



2020 Florida Alcoholic Beverages Trade Practices Guide

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This guide is for informational purposes only and is subject to change at any time. The information contained in this guide was derived from Florida Statutes (Fla. Stat.) and Florida Administrative Code (F.A.C.) and was current as of January 12, 2020.

BACKGROUND

Florida Statute § 561.42, referred to as the Tied House Evil law, provides prohibitions and limitations related to the relationships and interactions between manufacturers, distributors, importers, brand owners, brokers and sales agents on the one hand, and vendors on the other. For example, the law expressly prohibits industry members from:

- having any financial interest, directly or indirectly, in the establishment or business of any vendor
- assisting any vendor by any gifts or loans of money or property of any description or by giving any rebates of any kind

The prohibition is reciprocal to vendors who may not accept, directly or indirectly, any gift or loan of money or property or any rebates. The law's rationale is to protect competition and prevent improper influence or control of a vendor's business or behavior. With this purpose in mind, Florida law attempts to balance the public's interest with industry realities and provides specific practices that do not violate or are exempt from the Tied House Evil law.

DEFINITIONS

For purposes of this guide, the following terms are defined as such:

- "Broker or sales agent" means those licensed to sell – or to cause to be sold, shipped and invoiced – alcoholic beverages to licensed manufacturers or licensed distributors.
- "Distributor" means those licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.
- "Exporter" means those licensed to sell alcoholic beverages to persons for use outside of Florida.
- "Importer" means those licensed to sell – or to cause to be sold, shipped and invoiced – alcoholic beverages to licensed manufacturers or licensed distributors in Florida.
- "Industry member(s)" means manufactures, distributors, importers, brand owners, brokers and sales agents of alcoholic beverages.
- "Liquor" means distilled spirits, spirituous liquors, spirituous beverages or distilled spirituous liquors, including all dilutions and mixtures thereof from whatever source or by whatever process produced.
- "Malt beverage" means beer and all brewed beverages containing malt.
- "Manufacturer" means those licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors.
- "Vendor" means those licensed to sell alcoholic beverages at retail only.

- "Wine" means all beverages made from fresh fruits, berries or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths and like products.

ADVERTISING

Advertising Materials

Industry members may give, lend, furnish or sell to a vendor who sells the products of the industry members the following items: neon or electric signs, window painting and decalcomanias, posters, placards and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises. Fla. Stat. § 561.42(12).

Advertising Vendor Locations Where Brand Sold

Industry members may use vendors' names and addresses in brand advertisements to indicate vendors from whom consumers can purchase the advertised brands if the advertisement includes two or more unaffiliated vendors.

Unaffiliated vendors are those vendors not affiliated through having common ownership, being members of the same pool buying group or being members of the same advertising cooperative. The advertisement must identify vendors relatively inconspicuously in relation to the entire advertisement. Such advertising is not considered cooperative advertising as long as no vendor shares in the cost of the advertising. F.A.C. 61A-1.01015.

Industry members may not underwrite any vendor's publications or events through the purchase of advertising or sponsorships. F.A.C. 61A-1.01015.

Beverage List

A distributor of wine and or liquor in Florida may furnish, give, rent, loan or sell to a vendor, and a vendor may accept, alcoholic beverage lists, otherwise referred to as "wine lists." Fla. Stat. §§ 564.07, 565.12.

Brand Images

Industry members may provide to any vendor without conditions copy-ready images of alcoholic beverage brands, brand logos, industry member logos, responsibility messages or products in any format. "Copy-ready" images are those images ready to be reproduced for immediate use in advertising. F.A.C. 61A-1.01014.

Consumer Advertising Specialties

Wine or liquor industry members may give or sell to a vendor consumer advertising specialties of nominal value bearing substantial brand or industry member advertising designed to be carried away by the consumer, including trading stamps, nonalcoholic mixers, pouring racks, ashtrays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, T-shirts, caps, visors and similar specialties. F.A.C. 61A-1.01012(1).

