

1                                   A bill to be entitled  
 2           An act relating to malt beverages; creating s.  
 3           563.061, F.S.; providing definitions; prohibiting  
 4           consignment sales of malt beverages between a  
 5           distributor and vendor; authorizing bona fide returns  
 6           of malt beverages under certain conditions; providing  
 7           applicability; authorizing distributors to accept  
 8           returns of certain products under specified  
 9           conditions; providing distributor requirements for  
 10          such returns; providing requirements for exchanges of  
 11          product; providing recordkeeping requirements;  
 12          specifying that authorized returns are not gifts,  
 13          loans, or other prohibited forms of financial aid or  
 14          assistance; providing penalties; providing for  
 15          rulemaking; providing an effective date.

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

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 19           Section 1. Section 563.061, Florida Statutes, is created  
 20 to read:

21           563.061 Return of malt beverage products.-  
 22           (1) DEFINITIONS.-As used in this section, the term:  
 23           (a) "Damaged product" means a malt beverage product  
 24 delivered to a vendor exhibiting product deterioration,

25 defective seals, leaking, damaged labels, or missing or  
26 mutilated tamper-evident closures.

27 (b) "Division" means the Division of Alcoholic Beverages  
28 and Tobacco of the Department of Business and Professional  
29 Regulation.

30 (c) "Keg" means malt beverages sold in a reusable  
31 container for the purpose of sale in draft form on tap.

32 (d) "Malt beverage product" means malt beverages packaged  
33 in bulk in kegs or in barrels or any individual container  
34 containing 1 gallon or more of such malt beverage regardless of  
35 individual container type.

36 (e) "Manufacturer's code date" means a coded best-by date,  
37 expiration date, or other designated date or dating system  
38 established by a manufacturer to signify freshness that is  
39 printed on the malt beverage container or, in the case of a keg,  
40 marked on a cap, collar, tag, or label affixed directly to the  
41 keg.

42 (f) "Out-of-code product" means malt beverage products  
43 that have exceeded the manufacturer's code date and, according  
44 to the manufacturer's policies, must be removed and replaced  
45 with fresh product for purchase in the retail market.

46 (g) "Undamaged product" means malt beverage products that  
47 are not damaged or out of code.

48 (2) CONSIGNMENT SALES PROHIBITED; AUTHORIZED RETURNS.—A  
49 distributor may not sell, offer for sale, or contract to sell

50 malt beverages on consignment or any basis other than a bona  
51 fide sale. A vendor may not purchase, offer to purchase, or  
52 contract to purchase malt beverages on consignment or any basis  
53 other than a bona fide sale. Once a distributor sells malt  
54 beverages to a vendor, only bona fide returns are permitted for  
55 the ordinary and usual commercial reasons authorized in this  
56 section. This section does not permit return of product because  
57 it is overstocked or slow-moving or for which there is only  
58 limited or seasonal demand, such as holiday decanters and  
59 certain distinctive bottles.

60 (3) RETURNS OF UNDAMAGED PRODUCT.—

61 (a) Except as provided in paragraph (b), any undamaged  
62 product may be returned for exchange of the product or credit.

63 (b) A distributor may only accept a return of undamaged  
64 product if the return is requested within 7 days after the  
65 delivery date. However, a distributor may accept a return of an  
66 undamaged product after such time in the following  
67 circumstances:

68 1. If a vendor or its employees or agents are no longer  
69 permitted, due to a change in regulation or administrative  
70 procedure, to sell a particular brand or size product, such  
71 product may be returned for credit or refund.

72 2. If a vendor terminates operations, the product on hand  
73 at the time of termination may be returned for credit or refund.

74 This subparagraph does not apply to a vendor's temporary  
75 seasonal shutdown.

76 3. Except as provided in subparagraph 6., any product that  
77 has not yet exceeded the manufacturer's code date may be  
78 returned for purposes of ensuring quality control or freshness;  
79 however, the product may only be returned for an exchange of  
80 product.

81 4. If a manufacturer has issued a product recall that  
82 affects multiple vendors that are not affiliated through having  
83 common ownership, being members of the same pool buying group,  
84 or being members of the same advertising cooperative, the  
85 recalled product may be returned for exchange of product or  
86 credit. If return of such product is requested more than 7 days  
87 after the delivery date, the distributor must keep documentation  
88 of the recall with the transaction record maintained pursuant to  
89 subsection (8).

