

Legislative History for Connecticut Act

<u>HB 5081</u>	<u>PA 287</u>	<u>1972</u>
General Law 167-168, 170-172, 178-181, 182-194, 197-198, 214-218		29p
House 2776-2795		20p.
Senate 2543-2556		14p.
		TOTAL 63 p.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
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it would become effective October 1st after the legislature is out of session so I have no idea. We called Washington as late as yesterday to see if they had any idea when that would be in and there is no actual date set for it.

? I repeat. Do you have any quarrel with the date of January 1, 1973?

Commissioner Dunn: No, sir.

Rep. Webber: I think also you may not realize that the federal regulations are...; there are no federal regulations per say. You know what I mean? Does that answer your questions? Federal regulations do become effective before our date; we naturally will prescribe to their regulations.

Commissioner Dunn: It is possible too, and we are researching that, that it is possible that we could accomplish the same thing under the hazardous substance act by making it a regulation but this we would have no quarrel with. I would rather have it redundant than not have it.

Rep. Webber: Fine.

Commissioner Dunn: The next bill we would comment on.

Rep. Webber: Are there any other questions from the members of the Committee on this matter to Mrs. Dunn? No.

Commissioner Dunn: The next one is, in order as you listen, the next rule HB 5074, an act concerning Truth-in-accommodations billing. We have no quarrel with the language, we have no quarrel with the intent. We do point out, however, that this is not identical to any motion now being discussed, now under the jurisdiction of my department, and we would anticipate that it is possible, with an effective date of July 1, 1972, it might be necessary for stack. Now, how many it would take is a little difficult for me to figure at this point. I don't know, but we do point out that we may need a.....or two to go about the rooming houses, boarding houses and so forth to check these particular type things. Other than that we have no quarrel.

HB 5081, an act concerning fairness in franchising. This one is by ...inaudible...is an authority on this thing; I am not. This is HB 5081 and that concerns fairness in franchising; and he may speak for the department.

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Attorney Sills: First of all Mr. Chairman I would like to strike the word authority as I am not. I understand the purpose of this

Rep. Webber: Excuse me. Would you change seats with the Commissioner now so that all the people in the room can hear you. Please raise your voice a little bit.

Attorney Sills: What you have done in this bill, Mr. Chairman.

Rep. Webber: I have done nothing, the bill was given to us; I have done nothing with the bill.

Attorney Sills: What the bill tries to do is to establish the ground rules for the execution and performance of any franchising agreement and what they have written in here are the bill basis contained in Section 3 of theact, which prohibits exclusive dealing; and they have also written in provisions of Section 2 a, d and e of the Robinson-Patten Act. They in doing that, they have used language which is a departure from the federal language.

Rep. Webber: Does anybody have that bill? Do you have it there? Excuse me, can we get copies of that bill?

Commissioner Dunn. I am not sure if copies have been printed yet. Wait on that sir.

The next one is Senate bill 41, concerning certain merchandising schemes with enforcement by the commissioner of consumer protection and the attorney general; 41.

Attorney Sills: As you know Mr. Chairman, the department submitted some time ago to this committee a proposed bill involving consumer protection which embodies within it what is attempted to do here with one exception; on Section 2 b, you have the bill which contains language which prohibits referral selling, which we have in a great number of cases in the State of Connecticut. Actually, as far as 2 b is concerned, I think it's a step forward in that direction. So far as the language is concerned in 2 a, it defines a prohibited act. I again remind the Committee that in the bill we propose we use the simple language of the Federal Trade Commission Act, unfair methods of competition; the unfair, deceptive acts or practices in commerce. Now the reason we did that is the experiences of anyone connected in this, that the more you attempt to point out in detail the particular practice that you are trying to reach the more difficulty you create in its importance.

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2 a of the proposal bill that we submitted.

Mr. Chairman: Well, if we can take that bill out of your proposed bill and you give us a separate bill it would be much more helpful to the Committee. Don't you think so.

Rep. Webber: Well, there is no use discussing the various words used as they are material fact and intent and so forth. Then we get to Section 2 b where you are attempting to reach referral sales as we know them. The question arises on line 42 "procurement of prospective customer". The question of what a customer is. It might be procurement of prospective customers or other parties.

Attorney Sills: It all depends what the procuring is for, then you can determine the customer. Do you know what I mean.

Rep. Webber: Well, I didn't read that in this bill. And then you get to Section 3, and we will go hurriedly. One of the powers given here not only to seek an injunction or a cease and desist order if you will, they also provide for a petition for an order directing restitution in appropriate instances or both. If you recall in a bill we gave you originally, again the FTC Act, we went a step further and I think it is better procedure were where we empower the Court to appoint a receiver to marshal and collect such money as may be needed that the Court may direct to pay to those who were deceived. And we further provide, probably I should make this comment with respect to the other bill; I guess I will. That's our only comment on this. We will submit what you suggested.

What is the next bill we have?

Commissioner Dunn: Do you have copies of 5081 so we may return to that? It is an act concerning fairness in franchising.

Rep. Webber: Well, this bill as we read it is simply laying down the ground rules for the solicitation, execution and performance of any franchise agreement. And in there, so far as we are concerned, you have established, or this bill will establish in Section 4, certain acts that the franchisor cannot do and I turn to line 75, and then we go down to line 77 "prohibit directly or indirectly the right of free association among franchisees". Now the current Sherman Act now in effect in this state would more than dispose of any combination of that kind. Now 78 "requiring a franchisee to purchase or lease goods or services of franchisor or from approved sources of, unless and to the extent" and so forth that the franchisor satisfies the burden of proving that such restrictive purchasing agreement.

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are reasonably necessary for a lawful purpose, justified or reasonably necessary for lawful purpose justified on business grounds, and do not substantially effect competition. What this Section 3 has done is first of all if you are talking about exclusive dealing as prohibited by Section 3 of the Clayton Act, there are no such contingencies such as this except where it must unreasonably effect competition. Now, if you get to the burden of proving such restrictive purchasing agreements are reasonably necessary, now you are getting into a phrase of the Landam Act which simply states this; that if I have a copyrighted product and I enter into a licenses agreement with anyone of you to sell that, because it has a copyright, it has a trademark, I must exercise some quality control over your manufacturer of that product bearing this name. I don't know whether that's the intent of this or not; I don't know. But I do know that if there is any attempt to engage in exclusive dealing over and beyond the necessity of some quality control in the product it would be illegal, but these conditions would make it difficult to enforce, and I would be glad Mr. Chairman to give you a memorandum on that. It's strictly Section 3. I can give you an example. Most of these ice cream outlets, let's just take an example, where licensed order require them to buy their wooden spoons from a certain source or paper cups, what possibly does that have to do with the careful operation of that plant to meet certain standards that he lays down. It simply insulates all of those licensees from buying from anybody else. That's exclusive dealing. If that's what this is leveled at, I don't think it reaches it. And then at the bottom if you are again talking about referral selling, which you have mentioned in the section of the other act, engaged directly, and I am talking about line 91, engaged directly or indirectly in methods of competition, and that's all. Now, there is no reference to unfair, deceptive acts or practices so I in reading this bill, the department feels that this is not an attempt to reach any referral selling at all, it couldn't. In other words, the very.....of referral selling, is that I promise you, Mr. Chairman, that you will make \$100,000 a year, you give me \$3,500 and you are a master distributor. That's a deceptive statement, not an unfair method of competition. And again, in lines 84, 85, 86 and 87 you have written into the Robinson-Patman Act, which prohibits price discrimination by a supplier among competing customers except under certain conditions where he can prove a cost saving in view of manufacturer delivery, volume or what; that's all spelled out in the act. But in this, you permit him to discriminate unless and to the extent that the

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franchisor satisfies the burden of proving that any discrimination between franchisee is reasonable. There is no such thing in the Robinson-Patman Act as a reasonable discrimination. It is either legal or illegal depending upon whether the conditions are met. Now it is possible you could write in the conditions of the federal law into this; if that's what you had in mind; I don't know. It is based upon proper and justifiable distinctions. What is a proper and justifiable distinction? Those are words of art that have no meaning to me I think that's about all of our comments on this, but I will give you a memorandum.

Attorney Sills: This is directed to Commissioner Dunn. If this bill should become into law, implementation will be the responsibility of your agency.

