

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

**IN RE: Request for Variance from
Florida Administrative Code Rule 61A-2.014**

**Petitioner: TGI Friday's, Inc.
Counsel for Petitioner: Gray Robinson, P.A.
401 E. Law Olas Blvd., Suite 1850
Fort Lauderdale, Florida 33301**

ORDER GRANTING PETITION FOR WAIVER

This matter came before the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("Division"), for consideration of a Petition for Waiver filed March 28, 2008, pursuant to Section 120.542, Florida Statutes. Petitioner requests a variance from the following pertinent portion of the rule:

Florida Administrative Code Rule 61A-2.014: The following persons or entities as described below shall file a set of fingerprints at the time of making application for a beverage license or at the time an interest is created after a license has been issued ... (6) All directors or officers of a corporation with an interest in an alcoholic beverage license except when: (a) The stock of the corporation is regularly traded on a national exchange; (b) The corporation is an insurance company as defined by the Florida Insurance Code; (c) The corporation is a bank, credit union, or savings and loan association chartered by this state, another state, or by the United States.

Specifically, Petitioner requests a variance from the application of the rule to Petitioner's positions of Assistant Secretary, Assistant Secretary (acting as in-house counsel), Vice President

of Operations, and Vice President (relating only to those locations outside of Florida),

Vice President of Strategic Projects, Vice President of International Operations, Vice President of Marketing, and Chief Operations Officer.

After a careful review of the Petition, the Division makes the following findings and conclusions:

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Submitted to
F.A.W. 5/30
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FINDINGS OF FACT

1. Petitioner's positions of Assistant Secretary, Assistant Secretary (acting as in-house counsel), Vice President of Operations (with oversight responsibilities relating only to those locations outside of Florida), Vice President of Franchising, Vice President of Strategic Projects, Vice President of International Operations, Senior Vice President of Marketing, and Chief Operations Officer are not involved in the operation, control, or management of any Florida hotel or of any alcoholic beverage sales at a Florida location.

CONCLUSIONS OF LAW

1. Section 120.542(2), Florida Statutes, provides as follows:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of the section, "substantial hardship" means a demonstrated economic, technological, legal or other type hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.


2. The above-quoted statute places the burden upon the petitioner requesting a variance to demonstrate that the purpose of the underlying statute would be or has been achieved by some other means in the petitioner's case. In this particular case, Petitioner has the burden of demonstrating that the positions for which a variance is requested are not involved in the operation, control, or management of any Florida hotel or of any alcoholic beverage sales at a Florida location, that granting this variance would not create a dangerous precedent, and that the proposed variance is consistent with the principles of public welfare articulated by the Rules.

3. Based on the foregoing, the Division concludes that Petitioner's request for variance meets the burden of demonstrating that the principles of public welfare and the purposes provided by Rule have otherwise been met.

4. Approval is contingent upon Petitioner ensuring that the positions for which a variance is requested do not engage in the operation, control, or management of any Florida hotel or of any alcoholic beverage sales at a Florida location. Approval applies to Petitioner's positions of Assistant Secretary, Assistant Secretary (acting as in-house counsel), Vice President of Operations (with oversight responsibilities relating only to those locations outside of Florida), Vice President of Franchising, Vice President of Strategic Projects, Vice President of International Operations, Senior Vice President of Marketing, and Chief Operations Officer only. Any violation of the variance is the equivalent of a violation of the rule and may result in a rescission of the variance and subject Petitioner to disciplinary sanctions as enumerated in Chapters 561 and 562, Florida Statutes.

WHEREFORE, and for the foregoing reasons and with the aforesaid restrictions, Petitioner's Petition for Waiver is GRANTED.

DONE AND ORDERED this 21 day of May, 2008.



Cynthia Hill, Director
Division of Alcoholic Beverages and Tobacco
Dept. of Business and Professional Regulation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Robert F. Lewis, Esquire, and Marbet Mier, Esquire, Gray Robinson, P.A., 401 E. Las Olas Boulevard, Suite 1850, Fort Lauderdale, Florida 33301.

By:

Date: