

CHAPTER 563

BEER

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563.01 Definition.—The terms “beer” and “malt beverage” mean all brewed beverages containing malt.

History.—s. 3, ch. 72-230.

Note.—Former s. 561.01(3).

563.02 License fees; vendors; manufacturers and distributors.—

(1) Each vendor of malt beverages containing alcohol of 0.5 percent or more by volume shall pay an annual state license tax as follows:

(a) Vendors operating places of business where beverages are sold only for consumption off the premises, an amount equal to 50 percent of the amount of the license tax herein provided for vendors in the same county operating places of business where consumption on the premises is permitted. Vendors holding such off-premises sales licenses shall not be subject to zoning by municipal and county authorities.

(b) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, \$200.

(c) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 75,000 and not over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, \$160.

(d) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 50,000 and less than 75,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, \$120.

(e) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 25,000 and less than 50,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, \$80.

(f) Vendors operating places of business where consumption on the premises is permitted in counties having a population of less than 25,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, \$40.

(2) Each manufacturer engaged in the business of brewing only malt beverages shall pay an annual state license tax of \$3,000 for each plant or branch he may operate. However, each manufacturer engaged in the business of brewing less than 10,000 kegs of malt beverages annually for consumption on the premises pursuant to s. 561.221(3) shall pay an annual state license tax of \$500 for each plant or branch.

(3) Each distributor who shall distribute or sell alcoholic beverages containing less than 17.259 percent alcohol by volume shall pay an annual state license tax of \$1,250 for each establishment or branch he may operate.

History.—s. 3, ch. 72-230; s. 8, ch. 86-269; s. 2, ch. 87-63; s. 7, ch. 92-176.

Note.—Former ss. 561.34, 561.35.

563.021 Malt beverages; exclusive sales territories.—

(1) No distributor shall sell or deliver any brand or brands of malt beverages in this state to any retail vendor whose place of business is outside of the distributor's restricted exclusive sales territory for such products. The restricted exclusive sales territory shall be mutually agreed upon by the manufacturer or importer and each distributor, and shall be embodied in a formal written agreement between the manufacturer or importer and each distributor, which agreement shall designate the specified brand or brands for which the territory is granted and set forth the exact geographical area of the territory. Where a manufacturer or importer sells several brands, the agreement may apply to all brands sold by the manufacturer or importer or may apply to one brand or several brands so long as each brand is covered by an exclusive territorial agreement. No manufacturer or importer shall provide by such written agreement for the distribution of a brand to more than one distributor for all or any part of the designated territory. All such agreements shall be filed with the division.

(2) Upon a prima facie showing of a violation of this section, the division, on its own motion or on complaint of a manufacturer or distributor, may pursue appropriate administrative remedies provided by law, including the revocation or suspension of licenses, the imposition of fines or any combination of the foregoing.

(3) No provision of any written agreement required by this section shall expressly, by implication, or in its own operation establish or maintain the resale price of any brand or brands of beer sold by the malt beverage distributor.

History.—s. 14, ch. 88-308.

563.022 Relations between beer distributors and manufacturers.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) Regulation of business relations between beer distributors and manufacturers is necessary and appropriate in the public interest.

(b) This section is enacted pursuant to authority of the state under the provisions of the Twenty-First

Amendment to the United States Constitution to promote the public's interest in fair, efficient, and competitive distribution of malt beverage products by regulation and encouragement of manufacturers and distributors to conduct their business relations toward these ends by:

1. Assuring that the beer distributor is free to manage its business enterprise, including the distributor's right to independently establish its selling prices;

2. Assuring the manufacturer and the public of service from a distributor who will devote reasonable efforts and resources to sales and distribution of the manufacturer's products, which distributor has been granted the right to sell and distribute and to maintain a satisfactory sales level; and

3. Establishing and maintaining an orderly system of distribution of beer to the public.

(c) This section shall govern all relations between manufacturers and their distributors to the full extent consistent with the constitutions and laws of this state and the United States.

(d) In order to promote the intention and policies announced herein, the provisions of this section shall be liberally construed.