Malt beverages industry members may sell to a vendor consumer advertising specialties of nominal value bearing substantial brand advertising designed to be carried away by the consumer, including trading stamps, nonalcoholic mixers, pouring racks, ashtrays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, T-shirts, caps, visors and similar specialties at no less than the actual cost to the industry member who initially purchased them, without limitation in total value of such items sold to a vendor, unless the manufacturer or distributor gives the items directly to consumers on the vendor's licensed premises. Fla. Stat. § 561.42(14)(c); F.A.C. 61A-1.01012(2).

Malt beverages industry members may provide consumers advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags and the like directly to consumers on any vendor's licensed premises. Fla. Stat. § 561.42(14)(d).

Industry members may not provide assistance to a vendor for allowing the industry member to give advertising specialties directly to consumers on the vendor's licensed premises. F.A.C. 61A-1.01012(3).

The vendor's name, business name, website address, logo and business address may be printed on advertising specialties. F.A.C. 61A-1.01012(4).

Cooperative Advertising

Industry members, or their third-party marketing agents, may not engage in cooperative advertising with a vendor and may not name the vendor in any advertising for malt beverage tasting. Cooperative advertising includes participating in or paying for any advertising in cooperation with a vendor. Fla. Stat. § 561.42(14)(e); F.A.C. 61A-1.010.

Durable Retailer Specialties

Durable retailer advertising specialties bear permanently inscribed, substantial advertising intended to promote the brand or industry member being advertised and have a secondary passive function, such as providing illumination, reflection, the time, the date or similar limited functions. Durable retailer advertising specialties include pool table lights, picnic-table umbrellas, mirrors, clocks, calendars and similar specialties. F.A.C. 61A-1.01011.

Durable retailer advertising specialties do not include product displays, equipment (e.g., refrigerators, grills), furniture (e.g., tables, chairs), other furnishings (e.g., wallpaper, deck awnings), or other fixtures (e.g., sinks, dishwashers) and similar items that exceed the passive function limitation. Additional examples of items that are not durable retailer advertising specialties are entertainment equipment (e.g., televisions, radios and computers), sports equipment (e.g., footballs, soccer balls, and goals), amusement or leisure equipment (e.g., table games, and dart boards) and recreational equipment (e.g., tents, bicycles, and canoes). F.A.C. 61A-1.01011(1)(b).

Wine or liquor industry members may give or sell durable retailer advertising specialties to a vendor, for use only on a vendor's licensed premises, when such specialties advertise wine or liquor. F.A.C. 61A-1.01011(2).

Malt beverages industry members may rent, loan or sell durable retailer advertising specialties to a vendor, for use only on the vendor's licensed premises, when such specialties advertise malt beverages, and without limitation in total dollar value of such items provided to a vendor. When an industry member sells such specialties to a vendor, it must be at a cost not less than the actual cost to the industry member who purchased them. Without limitation in total value, such specialties may be loaned or rented without charge for an indefinite duration, and the industry member may maintain and service such specialties. Fla. Stat. § 561.42(14)(b); F.A.C. 61A-1.01011(3).

Expendable Retailer Advertising Specialties

Industry members of malt beverages may sell items of nominal value such as trays; coasters; mats; menu cards; napkins; thermometers; paper, plastic or Styrofoam cups; foam scrapers; placemats; back bar mats; menu cards; meal checks; alcoholic beverage lists; and similar specialties and the like to vendors at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor. Alcoholic beverage lists, menus and menu cards may not contain any information other than advertising, alcoholic beverages and prices. Fla. Stat. § 561.42(14)(a); F.A.C. 61A-1.01010.

