

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

29 (c) "Manufacturer's code date" means a coded best-by date,
30 expiration date, or other designated date or dating system
31 established by a manufacturer to signify freshness that is
32 printed on the malt beverage container or, in the case of a keg,
33 marked on a cap, collar, tag, or label affixed directly to the
34 keg.

35 (d) "Out-of-code product" means malt beverage products
36 that have exceeded the manufacturer's code date and, according
37 to the manufacturer's policies, must be removed and replaced
38 with fresh product for purchase in the retail market.

39 (e) "Undamaged product" means malt beverage products that
40 are not damaged or out of code.

41 (2) CONSIGNMENT SALES PROHIBITED; AUTHORIZED RETURNS.—A
42 distributor may not sell, offer for sale, or contract to sell
43 malt beverages on consignment or any basis other than a bona
44 fide sale. A vendor may not purchase, offer to purchase, or
45 contract to purchase malt beverages on consignment or any basis
46 other than a bona fide sale. Once a distributor sells malt
47 beverages to a vendor, only bona fide returns are permitted for
48 the ordinary and usual commercial reasons authorized in this
49 section. This section does not permit return of product because

50 it is overstocked or slow-moving or for which there is only
51 limited or seasonal demand, such as holiday decanters and
52 certain distinctive bottles.

53 (3) RETURNS OF UNDAMAGED PRODUCT.—

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

56 (b) A distributor may only accept a return of undamaged
57 product if the return is requested within 7 days after the
58 delivery date. However, a distributor may accept a return of an
59 undamaged product after such time in the following
60 circumstances:

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

65 2. If a vendor terminates operations, the product on hand
66 at the time of termination may be returned for credit or refund.
67 This subparagraph does not apply to a vendor's temporary
68 seasonal shutdown.

69 3. Except as provided in subparagraph 6., any product that
70 has not yet exceeded the manufacturer's code date may be
71 returned for purposes of ensuring quality control or freshness;
72 however, the product may only be returned for an exchange of
73 product.

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

83 5. If production or importation of a product is
 84 discontinued, a vendor's inventory of the discontinued product
 85 may be returned for credit or refund.

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

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

96 (4) RETURNS OF DAMAGED PRODUCT.-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 (8) TRANSACTION RECORDS.—A distributor must keep and
137 maintain for 3 years a transaction record of each return
138 identifying the licensed vendor's business name, address, and
139 license number; product returned for exchange of product,
140 credit, or refund; and any other documentation required by this
141 section. The distributor must provide a copy of the transaction
142 record to the vendor in a format accessible and readable by the
143 vendor. Such transaction records must be maintained on the
144 distributor's licensed premises, or may be kept at another
145 location in this state if the distributor notifies the division

146 in writing before keeping records in another location, and must
147 be made available to the division upon request for inspection in
148 a format accessible and readable by the division. The
149 distributor must notify the division in writing of any change in
150 recordkeeping location.

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

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

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

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