

1 A bill to be entitled
2 An act relating to the Beverage Law; amending s.
3 561.20, F.S.; authorizing caterers to store alcoholic
4 beverages under certain circumstances; amending s.
5 561.221, F.S.; authorizing a manufacturer who
6 possesses a vendor's license to sell, transport, and
7 deliver to vendors under certain circumstances;
8 providing applicability; authorizing vendors licensed
9 as manufacturers to transfer malt beverages to certain
10 restaurants with common ownership affiliations;
11 amending s. 561.5101, F.S.; revising construction;
12 amending s. 561.57, F.S.; authorizing certain
13 manufacturers to transport malt beverages in vehicles
14 owned or leased by certain persons other than the
15 manufacturer; amending s. 563.022, F.S.; revising the
16 definition of the term "manufacturer"; revising
17 construction; authorizing a manufacturer to terminate
18 a contract with a distributor under certain
19 circumstances; creating s. 563.061, F.S.; providing
20 definitions; prohibiting consignment sales of malt
21 beverages between a distributor and vendor;
22 authorizing bona fide returns of malt beverages under
23 certain conditions; providing applicability;
24 authorizing distributors to accept returns of certain
25 products under specified conditions; providing

26 distributor requirements for such returns; providing
 27 requirements for exchanges of product; providing
 28 recordkeeping requirements; specifying that authorized
 29 returns are not gifts, loans, or other prohibited
 30 forms of financial aid or assistance; providing
 31 penalties; providing for rulemaking; providing an
 32 effective date.
 33

34 Be It Enacted by the Legislature of the State of Florida:
 35

36 Section 1. Paragraph (a) of subsection (2) of section
 37 561.20, Florida Statutes, is amended to read:

38 561.20 Limitation upon number of licenses issued.—

39 (2) (a) The limitation of the number of licenses as
 40 provided in this section does not prohibit the issuance of a
 41 special license to:

42 1. Any bona fide hotel, motel, or motor court of not fewer
 43 than 80 guest rooms in any county having a population of less
 44 than 50,000 residents, and of not fewer than 100 guest rooms in
 45 any county having a population of 50,000 residents or greater;
 46 or any bona fide hotel or motel located in a historic structure,
 47 as defined in s. 561.01(21), with fewer than 100 guest rooms
 48 which derives at least 51 percent of its gross revenue from the
 49 rental of hotel or motel rooms, which is licensed as a public
 50 lodging establishment by the Division of Hotels and Restaurants;

51 provided, however, that a bona fide hotel or motel with no fewer
52 than 10 and no more than 25 guest rooms which is a historic
53 structure, as defined in s. 561.01(21), in a municipality that
54 on the effective date of this act has a population, according to
55 the University of Florida's Bureau of Economic and Business
56 Research Estimates of Population for 1998, of no fewer than
57 25,000 and no more than 35,000 residents and that is within a
58 constitutionally chartered county may be issued a special
59 license. This special license shall allow the sale and
60 consumption of alcoholic beverages only on the licensed premises
61 of the hotel or motel. In addition, the hotel or motel must
62 derive at least 60 percent of its gross revenue from the rental
63 of hotel or motel rooms and the sale of food and nonalcoholic
64 beverages; provided that this subparagraph shall supersede local
65 laws requiring a greater number of hotel rooms;

66 2. Any condominium accommodation of which no fewer than
67 100 condominium units are wholly rentable to transients and
68 which is licensed under chapter 509, except that the license
69 shall be issued only to the person or corporation that operates
70 the hotel or motel operation and not to the association of
71 condominium owners;

72 3. Any condominium accommodation of which no fewer than 50
73 condominium units are wholly rentable to transients, which is
74 licensed under chapter 509, and which is located in any county
75 having home rule under s. 10 or s. 11, Art. VIII of the State

76 Constitution of 1885, as amended, and incorporated by reference
77 in s. 6(e), Art. VIII of the State Constitution, except that the
78 license shall be issued only to the person or corporation that
79 operates the hotel or motel operation and not to the association
80 of condominium owners;

