

IN THE SUPREME COURT OF FLORIDA

FLORIDA DEPARTMENT OF HEALTH,
OFFICE OF MEDICAL MARIJUANA USE,
ET AL.,

Case No. SC19-1464
DCA Case No. 1D18-4471
L.T. Case No. 2017-CA-2549

Petitioners,

v.

FLORIGROWN, LLC, a Florida Limited
Liability Company, and VOICE OF
FREEDOM, INC., d/b/a FLORIGROWN,

Respondents.

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RESPONDENTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Respondents, Florigrown, LLC, and Voice of Freedom, Inc., d/b/a Florigrown (“Florigrown”), submit the following two statutes as supplemental authority.

First, Florigrown submits section 561.42, Florida Statutes, a copy of which is attached to this notice. Section 561.42 is the “Tied House Evil” prevention statute, which expressly mandates a horizontal integration scheme under which no manufacturer or distributor can have any financial interest in any vendor licensed to sell alcohol, and manufacturers, distributors and vendors must operate independently from one another. The supplemental authority is pertinent to Petitioner Florida Department of Health’s (the “Department”) statement on page 2 of its Reply Brief, in which the Department asserts that the legislature, in mandating a vertical scheme

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for licensure of Medical Marijuana Treatment Centers (“MMTCs”) “harmonized MMTC licensure with the licensure schemes of alcoholic beverages.”

Second, Florigrown submits as supplemental authority section 210.085, Florida Statutes, a copy of which is attached to this notice. Section 210.085, which governs transactions among manufacturers, importers, distributing agents, dealers, and retail dealers of cigarettes, expressly recognizes that the permitting scheme for cigarettes is horizontal in nature, not vertical. The supplemental authority is pertinent to the Department’s statement on page 2 of its Reply Brief, in which the Department asserts that the legislature, in mandating a vertical scheme for licensure of MMTCs “harmonized MMTC licensure with the licensure schemes of . . . tobacco.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February 2020, a true and correct copy of the foregoing was furnished by E-Mail to all parties listed below.

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Florida Statutes Annotated

Title XXXIV. Alcoholic Beverages and Tobacco (Chapters 561-569) (Refs & Annos)

Chapter 561. Beverage Law: Administration (Refs & Annos)

West's F.S.A. § 561.42

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

Effective: October 1, 2018

Currentness

(1) No manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, nor any broker, sales agent, or sales person thereof, shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section. A brand owner is a person who is not a manufacturer, distributor, importer, primary American source of supply, brand registrant, or broker, sales agent, or sales person thereof, but who directly or indirectly owns or controls any brand, brand name, or label of alcoholic beverage. Nothing in this section shall prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

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

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

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

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

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

(7) The extension or receiving of credits in violation of this section shall be considered as an arrangement for financial assistance and shall constitute a violation of the Beverage Law and any maneuver, shift, or device of any kind by which credit is extended contrary to the provisions of this section shall be considered a violation of the Beverage Law.

(8) The division may adopt rules and require reports to enforce, and may impose administrative sanctions for any violation of, the limitations established in this section on credits, coupons, and other forms of assistance.

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

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

(11) A vendor may display in the interior of his or her licensed premises, including the window or windows thereof, neon, electric, or other signs, including window painting and decalcomanias applied to the surface of the interior or exterior of such windows, and posters, placards, and other advertising material advertising the brand or brands of alcoholic beverages sold by him or her, whether visible or not from the outside of the licensed premises, but no vendor shall display in the window or windows of his or her licensed premises more than one neon, electric, or similar sign, advertising the product of any one manufacturer.

(12) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant any of the following: neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of his or her licensed premises.

(13) A licensee under the Beverage Law may not possess or use, in physical or electronic format, any type of malt beverage coupon or malt beverage cross-merchandising coupon in this state, where:

(a) The coupon is produced, sponsored, or furnished, whether directly or indirectly, by an alcoholic beverage manufacturer, distributor, importer, brand owner, or brand registrant or any broker, sales agent, or sales person thereof; and

(b) The coupon is or purports to be redeemable by a vendor or other person who sells malt beverages to consumers in the state.

(14) The division shall adopt reasonable rules governing promotional displays and advertising. Such rules may not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof; however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with branded expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glassware, thermometers, and the like, such items may be sold only 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. However, a distributor that receives glassware at no charge on a no-charge invoice from a malt beverage manufacturer or importer may give such glassware to a vendor licensed to sell malt beverages for on-premises consumption. Each piece of glassware given to a vendor by a distributor must bear a permanent brand name intended to prominently advertise the brand. A distributor may not give a vendor more than 10 cases of glassware per calendar year per licensed premises. 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.