Commissioner Dunn: That's not mentioned, sir.

Rep. Webber: It's simply a law that defines that acts conducted in connection with the franchise contract, the execution of one or the attempt to cancel one are illegal under certain conditions.

Atty. Sills: How does the franchisee have due process if any, or who does he complain to?

Rep. Webber: It creates a civil action for him.

Atty. Sills: Only a civil action?

Rep. Webber: Only a civil action, that's all. Why don't you revise this and we can get back to this.

Atty. Sills: Am I to understand that in the revision are you attempting to reach the prohibitions of the Clayton Act and the Robinson Patman Act? If that's what it is, yes it can be done.

Rep. Webber: Also, I think the responsibility should be in your office.

Commissioner Dunn: The next is bill 38; act concerning consumer class actions, and again Mr. Sills is an expert in that.

Attorney Sills: Well again, this bill in its entirety has nothing to do with the department of consumer protection. It creates a civil action for a number of plaintiffs to bring an action in one single suit. However, if there is

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Mr. Covellis: You can't take that away Mr. Webber, and we thank you for your support. But when we get into three family and above, we are now getting into a different classification of fire resistance ratings and so on and expertises in the craftsman. I am very much afraid that if you look at the residences as a whole I think that the way this bill was written that the owner of the Hilton Hotel could then perform work if he lived there because a hotel under our building code is a residence as is a rooming house, boarding house or anything else.

Now the problem as I see this is that as we could into the multiple end of this we can very well expect our building officials to become instructors to take the homeowner and begin to lead him by the hand and say well this wrong, and this correct; and I think they will waste a lot of time. I don't know your intention. If it's the Committee's intention to limit this to say one and two family which is in a definite category, a type 4b construction under our building code; I would come out and I would say I am very much in favor of it. If we go beyond that second family I would have to oppose. Thank you sir.

Rep. Webber: Thank you very much. Is there anyone else from a department? All right if now, Mr. Brown.

Mr. Brown: Thank you Chairman. My name is J. Thomas Brown. I represent Burger King Corporation of Miami, Florida. You have got to realize it is very important to me to be here or else I would not have come. We are speaking in opposition to 5081. I also speak in behalf of the International Franchise Association. Opposition is generally this: we concur with Mr. Sills recommendation that most of the language of Section 4 repeats portions of the various anti-trust bills and to that extent should be deleted. We also think the commission's attention, that the bill, directs most of its emphasis towards termination clauses and the, as you know that bill was sadly rejected, subcommittee of last year on the fact that committee could not develop proof of wide-spread termination of an arbitrary nature. The association I represent does speak in favor of a disclosure type legislation and to that extent we have promulgated an act success in adding such acts introduced and passed in California, one coming up in Texas and also in several states. Approximately twenty states that are opposing franchise bills. Company like Burger King is faced with the possibility of having fifty state legislators act regulating our business as long as the United States government. It would be intolerable for us to submit franchise agreements that would be that diversified in nature.

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Mr. Brown (cont): I would like to call your attention to paragraph 24, sorry line 24 where the word oral is used. This particular paragraph is taken in total from the New Jersey bill which proposed last year and just became law within the last month. That New Jersey bill finally passed knocking out the word oral so that oral franchisers would not be a subject of the state's intention, being too difficult to regulate.

Rep. Webber: You said a minute ago Mr. Brown your association or your company?

Mr. Brown: My company.

Rep. Webber: Promulgated some kind of a measure that you thought...

Mr. Brown: I am a member of the legal legislative committee of the International Franchise Association and we have spoken before many state legislations on a matter of disclosure legislation which we prefer. I'm sure you are aware that the FtC is conducting hearings starting next Monday and continuing for at least two or three weeks now on the matter of disclosure. Now, this is a type of legislation which has passed and has stood the test of the court.

Rep. Webber: Where?

Mr. Brown: In California. This is contrasted to regulating the relationship between the franchisor and the franchisee.

