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 1162

SPONSOR: Committee on Regulated Industries, Senators Scott and Geller

SUBJECT: Malt Beverages

DATE: March 23 1999 REVISED:

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

I. Summary:

The bill provides that nothing in the Beverage Law may prohibit licensed distributors of malt beverages from charging different malt beverage prices according to county, the branch of the distributor's parent place of business, quantity sold, or whether a vendor sells malt beverages on-premises or off-premises. The distributor must file all price differentials in advance with the Department of Business and Professional Regulation as provided by rule.

The bill creates an as yet unnumbered section 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. Subsection (6) specifically authorizes the giving of trade discounts in the usual course of business on wine and liquor sales, however, there is no such provision for malt beverage 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.

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. This authorization allows distributors to charge different prices, for example, to restaurants than to grocery stores.

Under current rules and practice, therefore, distributors must file, or “post” quantity differentials at least 10 days in advance and must post county or branch differentials before they take effect. On-premises/off-premises differentials need not be posted under the current rule.

Recently DBPR issued Industry Bulletin 98-05, stating that upon more recent review of this issue, the Department had 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.

III. Effect of Proposed Changes:

Section 1 provides that nothing in the Beverage Law may prohibit licensed distributors of malt beverages from charging different malt beverage prices according to county, the branch of the distributor’s parent place of business, quantity sold, or whether a vendor sells malt beverages on-premises or off-premises. The distributor must file all price differentials in advance with the Department of Business and Professional Regulation as provided by rule. This codifies the current rule, authorizes the current practice of on-premises/off-premises price differentials, and requires that any price differentials be filed with the Department of Business and Professional Regulation.

Section 2 is a severability clause.

Section 3 provides that the bill takes effect July 1, 1999.

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:

Malt beverage distributors will be able to continue to set different prices based on whether a vendor sells for on-premises consumption or for off-premises consumption. According to representatives of the distributors, this allows distributors to give lower prices, for example, to vendors who cost less to service, who pass along price breaks to consumers, or who take part in special promotions. The vendors receiving these lower prices are usually "off-premises" vendors. "On-premises" vendors operate beer taps, which are an expense for the distributors to service, and these vendors tend to charge fixed prices for malt beverages without regard to wholesale price breaks or special promotions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.