A distributor that receives glassware at no charge on a no-charge invoice from a malt beverage manufacturer or importer may give such glassware, up to 10 cases (240 pieces), to a vendor licensed to sell malt beverages for on-premises consumption per calendar year per licensed premises. Each piece of glassware given to a vendor by a distributor must bear a permanent brand name intended to prominently advertise the brand. A vendor that receives a gift of glassware from a distributor may not sell the glassware or return it to a distributor for cash, credit or replacement. A manufacturer or importer who sells or gives glassware to a distributor, a distributor who sells or gives glassware to a vendor, and such vendor, must maintain records of such sale or gift of glassware. The industry member is responsible for maintaining such records for three years. The records must show:

- a. the name and address of the recipient, the recipient's employee or agent receiving the glassware
- b. the recipient's license number
- c. the date furnished or given
- d. the description and quantity of glassware furnished or given
- e. the cost to the industry member determined by the original purchaser's invoice price
- f. the charges to the recipient for the glassware, if any
- g. the name, license number and address of the industry member providing the glassware

Fla. Stat. § 561.42(14)(a).

Industry members of wine or liquor may give or sell, expendable retailer advertising specialties of nominal value such as coasters; paper, plastic or Styrofoam cups; foam scrapers; placemats; back bar mats; menu cards; meal checks; paper napkins; trays; thermometers; alcoholic beverage lists and similar specialties. Alcoholic beverage lists, menus and menu cards may not contain any information other than advertising, alcoholic beverages and prices.

If an industry member provides a vendor with glassware, pitchers, carafes or similar containers made of other materials, whether they advertise beer, wine, or spiritous beverages, such containers shall be sold at a cost not less than the actual cost of the industry member who purchased them.. F.A.C. 61A-1.01010.

Expendable retailer advertising specialties must advertise a brand or industry member. The vendor's name, business name, website address, logo and business address may be printed on these specialties, which must be intended for use by the vendor or consumers on the vendor's licensed premises. F.A.C. 61A-1.01010(2).

COUPONS, COMBINATION PACKAGING, DISCOUNTS

Coupons

Coupons for malt beverages or coupons for cross-merchandising malt beverages that are produced, sponsored or furnished in physical or electronic format by industry members to be redeemable by vendors or any other person who sells malt beverages to consumers are prohibited. Fla. Stat. § 561.42(13).

Combination Packages

Industry members may package, and distributors may offer and sell to vendors, non-alcoholic beverages or products combined with alcoholic beverages in an integrated package that is ready for sale to the consumer. F.A.C. 61A-1.01022.

Consumer Premium Offers

Industry members may furnish premium offers on products to consumers with proof of purchase and may provide vendors with point-of-sale advertising and order forms. Premium offer means value-added merchandise, travel or services held out to consumers in exchange for their purchase of an alcoholic product, sometimes referred to as "product gift" or "gift with sales promotion." F.A.C. 61A-1.0103.

Industry members must make premium offers available to all vendors who wish to participate. The premium offers may be offered in quantities reasonably calculated to accommodate the individual vendor's level of sales during the promotion period.

The premium may not be placed on any vendor's licensed premises for display. The vendor's name, business name, website address, logo and business address may be printed on these premiums.

Discounts

Trade discounts provided by industry members to vendors in the usual course of business upon wine and liquor sales are permitted. Fla. Stat. § 561.42(6).

DRAFT EQUIPMENT, IN-STORE SERVICING, SHELF PLANS AND PRODUCT DISPLAYS

Draft Equipment

A distributor of malt beverages may sell to a vendor draft equipment and tapping accessories at a price not less than the cost to the industry member who initially purchased them, except there is no required charge, and the distributor may exchange any parts that are not compatible with a competitor's system and are necessary to dispense the distributor's brands. A distributor of malt beverages may also furnish to a vendor at no charge replacement parts of nominal intrinsic value, including, but not limited to, washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers and tap markers. Fla. Stat. § 561.42(14)(f).

In-Store Servicing

Malt Beverages

Distributors of malt beverages may provide in-store servicing of malt beverage products for quality control, including but not limited to: rotation of malt beverages on the vendor's shelves, rotation and placing of malt beverages in vendor's coolers, proper stacking and maintenance of appearance and display of malt beverages on vendor's shelves, price-stamping of malt beverages in vendor's licensed premises, and moving or resetting any product or display in order to display a distributor's own product when authorized by the vendor. Fla. Stat. § 561.423.