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

(a) "Designated member" means the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a distributor, who is entitled to inherit the deceased individual's ownership interest in the distributor under the terms of the deceased individual's will or other testamentary device, or who is entitled to inherit such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual owning an ownership interest in a distributor, the term means the person appointed by a court as the conservator of such individual's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a distributor.

(b) "Distributor" or "wholesaler" means any person, firm, association, corporation, or company which is a distributor licensed to sell and distribute beer at wholesale to persons who are licensed to sell beer.

(c) "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, for a definite or indefinite period of time in which a manufacturer grants to a beer distributor the right to purchase, resell, and distribute any brand or brands offered by the manufacturer.

(d) "Franchisee" means a beer distributor to whom a franchise is offered or granted.

(e) "Franchisor" means a beer manufacturer who grants a franchise to a beer distributor.

(f) "Fraud" includes actual fraud or constructive fraud as normally defined, in addition to the following:

1. A misrepresentation in any manner, whether intentionally false or arising from gross negligence, of a material fact.

2. A promise or representation not made honestly and in good faith.

3. An intentional failure to disclose a material fact.

4. Any artifice employed to deceive another.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned as defined and interpreted under s. 671.201(19).

(h) "Manufacturer" means any person who manufactures or imports beer for distribution to distributors licensed in Florida.

(i) "Person" means a natural person, corporation, association, partnership, trust, or other business entity and, in case of a business entity, shall include any other entity in which it has a majority interest or it effectively controls, as well as the individual officers, directors, and other persons in active control of the activities of each such entity. The term also includes heirs, assigns, personal representatives, and guardians.

(j) "Reasonable qualifications" means the standard of the reasonable criteria established and consistently used by the respective manufacturer for Florida distributors that entered into, continued, or renewed an agreement with the manufacturer during a period of 24 months prior to the proposed transfer of the distributor's business, or for Florida distributors that have changed managers or designated managers during a period of 24 months prior to the proposed change in manager or successor manager of the distributor's business.

(k) "Retaliatory action" includes, but is not limited to, the refusal to continue an agreement or a material reduction in the quality of service or quantity of products available to a distributor under an agreement which refusal or reduction is not made in good faith.

(l) "Sale" includes the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation, or mortgage in any manner or form, whether by transfer in trust or otherwise, of beer or of any franchise related thereto for a consideration and any option, subscription, or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether in oral or written form, for a consideration.

(m) "Transfer of a distributor's business" means the voluntary sale, assignment, or other transfer of the business or control of the business of the distributor, including the sale or other transfer of stock or assets by merger, consolidation, or dissolution.

(3) APPLICATION.—Any person who engages directly or indirectly in purposeful agreements or contracts in connection with the sale of beer to beer distributors within this state shall be subject to the provisions of this section and shall be subject to the jurisdiction of the courts of this state for violations of this section in accordance with the provisions of the laws of this state.

(4) UNLAWFUL ACTS AND PRACTICES.—Unfair methods of competition and unfair or deceptive acts or practices in the conduct of the manufacturing, importing, distribution, sale, wholesaling, and franchising of beer, as defined in subsection (5), are declared to be unlawful. Any person who violates any provision of this section shall not be subject to the criminal penalties set forth in the Beverage Law on account of such violation.

(5) UNFAIR AND PROHIBITED ACTS.—

(a) It shall be deemed a violation of subsection (4) for any manufacturer or distributor to engage in any action which is in bad faith or unconscionable and which

causes damage in terms of law or equity to any of the parties or to the public.

(b) It shall be deemed a violation of subsection (4) for a manufacturer or officer, agent, or other representative thereof:

1. To coerce or compel, or attempt to coerce or compel, any beer distributor to order or accept delivery of any beer or any other commodity or commodities which such beer distributor has not voluntarily ordered.

2. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of the distributor's order to any distributor having a franchise or contractual agreement for the distribution and sale of beer sold by such manufacturer, beer covered by such franchise or contract. However, the failure to deliver any such beer shall not be considered a violation of this section if such failure is due to prudent and reasonable restriction on extension of credit by the manufacturer to the distributor, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the manufacturer, or any agent thereof, shall have no control whatsoever.

