First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0012.01 Christy Chase x2008 **SENATE BILL 13-084**

SENATE SPONSORSHIP

Balmer,

HOUSE SPONSORSHIP

(None),

Senate Committees
State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

CONCERNING THE ABILITY OF AN ALCOHOL BEVERAGE SUPPLIER TO PROVIDE INCENTIVES TO ALCOHOL BEVERAGE RETAILERS THROUGH CUMULATIVE DISCOUNT PROGRAMS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Current rules adopted by the executive director of the department of revenue, acting as the state licensing authority regulating the alcohol beverage industry in the state, prohibit alcohol beverage suppliers from issuing a reward or compensation to an alcohol beverage retailer for

meeting a previously specified purchase goal for the alcohol beverage products that the supplier sells to the retailer.

The bill authorizes cumulative discount programs, under which a supplier provides a reward to the retailer for meeting a previously determined purchase goal. However, the amount paid under a program by the retailer to the supplier for the products must exceed the supplier's laid-in cost for the products sold. Also, the supplier cannot condition the program on the retailer's commitment to prominently display the supplier's product or exclude a competitor's products. Finally, the supplier cannot provide, and the retailer cannot accept, the reward unless the retailer meets the previously set purchase goal.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 12-47-103, **add** (6.8), (30.5), and (37.3) as follows:

12-47-103. Definitions. As used in this article and article 46 of this title, unless the context otherwise requires:

(6.8) "CUMULATIVE DISCOUNT PROGRAM" MEANS A PROGRAM UNDER WHICH A SUPPLIER PROVIDES A PRICE DISCOUNT, ACCOUNT CREDIT, OR REBATE TO A RETAILER AS A REWARD OR COMPENSATION FOR THE RETAILER MEETING A PREVIOUSLY SPECIFIED PURCHASE GOAL.

(30.5) "RETAILER" MEANS A PERSON LICENSED TO SELL ALCOHOL BEVERAGES TO THE END CONSUMER PURSUANT TO ANY OF THE FOLLOWING SECTIONS: 12-46-104 (1) (c), 12-47-407 TO 12-47-409, OR 12-47-411 TO 12-47-420.

(37.3) "SUPPLIER" MEANS A COLORADO-LICENSED:

(a) MANUFACTURER, NONRESIDENT MANUFACTURER, WHOLESALER, OR IMPORTER OF ALCOHOL BEVERAGES; OR

(b) BREW PUB, VINTNER'S RESTAURANT, OR LIMITED WINERY.

SECTION 2. In Colorado Revised Statutes, 12-47-308, **amend** (3) (a) and (5); and **add** (1) (c) as follows:

12-47-308. Unlawful financial assistance - exceptions. (1) (c) (I) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, A SUPPLIER MAY PROVIDE A CUMULATIVE DISCOUNT PROGRAM TO A RETAILER IF:

(A) THE TOTAL AMOUNT PAID BY THE RETAILER FOR THE ALCOHOL BEVERAGE PRODUCTS, LESS ANY REWARD OR COMPENSATION THE SUPPLIER GIVES THE RETAILER IN CONNECTION WITH THE CUMULATIVE DISCOUNT PROGRAM, EXCEEDS THE SUPPLIER'S LAID-IN COST, AS DEFINED IN STATE LICENSING AUTHORITY RULES, FOR THE ALCOHOL BEVERAGE PRODUCTS SOLD; AND

(B) THE CUMULATIVE DISCOUNT PROGRAM IS NOT CONDITIONED ON A RETAILER'S COMMITMENT TO PROMINENTLY DISPLAY THE SUPPLIER'S PRODUCTS OR EXCLUDE A COMPETITOR'S PRODUCTS.

(II) A SUPPLIER MAY PROVIDE, AND A RETAILER MAY ACCEPT, A PRICE DISCOUNT, ACCOUNT CREDIT, OR REBATE UNDER A CUMULATIVE DISCOUNT PROGRAM ONLY IF THE RETAILER MEETS THE PREVIOUSLY SPECIFIED PURCHASE GOAL.

(3) (a) It is unlawful for any person licensed to sell at retail pursuant to this article or article 46 of this title to receive and obtain from the persons or parties described and referred to in PARAGRAPH (a) OF subsection (1) ~~(a)~~ of this section, directly or indirectly, any financial assistance or any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcohol beverages within the premises or from making any structural alterations or improvements in or on the building on which such premises are located. This subsection (3) ~~shall~~ DOES not apply to:

(I) CUMULATIVE DISCOUNT PROGRAMS PROVIDED BY SUPPLIERS

TO RETAILERS;

(II) Signs or displays within ~~such~~ THE LICENSED premises; ~~or to~~

(III) Advertising materials that are intended primarily to advertise the product of the wholesaler or manufacturer and that have only negligible value in themselves; or ~~to~~

(IV) The inspection and servicing of malt or vinous liquor-dispensing equipment to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.

(5) It is unlawful for any owner, part owner, shareholder, stockholder, or person interested, directly or indirectly, in any retail business or establishment of a person licensed to sell at retail pursuant to ~~the provisions of~~ this article or article 46 or 48 of this title to enter into any agreement with any person or party or to receive, possess, or accept any money, fixtures, supplies, or things of value from any person or party, whereby a person licensed to sell at retail pursuant to this article or article 46 or 48 of this title may be influenced or caused, directly or indirectly, to buy, sell, dispense, or handle the product of any manufacturer of alcohol beverages. This subsection (5) ~~shall~~ DOES not apply to displays within ~~such~~ THE LICENSED premises OR TO CUMULATIVE DISCOUNT PROGRAMS.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.