Wine

Distributors of wine may provide in-store servicing of wine products for quality control, including placing the wine on the vendor's shelves and maintaining the appearance and display of said wine on the vendor's shelves in the vendor's licensed premises; placing the wine not so shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises; rotation of vinous beverages and price stamping of vinous beverages in vendor's licensed premises. Fla. Stat. § 561.424.

Liquor

In-store servicing of liquor is not permitted.

Product Displays

Industry members may give, loan or sell alcoholic beverage product displays to vendors, for use on a vendor's licensed premises, to include wine racks, bins, barrels, casks, shelving or similar product display items that are separated from a vendor's ordinary shelves and used primarily to hold and display factory sealed products of the provider for sale to customers at room temperature or cold. Such displays may not have, or be used to provide, a secondary function, other than advertising, which would function to provide equipment, including refrigeration, furniture or other fixtures. F.A.C. 61A-1.0101.

Industry members may transport, install, assemble and disassemble their own product displays on a vendor's licensed premises. Industry members may require the vendor to purchase a minimum amount of the product advertised on the display in a quantity necessary for the completion of the display.

The value of any product display, excluding transportation, installation and disassembly costs, may not exceed \$300 per brand, and the total value of all product displays at any one time on any one vendor's licensed premises may not exceed \$300 per brand. Industry members may not pool or combine dollar limitations in order to provide a vendor a product display valued in excess of \$300 per brand.

The product display must bear product or industry member information that is conspicuous and permanently inscribed or securely affixed to the product display. The vendor's name, business name, website address, logo and address may be part of the product display.

Shelf Plans

Manufacturers and distributors may give vendors layouts or designs of the vendors' shelves or coolers. The shelf plans must be used solely for the purpose of providing vendors with information regarding placement of alcoholic beverage products on shelves and in coolers. There may not be a requirement for a vendor to purchase anything to receive a shelf plan. F.A.C. 61A-1.01016.

Slotting Fees

Industry members are prohibited from providing slotting fees or allowances to vendors of any kind. A slotting fee is defined as any form of assistance given by an industry member to a vendor to purchase or rent additional, particular, favorable or dedicated display, shelf, cooler, storage or warehouse space for alcoholic beverages. F.A.C. 61A-1.0101.

SIGNAGE

Interior Signs

Industry members may give, sell, lend or furnish inside signs advertising brands to vendors such as neon or electric signs, window painting and decalcomanias, posters, placards and other advertising material to be displayed or used in the interior of a vendor's licensed premises. The signs must advertise brands sold by the vendor. Fla. Stat. § 561.42(11)-(12); F.A.C. 61A-1.01013.

The signs may include the vendor's name, business name, website address, logo and business address; however, identification of vendors must be relatively inconspicuous in relation to the entire advertisement. The only additional information permitted on the sign is price or a space for the price of the alcoholic beverage product advertised on the signs. F.A.C. 61A-1.01013(2).

Vendors may not have more than one neon or electric sign per manufacturer's brand in its window or windows. F.A.C. 61A-1.01013(3).

Outside Signs

Industry members may not directly or indirectly give, lend, rent, sell or in any other manner furnish to a vendor any outside sign, printed, painted, electric or otherwise; nor may any vendor display any sign advertising any brand of alcoholic beverages on the outside of his or her licensed premises, on any lot of ground of which the licensed premises are situated or on any building of which the licensed premises are a part. Fla. Stat. § 561.42(10).