3. To coerce or compel, or attempt to coerce or compel, a beer distributor to enter into any agreement, whether written or oral, supplementary to an existing franchise with such manufacturer or officer, agent, or other representative thereof, or to do any other act prejudicial to such distributor, by threatening to cancel any franchise or any contractual agreement existing between such manufacturer and such distributor. However, notice in good faith to a beer distributor of such distributor's violation or breach of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this section if such notice is in writing, is mailed by registered or certified mail to such distributor at his current business address, and contains the specific facts as to the distributor's violation or breach of such franchise or contractual agreement.

4. To terminate, cancel, fail to renew, or refuse to continue the franchise or selling agreement of any such distributor without good cause as defined in subsections (7) and (10). The nonrenewal of a franchise or selling agreement without good cause shall constitute an unfair termination or cancellation regardless of the specified time period of such franchise or selling agreement.

5. To willfully discriminate, either directly or indirectly, in price offered to franchisees where the effect of such discrimination is likely to substantially lessen competition.

6. To prevent or attempt to prevent, by contract or otherwise, any beer distributor from changing the capital structure of his distributorship or the means by or through which he finances the operation of his distributorship, provided that the distributor at all times meets capital standards which are reasonable in light of generally accepted capital standards within the manufacturer's beer distribution system. Nothing in this subparagraph diminishes the right of a manufacturer to prohibit public ownership of its franchises.

7. To prevent or attempt to prevent, by contract or otherwise, any beer distributor or any officer, member

partner, or stockholder of any beer distributor from selling or transferring any part of the interest of any of them to any other person or persons or party or parties. However, no distributor, officer, partner, or stockholder shall have the right to sell, transfer, or assign the franchise or power of management or control thereunder without the written consent of the manufacturer, distributor, or wholesaler, except that such consent shall not be unreasonably withheld.

a. No manufacturer shall unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock of a distributor or of all or any portion of a distributor's assets, a distributor's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling a distributor, including the distributor's rights and obligations under the terms of an agreement, whenever the person or persons to be substituted meet reasonable qualifications. Upon the death of one of the partners of a partnership operating the business of a distributor, no manufacturer shall deny the surviving partner or partners of such partnership the right to become a successor-in-interest to the agreement between the manufacturer and such partnership, provided that the survivor has been active in the management of the partnership and is otherwise capable of carrying on the business of the partnership, and provided further that such right is consistent with the rights and desires of the heirs or devisees of the deceased partner.

b. Notwithstanding the provisions of subparagraph a., upon the death of a distributor, no manufacturer shall deny approval for any transfer of ownership to a designated member of the family of an owner of a distributor; provided, however, that any subsequent transfer of such ownership by such designated member shall thereafter be subject to the provisions of subparagraph a.

8. To obtain money, goods, services, anything of value, or any other benefit from any person in exchange for having coerced or compelled a beer distributor to do business with such other person.

9. To require a beer distributor to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this section.

10. To restrict or inhibit, directly or indirectly, the right of free association among manufacturers or distributors of beer for any lawful purpose.

11. To fix or maintain the price at which a distributor may resell beer.

12. To coerce or attempt to coerce any distributor to accept delivery of any beer or other commodity ordered by a distributor if the order was properly canceled by the distributor.

13. To change a distributor's quota of a brand or brands if the change is not made in good faith.

14. To require a distributor, by any means, to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a manufacturer.

15. To take any retaliatory action against a distributor that files a complaint regarding an alleged violation by the manufacturer of state or federal law or an administrative rule.

16. To require or prohibit, without good cause provided in writing, any change in the manager or successor manager of any distributor who has been approved by the manufacturer as of June 4, 1987. Should a distributor change an approved manager or successor manager, a manufacturer shall not require or prohibit the change unless the person fails to meet the reasonable written standards for Florida distributors of the manufacturer which standards have been provided to the distributor.

