions of the law enacted last year this bill should improve the ability of manufacturers to keep their distribution systems strong.

   Additionally, both distributors and manufacturers will benefit from having a more certain understanding of their respective rights and responsibilities as a result of the clarifications and technical corrections contained in this bill. This in turn should tend to minimize litigation between parties which might otherwise result from unclear statutory provisions.

3. Effects on Competition, Private Enterprise, and Employment Markets:
   These should be minimal.

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

As noted above, this bill addresses technical deficiencies and omissions in the present law and therefore should minimize litigation over the construction and implementation of its provisions.

IV. COMMENTS:

Legislative History 1988 Session

A. Enacted Bill

SB 908 was filed by Senators Deratany and Kiser on April 6, 1988. On April 18th it was introduced and referred to the Commerce Committee. On April 20th the Commerce Committee reported it favorably with one technical, title amendment. On April 28th the bill was placed on the Special Order Calendar and passed with amendments by a vote of 36-0. The adopted amendments included the amendment previously approved by the Commerce Committee, an amendment to prevent manufacturers from selling directly to retailers in most instances, and another title amendment. Later that day the bill was received by the House, substituted for HB 1028, and passed by a vote of 114-1. On May 4, 1988 the bill was approved by the Governor.

B. Disposition of Companion
HB 1028 was filed by Representative Meffert on April 5, 1988. On April 8th it was introduced and referred to the Committee on Regulated Industries & Licensing. On April 12th it was subreferred to the Subcommittee on Alcoholic Beverages & Tobacco. On April 14th the subcommittee reported it favorably to the full committee. On April 20th the Committee on Regulated Industries & Licensing reported it favorably and it was placed on the Calendar. On April 28th it was placed on the Special Order Calendar, amendments were adopted to prevent manufacturers from selling directly to retailers in most instances, and identical SB 908 was substituted for it and passed.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: Robert B. Beitler

FINANCE & TAXATION:
Prepared by: Staff Director: Wyatt T. Martin

APPROPRIATIONS:
Prepared by: Staff Director:
SENATE BILL 908 (CHAPTER 88- ) makes numerous modifications to s. 563.022, F.S. Section 563.022, F.S., was enacted in 1987 and sets comprehensive standards to govern the relations between beer manufacturers and distributors.

The bill changes the definition of "reasonable qualifications" from one reflecting an average industry standard to one reflecting the manufacturer's average reasonable standard for Florida distributors over the latest 24-month period.

The bill clarifies that the definition of manufacturer is intended to encompass all persons manufacturing or importing beer for distribution in Florida. It also provides that persons who violate the provisions of s. 563.022, F.S., are not subject to the criminal penalties set forth in the Beverage Law.

SB 908 eliminates the prohibition against a manufacturer of offering different prices, programs, or terms of sale to any of its Florida distributors. However, a manufacturer is still prohibited from willfully discriminating, either directly or indirectly, in the price offered to its distributors when the effect is likely to substantially lessen competition.

The bill provides that the capital standards which a manufacturer can require of a distributor must be reasonable. Reasonableness is based upon the manufacturer's standards which are present in its current distribution system. The present provision, which requires determination of reasonable industry wide standards, is eliminated.
The restrictions against a manufacturer receiving benefits from a third party, with whom its distributor does business, are moderated. Under the bill, benefits are only prohibited where the manufacturer has coerced the distributor into doing business with the third party.

SB 908 eliminates the inability of a manufacturer to change an approved manager of any distributor. Under the bill, the manufacturer could make a managerial change if the change is with good cause and is provided in writing.

An area of substantive change involves an expansion of the permissible reasons for which a manufacturer may revoke a distributorship. This bill specifies that under the following additional conditions a manufacturer may revoke a distributorship:

1. where the distributor has failed to pay the manufacturer in a timely manner for products ordered and delivered and has continued the failure for 15 additional days after receipt of demand for payment;

2. where there is fraudulent conduct on a material matter by the distributor in the distributor's dealings with the manufacturer;

3. where the distributor intentionally sells the manufacturer's product in the exclusive territory of another; and

4. where the distributor transfers the franchise without the written consent of the manufacturer. However, as noted above, this consent may not be unreasonably withheld.
The bill provides the manufacturer the option, under certain conditions, of terminating a distributorship when a revocation action is taken by the Federal Bureau of Alcohol, Tobacco, and Firearms. In addition, the time within which a manufacturer may notify a distributor of a failure, constituting cause for termination, is extended from 12 to 18 months.

SB 908 now also specifies that during the time distributors may pursue corrective action concerning an insolvency, they can sell the distributorship to avoid forfeiture of the franchise.

The definition of what constitutes a disqualifying felony has been modified. Felonies under the laws of other states will be considered, but no felony conviction which does not adversely affect the good will or interest of the manufacturer or distributor will be disqualifying.

Section 563.022, F.S., presently requires that a distributor devote "reasonable efforts" and resources to the sale of a manufacturer's products. This bill adds that where an agreement addressing this issue exists between the parties, "reasonable efforts" will be considered to be those efforts required by the agreement.

SB 908 permits manufacturers to financially assist a new distributorship by participating in a limited partnership for a period not to exceed 8 years. Under the bill, a manufacturer may obtain a security interest in the inventory or property of its distributors. However, if the manufacturer is required to foreclose on the distributorship, it must divest itself of the distributorship within 180 days. In addition, the bill's provisions allow a manufacturer to ship products to or between its breweries without a distributor's license.
SB 908 also defines ancillary business for the purposes of s. 563.022, F.S., and the bill clarifies that attorney fees and court costs may only be recovered if the aggrieved party prevails in the court case.

Furthermore, the bill provides that if a manufacturer lawfully terminates a franchise, the distributor will no longer be permitted to keep the remaining inventory.

However, in addition to reimbursing the distributor for 100 percent of its product cost, including freight, as it now must do, the manufacturer must also pay the distributor reasonable storage and handling costs for the unsold inventory.

Finally, the bill adds that for a manufacturer to be liable to the distributor under the indemnity requirements, the distributor must have provided the manufacturer with prompt and timely notice of the claim or suit.
April 28, 1988

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—a companion measure, was substituted for CS for SB 418 and
by two-thirds vote read the second time by title. On motion by Senator
Johnson, by two-thirds vote HB 594 was read the third time by title,
passed and certified to the House. The vote on passage was:

Yea—38

Mr President Frank Johnson Ros-Lehtinen
Barron Girardeau Kiser Scott
Beard Gordon Langley Stuart
Brown Grant Lehtinen Thomas
Childers, D. Grizzle Margolis Thurman
Childers, W. D. Hair McPherson Weinstein
Crawford Hill Meek Weinstock
Crenshaw Hollingsworth Myers Woodson
Deratany Jenne Peterson
Dudley Jennings Plummer

Nays—None

Vote after roll call.