Rep. Webber: You come to this committee as a result of a lot of complaints from franchisees in our state in that they were shabbily treated, they were not given the company's franchisor did not live up to promises and so-called commitments and based upon the public hearings that we have held and this is not new with us, we have held public hearings on this matter for the last two terms. Some of these guys, the franchisees are really the victims of a bad situation. Their lifesavings went down the drain because the corporation decides very quickly or without very little notice to remove them; because the light bulb might have been out or some other excuse. What we are trying to do certainly is not to impose our regulations on you the franchisor, is that the word, but certainly we feel for these franchisees, particularly gas stations and others who have been victimized literally based upon the testimony they gave us. From what we checked out they are not entirely wrong. They have some very valid complaints. We don't want to tell you how to run your business, that is certainly not the intent of the Committee.

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Mr. Brown: I agree with that particular finding of the Committee and many unjust determinations, but these have been particularly attributed to the gasoline station industry where the term of franchise is one year or less. Now, in our instance, we franchise for fifteen or twenty years depending on the term of the lease that the franchisee is successful in getting. Now we say to you that your attempt to remedy the dilemma of the one year franchisee or the sixty days franchisee damages the franchisor who gives a franchise for fifteen or twenty years and we construe this particular act to give a perpetual franchise.

In other words, failure to renew is equated with unjust determinations. So if we give a man the benefit of a bargain, of fifteen or twenty years, we think after that term his opportunity has been had to get the benefit of his bargain, that we should not be or have an opportunity to make a new deal, or strike a new deal with him at that time. So the dilemma of the gasoline station industry has branded all other franchise corporations, and of course you know, there is legislation which can be directed to this particular type of industries where the abuse is prevalent. Well, they have the Faness and Day Act for the automobile dealers,...inaudible... Of course, you are proposing legislation to effect the food industry; I heard it today on the agenda. I know that this is a question you seriously consider, but let me give one more point to you sir. One of the failures of the act as proposed is that it does not address itself to the fact that the law as it is written or proposed here appears to have retroactivity attributed to it. In other words, it will effect all franchisors now in existence. This has been striken, this type of regulation has been striken in Puerto Rico and most recently in the state of Delaware where the franchise law there tries to apply retroactivitly, a case involving Four Roses franchise.

Rep. Webber: You mean by the court it was striken.

Mr. Brown: Yes sir, the Supreme Court of Delaware upheld the lower court and was taken to the Supreme Court of the United States and they refused....., so the decision was that the retroactive part of it constituted a deprivation of property without due process and that is, consequently the law in the Delaware, now of the United States Supreme Court and I would think the state here would look at that particular clause and insert it in this law. Now, it was also brought up in New Jersey and have taken that message and have made that a part of New Jersey law an enacted. I'm suggesting it to you sir.

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Rep. Webber: Do you know which state presently is considering or might have on their statutes now a bill that you would call the ideal franchising measure that would have some built in protective devices that you people are trying to help.

Mr. Brown: Well, the California bill would be of that nature. We helped draft that; it's very comprehensive. We believe that the franchisee, his critical time is at the time he enters this relationship. If he does not know what he is getting into then it doesn't help him later on to bring a cause of action against a franchisor who has flown the coop. Franchisors under disclosure laws have to tell much about their financial relationship, the fact whether or not a sport figure is dominating scene; they have to give even a prospectus in the state of California. Then we take the position that there are ample remedies under Sherman-Clayton and Robinson-Patman act and the proposed new FTC Act to give a franchisee a remedy without adding another one to it.

Rep. Webber: Did I understand you to say that you participated in drafting the California bill?

Mr. Brown: Yes, sir.

Rep. Webber: Would you be kind enough to make a copy of that bill and make it available to the Committee?

Mr. Brown: I will make another copy of it.

Rep. Webber: That subcommittee, do you mean one of our subcommittees couldn't.....inaudible...

Mr. Brown: The what bill? There are three bills pending in Congress still. That's the Hartt bill, the Williams bill and the MacIntire bill; all on the question of franchising and it is not likely that any of these will come out ~~direct~~ the FTC is promulgating a rule which they will be holding here in short, there is about ninety per cent chance it will come out altered of course by the testimony. But when they decide to promulgate a rule, it doesn't have to be passed on by Congress, they just say it's a law.

Rep. Webber: Is that similar to the California bill?

Mr. Brown: Yes it is. It's very much similar to it.

Rep. Webber: Any other questions. I thank you Mr. Brown.