(6) DISTRIBUTOR'S RESIGNATION, CANCELLATION, TERMINATION, FAILURE TO RENEW, OR REFUSAL TO CONTINUE.—Notwithstanding any agreement and except as otherwise provided for in this section, a manufacturer shall not cause a distributor to resign from an agreement, or cancel, terminate, fail to renew, or refuse to continue under an agreement unless the manufacturer has complied with all of the following:

(a) Has satisfied the applicable notice requirements of subsection (9).

(b) Has acted in good faith.

(c) Has good cause for the cancellation, termination, nonrenewal, discontinuance, or forced resignation.

(7) GOOD CAUSE.—Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under paragraph (6)(c) when all of the following occur:

(a) There is a failure by the distributor to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the distributor and the manufacturer.

(b) The manufacturer first acquired knowledge of the failure described in paragraph (a) not more than 18 months before the date notification was given pursuant to subsection (6).

(c) The distributor was given written notice by the manufacturer of failure to comply with the agreement.

(d) The distributor was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement within the time limits provided for in paragraph (e).

(e) The distributor has been afforded 30 days in which to submit a plan of corrective action to comply with the agreement and an additional 90 days to cure such noncompliance in accordance with the plan or to sell his distributorship consistent with the provisions of this section.

(8) BURDEN OF PROOF.—For each termination, cancellation, nonrenewal, or discontinuance, the manufacturer shall have the burden of showing that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.

(9) NOTICE.—Notwithstanding any agreement and except as otherwise provided in this section, the manufacturer shall furnish written notice of the termination, cancellation, nonrenewal, or discontinuance of an agreement to the distributor not less than 90 days before the effective date of the termination, cancellation, nonrenewal, or discontinuance; in no event shall the contractual term of any such franchise or selling agreement expire without the written consent of the beer distributor

involved prior to the expiration of at least 90 days following such written notice. The notice shall be by certified mail and shall contain all of the following:

(a) A statement of intention to terminate, cancel, not renew, or discontinue the agreement.

(b) A statement of the reason for the termination, cancellation, nonrenewal, or discontinuance.

(c) The date on which the termination, cancellation, nonrenewal, or discontinuance takes effect.

(10) CONDITIONS AND NOTICE REQUIRED.—Notwithstanding subsections (6) and (9), a manufacturer may terminate, cancel, fail to renew, or discontinue an agreement for good cause after not less than 15 days' written notice given in the manner and containing the information required by subsection (9), if any of the following occur:

(a) Insolvency of the distributor, the filing of any petition by or against the distributor under any bankruptcy or receivership law, or the dissolution or liquidation of the wholesaler which materially affects the distributor's ability to remain in business.

(b) Revocation of the distributor's license by the division or by the Federal Bureau of Alcohol, Tobacco and Firearms whereby the distributor cannot distribute beer for more than 60 days.

(c) The distributor, or a partner or an individual who owns 10 percent or more of the partnership or stock of a corporate distributor, has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the good will or interest of the distributor or manufacturer. However, an existing stockholder or stockholders, partner or partners, a designated member or members, or the distributor itself, if incorporated, shall have, subject to the provisions of this section, the right to purchase the partnership interest or the stock of the offending partner or stockholder, and if the sale is completed within 15 days of the conviction of the offending partner or stockholder, the right of termination, cancellation, nonrenewal, or discontinuance of the distributorship agreement shall not apply.

(d) There was fraudulent conduct on the part of the distributor relating to a material matter in dealings with the manufacturer or its products.

(e) The principal of the distributor intentionally and willfully sells the manufacturer's products to a retailer or retailers located outside a distributor's territory, but only if the manufacturer has assigned exclusive territories to its distributors in Florida.

(f) The distributor fails to pay for the manufacturer's products ordered and delivered in accordance with terms established with the manufacturer and has continued to fail to make payment within 15 business days after receipt of notice of the delinquency and demand for immediate payment.

(g) The distributor sells, transfers, or assigns the franchise or control thereunder without the written consent of the manufacturer.