Yea—Malchon

CS for SB 418 was laid on the table.

SB 908—A bill to be entitled An act relating to relations between beer
distributors and manufacturers, amending s. 563.022, F.S., redefining
the terms “designated member,” “manufacturer,” and “reasonable quali­­fications”; defining the term “good faith”; providing that persons who violate
the section shall not be subject to specified criminal penalties, revising
language with respect to unfair and prohibited acts, revising the term
“good cause”, revising language with respect to termination, cancellation,
failure to renew, or discontinuance of an agreement; requiring reasonable
effort to the sales and distribution of the manufacturer’s products, revis­­ing
language with respect to prohibited interests of the manufacturer,
defining the terms “ancillary business” and “controlling stockholder” or
“controlling partner”; revising language with respect to remedies; revising
language with respect to repurchase of inventory upon termination;
requiring written notice with respect to indemnification, repealing section
5 of chapter 87-63, Laws of Florida, relating to written contracts in
existence on May 29, 1987, to proved that such contracts shall be gov­­erned
by certain provisions of the chapter law; providing an effective date

—was read the second time by title.

Senator Kiser moved the following amendment which was adopted.

Amendment 1—On page 11, line 24, before the period (.) insert:
    nor shall such entity sell directly to any vendor in this state other than
to vendors who are licensed pursuant to s. 561.221(2)

The Committee on Commerce recommended the following amend­­ment which was moved by Senator Kiser and adopted:

Amendment 2—In title, on page 1, line 27, strike “proved” and insert:
    provide

Amendment 3—In title, on page 1, strike line 16 and insert: of the
    manufacturer’s products, restricting the vendors to which manufacturers
    can sell directly; revising

On motion by Senator Deratany, by two-thirds vote SB 908 as amended
was read the third time by title, passed, ordered engrossed and
then certified to the House. The vote on passage was:

Yea—39

Mr President Frank Johnson Plummer
Barron Girardeau Kiser Ros-Lehtinen
Beard Gordon Langley Scott
Brown Grant Lehtinen Thomas
Childers, D. Grizzle Margolis Thurman
Childers, W. D. Hair McPherson Weinstein
Crawford Hill Meek Weinstock
Crenshaw Hollingsworth Myers Woodson
Deratany Jenne Peterson
Dudley Jennings Plummer

Nays—None

SB 358 was laid on the table.

SB 433—A bill to be entitled An act relating to the program for state
purchase, from nonprofit agencies, of commodities and services provided
by blind and other severely handicapped persons; amending s. 413.034,
F.S.; revising the composition of the commission that administers the
program; reviving and readopting ss. 413.032, 413.033, 413.034, 413.035,
413.036, 413.037, F.S., as amended, which provide for such program and
its administration, notwithstanding repeal scheduled pursuant to the
Sundown Act, providing for future review and repeal of such sections;
providing an effective date.

—was read the second time by title.

Two amendments were adopted to SB 433 to conform the bill to HB
776.

Pending further consideration of SB 433, as amended, on motion by Senator Kiser—

HB 776—A bill to be entitled An act relating to the Commission for
Purchase from the Blind or Other Severely Handicapped, amending s.
413.034, F.S.; revising membership of the commission; amending s.
413.036, F.S., providing that the act shall have precedence over laws
requiring procurement of products or services from other nonprofit cor­­porations; saving ss. 413.032-413.037, F.S., from Sundown repeal; provid­­ing
for future review and repeal; providing an effective date.

—a companion measure, was substituted for SB 433 and read the
second time by title. On motion by Senator Kiser, by two-thirds vote HB
776 was read the third time by title, passed and certified to the House.
The vote on passage was:
Journal of the Florida House of Representatives

Ninetieth Regular Session since Statehood in 1845

April 5 through June 7, 1988

[Including a record of transmittal of Acts subsequent to sine die adjournment]
Rep Bankhead moved the adoption of the amendment, which was adopted without objection.

Representative Bankhead offered the following title amendment:

Amendment 2—On page 1, lines 4-6, strike all of said lines and insert the district school superintendent or his designee of arrest of juvenile who is a student under certain circumstances, requiring notification of principal and guidance counselor, providing for confidentiality, providing for removal of information, providing an effective date.

Rep Bankhead moved the adoption of the amendment, which was adopted without objection.

Under Rule 8.19, the bill was referred to the Engrossing Clerk.

HB 901—A bill to be entitled An act relating to funeral directing, embalming, and direct disposition; repealing s. 470.004, F.S., relating to the establishment of the location of headquarters of the Board of Funeral Directors and Embalmers, providing an effective date.

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

HB 1060—A bill to be entitled An act relating to retirement; amending ss. 121.091 and 238.181, F.S.; permitting district school retirees to be employed after retirement as hourly employees, providing an effective date.

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

On motion by Rep. Meffert, the rules were waived and the House reverted to the order of—

Messages from the Senate

The Honorable Jon Mills, Speaker

I am directed to inform the House of Representatives that the Senate has passed, as amended, SB 908 and requests the concurrence of the House.

Joe Brown, Secretary

SB 908—A bill to be entitled An act relating to relations between beer distributors and manufacturers; amending s. 563.022, F.S., defining the terms "designated member," "manufacturer," and "reason-able qualifications"; defining the term "good faith", providing that persons who violate the section shall not be subject to specified criminal penalties, revising language with respect to unfair and prohibited acts, redefining the term "good cause", revising language with respect to termination, cancellation, failure to renew, or discontinuance of an agreement, requiring reasonable effort to the sales and distribution of the manufacturer's products, restricting the vendors to which manufacturers can sell directly; revising language with respect to prohibited interests of the manufacturer, defining the terms "ancillary business" and "controlling stockholder" or "controlling partner", revising language with respect to remedies; revising language with respect to indemification; repealing section 5 of chapter 87-63, Laws of Florida, relating to written contracts in existence on May 29, 1987, to provide that such contracts shall be governed by certain provisions of the chapter law, providing an effective date.

—was taken up and read the second time by title.

Representative Meffert offered the following amendment:

Amendment 1—On page 11, line 24, before the period insert, nor shall such entity sell directly to any vendor in this state other than to vendors who are licensed pursuant to s. 551.221(2).