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Mr. John O'Brien: My name is John O'Brien, Executive Director of the Connecticut Petroleum counsel, an organization of petroleum marketing companies who supply the service station dealers in this state. We oppose house bill or committee bill 5081 on franchising because we do not think it is in the best interest of the people of the state of Connecticut nor is it in the best interest of the petroleum industry nor in the best interest of all service station and dealers.

Before we proceed, we think it appropriate to explain the relationship between the particular service station dealer and his supplier. The service station business is not analysis to the common conception of the franchise business. A potential service station dealer who desires to sell petroleum products to the motoring public does not purchase a franchise and does not pay a franchise fee to the supplier.

Rep. Webber: Does he have to put a certain amount of money into that station for improvements?

Mr. John O'Brien: The answer to that is in the next part of my statement, and I would like to read it. I have copies for the Committee.

Moreover, a qualified dealer candidate typically will be trained by his supplier and paid for his time while he is in training. He then leases his station from the supplier, a landlord-tenant relationship as opposed to a franchise relationship. Many suppliers now give three year leases as a matter of policy. Typically, the dealers' investing in the service station will consist only of his inventory, which readily is saleable, and his tools which also are marketable and moveable. This investment in many cases is financed by the supplier. The supplier on the other hand has made a large investment in the service station facility. One supplier estimates that it cost approximately \$275,000 to \$300,000 to build and equip a new service station today. While individual cases may be significantly higher, these figures are typical of the industry in general and are increasing. Thus for a relatively small investment for inventory and tools needed to conduct the business, an individual can lease and operate a quarter million dollar business property. We know of none other industry where a small businessman without substantial capital, extensive prior training or higher educational background can find such an opportunity.

One further point about the dealer-supplier relationship should be considered. The supplier profits only if a great number of his dealers profit. With a large investment a supplier has in building a station and training

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the dealer, it is obvious that the supplier has a strong economic incentive to help the dealer succeed and no incentive at all to see a dealer failure. Indeed, it is inconceivable that a supplier deliberately would set up obstacles not in his dealer's best interest. To do so only would hurt them both. As evidence of this, the majority of dealers in Connecticut prosper under this relationship. Many have been with the same supplier for over twenty-five years. Now, against this background I would like to make some general comments about this bill, and then to mention a few specific problems we see in it.

A definitive statement regarding bill 5081 is not possible because of the imprecise nature of its language and the intended uncertainties of its meaning and the eventual impact to those points were discussed by the lawyer for the Department of Consumer Protection earlier. There are, however, certain general comments which can be made. Number one, we think it is inadvisable to consider such far-reaching legislation without a showing of compelling need. We do not think that such a need has been established. Our jurisprudence has historically recognized the right of customer selection unless an anticompetitive scheme or plan was involved in which case remedies exist under the anti-trust laws, or unless the practice was grounded in discrimination based on race, color or some other prohibited classification. Number three, there is some opportunity presently for a supplying company, a franchisor if you will, to help make a franchisee responsive to the needs and demands of the community. When a consumer or an official with responsibility for consumer affairs contacts an oil company about the practices or conduct of a dealer, they expect assistance. They want action in resolving the situation. Supplying companies are often able to assist. This point was recognized editorially in a major newspaper in a nearby state. Speaking in opposition to a franchise legislation proposal, they also stated that it would encourage a public-be-damned attitude among franchisees and that the consumer would ultimately suffer. It is apparent to us that this legislation will not benefit the citizens of Connecticut, but would indeed have a reverse impact. Inefficiency in a market place would be perpetuated under this type of legislation. A free market economy is based upon competition. This bill will have the effect of practically eliminating competition for a franchise with a result of individuals ready, willing and able to do the job and better suited than an incumbent will be frozen out.