(11) DISCONTINUANCE OF PRODUCTION OR DISTRIBUTION.—Notwithstanding subsections (6), (9), and (10), a manufacturer may terminate, cancel, not renew, or discontinue an agreement upon not less than 30 days' prior written notice if the supplier discontinues produc-

tion or discontinues distribution throughout this state of all the brands sold by the manufacturer to the distributor. Nothing in this section shall prohibit a manufacturer, upon not less than 30 days' notice, to completely discontinue the distribution throughout this state of any particular brand or package of beer. This subsection does not prohibit a manufacturer from conducting test marketing of a new brand of beer or from conducting the test marketing of a brand of beer which is not currently being sold in this state, provided that the manufacturer has notified the division in writing of its plans to test market. The notice shall describe the market area in which the test shall be conducted, the name or names of the distributor or distributors who will be selling the beer, the name or names of the brand of beer being tested, and the period of time during which the testing will take place. A market testing period shall not exceed 18 months.

(12) REASONABLE EFFORT REQUIRED.—The distributor shall devote such efforts and resources, as required in the agreement between the distributor and the manufacturer, to sales and distribution of all the manufacturer's products which the distributor has been granted the right and has agreed to sell and distribute so long as such requirements are reasonable. In the absence of such an agreement, the distributor shall devote reasonable efforts and resources.

(13) WAIVER PROHIBITED.—A distributor shall not waive any of the rights granted in any provision of this section. Nothing in this section shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

(14) MANUFACTURER; PROHIBITED INTERESTS.—

(a) This subsection applies to:

1. A manufacturer;
2. Any officer, director, agent, or employee of a manufacturer; or
3. An affiliate of any manufacturer, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) Except as provided in paragraph (c), no entity or person specified in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor nor shall such entity sell directly to any vendor in this state other than to vendors who are licensed pursuant to s. 561.221(2).

(c) Any entity described in paragraph (a) may financially assist a proposed distributor in acquiring ownership of the distributorship through participation in a limited partnership arrangement in which the entity described in paragraph (a) is a limited partner and the proposed distributor seeking to acquire ownership of the distributorship is the general partner. Such limited partnership arrangements may exist for no longer than 8 years from their creation and shall not be extended or renewed by means of a transfer of full ownership to an entity described in paragraph (a) followed by the creation of a new limited partnership or by any other means. In any such arrangement for financial assistance, the federal basic permit and distributor's license issued by the division shall be issued in the name of the distributor and not in the name of an entity described in paragraph (a). If, after the creation of a limited partnership pursuant

to this paragraph, an entity described in paragraph (a) acquires title to the distributorship which was the subject of the limited partnership, the entity described in paragraph (a) shall divest itself of the distributorship within 180 days, and the distributorship shall be ineligible for limited partnership financing for 20 years thereafter. No entity described in paragraph (a) shall enter into a limited partnership arrangement with a licensed distributor whose distributorship existed and was operated prior to the creation of such limited partnership arrangement.

(d) Nothing in the Beverage Law shall be construed to prohibit a manufacturer from shipping products to or between its breweries without a distributor's license.

(e) Notwithstanding the provisions of paragraph (b), any entity named in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor for a maximum of 180 consecutive days as the result of a judgment of foreclosure against the distributor or for 180 consecutive days after acquiring title pursuant to the written request of the licensed distributor. Under either of these circumstances, manufacturer ownership of an interest in the license, business, assets, or corporate stock of a licensed distributor shall only be for 180 days and only for the purpose of facilitating an orderly transfer of the distributorship to an owner not affiliated with a manufacturer.

(f) Notwithstanding the provisions of paragraph (b), any entity named in paragraph (a) may have a security interest in the inventory or property of its licensed distributors to secure payment for said inventory or other loans for other purposes.

(15) AGREEMENTS SUBJECT TO SECTION.—The provisions of this section shall apply to all written or oral agreements between a manufacturer and beer distributor in existence on June 4, 1987, as well as agreements entered into or renewed after June 4, 1987.

(16) AGREEMENTS BINDING ON SUCCESSOR.—A successor to a manufacturer that continues in business as a manufacturer shall be bound by all terms and conditions of each agreement of the manufacturer in effect on the date of succession.