Rep Meffert moved the adoption of the amendment, which was adopted without objection.

Representative Meffert offered the following title amendment:

Amendment 2—On page 1, line 16, strike all language and insert of the manufacturer's products, restricting the vendors to which manufacturers can sell directly, revising language with respect to prohibited interests of the manufacturer, defining the terms "ancillary business" and "controlling stockholder" or "controlling partner", revising language with respect to remedies, revising language with respect to indemification; repealing section 5 of chapter 87-63, Laws of Florida, relating to written contracts in existence on May 29, 1987, to provide that such contracts shall be governed by certain provisions of the chapter law, providing an effective date.

—a similar or companion measure, was substituted for HB 1028 and read the second time by title. Under the rules, the House bill was laid on the table.

On further motion by Rep. Meffert, the rules were waived by two-thirds vote and—

SB 908—A bill to be entitled An act relating to relations between beer distributors and manufacturers, amending s. 563.022, F.S., defining the terms "designated member," "manufacturer," and "reason-able qualifications", defining the term "good faith", providing that persons who violate the section shall not be subject to specified criminal penalties, revising language with respect to unfair and prohibited acts, redefining the term "good cause", revising language with respect to termination, cancellation, failure to renew, or discontinuance of an agreement, requiring reasonable effort to the sales and distribution of the manufacturer's products, restricting the vendors to which manufacturers can sell directly; revising language with respect to prohibited interests of the manufacturer, defining the terms "ancillary business" and "controlling stockholder" or "controlling partner", revising language with respect to remedies, revising language with respect to indemification; repealing section 5 of chapter 87-63, Laws of Florida, relating to written contracts in existence on May 29, 1987, to provide that such contracts shall be governed by certain provisions of the chapter law, providing an effective date.

—a similar or companion measure, was substituted for HB 1028 and read the second time by title. Under the rules, the House bill was laid on the table.

On further motion by Rep. Meffert, the rules were waived by two-thirds vote and the bill was read a third time by title. On passage, the vote was—

Yeas—114

Nays—

The Chair—Bankhead

Abrams—Bass

Arnold—Bell

Ascherl—Bloom

Bamter—Bronson

Banjamin—Brown

Burke—Burnsed

Canady—Carpenter

Cass—Crosby

Clark—Crepes

Clements—Cosgrove

Cromley—Crotty

Dantzler—Davis

Davis—Davis

Dowdy—Dowdy

Fajardo—Franklin

Finklea—Gleason

Gonzalez—Grayson

Gray—Greene

Haire—Haire

Herron—Herron

Hill—Hill

Hoyt—Hoyt

Hunter—Hunter

Jackson—Jackson

Jefferson—Jefferson

Jones—Jones

Kerwin—Kerwin

Koontz—Koontz

Krause—Krause

Moore—Moore

Patterson—Patterson

Pepper—Pepper

Peters—Peters

Ponder—Ponder

Price—Price

Raines—Raines

Reed—Reed

Reese—Reese

Reynolds—Reynolds

Rippsel—Rippsel

Rodriguez—Rodriguez

Rogers—Rogers

Sanz—Sanz

Santiago—Santiago

Schweizer—Schweizer

Shaddy—Shaddy

Shelby—Shelby

Simmons—Simmons

Singleton—Singleton

Smith—Smith

Smith—Smith

Snow—Snow

Sowell—Sowell

Sutton—Sutton

Tampa—Tampa

Taylor—Taylor

Terrell—Terrell

Thompson—Thompson

Trenchard—Trenchard

Velasquez—Velasquez

Warden—Warden

Wells—Wells

White—White

Wilson—Wilson

Woodford—Woodford

Yates—Yates

Zollinger—Zollinger
April 28, 1988

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Irvin
Jamerson
Jennings
Johnson, B. L
Johnson, R. C
Jones, C F
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King
Langton
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Lewis
Liberti
Lippman
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Logan
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Hawkins
Mackenzie
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Mortham
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Patchett
Peeples
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Redick
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Rochlin
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Shaybrook
Sanderson
Sansom
Saunders
Shelley
Siewer
Simon
Smith
Soto
Starks
Stone
Thomas
Tone
Tobin
Trammell
Truxler
Upchurch
Wallace
Webster
Wetherell
Wise
Young

Votes after roll call:

Yeas—Mackey

So the bill passed. On motion by Rep. Meffert, the rules were waived and the bill was immediately certified to the Senate

CB/HB 158—A bill to be entitled An act relating to state warrants and other abandoned property, amending s 1726, F.S., making funds represented by a state warrant abandoned property, providing an exception where such treatment would result in loss of federal funds; providing limited retroactive application; permitting recovery of funds by payee of such state warrants, amending s 71718, F.S., deleting requirement of second publication of notice and mailing of notice to last known owner of abandoned property prior to placement of abandoned property in the custody of the Department of Banking and Finance, providing an effective date.

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk

HB 411—A bill to be entitled An act relating to elections, amending s 97041, F.S., revising qualifications for the preregistration of persons under 18 years of age to vote, providing an effective date.

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

HB 658—A bill to be entitled An act relating to consumer finance, revising and restructuring chapter 516, F.S., the Florida Consumer Finance Act; amending s 516.01, F.S.; providing definitions; amending s 516.02, F.S.; specifying that licensees are not liable when acting in reliance upon an order, declaratory statement or rule of the Department of Banking and Finance; amending s 516.03, F.S.; providing that amendments do not affect existing contracts; amending s 516.04, F.S., relating to the Engrossing Clerk.