81 4. A food service establishment that has 2,500 square feet
82 of service area, is equipped to serve meals to 150 persons at
83 one time, and derives at least 51 percent of its gross food and
84 beverage revenue from the sale of food and nonalcoholic
85 beverages during the first 60-day operating period and each 12-
86 month operating period thereafter. A food service establishment
87 granted a special license on or after January 1, 1958, pursuant
88 to general or special law may not operate as a package store and
89 may not sell intoxicating beverages under such license after the
90 hours of serving or consumption of food have elapsed. Failure by
91 a licensee to meet the required percentage of food and
92 nonalcoholic beverage gross revenues during the covered
93 operating period shall result in revocation of the license or
94 denial of the pending license application. A licensee whose
95 license is revoked or an applicant whose pending application is
96 denied, or any person required to qualify on the special license
97 application, is ineligible to have any interest in a subsequent
98 application for such a license for a period of 120 days after
99 the date of the final denial or revocation;

100 5. Any caterer, deriving at least 51 percent of its gross

101 food and beverage revenue from the sale of food and nonalcoholic
102 beverages at each catered event, licensed by the Division of
103 Hotels and Restaurants under chapter 509. This subparagraph does
104 not apply to a culinary education program, as defined in s.
105 381.0072(2), which is licensed as a public food service
106 establishment by the Division of Hotels and Restaurants and
107 provides catering services. Notwithstanding any law to the
108 contrary, a licensee under this subparagraph shall sell or serve
109 alcoholic beverages only for consumption on the premises of a
110 catered event at which the licensee is also providing prepared
111 food, and shall prominently display its license at any catered
112 event at which the caterer is selling or serving alcoholic
113 beverages. A licensee under this subparagraph shall purchase all
114 alcoholic beverages it sells or serves at a catered event from a
115 vendor licensed under s. 563.02(1), s. 564.02(1), or licensed
116 under s. 565.02(1) subject to the limitation imposed in
117 subsection (1), as appropriate. A licensee under this
118 subparagraph may ~~not~~ store at its location licensed under
119 chapter 509 any alcoholic beverages to be sold or served at a
120 catered event. ~~Any alcoholic beverages purchased by a licensee~~
121 ~~under this subparagraph for a catered event that are not used at~~
122 ~~that event must remain with the customer; provided that if the~~
123 ~~vendor accepts unopened alcoholic beverages, the licensee may~~
124 ~~return such alcoholic beverages to the vendor for a credit or~~
125 ~~reimbursement.~~ Regardless of the county or counties in which the

126 | licensee operates, a licensee under this subparagraph shall pay
127 | the annual state license tax set forth in s. 565.02(1)(b). A
128 | licensee under this subparagraph must maintain for a period of 3
129 | years all records and receipts for each catered event, including
130 | all contracts, customers' names, event locations, event dates,
131 | food purchases and sales, alcoholic beverage purchases and
132 | sales, nonalcoholic beverage purchases and sales, and any other
133 | records required by the department by rule to demonstrate
134 | compliance with the requirements of this subparagraph.
135 | Notwithstanding any law to the contrary, any vendor licensed
136 | under s. 565.02(1) subject to the limitation imposed in
137 | subsection (1), may, without any additional licensure under this
138 | subparagraph, serve or sell alcoholic beverages for consumption
139 | on the premises of a catered event at which prepared food is
140 | provided by a caterer licensed under chapter 509. If a licensee
141 | under this subparagraph also possesses any other license under
142 | the Beverage Law, the license issued under this subparagraph
143 | shall not authorize the holder to conduct activities on the
144 | premises to which the other license or licenses apply that would
145 | otherwise be prohibited by the terms of that license or the
146 | Beverage Law. Nothing in this section shall permit the licensee
147 | to conduct activities that are otherwise prohibited by the
148 | Beverage Law or local law. The Division of Alcoholic Beverages
149 | and Tobacco is hereby authorized to adopt rules to administer
150 | the license created in this subparagraph, to include rules

151 governing licensure, recordkeeping, and enforcement. The first
152 \$300,000 in fees collected by the division each fiscal year
153 pursuant to this subparagraph shall be deposited in the
154 Department of Children and Families' Operations and Maintenance
155 Trust Fund to be used only for alcohol and drug abuse education,
156 treatment, and prevention programs. The remainder of the fees
157 collected shall be deposited into the Hotel and Restaurant Trust
158 Fund created pursuant to s. 509.072; or

159 6. A culinary education program as defined in s.
160 381.0072(2) which is licensed as a public food service
161 establishment by the Division of Hotels and Restaurants.