1. These records must be maintained for 3 years by the industry member. The records may be in any format so long as they are available and legible to division personnel upon request during normal business hours. A copy of any record maintained

or produced in compliance with this paragraph shall be provided to each industry member who receives such glassware. The copy shall be in a format accessible and readable by the recipient and may not be provided in an electronic format that would require proprietary software unavailable to the recipient. These 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; and
- g. The name, license number, and address of the industry member providing the glassware.

2. As used in this paragraph, the term:

- a. "Case" means a box containing up to 24 pieces of glassware.
- b. "Glassware" means a single-service glass container that can hold no more than 23 ounces of liquid volume.

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter.

(c) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with consumer advertising specialties such as ashtrays, T-shirts, bottle openers, shopping bags, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially

purchased them, and may be sold without limitation in total value of such items sold to a vendor.

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

(e) A manufacturer, distributor, importer, brand owner, or brand registrant of malt beverages, and any sales agent or sales person thereof or contracted third-party, may not engage in cooperative advertising with a vendor and may not name a vendor in any advertising for a malt beverage tasting authorized under s. 563.09.

(f) 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 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.

Credits

Laws 1935, c. 16774, § 4; Comp.Gen.Laws Supp.1936, § 4151(230); Laws 1943, c. 22078, § 1; Laws 1947, c. 23746, § 6; Laws 1949, c. 25260, § 1; Laws 1949, c. 25340, § 1; Laws 1951, c. 26484, § 10; Laws 1957, c. 57-420, § 28; Laws 1969, c. 69-106, §§ 16, 35; Laws 1971, c. 71-377, § 208; Laws 1972, c. 72-230, § 1; Laws 1975, c. 75-97, § 1; Laws 1978, c. 78-95, § 9; Laws 1979, c. 79-4, § 30; Laws 1984, c. 84-142, § 3; Laws 1984, c. 84-262, § 10; Laws 1985, c. 85-166, § 1. Amended by Laws 1987, c. 87-226, § 1; Laws 1994, c. 94-218, § 217, eff. May 20, 1994; Laws 1997, c. 97-98, § 34, eff. July 1, 1997; Laws 1997, c. 97-103, § 849, eff. July 1, 1997; Laws 2008, c. 2008-226, § 1, eff. July 1, 2008; Laws 2013, c. 2013-145, § 1, eff. July 1, 2013; Laws 2015, c. 2015-12, § 3, eff. July 1, 2015; Laws 2016, c. 2016-10, § 70, eff. May 10, 2016; Laws 2018, c. 2018-135, § 1, eff. Oct. 1, 2018.

Notes of Decisions (47)

West's F. S. A. § 561.42, FL ST § 561.42

Current through the 2019 First Regular Session of the 26th Legislature.

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West's Florida Statutes Annotated

Title XIV. Taxation and Finance (Chapters 192-221) (Refs & Annos)

Chapter 210. Tax on Tobacco Products (Refs & Annos)

Part I. Tax on Cigarettes (Refs & Annos)

West's F.S.A. § 210.085

210.085. Transactions only with permitted manufacturers, importers, distributing agents, dealers, and retail dealers

Effective: October 1, 2005

Currentness

Except as otherwise provided in s. 210.04(9), a manufacturer or importer, or a distributing agent representing a manufacturer or importer, may sell or distribute cigarettes to a person located or doing business within this state only if such person is a dealer or importer with a valid, current permit under s. 210.15. A distributing agent may accept cigarettes from a manufacturer or importer with a valid, current permit for transfer to a dealer with a valid, current permit but may not own or sell cigarettes. A dealer may sell or distribute cigarettes to a person located or doing business within this state only if such person is a dealer or retail dealer with a valid, current permit under s. 569.003. A dealer may obtain cigarettes only from a manufacturer or importer or from a distributing agent or dealer with a valid, current permit under s. 210.15. A retail dealer may obtain cigarettes only from a dealer with a valid, current permit under s. 210.15.

Credits

Added by Laws 2005, c. 2005-228, § 5, eff. Oct. 1, 2005.

West's F. S. A. § 210.085, FL ST § 210.085

Current through the 2019 First Regular Session of the 26th Legislature.

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