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

HB 93—A bill to be entitled An act relating to theft, amending s 812.014, F.S., providing that failure to comply with a lease does not constitute theft under certain circumstances; providing exceptions; providing penalties; providing an effective date

—was read the second time by title

Representative Bass offered the following amendment:

Amendment 1—On page 1, line 24, insert after "to": Part I of Rep. Bass moved the adoption of the amendment, which was adopted without objection

Under Rule 8.19, the bill was referred to the Engrossing Clerk

HB 1445—A bill to be entitled An act relating to the Open Government Sunset Review Act, amending s 119.14, F.S., which provides for review of exemptions to the open government and public records laws; providing procedures and a definition applicable to exemptions required by federal law, providing an effective date

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

On motions by Rep. Upchurch, the rules were waived and—

HR 1425—A resolution declaring the week of May 1-7, 1988, as "Law Week" and May 1, 1988, as "Law Day"

WHEREAS, this year marks the 30th annual nationwide observance of Law Day, and the Congress of the United States and the President by official proclamation have set aside May 1 as a special day for recognition of the place of law in American life, and

WHEREAS, Florida, through the Governor's Proclamation, recognizes May 1 through May 7 as Law Week, with "We the People" as a national theme, and
**BILL VOTE SHEET**

(VS-88: File with Secretary of Senate) BILL NO. SB 908

COMMITTEE ON: Commerce

DATE: April 20, 1988 ACTION: X Favorably with 1 amendments

TIME: 2:00 p.m. - 5:00 p.m. __ Favorably with Committee Substitute

PLACE: Room A, Senate Office Building __ Unfavorably

OTHER COMMITTEE REFERENCES: __ Submitted as a Committee Bill

(in order shown) __ Temporarily Passed

None. __ Reconsidered

__ Not Considered

THE VOTE WAS:

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6 * 0 TOTAL W/O -

* Present at the table without objection

Please Complete: The Key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( )
A bill to be entitled
An act relating to relations between beer
distributors and manufacturers; amending s.
563.022, F.S.; redefining the terms "designated
member," "manufacturer," and "reasonable
qualifications"; defining the term "good
faith"; providing that persons who violate the
section shall not be subject to specified
criminal penalties; revising language with
respect to unfair and prohibited acts;
redefining the term "good cause"; revising
language with respect to termination,
cancellation, failure to renew, or
discontinuance of an agreement; requiring
reasonable effort to the sales and distribution
of the manufacturer's products; revising
language with respect to prohibited interests
of the manufacturers; defining the terms
"ancillary business" and "controlling
stockholder" or "controlling partner"; revising
language with respect to remedies; revising
language with respect to repurchase of
inventory upon termination; requiring written
notice with respect to indemnification;
repealing section 5 of chapter 87-63, Laws of
Florida, relating to written contracts in
existence on May 29, 1987, to provide that such
contracts shall be governed by certain
provisions of the chapter law; providing an
effective date.

CODING: Words stricken are deletions; words underlined are additions.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (g), and (i) of subsection 12), subsections (4) and (5), paragraphs (b) and (e) of subsection (7), subsections (10), (12), and (14), paragraph (a) of subsection (17), paragraphs (a), (c), and (g) of subsection (18), paragraphs (a) and (b) of subsection (20), and subsection (21) of section 563.022, Florida Statutes, are amended, a new paragraph (j) is added to subsection (21) of said section, and present paragraphs (g), (h), (i), (j), (k), and (l) of said subsection are redesignated as paragraphs (h), (j), (k), (l), and (m), respectively, to read:

563.022 Relations between beer distributors and manufacturers.--

(2) DEFINITIONS.--In construing this section, unless the context otherwise requires, the word, phrase, or term:

(a) "Designated member" means the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a distributor, who is entitled to inherit the deceased individual's ownership interest in the distributor under the terms of the deceased individual's will, or other testamentary device who has otherwise been designated in writing by the deceased individual to succeed the deceased individual in the distributor's business, or who is entitled to inherit such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual owning an ownership interest in a distributor, the term means the person appointed by a court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary

CODING: Words stricken are deletions; words underlined are additions.
trustee of a deceased individual owning an ownership interest in a distributor.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned as defined and interpreted under 671.201119.

[h] "Manufacturer" means any person who manufactures or imports licensed-to-manufacture-or-import beer for distribution to distributors licensed in Florida.

[i] "Reasonable qualifications" means the standard of the reasonable criteria established and consistently used by the respective manufacturer for Florida distributors that entered into, continued, or renewed an agreement with the manufacturer during a period of 24 months prior to the proposed transfer of the distributor's business, or for Florida distributors that have changed managers or designated managers during a period of 24 months prior to the proposed change in manager or successor manager of the distributor's business. The average standard of the criteria used by the respective manufacturer for distributors that entered into or renewed an agreement with the manufacturer during a period of 24 months prior to the proposed transfer of the distributor's business.

(4) UNLAWFUL ACTS AND PRACTICES.--Unfair methods of competition and unfair or deceptive acts or practices in the conduct of the manufacturing, importing, distribution, sale, wholesaling, and franchising of beer, as defined in subsection (5) this section, are declared to be unlawful. Any person who violates any provision of this section shall not be subject to the criminal penalties set forth in the Beverage Law on account of such violation.

(5) UNFAIR AND PROHIBITED ACTS.--
It shall be deemed a violation of subsection (4) for any manufacturer or distributor to engage in any action which is arbitrary, capricious, in bad faith, or unconscionable and which causes damage in terms of law or equity to any of the parties or to the public.

It shall be deemed a violation of subsection (4) for a manufacturer or officer, agent, or other representative thereof:

1. To coerce or compel, or attempt to coerce or compel, any beer distributor to order or accept delivery of any beer or any other commodity or commodities which such beer distributor has not voluntarily ordered.

2. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of the distributor's order to any distributor having a franchise or contractual agreement for the distribution and sale of beer sold by such manufacturer, beer covered by such franchise or contract. However, the failure to deliver any such beer shall not be considered a violation of this section if such failure is due to prudent and reasonable restriction on extension of credit by the manufacturer to the distributor, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the manufacturer, or any agent thereof, shall have no control whatsoever.

3. To coerce or compel, or attempt to coerce or compel, a beer distributor to enter into any agreement, whether written or oral, supplementary to an existing franchise with such manufacturer or officer, agent, or other representative thereof, or to do any other act prejudicial to such distributor, by threatening to cancel any franchise or

CODING: Words stricken are deletions; words underlined are additions.
any contractual agreement existing between such manufacturer
and such distributor. However, notice in good faith to a beer
distributor of such distributor’s violation or breach of any
terms or provisions of such franchise or contractual agreement
shall not constitute a violation of this section if such
notice is in writing, is mailed by registered or certified
mail to such distributor at his current business address, and
contains the specific facts as to the distributor’s violation
or breach of such franchise or contractual agreement.

4. To terminate, cancel, fail to renew, or refuse to
continue the franchise or selling agreement of any such
distributor without good cause, as defined in subsections (7)
and (10). The nonrenewal of a franchise or selling agreement
without good cause shall constitute an unfair termination or
cancellation, regardless of the specified time period of such
franchise or selling agreement.