90 5. If production or importation of a product is  
91 discontinued, a vendor's inventory of the discontinued product  
92 may be returned for credit or refund.

93 6. If a vendor is only open for a portion of the year and  
94 has product remaining at closure which, with respect to quality  
95 control or freshness, would become unsuitable for sale during  
96 the off-season according to the manufacturer's code date, the  
97 product may be returned for credit or refund.

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99 If undamaged product is returned under this paragraph,  
100 documentation of a qualifying exception in subparagraphs 1.-6.  
101 must be kept with the transaction record maintained by the  
102 distributor pursuant to subsection (8).

103 (4) RETURNS OF DAMAGED PRODUCT.-

104 (a) Damaged product may only be returned for exchange of  
105 product or credit. The distributor must verify damaged product  
106 before accepting its return.

107 (b) Product damaged by a vendor or its employees or agents  
108 or its customers may not be returned and shall be the vendor's  
109 liability.

110 (c) A distributor may only accept return of damaged  
111 product if requested within 7 days after the delivery date.

112 (5) RETURNS OF OUT-OF-CODE PRODUCT.-

113 (a) Out-of-code product may only be returned for exchange  
114 of product. The distributor must verify out-of-code product  
115 before accepting its return.

116 (b) A distributor may accept return of out-of-code product  
117 any time after the manufacturer's code date only in the  
118 following circumstances:

119 1. The manufacturer has written policies and procedures  
120 that specify the date that product should be removed.

121 2. Such policies and procedures are readily available,  
122 verifiable, and consistently applied by the manufacturer.

123 3. The manufacturer's code date is printed on the product  
124 container or, in the case of a keg, marked on a cap, collar,  
125 tag, or label affixed directly to the keg.

126 4. Out-of-code product removed by the distributor does not  
127 reenter the retail market.

128 (6) EXCHANGES OF PRODUCT.—An exchange of product  
129 authorized under this section must be in exact quantities with a  
130 product of near or equal value, made by the same manufacturer,  
131 and in the same size container or keg unless a credit is issued  
132 at the time of the return.

133 (7) DISTRIBUTOR REQUIREMENTS FOR RETURNS.—This section  
134 does not require a distributor to accept returns authorized  
135 under this section; however if a distributor accepts return of  
136 product, the distributor must:

137 (a) Provide the exchange of product, credit, or refund to  
138 the vendor, as provided in subsections (3)-(5), at the same time  
139 the distributor picks up the product being returned.

140 (b) For damaged or undamaged product, pick up the product  
141 being returned within 14 days after receipt of the vendor's  
142 request.

143 (8) TRANSACTION RECORDS.—A distributor must keep and  
144 maintain for 3 years a transaction record of each return  
145 identifying the licensed vendor's business name, address, and  
146 license number; product returned for exchange of product,  
147 credit, or refund; and any other documentation required by this

148 section. The distributor must provide a copy of the transaction  
149 record to the vendor in a format accessible and readable by the  
150 vendor. Such transaction records must be maintained on the  
151 distributor's licensed premises, or may be kept at another  
152 location in this state if the distributor notifies the division  
153 in writing before keeping records in another location, and must  
154 be made available to the division upon request for inspection in  
155 a format accessible and readable by the division. The  
156 distributor must notify the division in writing of any change in  
157 recordkeeping location.

158 (9) RETURNS NOT TIED HOUSE EVIL.—Bona fide returns  
159 authorized under this section for exchange of product, credit,  
160 or refund are not considered gifts, loans, or other forms of  
161 financial aid or assistance prohibited by s. 561.42.

162 (10) CIVIL PENALTY.—In accordance with s. 561.29, the  
163 division shall impose a civil penalty not to exceed \$1,000 per  
164 violation against a distributor or vendor that violates this  
165 section or any rule adopted under this section.

166 (11) RULEMAKING AUTHORITY.—The division may adopt rules to  
167 administer and enforce this section.

168 Section 2. This act shall take effect July 1, 2019.