(17) REASONABLE COMPENSATION.—Upon termination:

(a) Any manufacturer which, without good cause, cancels, terminates, or fails to renew any agreement, or lawfully denies approval of, or unreasonably withholds consent to, any assignment, transfer, or sale of a distributor's business assets or voting stock or other equity securities, shall pay such distributor with whom it has a written contract reasonable compensation for the diminished value of the distributor's business or of any ancillary business or both which has been negatively affected by the act of the manufacturer. "Ancillary business" means a business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler, the assets of which are primarily used in transporting, storing, or marketing the brand or brands of malt beverage of the supplier with whom the wholesaler has an agreement; or a business owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler which recycles returnable beverage containers; or any other business

owned by a wholesaler, a controlling stockholder of a wholesaler, or a controlling partner of a wholesaler, which business is primarily operated to benefit the wholesaler's ability to handle the brand or brands of malt beverage of the supplier with whom the wholesaler has an agreement. "Controlling stockholder" or "controlling partner" shall mean a person with an ownership interest in the wholesaler of 50 percent or more. The value of the distributor's business or ancillary business shall include, but not be limited to, its goodwill.

(b) In the event the manufacturer and the beer distributor are unable to mutually agree on the reasonable compensation to be paid for the value of the distributor's business, as defined herein, the matter may by agreement of the parties be submitted to a neutral arbitrator to be selected by the parties and the claim settled in accordance with the rules provided by the American Arbitration Association. Arbitration costs shall be paid one-half by the distributor and one-half by the manufacturer. The award of the arbitrator shall be final and binding on the parties.

(18) REMEDIES.—

(a) During the 90-day period provided in subsection (9) or during the 15-day period provided in subsection (10), either party, in appropriate circumstances, may bring action in the appropriate circuit court of this state to shorten the notice period so provided or to extend it pending a final determination of such proceedings on the merits.

(b) In any action brought under this section, the court shall have authority to grant temporary, preliminary, and final injunctive relief. If the court grants injunctive relief, bond shall not be required to be posted.

(c) In addition to temporary, preliminary, or final injunctive relief, any person who shall be aggrieved or injured in his business or property by reason of anything forbidden in this section may bring an action therefor in the appropriate circuit court of this state and, if successful shall recover the damages sustained and the costs of such action, including a reasonable attorney's fee.

(d) Without regard and in addition to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this section may bring an action to obtain a declaratory judgment that an act, action, or practice violates this section and to enjoin a manufacturer or distributor who has violated, is violating, or is otherwise likely to violate this section.

(e) When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more persons may bring a class action for the benefit of the whole, including actions for injunctive relief.

(f) In an action for money damages, if a judge or jury finds that the defendant acted maliciously, the judge or jury may award punitive damages as permitted by Florida law.

(g) The remedies provided in this subsection shall be in addition to any other civil remedies provided by law or in equity. Nothing contained in this subsection shall give rise to or foreclose any claim which would otherwise exist against the manufacturer or distributor by any proposed purchaser of the distributor's business.

(19) CONTRACTS AND THE VALIDITY THEREOF.— No manufacturer shall effect any sale to a distributor in Florida except pursuant to a written contract between the manufacturer and the distributor which contract is consistent with the provisions of this section.

(20) REPURCHASE OF INVENTORY UPON TERMINATION.—

(a) Whenever any beer distributor enters into a franchise agreement with a manufacturer wherein the distributor agrees to maintain an inventory of beer and the franchise is subsequently terminated in accordance with this section and any circuit court injunction requested by the distributor has been denied or dissolved, the manufacturer shall repurchase the inventory as provided in this section. If the distributor has any outstanding debts to the manufacturer, then the repurchase amount may be credited to the distributor's account.

(b) The manufacturer shall repurchase that inventory previously purchased from him and held by the distributor on the date of termination of the contract. The manufacturer shall pay 100 percent of the actual distributor cost, including freight and reasonable storage and handling costs, of all unsold beer.

(c) Upon payment within a reasonable time of the repurchase amount to the distributor, the title and right of possession to the repurchased inventory shall be transferred to the manufacturer.