5. To offer to sell or to sell any beer to any other
Florida-distributor at a lower actual price therefor than the
actual price offered to any other Florida-distributor for the
same product or to utilize any device, including, but not
limited to, sales promotion plans or programs which result in
such lesser actual price or result in a fixed price
predetermined solely by the manufacturer;

5.6. To willfully discriminate, either directly or
indirectly, in price, programs or terms of sale offered to
franchisees, where the effect of such discrimination is likely
may be to substantially lessen competition or to give to one
holder--of-a-franchise any economic, business, or competitive
advantage not offered to all holders of the same or similar
franchise.

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6. To prevent or attempt to prevent, by contract or otherwise, any beer distributor from changing the capital structure of his distributorship or the means by or through which he finances the operation of his distributorship, provided that the distributor at all times meets any reasonable capital standards which are reasonable in light of generally accepted capital standards within the manufacturer's beer distribution system. Nothing in this subparagraph diminishes the right of a manufacturer to prohibit public ownership of its franchises agreed-to between the distributor and the manufacturer.

7. To prevent or attempt to prevent, by contract or otherwise, any beer distributor or any officer, member, partner, or stockholder of any beer distributor from selling or transferring any part of the interest of any of them to any other person or persons or party or parties. However, no distributor, officer, partner, or stockholder shall have the right to sell, transfer, or assign the franchise or power of management or control thereunder without the written consent of the manufacturer, distributor, or wholesaler, except that such consent shall not be unreasonably withheld.

   a. No manufacturer shall unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock of a distributor or of all or any portion of a distributor's assets, distributor's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling a distributor, including the distributor's rights and obligations under the terms of an agreement, whenever the person or persons to be substituted meet reasonable qualifications. Upon the death of one of the partners of a
partnership operating the business of a distributor, no
manufacturer shall deny the surviving partner or partners of
such partnership the right to become a successor-in-interest
to the agreement between the manufacturer and such
partnership, provided that the survivor has been active in the
management of the partnership and is otherwise capable of
carrying on the business of the partnership, and provided
further that such right is consistent with the rights and
desires of the heirs or devisees of the deceased partner.

b. Notwithstanding the provisions of subparagraph a.,
upon the death of a distributor, no manufacturer shall deny
approval for any transfer of ownership to a designated member
of the family of an owner of a distributor; provided, however,
that any such subsequent transfer of such ownership by such
designated member shall thereafter be subject to the
provisions of subparagraph a.

8. To obtain money, goods, services, anything of
value, or any other benefit from any person in exchange for
having coerced or compelled a beer distributor to do business
with such other person.

9. To obtain money, goods, services, anything of
value, or any other benefit from any other person with whom
the beer distributor does business or employs on account of or
in relation to the transactions between the distributor, the
franchisor, and such other person.

10. To require a beer distributor to assent to a
release, assignment, novation, waiver, or estoppel which would
relieve any person from liability imposed by this section.

11. To restrict or inhibit, directly or indirectly,
the right of free association among manufacturers or
distributors of beer for any lawful purpose.

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To fix or maintain the price at which a distributor may resell beer.

To coerce, or attempt to coerce, any distributor to accept delivery of any beer or other commodity ordered by a distributor if the order was properly canceled by the distributor in accordance with the procedures agreed upon by the manufacturer and distributor.

To change a distributor's quota of a brand or brands if the change is not made in good faith.

To require a distributor, by any means, to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a manufacturer.

To take any retaliatory action against a distributor that files a complaint regarding an alleged violation by the manufacturer of state or federal law or an administrative rule.

To require or prohibit, without good cause provided in writing, any change in the manager or successor manager of any distributor who has been approved by the manufacturer as of June 4, 1987. Should a distributor change an approved manager or successor manager, a manufacturer shall not require or prohibit the change unless the person fails to meet the reasonable written standards for Florida distributors of the manufacturer, which standards have been provided to the distributor.

GOOD CAUSE.—Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under paragraph (6)(c) when all of the following occur:

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(b) The manufacturer first acquired knowledge of the failure described in paragraph (a) not more than 18 months after the date notification was given pursuant to subsection (6).

(e) The distributor has been afforded 30 days in which to submit a plan of corrective action to comply with the agreement and an additional 90 days to cure such noncompliance in accordance with the plan or to sell his distributorship consistent with the provisions of this section.

(10) CONDITIONS AND NOTICE REQUIRED.--Notwithstanding subsections (6) and (9), a manufacturer may terminate, cancel, fail to renew, or discontinue an agreement for good cause, after upon not less than 15 days' written notice given in the manner and containing the information required by subsection (9), if any of the following occur:

(a) Insolvency of the distributor, the filing of any petition by or against the distributor under any bankruptcy or receivership law, or the dissolution or liquidation of the wholesaler which materially affects the distributor's ability to remain in business.

(b) Revocation of the distributor's license by the division or by the Federal Bureau of Alcohol, Tobacco and Firearms whereby the distributor cannot distribute beer for more than 60 days.

(c) The distributor, or a partner or an individual who owns 10 percent or more of the partnership or stock of a corporate distributor, has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the good will or interest of the distributor or manufacturer. However, an existing stockholder or stockholders, or partner or partners, or a

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designated member or members, or the distributor itself, if
incorporated, shall have, subject to the provisions of this
section, the right to purchase the partnership interest or the
stock of the offending partner or stockholder, and if the sale
is completed within 15 days of the conviction of the offending
partner or stockholder, the right of termination;
cancellation, nonrenewal, or discontinuance of the
distributorship agreement shall not apply. The distributor or
an individual who owns more than 10 percent of the stock of a
corporate distributor has been convicted of a felony. As used
in this paragraph, "felony" means a felony under the United
States Code or the Florida Statutes. However, an existing
approved stockholder or stockholders shall have the right to
purchase the stock of the offending stockholder within 15 days
of the conviction of the offending stockholder, and if the
sale is completed within said 15-day period, the provisions of
this paragraph shall not apply;

(d) There was fraudulent conduct on the part of the
distributor relating to a material matter in dealings with the
manufacturer or its products.

(e) The principal of the distributor intentionally and
willfully sells the manufacturer's products to a retailer or
retailers located outside the distributor's territory, but only
if the manufacturer has assigned exclusive territories to its
distributors in Florida.

(f) The distributor fails to pay for the
manufacturer's products ordered and delivered in accordance
with terms established with the manufacturer and has continued
to fail to make payment within 15 business days after receipt
of notice of the delinquency and demand for immediate payment.
(g) The distributor sells, transfers, or assigns the franchise or control thereunder without the written consent of the manufacturer.

