

By Senator Diaz

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1 A bill to be entitled
2 An act relating to malt beverages; creating s.
3 563.061, F.S.; defining terms; prohibiting sales and
4 purchases of malt beverages on consignment or any
5 basis other than a bona fide sale; authorizing a
6 vendor to request return of undamaged product, damaged
7 product, and out-of-code product to a distributor;
8 authorizing a distributor to accept such returns under
9 certain circumstances; providing requirements for the
10 exchange of product; specifying that a distributor is
11 not required to accept returns authorized by the act;
12 requiring a distributor to take certain actions if the
13 distributor accepts return of product; requiring the
14 distributor to keep transaction records of each return
15 for a specified time; requiring the records to contain
16 certain information; requiring the distributor to
17 provide a copy of the transaction record to a vendor
18 and the Division of Alcoholic Beverages and Tobacco
19 under certain circumstances; providing requirements
20 for the maintenance of the transaction records;
21 providing that returns pursuant to the act are not
22 considered gifts, loans, or other forms of financial
23 aid or assistance for purposes of tied house evil;
24 providing for a civil penalty; authorizing the
25 division to adopt rules; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Section 563.061, Florida Statutes, is created to

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30 read:

31 563.061 Return of malt beverage products; prohibition of
32 consignment sales.-

33 (1) DEFINITIONS.-As used in this section, the term:

34 (a) "Damaged product" means malt beverages, whether sold in
35 individual containers or kegs, which, upon delivery to a vendor,
36 exhibit product deterioration, defective seals, leaking, damaged
37 labels, or missing or mutilated tamper-evident closures.

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

44 (c) "Out-of-code product" means malt beverages, whether
45 sold in individual containers or kegs, which have exceeded the
46 manufacturer's code date and which, according to the
47 manufacturer's policies, must be removed and replaced with fresh
48 products to ensure that only fresh malt beverages are available
49 for purchase at retail.

50 (d) "Undamaged product" means malt beverages, whether sold
51 in individual containers or kegs, which are not damaged products
52 or out-of-code products.

53 (2) CONSIGNMENT SALES PROHIBITED; AUTHORIZED BONA FIDE
54 RETURNS.-A distributor may not sell, offer for sale, or contract
55 to sell malt beverages on consignment or any basis other than a
56 bona fide sale. A vendor may not purchase, offer to purchase, or
57 contract to purchase malt beverages on consignment or any basis
58 other than a bona fide sale. Once a distributor sells malt

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59 beverages to a vendor, only bona fide returns are allowed for
60 the ordinary and usual commercial reasons authorized in this
61 section. A product may not be returned because it is overstocked
62 or slow-moving or because there is only limited or seasonal
63 demand for the product.

64 (3) RETURNS OF UNDAMAGED PRODUCT.—A vendor may request
65 return of undamaged product to a distributor and, unless
66 otherwise provided in paragraphs (a)-(f), a return under this
67 subsection may only be for exchange of product or for a credit.
68 A distributor may not accept a return of undamaged product
69 unless the return is requested within 7 days after the delivery
70 date or unless:

71 (a) There is a change in regulation or administrative
72 procedure over which the vendor or its employees or agents have
73 no control, including, but not limited to, when a particular
74 brand or container size is no longer allowed to be sold. A
75 return under this paragraph may be for a credit or a refund.

76 (b) A vendor terminates operations and requests return of
77 any remaining products on hand. A return under this paragraph
78 may be for a credit or a refund. This paragraph does not apply
79 to a vendor's temporary seasonal shutdown.

80 (c) Except as provided in paragraph (f), a vendor requests
81 return of a product for purposes of quality control or
82 freshness, and the product has not yet exceeded the
83 manufacturer's code date. A return under this paragraph may only
84 be for exchange of product.

85 (d) A manufacturer has issued a product recall that affects
86 multiple vendors who are not affiliated with one another through
87 having common ownership, through being members of the same pool

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88 buying group, or through being members of the same advertising
89 cooperative. A return under this paragraph may be for exchange
90 of product or for a credit.

91 (e) A vendor requests a return because the production or
92 importation of a product is discontinued. A vendor's inventory
93 of the discontinued product may be returned under this paragraph
94 for a credit or a refund.

95 (f) A vendor who is open for a portion of the year has
96 product remaining at closure which, with respect to quality
97 control or freshness, would become unsuitable for sale during
98 the off-season, according to the manufacturer's code date. A
99 return under this paragraph may be for credit or a refund.

100
101 If undamaged product is returned pursuant to paragraphs (a)-(f),
102 documentation of a qualifying exception in paragraphs (a)-(f)
103 must be kept with the transaction record maintained by the
104 distributor pursuant to subsection (8).

105 (4) RETURNS OF DAMAGED PRODUCT.—

106 (a) A vendor may request return of damaged product to a
107 distributor, and a return under this subsection may only be for
108 exchange of product or for a credit. The distributor must verify
109 that the product is damaged before accepting the return. A
110 vendor is liable for any product damaged by the vendor or its
111 customers and such product may not be returned.

112 (b) A distributor may accept a return of damaged product if
113 the return is requested within 7 days after the delivery date.

114 (5) RETURNS OF OUT-OF-CODE PRODUCT.—

115 (a) A vendor may request return of out-of-code product to a
116 distributor, and a return under this subsection may only be for

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117 exchange of product. The distributor must verify that the
118 product is an out-of-code product before accepting such return.

119 (b) A distributor may accept a return of out-of-code
120 product at any time after the manufacturer's code date if:

121 1. The manufacturer has written policies and procedures
122 that specify the date that product should be removed;

123 2. Such policies and procedures are readily verifiable and
124 consistently followed by the manufacturer; and

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

128 (c) Out-of-code product returned to a distributor may not
129 reenter the retail market.

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

136 (7) DISTRIBUTOR NOT REQUIRED TO ACCEPT RETURNS.—This
137 section does not require a distributor to accept returns
138 authorized under this section. If a distributor accepts a return
139 of product, the distributor must:

140 (a) Provide the exchange of product, the credit, or the
141 refund to the vendor, as provided in subsections (3), (4), and
142 (5), at the same time the distributor picks up the product being
143 returned; and

144 (b) For damaged or undamaged product, pick up the product
145 being returned within 14 days after receipt of the vendor's

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146 request.

147 (8) TRANSACTION RECORDS.—

148 (a) A distributor must keep and maintain for 3 years a
149 transaction record of each return which identifies:

150 1. The licensed vendor;

151 2. The licensed vendor's business name and address;

152 3. The licensed vendor's license number;

153 4. The product returned for exchange of product, credit, or
154 refund; and

155 5. Any documentation required by this section.

156 (b) The distributor must provide a copy of the transaction
157 record to the vendor in a format accessible by and legible to
158 the vendor. The distributor must provide a copy of the
159 transaction record to the division upon request in a format
160 accessible by and legible to the division.

161 (c) The transaction records must be maintained on the
162 distributor's licensed premises, or may be kept at another
163 location in this state if the distributor notifies the division
164 in writing before using the other location. The distributor must
165 notify the division in writing of any change in recordkeeping
166 location.

167 (9) RETURNS NOT TIED HOUSE EVIL.—Bona fide returns made
168 pursuant to this section for exchange of product, credit, or
169 refund are not considered gifts, loans, or other forms of
170 financial aid or assistance that are prohibited by s. 561.42.

171 (10) CIVIL PENALTY.—In accordance with s. 561.29, the
172 division shall impose a civil penalty of \$1,000 per violation
173 against a distributor or vendor who violates this section or any
174 rule adopted under this section.

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

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