TASTING AND SAMPLING

Tastings

Malt Beverage Tastings

A manufacturer, distributor or importer of malt beverages, or their contracted third-party agent, may conduct sampling activities that include the tasting of malt beverage products on:

- The licensed premises of a vendor authorized to sell alcoholic beverages by the drink for consumption on premises; Fla. Stat. § 563.09(1)(a). The tasting of malt beverages in such premises must be provided to the consumer by the drink in a tasting cup, glass or other open container and may not be provided by the package in an unopened can or bottle or in any other sealed container. Fla. Stat. § 563.09(3).
- The licensed premises of a vendor authorized to sell alcoholic beverages only in sealed containers for consumption off premises if (1) the licensed premises are at an establishment with at least 10,000 square feet of interior floor space exclusive of storage space not open to the general public; or (2) the licensed premises are a package store licensed under Fla. Stat. § 565.02(1)(a). Fla. Stat. § 563.09(1)(b). The tasting of malt beverages in such premises must be conducted in the interior of the building constituting the vendor's licensed premises, and each serving of a malt beverage to be tasted must be provided to the consumer in a tasting cup having a capacity of 3.5 ounces or less. Fla. Stat. § 563.09(4).

All malt beverage tasting must be limited to and directed toward the general public of the age of legal consumption. Fla. Stat. § 563.09(2).

A manufacturer, distributor or importer or their contracted third-party agent may not pay a vendor a fee or compensation of any kind, including the provision of a malt beverage at no cost or at a reduced cost, to authorize the conduct of a malt beverage tasting. When conducting a malt beverage tasting, a manufacturer, distributor or importer or their contracted third-party agent must provide all of the beverages to be tasted; must have paid all required excise taxes on those beverages; and must return to the manufacturer's or distributor's inventory all of the malt beverages provided for the tasting that remain unconsumed after the tasting.

More than one malt beverage tasting may be held on the licensed premises each day, but only one manufacturer, distributor, importer or contracted third-party agent may conduct a tasting on the premises at any one time. Further, manufacturer, distributor or importer, or their contracted third-party agent, may buy the malt beverages that it provides for the tasting from a vendor at no more than the retail price, but all of the malt beverages so purchased and provided for the tasting that remain unconsumed after the tasting must be removed from the premises of the tasting and properly disposed of. Fla. Stat. § 563.09(5)-(6).

Wine Tastings

A licensed distributor of wine, or any vendor, is authorized to conduct wine tastings upon any licensed premises authorized to sell vinous or spirituous beverages by package or for consumption on premises. The wine tasting must be limited to and directed toward the general public of the age of legal consumption. Fla. Stat. § 564.08.

Liquor Tastings

A licensed distributor of liquor, or any vendor, is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premise. The spirituous beverage tasting must be limited to and directed toward the general public of the age of legal consumption. Fla. Stat. § 565.17.

Samples

A distributor may give a sample of liquor, wine or malt beverages to a vendor if that vendor has not purchased the brand or received a sample of the brand within the preceding 12 months. However, if ownership of a distributor or vendor is transferred to a new entity, the distributor is eligible to give, and the vendor is eligible to receive, new samples.

Samples of malt beverages may not exceed three gallons per brand to each licensed premise; samples of wine may not exceed three liters per brand to each licensed premise; and samples of liquor may not exceed three liters per brand to each licensed premise.

If a particular product is not available in a size within the required quantity limitations, a distributor may furnish to a vendor the next larger size.

Any withdrawal of tax paid samples from the distributor's inventory must be substantiated by an invoice to the vendor. The invoice must include:

- distributor's name and address
- date invoice was prepared
- identification of the product as a sample
- identification of salesman
- name and address and license number of the vendor
- brand name
- number of containers and size of containers used in sampling

F.A.C. 61A-1.01024.

SWEEPSTAKES, TOURNAMENTS

Consumer Sweepstakes, Drawings and Contests

Industry members may conduct sweepstakes, drawings and contests. Industry members may provide entry forms, rules, advertising materials, and a box or other similar container in which to collect completed entry forms to vendors. F.A.C. 61A-1.0104.

These advertising materials must be offered to all vendors who wish to participate in quantities reasonably calculated to accommodate the individual vendor's level of sales during the promotion period. The prize or giveaway may not be placed on any vendor's licensed premises for display.