(12) REASONABLE EFFORT REQUIRED.--The distributor shall devote such reasonable efforts and resources as required in the agreement between the distributor and the manufacturer to sales and distribution of all the manufacturer's products which the distributor has been granted the right and has agreed to sell and distribute so long as such requirements are reasonable. In the absence of such an agreement, the distributor shall devote reasonable efforts and resources.

(14) MANUFACTURER PROHIBITED INTERESTS.--

(a) This subsection applies to:

1. A manufacturer holder-of-a-manufacturer's-license;

2. Any officer, director, agent, or employee of a manufacturer holder-of-a-manufacturer's-license; or

3. An affiliate of any manufacturer holder-of-a manufacturer's-license, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) Except as provided in paragraph (c), no entity or person specified in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor.

(c) Any entity described in paragraph (a) may financially assist a proposed distributor in acquiring ownership of the distributorship through participation in a limited partnership arrangement in which the entity described in paragraph (a) is a limited partner and the proposed distributor seeking to acquire ownership of the distributorship is the general partner. Such limited

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partnership arrangements may exist for no longer than 8 years from their creation and shall not be extended or renewed by means of a transfer of full ownership to an entity described in paragraph (a) followed by the creation of a new limited partnership, or by any other means. In any such arrangement for financial assistance, the federal basic permit and distributor's license issued by the division shall be issued in the name of the distributor and not in the name of an entity described in paragraph (a). If, after the creation of a limited partnership pursuant to this paragraph, an entity described in paragraph (a) acquires title to the distributorship which was the subject of the limited partnership, the entity described in paragraph (a) shall divest itself of the distributorship within 180 days, and the distributorship shall be ineligible for limited partnership financing for 20 years thereafter. No entity described in paragraph (a) shall enter into a limited partnership arrangement with a licensed distributor whose distributorship existed and was operated prior to the creation of such limited partnership arrangement.

(d) Nothing in the Beverage Law shall be construed to prohibit a manufacturer from shipping products to or between its breweries without a distributor's license.

(e) Notwithstanding the provisions of paragraph (b), any entity named in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor for a maximum of 180 consecutive days as the result of a judgment of foreclosure against the distributor or for 180 consecutive days after acquiring title pursuant to the written request of the licensed distributor. Under either of these circumstances, manufacturer ownership of an interest in

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the license, business, assets, or corporate stock of a licensed distributor shall only be for 180 days and only for the purpose of facilitating an orderly transfer of the distributorship to an owner not affiliated with a manufacturer.

(f) Notwithstanding the provisions of paragraph (b), any entity named in paragraph (a) may have a security interest in the inventory or property of its licensed distributors to secure payment for said inventory or other loans for other purposes.

17. REASONABLE COMPENSATION.--Upon termination:

(a) Any manufacturer which, without good cause, cancels, terminates, or fails to renew any agreement, or lawfully denies approval of, or unreasonably withholds consent to, any assignment, transfer, or sale of a distributor's business assets or voting stock or other equity securities, shall pay such distributor with whom it has a written contract reasonable compensation for the diminished value of the distributor's business or of any ancillary business or both which has been negatively affected by the act of the manufacturer. "Ancillary business" means a business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler, the assets of which are primarily used in transporting, storing, or marketing the brand or brands of malt beverage of the supplier with whom the wholesaler has an agreement or a business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler which recycles returnable beverage containers; or any other business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler, which business is

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primarily operated to benefit the wholesaler's ability to
handle the brand or brands of malt beverage of the supplier
with whom the wholesaler has an agreement. "Controlling
stockholder" or "controlling partner" shall mean a person with
an ownership interest in the wholesaler of 50 percent or more.
The value of the distributor's business or ancillary business
shall include, but not be limited to, its goodwill.

(a) During the 90-day period provided in subsection
(b) or during the 15-day period provided in subsection (10),
either party, in appropriate circumstances, may bring action
in the appropriate circuit court of this state to shorten
modify the notice period so provided or to extend it pending a
final determination of such proceedings on the merits.
(c) In addition to temporary, preliminary, or final
injunctive relief, any person who shall be aggrieved or
injured in his business or property by reason of anything
forbidden in this section may bring an action therefor in the
appropriate circuit court of this state and, if successful,
shall recover the damages sustained and the costs of such
action, including a reasonable attorney's fee.

(g) The remedies provided in this subsection shall be
in addition to any other civil remedies provided by law or in
equity. Nothing contained in this subsection shall give rise
to or foreclose any claim which would otherwise exist against
the manufacturer or distributor by any proposed purchaser of
the distributor's business.

(20) REPURCHASE OF INVENTORY UPON TERMINATION.--

(a) Whenever any beer distributor enters into a
franchise agreement with a manufacturer wherein the
distributor agrees to maintain an inventory of beer and the

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franchise is subsequently terminated in accordance with this section and any circuit court injunction requested by the distributor has been denied or dissolved, the manufacturer shall repurchase the inventory as provided in this section. If the distributor has any outstanding debts to the manufacturer, then the repurchase amount may be credited to the distributor's account.

(b) If the distributor decides not to keep the inventory, the manufacturer shall repurchase that inventory previously purchased from him and held by the distributor on the date of termination of the contract. The manufacturer shall pay 100 percent of the actual distributor cost, including freight and reasonable storage and handling costs, of all unsold beer.

(2) INDEMNIFICATION.--A manufacturer shall fully indemnify and hold harmless its distributor against any losses, including, but not limited to, court costs and reasonable attorney's fees or damages arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or express or implied warranty where the complaint, claim, or lawsuit relates to the manufacture or packaging of beer or other functions by the manufacturer which are beyond the control of the distributor. The distributor must mail written notice to the manufacturer on a prompt and timely basis after receipt of notice of a complaint, claim, or lawsuit in order for the manufacturer to be liable under this subsection with respect to such complaint, claim, or lawsuit.

Section 2. Section 5 of chapter 87-63, Laws of Florida, is hereby repealed.
Section 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 4. This act shall take effect upon becoming a law.

HOUSE SUMMARY

Revises state law governing relations between beer distributors and manufacturers to:

1. Provide that any person who violates the statute governing such relations shall not be subject to the criminal penalties of the Beverage Law.
2. Revise language with respect to unfair and prohibited acts.
3. Add criteria for the termination, cancellation, failure to renew, or discontinuance of an agreement for good cause by a manufacturer.
4. Revise language with respect to prohibited interests of a manufacturer.
5. Repeal a provision of law relating to written contracts in effect on May 29, 1987, to provide that the provision requiring a license fee for certain manufacturers shall apply to such contracts.