(d) The provisions of this section shall not require the repurchase from a distributor of:

1. Any inventory which the distributor desires to keep, provided the distributor has a contractual right to do so.

2. Any inventory which was ordered by the distributor on or after the date of receipt of the notification of termination of the franchise or contractual agreement.

3. Any inventory which was acquired by the distributor from any source other than the manufacturer.

(e) If any manufacturer shall fail or refuse to repurchase any inventory covered under the provisions of this section within 60 days after termination of a distributor's contract, he shall be civilly liable for 100 percent of the current wholesale price of the inventory plus any freight charges paid by the distributor, the distributor's reasonable attorney's fees, court costs, and interest on the current wholesale price computed at the legal interest rate provided in s. 687.01 from the 61st day after termination.

(21) INDEMNIFICATION.—A manufacturer shall fully indemnify and hold harmless its distributor against any losses, including, but not limited to, court costs and reasonable attorney's fees or damages arising out of complaints, claims, or lawsuits, including, but not limited to, strict liability, negligence, misrepresentation, or express or implied warranty where the complaint, claim, or lawsuit relates to the manufacture or packaging of beer or other functions by the manufacturer which are beyond the control of the distributor. The distributor must mail written notice to the manufacturer on a prompt and timely basis after receipt of notice of a complaint, claim, or lawsuit in order for the manufacturer to be liable under this subsection with respect to such complaint, claim, or lawsuit.

History.—s. 4, ch. 87-63; s. 1, ch. 88-21; s. 48, ch. 91-220.

563.025 Surtax on license fees.—Each vendor of malt beverages containing alcohol of 0.5 percent or more by volume shall pay an annual surtax in an amount equal to 40 percent of the license fee imposed by s. 563.02(1).

History.—s. 23, ch. 86-269.

563.03 Regulation concerning draft beer.—Each and every tap or spigot through which draft beer is served shall, on the handle of such tap or spigot in plain view of the consuming public, display the name of the beer being presently served through such tap or spigot.

History.—s. 9, ch. 20830, 1941; s. 18, ch. 57-1; s. 3, ch. 72-230.

Note.—Former s. 561.60.

563.04 Labeling regulations; beer.—The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of beer, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

History.—s. 3, ch. 72-230.

Note.—Former s. 561.09(1).

563.045 Brands or labels to be registered; qualification to do business; fee; revocation.—

(1) No manufacturer, brewer, bottler, distributor, or importer of malt beverages, whether licensed under the beverage laws of this state or not, shall sell or offer for sale in this state, or move or cause to be moved within this state or into this state, any malt beverages, without first qualifying to do business in the state and registering its name and the brands or labels under which the malt beverages are to be sold or moved and furnishing such samples and information as to content, quality, and formula of such malt beverages as the division may require.

(2) Each registrant shall pay an annual registration fee of \$30 for a brand or label. Any registration may be suspended or revoked in the same manner as a beverage license for any violation of the Beverage Law.

(3) The purchase by any licensed wholesaler of any malt beverage from any manufacturer, brewer, bottler, distributor, or importer who has not complied with the provisions of subsection (1) is prohibited.

(4) The division shall promulgate rules to carry out the purpose of this section.

History.—s. 24, ch. 86-269.

563.05 Excise taxes on malt beverages.—As to malt beverages containing 0.5 percent or more of alcohol by volume, there shall be paid by all manufacturers, distributors, and vendors, as herein defined, a tax of 48 cents per gallon upon all such beverages in bulk or in kegs or barrels; and, when such beverages are sold in containers of less than 1 gallon, the tax will be 6 cents on each pint or fraction thereof in the container. However, the excise taxes required to be paid by this section upon malt beverages are not required to be paid upon such beverages when they are sold to post exchanges, ship service stores, and base exchanges located in military, naval, or air force reservations within this state.

History.—s. 3, ch. 72-230; s. 1, ch. 77-407; s. 12, ch. 83-349; s. 7, ch. 84-262; s. 9, ch. 86-269.

Note.—Former s. 561.46(1).