Sweepstakes, drawings and contests may not require proof of purchase to enter and must be open for the general public to participate; however, no vendor or vendor's employee or agent may be eligible to participate or win. A means of entry may be provided with a purchased alcoholic beverage, so long as an alternative means of entry not requiring a purchase is made available.

Vendors may not collect completed entry forms, and the selection of winners cannot occur at a vendor's place of business. Any completed entry forms deposited on the vendor's licensed premises must be collected by the industry member.

Live or electronic contests sponsored by industry members must not be held at a vendor's place of business.

Vendor's Property as Prize

Industry members may administer consumer contests and sweepstakes that include a vendor's property (e.g., a resort stay) as the prize. However, the contest or sweepstakes may not be a joint venture with a vendor.

Any contest or sweepstakes prizes purchased by the industry member must be purchased at a cost that is not more than the cost charged to the general public. Any room rental fee paid by the industry member to the vendor cannot be more than the vendor's normal rate.

Industry members may use the names and pictures of the vendor's properties related to prizes awarded to consumers. Any reference to a vendor, other than the identification of the specific property included in the contest or sweepstakes, must be relatively inconspicuous in relation to the total advertisement or entry form. F.A.C. 61A-1.0105.

Vendor-Sponsored Tournaments

Industry members may participate in vendor-sponsored tournaments and contests, but must pay no more than normal entry fees. Industry members may not advertise, co-sponsor, underwrite or contribute in time, money, gifts or provide any other assistance. F.A.C. 61A-1.0106.

TRADE SHOWS, SEMINARS

Educational Seminars

Manufacturers and distributors may host instructional programs relating to alcoholic beverage products, alcoholic beverage laws and regulations, or responsible service and sales of alcoholic beverages.

During seminars, manufacturers and distributors may give vendors and vendors' employees or agents, instructional materials, snacks, beverages, meals and tours of a manufacturer's or distributor's facility.

Manufacturers and distributors may not pay for or provide lodging or transportation to or from seminars to any vendor, vendor's employee or agent. F.A.C. 61A-1.01017.

Trade Shows and Conventions

Industry members may participate in nonprofit vendor association trade shows and conventions. Participation may include:

- displaying products
- renting display space at normal trade show rates
- paying normal registration fees
- purchasing tickets to functions
- providing samples to attendees
- conducting tastings for attendees
- providing hospitality independent of sponsored activities by the association or any member vendors
- purchasing advertisements in publications distributed during conventions and trade shows; payments for all such advertisements may not exceed \$300 per year to any nonprofit vendor association

Industry members may provide any expendable retailer advertising specialties, durable retailer advertising specialties or consumer advertising specialties to a nonprofit vendor association. Such specialties may only be provided pursuant to the conditions and limitations of F.A.C. 61A-1.01010, 61A-1.01011, and 61A-1.01012. F.A.C. 61A-1.01018.

ABOUT THE AUTHOR



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Luis Gonzalez is a partner in the Litigation Section and on the Alcohol Beverage Team in Holland & Knight's Orlando office.

Mr. Gonzalez offers clients an in-depth understanding of a broad subject matter, providing comprehensive representation for their beverage industry needs. He is experienced in advising on employment issues and contract disputes, obtaining all types of state and federal liquor licenses and permits, and compliance with Florida Division of Alcoholic Beverages and Tobacco (ABT) regulations.

Previously, Mr. Gonzalez was in law enforcement as a uniformed and undercover investigator, SWAT team member and K-9 handler. He also served as a special agent and special agent supervisor with the ABT. His hands-on experience and background offers clients a valuable perspective on navigating the heavily regulated alcohol beverage industry.

Mr. Gonzalez counsels all segments of the alcohol industry – including brand owners, wholesale distributors, restaurants, hotels, bars, nonprofits and clubs – in regulatory compliance, tax disputes, liquor licenses, distribution, retail sales, promotions, marketing and administrative enforcement actions. Additionally, he assists with land use matters and mergers and acquisitions involving liquor licensing.