162 a. This special license shall allow the sale and
163 consumption of alcoholic beverages on the licensed premises of
164 the culinary education program. The culinary education program
165 shall specify designated areas in the facility where the
166 alcoholic beverages may be consumed at the time of application.
167 Alcoholic beverages sold for consumption on the premises may be
168 consumed only in areas designated pursuant to s. 561.01(11) and
169 may not be removed from the designated area. Such license shall
170 be applicable only in and for designated areas used by the
171 culinary education program.

172 b. If the culinary education program provides catering
173 services, this special license shall also allow the sale and
174 consumption of alcoholic beverages on the premises of a catered
175 event at which the licensee is also providing prepared food. A

176 | culinary education program that provides catering services is
177 | not required to derive at least 51 percent of its gross revenue
178 | from the sale of food and nonalcoholic beverages.
179 | Notwithstanding any law to the contrary, a licensee that
180 | provides catering services under this sub-subparagraph shall
181 | prominently display its beverage license at any catered event at
182 | which the caterer is selling or serving alcoholic beverages.
183 | Regardless of the county or counties in which the licensee
184 | operates, a licensee under this sub-subparagraph shall pay the
185 | annual state license tax set forth in s. 565.02(1)(b). A
186 | licensee under this sub-subparagraph must maintain for a period
187 | of 3 years all records required by the department by rule to
188 | demonstrate compliance with the requirements of this sub-
189 | subparagraph.

190 | c. If a licensee under this subparagraph also possesses
191 | any other license under the Beverage Law, the license issued
192 | under this subparagraph does not authorize the holder to conduct
193 | activities on the premises to which the other license or
194 | licenses apply that would otherwise be prohibited by the terms
195 | of that license or the Beverage Law. Nothing in this
196 | subparagraph shall permit the licensee to conduct activities
197 | that are otherwise prohibited by the Beverage Law or local law.
198 | Any culinary education program that holds a license to sell
199 | alcoholic beverages shall comply with the age requirements set
200 | forth in ss. 562.11(4), 562.111(2), and 562.13.

201 d. The Division of Alcoholic Beverages and Tobacco may
202 adopt rules to administer the license created in this
203 subparagraph, to include rules governing licensure,
204 recordkeeping, and enforcement.

205 e. A license issued pursuant to this subparagraph does not
206 permit the licensee to sell alcoholic beverages by the package
207 for off-premises consumption.

208

209 However, any license heretofore issued to any such hotel, motel,
210 motor court, or restaurant or hereafter issued to any such
211 hotel, motel, or motor court, including a condominium
212 accommodation, under the general law shall not be moved to a new
213 location, such license being valid only on the premises of such
214 hotel, motel, motor court, or restaurant. Licenses issued to
215 hotels, motels, motor courts, or restaurants under the general
216 law and held by such hotels, motels, motor courts, or
217 restaurants on May 24, 1947, shall be counted in the quota
218 limitation contained in subsection (1). Any license issued for
219 any hotel, motel, or motor court under this law shall be issued
220 only to the owner of the hotel, motel, or motor court or, in the
221 event the hotel, motel, or motor court is leased, to the lessee
222 of the hotel, motel, or motor court; and the license shall
223 remain in the name of the owner or lessee so long as the license
224 is in existence. Any special license now in existence heretofore
225 issued under this law cannot be renewed except in the name of

226 the owner of the hotel, motel, motor court, or restaurant or, in
227 the event the hotel, motel, motor court, or restaurant is
228 leased, in the name of the lessee of the hotel, motel, motor
229 court, or restaurant in which the license is located and must
230 remain in the name of the owner or lessee so long as the license
231 is in existence. Any license issued under this section shall be
232 marked "Special," and nothing herein provided shall limit,
233 restrict, or prevent the issuance of a special license for any
234 restaurant or motel which shall hereafter meet the requirements
235 of the law existing immediately prior to the effective date of
236 this act, if construction of such restaurant has commenced prior
237 to the effective date of this act and is completed within 30
238 days thereafter, or if an application is on file for such
239 special license at the time this act takes effect; and any such
240 licenses issued under this proviso may be annually renewed as
241 now provided by law. Nothing herein prevents an application for
242 transfer of a license to a bona fide purchaser of any hotel,
243 motel, motor court, or restaurant by the purchaser of such
244 facility or the transfer of such license pursuant to law.

245 Section 2. Paragraph (d) of subsection (2) of section
246 561.221, Florida Statutes, is amended, paragraph (f) is added to
247 that subsection, paragraph (a) of subsection (3) is amended, and
248 subsection (4) is added to that section, to read:

249 561.221 Licensing of manufacturers and distributors as
250 vendors and of vendors as manufacturers; conditions and

251 limitations.—

252 (2)

253 (d) A manufacturer possessing a vendor's license under
254 this subsection is not permitted to make deliveries under s.
255 561.57(1), except as provided in paragraph (f).