563.06 Malt beverages; imprint on individual container; size of containers.—

(1) On and after October 1, 1959, all taxable malt beverages packaged in individual containers possessed by any person in the state for the purpose of sale or resale in the state, except operators of railroads, sleeping cars, steamships, buses, and airplanes engaged in interstate commerce and licensed under this section, shall have imprinted thereon in clearly legible fashion by any permanent method the word "Florida" or "FL" and no other state name or abbreviation of any state name in not less than 8-point type. The word "Florida" or "FL" shall appear first or last, if imprinted in conjunction with any manufacturer's code. A facsimile of the imprinting and its location as it will appear on the individual container shall be submitted to the division for approval.

(2) Nothing herein contained shall require such designation to be attached to individual containers of malt beverages which are transported through this state and which are not sold, delivered, or stored for sale therein, if transported in accordance with such rules and regulations as adopted by the division; nor shall this requirement apply to malt beverages packaged in individual containers and held on the premises of a brewer or bottler, which malt beverages are for sale and delivery to persons outside the state.

(3) Possession by any person in the state, except as otherwise provided herein, of more than 4½ gallons of malt beverages in individual containers which do not have the word "Florida" or "FL" as herein provided, shall be prima facie evidence that said malt beverage is possessed for the purpose of sale or resale.

(4) Except as otherwise provided herein, any malt beverages in individual containers held or possessed in the state for the purpose of sale or resale within the state which do not bear the word "Florida" or "FL" thereon shall, at the direction of the division, be confiscated in accordance with the provisions of the Beverage Law.

(5) All malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state shall be in individual containers containing only 8, 12, 16, or 32 ounces of such malt beverages; provided, however, that nothing contained in this section shall affect malt beverages packaged in bulk or in kegs or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

(6) Any person, firm, or corporation, its agents, officers or employees, violating any of the provisions of this section, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and the license, if any, shall be subject to revocation or suspension by the division.

History.—ss. 1-5, ch. 25261, 1949; s. 9, ch. 29786, 1955; s. 1, ch. 59-143; s. 8, ch. 61-219; s. 1, ch. 65-246; ss. 16, 35, ch. 69-106; s. 561, ch. 71-136; s. 3, ch. 72-230; s. 31, ch. 86-269; s. 8, ch. 88-308; s. 1, ch. 88-413; s. 12, ch. 95-346.

Note.—Former s. 561.471.

563.07 Beer distributors' collection credit.—For the purpose of allowing credit to licensed distributors of malt beverages or beer for keeping prescribed records, furnishing bond, and properly accounting for and remitting taxes due to the state, such licensed distributors shall be allowed 2.5 percent of the amount of the tax due, accounted for, and remitted to the division, in the

form of a deduction from such remittance. However, no allowance may be granted or permitted when the tax is delinquent at the time of payment.

History.—s. 3, ch. 72-230; s. 13, ch. 83-349.

Note.—Former s. 561.46(10).

563.08 Cash deposit on beer sales.—All licensed manufacturers, when distributing under a manufacturer's license, wholesalers and distributors of domestic malt or brewed beverages, as defined in the Beverage Law, shall require a minimum cash deposit of 50 cents on the sale of each case of 24 bottles of any domestic malt or brewed beverage herein referred to from their vendors, except nonreturnable bottles, and all vendors thereof shall make a minimum cash deposit of 50 cents

on the purchase of each case of 24 bottles of any domestic malt or brewed beverage herein referred to, except nonreturnable bottles, and vendors shall require a minimum cash deposit of 50 cents on the sale of each case of 24 bottles of any domestic malt or brewed beverages herein referred to from their purchasers, except nonreturnable bottles. Said manufacturers, wholesalers, and distributors shall keep a record of all such deposits and shall make refund to their vendors within 10 days after receipt of notice from such vendors in writing that empties are ready for return, if such be true, to such manufacturers, wholesalers, and distributors.

History.—s. 1, ch. 19570, 1939; CGL 1940 Supp. 4151(271dd); s. 24, ch. 25359, 1949; s. 3, ch. 72-230.

Note.—Former s. 562.22.