**HOUSE OF REPRESENTATIVES**
**COMMITTEE ON**
**REGULATED SERVICES**
**FINAL ANALYSIS**

**BILL #**: HB 315, 1st Engrossed

**RELATING TO**: Alcoholic Beverages; discount pricing

**SPONSOR(S)**: Representative Gay

**COMPANION BILL(S)**: SB 1070

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**:
(1) REGULATED SERVICES YEAS 6 NAYS 0
(2) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE (W/D)
(3)
(4)
(5)

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I. FINAL ACTION STATUS:

HB 315, as amended, passed the Legislature and became Chapter 99-362, Laws of Florida.

II. SUMMARY:

HB 315 amends the statutory definition of “discount in the usual course of business” to allow wine and spirit wholesalers to offer discounts, in addition to discounts based on volume, based on the license series or type held by the retailer. Further, the bill allows malt beverage wholesalers to charge different prices for their product according to county, to the branch of the wholesaler’s parent place of business, to quantity sold, or whether a retailer sells the malt beverages for on-premises or off-premises consumption provided the price differentials are filed in advance with the department.

The bill has no impact on state revenue.

The act will take effect upon becoming a law.

## III. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

The alcoholic beverage industry is characterized by the strict separation between suppliers/manufacturers, wholesalers and retailers. Federal and state law restrict the business relationship between the three tiers. This body of law is collectively known as "Tied House Evil" and is designed to prevent the earlier social evils which were associated with manufacturers owning and operating their own retail establishments [houses], to prevent monopolistic practices and to establish the framework for a comprehensive regulatory system. Basic Tied House prohibitions are located in s. 561.42, Florida Statutes.

Section 561.42, Florida Statutes, prohibits a manufacturer or distributor from having any direct or indirect financial interest in a retail license and also prohibits any gift or loan of money or property and the giving of rebates, credit for the purchase of beverages is restricted, advertising relationships are limited, etc. Subsection (6) does, however, allow the giving of trade discounts "in the usual course of business" on wine and liquor sales. Subsection (10) of s. 561.01, Florida Statutes, provides a definition for the term "discount in the usual course of business" and allows a cash discount or a wine or spirits merchandise discount [buy X cases and get X free] and requires the discount to be offered to all retailers buying similar quantities

Division rule 61A-4.0461, FAC, sets forth criteria for determining what are allowable transactions, and provides that discounts shall be considered unlawful financial aide unless:

(a) The discount is a cash discount given simultaneously at the time of sale;
(b) The same discount is offered to all vendors buying similar quantities in any one business day;
(c) The discount is related to a single transaction; and
(d) In the case of malt beverage sales, all of the quantity of malt beverage required to be purchased in order to qualify for the discount, is delivered to a single location.

Recent discussions between various segments of the industry and the Division of Alcoholic Beverages and Tobacco revealed some confusion regarding the ability of both beer and wine and spirit wholesalers to offer discounts based on whether the account was for "on-premise" or "off-premise" consumption. Much of this confusion apparently stemmed from a legal memorandum attached as part of Industry Bulletin 93-36 relating to *Malt Beverage Price Differentials* as set forth in Rule 61A-4.013, FAC. That interpretation acknowledges that some transactions impose additional costs on the distributor which can be passed through to the retailer, e.g. cash/credit sales, without being an unlawful assist. These pass-through costs are characterized as *price differentials.* The memo appears to permit a price differential between on-premise and off-premise accounts.

After considerable discussion, the Division's review of this issue, as found in Industry Bulletins 98-05 and 98-06, concluded that any discount, other than a discount based on volume, was a violation of law. Recognizing, however, that a more flexible pricing practice was now common throughout the industry, the extreme difficulty with immediate compliance industry-wide, and in an effort to allow the industry an opportunity for legislative redress of this issue, Division Industry Bulletin 98-09 which was issued on December 21, 1998, stayed enforcement until July 1, 1999.

### B. EFFECT OF PROPOSED CHANGES:

The Beverage Law contains numerous alcoholic beverage license classifications within classifications. For example a *4-COP license series* allows the sale of beer, wine and spirits for **c**onsumption **o**n the licensed **p**remises [COP]. However, within that series you may find a number of *license types*, e.g. 4-COP Quota License [which allows COP and package sales] or 4-COP SRX [a special restaurant license which is restricted to COP sales only]. This legislation will allow wine and spirits wholesalers to offer discounts, in addition to discounts which are based on volume as authorized under existing law, to retailers which operate under the same license *series* or *type*.

Further, this legislation will allow malt beverage wholesalers to charge different prices for their product according to county, to the branch of the wholesaler's parent place of business, to quantity sold, or whether a retailer sells the malt beverages for on-premises or off-premises consumption provided the price differentials are filed in advance with the department.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. Section 2 of the bill requires the agency to adopt rules concerning malt beverage price posting.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill allows alcoholic beverage wholesalers and alcoholic beverage retailers increased flexibility when making business decisions concerning product pricing.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 561.01(10), Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Amends the definition of "discount in the usual course of business" to include discounts based on the series or type of license held by the retailer.

**Section 2.** Creates new statutory language to allow price differentials for malt beverages as long as the prices are posted with the department as provided by rule.

**Section 3.** Severability clause

**Section 4.** Provides that the act will take effect upon becoming a law.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Insignificant.

2. Recurring Effects:

Insignificant.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

   Insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   N/A

2. Direct Private Sector Benefits:

   See 3. below.

3. Effects on Competition, Private Enterprise and Employment Markets:

   Alcoholic beverage retailers and alcoholic beverage wholesalers will benefit by this legislation to the extent it codifies some existing industry practices and provides flexibility to negotiate discounts and establish price differentials based on specified criteria.

D. FISCAL COMMENTS:

   N/A

## V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

   This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

   This bill does not reduce the percentage of state tax shared with counties or municipalities.

## VI. COMMENTS:

None.

## VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 11, 1999, the Committee on Regulated Services adopted an amendment to the bill which expanded the definition of "Discount in the usual course of business" to include both license series *and type* and passed the bill unanimously.

The bill was later amended to include the provisions allowing malt beverage price differentials and severability [Sections 2 & 3] and passed the House with a vote of 116 Yeas and 0 Nays on April 15, 1999. The bill passed the Senate on April 26, 1999, with a vote of 39 Yeas and 0 Nays. The bill was signed by the Governor on June 17, 1999, and became Chapter 99-362, Laws of Florida.

See also HB 719. On March 3, 1999, the Committee on Regulated Services considered similar legislation, HB 719, which authorized malt beverage price differentials according to specified criteria. HB 719, as amended, passed the House on March 17, 1999, and died in the Senate Regulated Industries Committee.

## VIII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

| Prepared by: | Staff Director: |
| --- | --- |
| Janet Clark Morris | Paul Liepshutz |

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON REGULATED SERVICES**:

| Prepared by: | Staff Director: |
| --- | --- |
| Janet Clark Morris | Paul Liepshutz |