

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1070

SPONSOR: Committee on Regulated Industries and Senator Sullivan

SUBJECT: Alcoholic Beverages

DATE: March 17, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill allows distributors of wine and spirits to offer discounts in the usual course of business on the basis of license series or license type.

This bill substantially amends section 561.01 of the Florida Statutes.

## II. Present Situation:

The “tied house evil” statute, s. 561.42, F.S., prohibits certain relationships between alcoholic beverage manufacturers, distributors, and vendors. No licensed manufacturer or distributor may have any financial interest, directly or indirectly, in any vendor. No licensed manufacturer or distributor may assist any vendor by giving any gifts, loans of money or property, or rebates of any kind whatsoever. However, nothing in the statute is to be interpreted to forbid the giving of trade discounts in the usual course of business on wine and liquor sales.

Section 561.01(10), F.S., defines “discount in the usual course of business” as “a cash or spirituous or vinous beverage merchandise discount given pursuant to an agreement made at the time of sale.” The definition also provides, however, that:

such agreement shall not result in an accrued, accumulated, or retroactive discount. The same discounts shall be offered to all vendors buying similar quantities. Any discount which is in violation of this section shall be considered an arrangement for financial assistance by gift.

Thus under the statute a “discount in the usual course of business” can be given only with sales of spirits or wine, not beer or other malt beverages. Department of Business and Professional Regulation (DBPR) rules, however, inferentially allow a manufacturer or distributor of malt beverages to charge different prices to different vendors. Rule 61A-4.013, F.A.C. provides that a malt beverage manufacturer or vendor must file notice of differential pricing with the DBPR if it

establishes “differential prices” based on: a) quantity sold, b) whether the sales are from a branch or the parent place of business, or c) the county where the sale occurs.

Additionally, on March 5, 1993, the Chief Attorney for DBPR’s Division of Alcoholic Beverages & Tobacco wrote in Division Training Bulletin 93-36 that a malt beverage distributor could set different prices for consumption on premises vendors and consumption off premises vendors as long as the difference was characterized as a price differential.

Recently DBPR issued Industry Bulletin 98-05, in which the Division Director stated that in the Division’s the more recent review of this issue, it concluded that:

- any discount given must comply with s. 561.10(10), F.S.;
- malt beverage distributors are not mentioned in this statute but are permitted by rule to establish price differentials in lieu of giving discounts;
- the Division would like to recede from the 1993 Training Bulletin, but would give time for submission of written legal arguments from industry;
- there appeared to be significant utilization of non-volume discount pricing of wine and spirit sales, although the ability to do so should not have been in question as these sales can be discounted based only upon volume; and
- the Division would be enforcing the prohibition against discounts of wine or spirits based upon anything other than volume.

The Division later determined that the simplest and most reasonable interpretation of the law is that pricing differences based on the on-premises versus off-premises distinction is an improper discount. This interpretation applied to all types of alcoholic beverages. However, in order to permit licensees sufficient time to come into compliance with this determination and to seek legislative change, the Division agreed to delay enforcement until July 1, 1999.

Alcoholic beverage licenses authorize sales for consumption on-premises, for consumption off-premises, or a combination of the two. There are a number of license series based on what kind of beverage is sold, what kind of business establishment the vendor is, and, if spirits are sold, the population of the county. Additionally, within some series, there are license types, which are also based on the kind of business holding the license. The table below is based on information from the Department of Business and Professional Regulation. The table contains license series designations, license type designations where applicable, the sales the license authorizes, some examples of the kinds of businesses holding such a license and the number of active licenses in each listed series.

Series / types(*)	Sales Authorized	Examples of Businesses	# active licenses in series
1-APS	Off-premise sale of beer	grocery store, gas station	2,420
*D		license issued in dry county	
2-APS	Off-premise sale of beer and wine	1-APS plus department store	13,214
1-COP	On- and off-premise sale of beer	bar, restaurant, private club, boat	807
*D		license issued in dry county	
*X		license issued to boat(no package	
2-COP	On- and off-premise sale of beer and wine	same as 1-COP	4,281
*D		license issued in dry county	
*X		license issued to boat	
3-APS	Off-premise sale of beer, wine & spirits	package store	21
3-BPS	Off-premise sale of beer, wine & spirits	package store	10
3-CPS	Off-premise sale of beer, wine & spirits	package store	38
3-DPS	Off-premise sale of beer, wine & spirits	package store	27
3-PS	Off-premise sale of beer, wine & spirits	package store	1,066
(4-8)-COP	On and Off-premise sale of beer, wine & spirits	restaurant, club, bar, hotel/motel, bowling center, golf club, private club, tennis club, civic center, sports arena, port authority, theme parks	4COP = 7,394 5COP = 232 6COP = 87 7COP = 145 8COP = 82
*S		special hotel, motel, motor court	
*SR		special restaurant	
*H		special hospital	
*SH		special restaurant, package prohibited	
*SPX		special boat, package prohibited	
*SAL		special airport	

Series / types(*)	Sales Authorized	Examples of Businesses	# active licenses in series
*SCX		special civic center, package prohibited	
*SCC		special county commission, package prohibited	
*SA		special act	
*SAX		special act	
*GC		golf cart on golf course operating under COP instead of 11-C	
11-PA	On-premise sale of beer, wine and spirits	symphony orchestra, performing arts centers, theaters	5
11-C	On-premise sale of beer, wine and spirits	private clubs	1,498
11-CT	On-premise sale of beer, wine and spirits	golf, tennis, beach clubs	included in 11-C
11-CX	On-premise sale of beer, wine and spirits	golf cart for 11-C licensees	included in 11-C
12-RT	On-premise sale of beer, wine and spirits	dog and horse tracks, jai alai	27

**III. Effect of Proposed Changes:**

The bill amends the definition of “discount in the usual course of business.” It allows distributors of wine and spirits to offer discounts on the basis of license series and license type.

Alcoholic beverage licenses are divided into license series and license types. One differentiating factor among license series is whether the license is for consumption on-premises, consumption off-premises, or a combination of the two. As such, one effect of allowing discount pricing based on license series is to statutorily authorize giving different discounts to on-premises licensees than are given to off-premises licensees.

License types are based, in part, on the kind of business holding the license. As such, one effect of allowing discount pricing based on license type is to authorize giving different discounts to one kind of business, for example a restaurant, than to other kinds of businesses, for example a bar, bowling center, or hotel.

The bill takes effect upon becoming a law.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

In allowing wine and spirits distributors to offer different discounts based on license series, distributors will be able to offer different discounts to on-premises consumption establishments and off-premises consumption establishments. By allowing discounts based on license type, distributors will also be able to offer different discounts to different types of on-premises consumption businesses. For example, a different discount can be given to a bar than to a restaurant or a hotel.

## C. Government Sector Impact:

DBPR indicates that although this bill will not require any increase in staffing or equipment, it will cause an increase in the workload in compliance auditing. To do this auditing, staff looks at a particular day's discount offers and sales and compares them to verify that the discount was applied consistently among all sales. If discounts were offered based on categories, staff would have an additional step of identifying sales within categories before they could then compare discounts with sales within those categories.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 561.14(3), F.S., allows alcoholic beverage vendors to form a pool buying group to place combined orders and receive greater volume discounts. The members of these groups may belong

to different categories under the bill. It is uncertain how discounts would properly be made to such a pool of vendors.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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