

STORAGE NAME: h0719a.rs

DATE: March 3, 1999

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

BILL #: HB 719

RELATING TO: Malt beverages; variable pricing

SPONSOR(S): Representative Pruitt

COMPANION BILL(S): SB 1162 by Senator Scott

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) REGULATED SERVICES YEAS 7 NAYS 0

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I. SUMMARY:

HB 719 amends the statutory definition of "discount in the usual course of business" to grant malt beverage wholesalers increased flexibility to charge different prices for their product to different categories of licensees.

The bill has no significant impact on state revenue.

The act will take effect July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The alcoholic beverage industry is characterized by the strict separation between 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 controlling or 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 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."

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. The rule also requires price posting with the Division under specified circumstances.

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 more flexible pricing practices were 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:

This bill amends the definition of "discount in the usual course of business" as found in s. 561.01(10) to allow malt beverage distributors the flexibility to charge different prices to different categories of licensees. Categories of licensees may be grouped by cities, by counties, by branches of a distributor's parent place of business, by license series, by license type and by general business operation so long as the prices set for a particular category are applied uniformly to all licensees in that category.

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?

N/A

(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 malt beverage distributors 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 subsection (10) of s. 561.01, Florida Statutes, to expand the definition of "discount in the usual course of business" to enable malt beverage distributors more flexibility when establishing product pricing. Pricing categories include: cities; counties, whether excluding or including cities within the counties; branches of a distributor's parent place of business; by license series; by license type; and by general business operation so long as the prices set for a particular category are applied uniformly to all licensees in that category.

Section 2. Provides that this act will take effect July 1, 1999.

III. 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:

Unknown.

2. Direct Private Sector Benefits:

See Effects on Competition, Private Enterprise and Employment Markets below.

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

Malt beverage wholesalers will benefit by this legislation to the extent it codifies some existing industry practices and provides additional flexibility to price malt beverages differently for different categories of licensees.

D. FISCAL COMMENTS:

N/A

IV. 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.

V. COMMENTS:

The category "general business operation" used in this legislation does not have a statutory definition, however, the term is commonly used to refer to the principal business or line of commodities sold by the retailer. Supporters of this legislation indicate their belief that the Standard Industrial Classification, the statistical classification standard used in federal economic statistics and also by the Florida Department of Revenue which is published by the Office of Management and Budget, Executive Office of the President, is the classification standard which would be utilized. The committee may wish to grant specific, narrow rulemaking authority to the Division of Alcoholic Beverages and Tobacco in order to define the numerous categories established by this legislation.

STORAGE NAME: h0719a.rs

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PAGE 7

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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