

By Senator Stargel

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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 certain
4 sales of malt beverages between a distributor and
5 vendor; authorizing bona fide returns of malt
6 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 civil 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 to
20 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 a reusable container used to store and
28 dispense a malt beverage product in draft form on tap.

29 (c) "Manufacturer's code date" means a coded best-by date,

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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 a malt beverage product
36 that has exceeded the manufacturer's code date and, according to
37 the manufacturer's policies, must be removed and replaced with
38 fresh product for purchase in the retail market.

39 (e) "Undamaged product" means a malt beverage product that
40 is 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 because it has limited or
51 seasonal demand, including, but not limited to, product packaged
52 in holiday decanters or distinctive bottles.

53 (3) RETURNS OF UNDAMAGED PRODUCT.—

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

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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 vendor's
66 inventory of product at the time of termination may be returned
67 for credit or refund. This subparagraph does not apply during a
68 vendor's temporary seasonal shutdown.

69 3. Except as provided in subparagraph 6., a 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, such product may only be returned for 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

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88 control or freshness, would become unsuitable for sale during
89 the off-season according to the manufacturer's code date, such
90 product may be returned for credit or refund.

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92 If undamaged product is returned under this paragraph, the
93 distributor must keep documentation of a qualifying exception in
94 subparagraphs 1.-6. with the transaction record maintained
95 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. A distributor must verify damaged product
99 before accepting its return.

100 (b) Product damaged by a vendor, 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 product
104 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. A distributor must verify out-of-code product before
108 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 out-of-code product should be
114 removed.

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

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

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

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

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

131 (a) Provide the exchange of product, credit, or refund to
132 the vendor, as provided in subsections (3), (4), and (5), at the
133 same time the distributor picks up the product being returned.

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

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

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

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

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

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

162 Section 2. This act shall take effect July 1, 2020.