See bill for details.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

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I. SUMMARY:

In 1987 the Legislature enacted a comprehensive law setting standards to govern the relations between beer manufacturers and distributors. This bill is, in essence, the product of negotiations between the major manufacturers and Florida's beer distributors to modify various provisions of the law passed last year. Some of the modifications involve clarification of existing provisions, some involve substantive changes, but all have been agreed to by representatives of the major manufacturers and the distributors.

A. PRESENT SITUATION:

Last year the Legislature enacted Section 563.022, F.S., which sets comprehensive standards to govern the relations between beer manufacturers and distributors. After the initial period of operation under this law, both the major manufacturers and the distributors have agreed that certain modifications in the law are desirable.

B. EFFECT OF PROPOSED CHANGES:

This bill would make numerous modifications in the law governing the relations between beer manufacturers and distributors.

The law presently prohibits a manufacturer from unreasonably withholding its approval of the sale of a distributorship if the new owner meets "reasonable qualifications". This bill changes the definition of these "reasonable qualifications" from one reflecting the average industry wide standard over the latest 24 months to one reflecting only that manufacturer's average reasonable standard for distributors over this period.

The bill clarifies that the definition of manufacturer is intended to encompass all persons manufacturing or importing beer for distribution in Florida.
It provides that persons who violate its provisions are not subject to the criminal penalties set forth in the Beverage Law.

It eliminates the prohibition upon a manufacturer offering different prices, programs, or terms of sale to any of its Florida distributors. However, a manufacturer will be prohibited from willfully discriminating, either directly or indirectly, in the price offered to its distributors when the effect of such discrimination is likely to substantially lessen competition.

This bill would provide that the capital standards which a manufacturer can require of a distributor must be reasonable in view of the standards within its present distribution system, deleting the present provision which requires determination of reasonable industry wide standards. A sentence is added which states that this provision should not be construed to prevent a manufacturer from prohibiting public ownership of its distributorships.

The restrictions upon a manufacturer receiving benefits from a party with whom its distributor does business are moderated, and benefits will now be prohibited only to the extent that they are the result of the manufacturer having coerced the distributor to do business with the third party.

The prohibition upon a manufacturer attempting to require or prohibit a change in the manager of a distributor approved prior to June 4, 1987, is lifted where the manufacturer provides good cause in writing.

One of the primary areas of substantive change involves an expansion in the listing of the permissible reasons for which a manufacturer may revoke a distributorship. This bill specifies that under the following additional conditions a manufacturer may take such action:

1. Where the distributor has failed to pay the manufacturer in a timely manner for products ordered and delivered and has continued the failure for 15 additional days after receipt of demand for payment.

2. Where there is fraudulent conduct in a material matter on the part of the distributor in his dealings with the manufacturer.

3. Where the retailer intentionally sells the manufacturer's product in the exclusive territory of another.

4. Where the distributor transfers the franchise without the written consent of the manufacturer. However, as noted above, this consent may not be unreasonably withheld.

One of the present specified reasons for which a manufacturer may terminate a distributorship is if the state Division of Alcoholic Beverages and Tobacco revokes the distributor's license so that the distributor cannot sell beer for more than 60 days. This bill would
provide the same when the federal Bureau of Alcohol, Tobacco, and Firearms takes such action.

The time within which a manufacturer may notify a distributor of a failure alleged to constitute good cause for termination is extended from 12 to 18 months.

The bill specifies that during the time allowed distributors for corrective action they will be permitted sell the distributorship to avoid forfeiture of the franchise.

The definition of what constitutes a disqualifying felony has been modified. Felonies under the laws of other states will now be considered, but no felony conviction which does not adversely affect the good will or interest of the manufacturer or distributor will be disqualifying.

The law presently requires that a distributor devote reasonable efforts and resources to the sale of a manufacturer's products. This bill adds that where an agreement addressing this exists between the parties, reasonable efforts will be considered to be those reasonable efforts specified in the agreement.

Manufacturers will be permitted to financially assist a new distributorship by participating in a limited partnership for a period not to exceed 8 years, and may obtain a security interest in the inventory or property of its distributors. If the manufacturer is required to foreclose on the distributorship itself, it must divest itself of the distributorship within 180 days.

Manufacturers will be permitted to ship products to or between its breweries without a distributor's license.

Present law provides that when a manufacturer cancels a distributorship without good cause the distributor can collect damages for the diminished value of the distributorship and any ancillary business. This bill defines ancillary business.

The law currently provides that a party aggrieved by a violation of these provisions may bring an action in circuit court and recover costs and attorney fees, in addition to damages. This bill clarifies that attorney fees and court costs may only be recovered if the aggrieved party prevails in the court case.

The bill provides that if a manufacturer terminates a franchise in accordance with lawful requirements the distributor will no longer be permitted to keep his inventory. It also provides that when this occurs, in addition to reimbursing the distributor for 100% of its product cost, including freight, as it now must do, the manufacturer will also pay the distributor its reasonable storage and handling costs for the unsold inventory.

Finally, the bill adds that for a manufacturer to be liable to the distributor under present indemnity provisions, the distributor must have provided the manufacturer with prompt and timely notice of the claim or suit.
II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:
   1. Non-recurring or First Year Start-Up Effects:
      None.
   2. Recurring or Annualized Continuation Effects:
      None.
   3. Long Run Effects Other Than Normal Growth:
      None.
   4. Appropriations Consequences:
      None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:
   1. Non-recurring or First Year Start-Up Effects:
      None.
   2. Recurring or Annualized Continuation Effects:
      None.
   3. Long Run Effects Other Than Normal Growth:
      None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
   1. Direct Private Sector Costs:
      They should be minimal, if any.
   2. Direct Private Sector Benefits:
      By addressing some of the omissions of the law enacted last year this bill should improve the ability of manufacturers to keep their distribution systems strong.

      Additionally, both distributors and manufacturers will benefit from having a more certain understanding of their respective rights and responsibilities as a result of the clarifications and technical corrections contained in this bill. This in turn should tend to minimize litigation between parties which might otherwise result from unclear statutory provisions.
3. **Effects on Competition, Private Enterprise, and Employment Markets:**

These should be minimal.

D. **FISCAL COMMENTS:**

None

III. **LONG RANGE CONSEQUENCES:**

As noted above, this bill addresses technical deficiencies and omissions in the present law and therefore should minimize litigation over the construction and implementation of its provisions.