256 (f) Notwithstanding any other provision of the Beverage
257 Law, a manufacturer possessing a vendor's license under this
258 subsection may sell, transport, and deliver to vendors, from the
259 manufacturer's licensed premises, malt beverages that have been
260 manufactured on its licensed premises if the manufacturer
261 complies with the requirements in ss. 561.42 and 561.423, as
262 applicable, to the same extent as if the manufacturer were a
263 distributor.

264 1. The authority provided in this paragraph is limited to
265 the sale, transport, and delivery of kegs or similar containers
266 that hold 5.16 gallons, 7.75 gallons, or 15.5 gallons.

267 2. A delivery by a manufacturer to a vendor under this
268 paragraph is subject to s. 561.57(2).

269 3. This paragraph does not apply to a manufacturer who:

270 a. Has a franchise agreement with a distributor pursuant
271 to s. 563.022; or

272 b. Has a total production volume of more than 3,000 kegs
273 of malt beverages per year.

274 (3) (a) Notwithstanding other provisions of the Beverage
275 Law, any vendor licensed in this state may be licensed as a

276 manufacturer of malt beverages upon a finding by the division
 277 that:

278 1. The vendor will be engaged in brewing malt beverages at
 279 a single location and in an amount which will not exceed 10,000
 280 kegs per year. For purposes of this section ~~subsection~~, the term
 281 "keg" means 15.5 gallons.

282 2. The malt beverages so brewed will be sold to consumers
 283 for consumption on the vendor's licensed premises or on
 284 contiguous licensed premises owned by the vendor.

285 (4) Notwithstanding any other provision of the Beverage
 286 Law, any vendor licensed as a manufacturer under this section
 287 may transfer malt beverages to a restaurant with which it has
 288 common ownership affiliations and that is part of a restaurant
 289 group that comprises not more than 15 restaurants.

290 Section 3. Subsection (1) of section 561.5101, Florida
 291 Statutes, is amended to read:

292 561.5101 Come-to-rest requirement; exceptions; penalties.—

293 (1) For purposes of inspection and tax-revenue control,
 294 all malt beverages, except those manufactured and sold by the
 295 same licensee, pursuant to s. 561.221(2) or (3), must come to
 296 rest at the licensed premises of an alcoholic beverage
 297 wholesaler in this state before being sold to a vendor by the
 298 wholesaler. The prohibition contained in this subsection does
 299 not apply to the shipment of malt beverages commonly known as
 300 private labels. The prohibition contained in this subsection

301 shall not prevent a manufacturer from shipping malt beverages
302 for storage at a bonded warehouse facility, provided that such
303 malt beverages are distributed as provided in this subsection or
304 to an out-of-state entity. This subsection does not prohibit a
305 manufacturer from delivering alcoholic beverages to a licensed
306 vendor as provided in s. 561.221(2)(f).

307 Section 4. Subsection (2) of section 561.57, Florida
308 Statutes, is amended to read:

309 561.57 Deliveries by licensees.—

310 (2) Deliveries made by a manufacturer or distributor away
311 from his or her place of business may be made only in vehicles
312 that are owned or leased by the licensee. However, a
313 manufacturer authorized to make deliveries under s.
314 561.221(2)(f) to the licensed premises of a vendor may transport
315 malt beverages in a vehicle owned or leased by the manufacturer
316 or any person who has been disclosed on a license application
317 filed by the manufacturer and approved by the division. By
318 acceptance of an alcoholic beverage license and the use of such
319 vehicles, the licensee agrees that such vehicle shall always be
320 subject to be inspected and searched without a search warrant,
321 for the purpose of ascertaining that all provisions of the
322 alcoholic beverage laws are complied with, by authorized
323 employees of the division and also by sheriffs, deputy sheriffs,
324 and police officers during business hours or other times the
325 vehicle is being used to transport or deliver alcoholic

326 beverages.