IV. **COMMENTS:**

The Department of Business Regulation approves of this bill.

V. **AMENDMENTS:**

VI. **SIGNATURES:**

**SUBSTANTIVE COMMITTEE:**
Prepared by: Robert B. Beitler

Staff Director: Wyatt T. Martin

**FINANCE & TAXATION:**
Prepared by:  

Staff Director:  

**APPROPRIATIONS:**
Prepared by:  

Staff Director:  

/dc  

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LAST YEAR THE LEGISLATURE ENACTED A BILL ESTABLISHING COMPREHENSIVE REQUIREMENTS TO GOVERN THE RELATIONSHIP BETWEEN BEER MANUFACTURERS AND THEIR DISTRIBUTORS. AFTER OPERATING UNDER THIS LAW FOR THE PAST YEAR BOTH THE MANUFACTURERS AND THE DISTRIBUTORS HAVE AGREED THAT NUMEROUS MODIFICATIONS, SOME TECHNICAL AND SOME SUBSTANTIVE, ARE DESIRABLE.

THIS BILL, CONTAINS NUMEROUS MODIFICATIONS TO THE LAW PASSED LAST YEAR AND IS A PACKAGE RESULTING FROM DISCUSSIONS BETWEEN THE DISTRIBUTORS AND THE MAJOR MANUFACTURERS WHICH THEY BOTH BELIEVE ENHANCES THE PRESENT LAW.
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BEER FRANCHISE LAW

SB 908 - HB 1028
TALK SHEET

During its 1987 regular session, the Florida Legislature enacted Chapter 87-63, Laws of Florida (1987), commonly referred to as the Florida Beer Franchise Law. This Act provides for the regulation of business relations between beer distributors and beer manufacturers, with the provisions of the Act now appearing in Section 563.022, Fla. Stat. (1987).

Senate Bill 908 and House Bill 1028, both introduced this session, contain a number of proposed changes to the Florida Beer Franchise Law. These changes are the product of interim discussions and negotiations between the affected parties, brewers and wholesalers, who have agreed that the changes would improve the current law. Accordingly, they fully support the amendments to the Florida Beer Franchise Law set forth in Senate Bill 908 and House Bill 1028.

Since the affected parties are in agreement on this bill, I urge that you support its passage.
SUPPOSEDLY S-908 WILL BE PASSED BY THE SENATE TODAY (28 APRIL) IMMEDIATELY CERTIFIED AND BOOGIED ON DOWN TO US TODAY.

WHEN YOU GET TO HB-1028 ON THE SPECIAL ORDER CALENDAR YOU NEED TO OFFER 2 AMENDMENTS TO MAKE IT IDENTICAL TO THE SENATE BILL (ONE SUBSTANTIVE, ONE TITLE)

MOVE TO WAIVE THE RULES TO RETURN TO THE ORDER OF READING MESSAGES (S-908 IS SUPPOSED TO BE THERE) (DON'T NEED TO DO THIS IF MESSAGE HAS BEEN READ EARLIER)

MOVE TO WAIVE THE RULES TO READ S-908 FOR A SECOND TIME BY TITLE

THEN MOVE TO SUBSTITUTE S-908 IN LIEU OF HB-1028

MOVE TO WAIVE THE RULES TO READ THE BILL A THIRD TIME

PASS IT

MOVE TO WAIVE THE RULES TO IMMEDIATELY CERTIFY THE BILL TO THE SENATE
BACKGROUND INFORMATION

1. Packaged beer is a perishable product that should be consumed within 150 days from the packaging date (some as low as 60 days). If not, it deteriorates and loses its taste.

2. As long as draft beer is refrigerated it should maintain its quality taste. However, once it is taken out of refrigeration it loses its taste quickly.

3. The consumer expects the beer he purchases to be a quality product and depends on the brewer and wholesaler to see that it is.

4. The brewer prepares a fresh wholesome product in periodic exchanges

5. The retailer of fresh beer wholesaler.

6. Wholesaler supplier, too

7. Wholesaler/ ordered, or out-of-date vendor by him addressing the Amendment

BASIS FOR PROH...
BACKGROUND INFORMATION

1. Packaged beer is a perishable product that should be consumed within 150 days from the packaging date (some as low as 60 days). If not, it deteriorates and loses its taste.

2. As long as draft beer is refrigerated it should maintain its quality taste. However, once it is taken out of refrigeration it loses its taste quickly.

3. The consumer expects the beer he purchases to be a quality product and depends on the brewer and wholesaler to see that he gets what he pays for.

4. The brewer, usually by contract, requires his distributors to keep a fresh wholesome product in the market place.

5. The retailer depends on the distributor for service which includes periodic exchanges of fresh beer for out-of-date product.

6. Wholesalers/distributors are required, usually by contract with their manufacturer/supplier, to service all licensed vendors in their assigned market areas - every mom and pop operation as well as every giant chain.

7. Wholesaler/distributor service includes taking of orders, delivering the product ordered, creating displays, rotating the product on shelves and displays, picking up out-of-date product and replacing it with fresh product, advertising and assisting the vendor by helping to keep him apprised of beverage law changes, etc.

BASIS FOR PROHIBITION OF DIRECT SHIPPING FROM BREWERS TO VENDORS

1. The major brewers and Florida beer wholesalers support this prohibition. Without it, the beer franchise law provides little long-term protection for Florida beer wholesalers.

2. Without it, brewers could use the threat of shipping direct to retailers as a tool for settling any dispute in lieu of the procedures set out in Florida's Beer Franchise Law.

3. With it, all retailers will be guaranteed similar services - giant chains and mom and pops alike.

4. Without it, there is the possibility that brewers/suppliers might choose to sell direct to large chains and ignore mom and pops. This would put a wholesaler in a situation that would drive him out of business.

5. Without it, there is the possibility that large chains would press brewers/suppliers to ship directly which would put small retailers at a decided disadvantage. The small guy could not compete.
6. Direct sales would jeopardize the traditional service provided by in-state beer wholesalers, which assist the retailer with marketing and the guarantee of a fresh quality product for the consumer.

CONCLUSION

1. Direct sales from brewer to retailer should be prohibited.

2. Wholesalers provide valuable services for brewers, vendors and consumers.

3. Wholesalers need the guarantee that they will service all retailers. Retailers need services provided by wholesalers.

4. It has been traditional to distribute beer in Florida through wholesalers and this proven system should be protected by statute.

5. The major suppliers would not support the amendment if distribution and service would suffer.