327 Section 5. Paragraph (h) of subsection (2) and paragraph
328 (d) of subsection (14) of section 563.022, Florida Statutes, are
329 amended, and subsection (22) is added to that section, to read:

330 563.022 Relations between beer distributors and
331 manufacturers.—

332 (2) DEFINITIONS.—In construing this section, unless the
333 context otherwise requires, the word, phrase, or term:

334 (h) "Manufacturer" means any person who manufactures or
335 imports beer for distribution to distributors licensed in
336 Florida. The term does not include a person whose total
337 production volume does not exceed 150,000 gallons of malt
338 beverages a year.

339 (14) MANUFACTURER; PROHIBITED INTERESTS.—

340 (d) Nothing in the Beverage Law shall be construed to
341 prohibit a manufacturer from shipping products to or between its
342 breweries, or between its breweries and the licensed premises of
343 a vendor as provided in s. 561.221(2)(f), without a
344 distributor's license.

345 (22) TERMINATION OF CONTRACTS.—Notwithstanding the
346 provisions of this section, a manufacturer may terminate a
347 contract with a distributor after at least 120 days' written
348 notice if the sale of products to the distributor by the
349 manufacturer does not exceed 3 percent of the distributor's
350 total alcoholic beverage sales in the prior calendar year.

351 Section 6. Section 563.061, Florida Statutes, is created
352 to read:

353 563.061 Return of malt beverage products.-

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

355 (a) "Damaged product" means a malt beverage product
356 delivered to a vendor exhibiting product deterioration,
357 defective seals, leaking, damaged labels, or missing or
358 mutilated tamper-evident closures.

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

361 (c) "Manufacturer's code date" means a coded best-by date,
362 expiration date, or other designated date or dating system
363 established by a manufacturer to signify freshness that is
364 printed on the malt beverage container or, in the case of a keg,
365 marked on a cap, collar, tag, or label affixed directly to the
366 keg.

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

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

373 (2) CONSIGNMENT SALES PROHIBITED; AUTHORIZED RETURNS.-A
374 distributor may not sell, offer for sale, or contract to sell
375 malt beverages on consignment or any basis other than a bona

376 fide sale. A vendor may not purchase, offer to purchase, or
377 contract to purchase malt beverages on consignment or any basis
378 other than a bona fide sale. Once a distributor sells malt
379 beverages to a vendor, only bona fide returns are permitted for
380 the ordinary and usual commercial reasons authorized in this
381 section. This section does not permit return of product because
382 it is overstocked or slow-moving or for which there is only
383 limited or seasonal demand, such as holiday decanters and
384 certain distinctive bottles.

385 (3) RETURNS OF UNDAMAGED PRODUCT.—

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

388 (b) A distributor may only accept a return of undamaged
389 product if the return is requested within 7 days after the
390 delivery date. However, a distributor may accept a return of an
391 undamaged product after such time in the following
392 circumstances:

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

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

401 3. Except as provided in subparagraph 6., any product that
402 has not yet exceeded the manufacturer's code date may be
403 returned for purposes of ensuring quality control or freshness;
404 however, the product may only be returned for an exchange of
405 product.

406 4. If a manufacturer has issued a product recall that
407 affects multiple vendors that are not affiliated through having
408 common ownership, being members of the same pool buying group,
409 or being members of the same advertising cooperative, the
410 recalled product may be returned for exchange of product or
411 credit. If return of such product is requested more than 7 days
412 after the delivery date, the distributor must keep documentation
413 of the recall with the transaction record maintained pursuant to
414 subsection (8).

415 5. If production or importation of a product is
416 discontinued, a vendor's inventory of the discontinued product
417 may be returned for credit or refund.

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

423
424 If undamaged product is returned under this paragraph,
425 documentation of a qualifying exception in subparagraphs 1.-6.

426 must be kept with the transaction record maintained by the
427 distributor pursuant to subsection (8).

428 (4) RETURNS OF DAMAGED PRODUCT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

468 (8) TRANSACTION RECORDS.—A distributor must keep and
469 maintain for 3 years a transaction record of each return
470 identifying the licensed vendor's business name, address, and
471 license number; product returned for exchange of product,
472 credit, or refund; and any other documentation required by this
473 section. The distributor must provide a copy of the transaction
474 record to the vendor in a format accessible and readable by the
475 vendor. Such transaction records must be maintained on the

476 distributor's licensed premises, or may be kept at another
477 location in this state if the distributor notifies the division
478 in writing before keeping records in another location, and must
479 be made available to the division upon request for inspection in
480 a format accessible and readable by the division. The
481 distributor must notify the division in writing of any change in
482 recordkeeping location.

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

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

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

493 Section 7. This act shall take effect July 1, 2019.