As you are aware, many companies actively recruit minority entrepreneurs. Programs to encourage the establishment of

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minority enterprises can be severely restricted if a better qualified minority individual, who is better positioned to the responses of the needs of the particular customer segments is prevented from taking advantage of opportunities which would otherwise be available. Legislation which unreasonably encumbers a franchisor in his relationship with franchisees will encourage direct control and operation of units within the state. This could effectively limit the growth of franchising in our state and restrict opportunities for entrapneurship. Franchise legislation has been and will continue to be considered on a federal level. No broad legislation governing the supplier-customer relationship has yet been enacted although extensive hearings have been held and diverse opinions sought. It is interesting to note that the Justice Department and the American Bar Association have opposed such legislation as not constant with the anti-trust laws. The Federal Trade Commission has scheduled this month, as we have heard earlier, hearings on a proposed trade regulation rule covering franchising. Without commenting on the specifics of their proposal, it is all right to say that their approach is to require full disclosure by the franchisor and to the potential franchisee or investor. We think this is a more enlightened approach with which will obviate than insure litigation between parties to a franchise relationship. While the above comments are directed to the inadvisability of this kind of legislation, House Bill 5081 has a number of specific defects, some of which I would like to mention. It would for all practical purposes cover all customer-supplier relationships without limitations. There is an unreasonable interference with constitutionally guaranteed freedom to contract in the absence of any compelling need to do so. It would require a franchisor in any termination to buy back all tools, inventory, equipment, etc. regardless of merchantibility and regardless of where or from whom purchased. It shifts to the franchisor the burden of justifying business practices now permissible under federal anti-trust laws. For example, differences in charges or rentals must under existing principles be shown to be discriminatory and anti-competitive. The burden is on the person challenging the practice. Defenses such as the needing of competitive offers or the passing on of cost savings available under federal anti-trust laws would not be available here. The consumer would be deprived of the benefit of competitive practices. There is no imposition or recognition of a concomitant obligation on the franchisee to act in good faith in his dealings with the franchisor. A former chairman of the Federal Trade Commission stated that it was impractical to attempt to govern or regulate a great variety of franchise arrangements in any single bill. The significance of this observation

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is particularly apparent to us when we contemplate the case where an investment of hundreds of thousands of dollars is turned over to an individual who has little or no investment only to be faced with a law that purports to vest in that individual the dominate interest in the property. In conclusion I would like to reiterate that we believe the purposed legislation is unnecessary and ill-advised, that it raises serious legal and constitutional issues, that it is contrary to the best interests to the citizens of the state of Connecticut, and that particularly as it might apply to our industry, it ignores the reality of our business. Now Mr. Chairman, in previous years my organization has been criticized for not having people who are in this marketing field everyday here when you hold these hearings. We have been through this a couple of times, and I am here today to state that we have several petroleum marketers in the room and we have one who can answer any kind of marketing questions or franchising questions that you might have. His name is right beneath mine on the sign up list, Mr. Hewitt of the Shell Oil Company. He has a statement that he would like to deliver in behalf of his company, one of the biggest marketing companies in the state. It's a very aggressive company and I think he would be able to tell you just what does go on in the beginnings and the terminations of leases. Thank you.

Rep. Webber: Mr. O'Brien, would you file that statement?

Mr. O'Brien: Yes.

Rep. Webber: Mr. Hewitt.

Mr. Hewitt: Before we get started I didn't realize that my credentials were that great from Jack O'Brien. Mr. Chairman and members of the Committee, my name is Herbert H. Hewitt and I am District Manager of the Shell Oil Company and I'm responsible for sales to most of the Shell Service Stations in Connecticut. My district does not have lower Fairfield County, and I have offices in East Hartford and I am a resident of Simsbury. We endorsed the position taken by the Connecticut Petroleum counsel concerning this legislation and we oppose the legislation because we do not think it's in the best interest of the public and the best interest of all service stations and the best interest of our own company and in the best interest of the State of Connecticut; nor really is it in the best interest of the petroleum industry. As Mr. O'Brien of the counsel has stated we oppose this legislation principally because we believe that its ultimate effect will be to encourage inefficiency and perpetuate mediocrity in the petroleum

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product market place. Very briefly I would like to tell you some of our arrangements with out dealings and to outside several points in the bill to which we are opposed. Now we have had experience in the present type of leasing arrangements with our dealers for over forty years and we think it's a profitable arrangements.

Rep. Webber: Are they all happy dealers?

Mr. Hewitt: If I can finish the statement, I'll be very happy to answer any question which you would like Mr. Webber. We think that's it, that it is a very profitable arrangement both for us and the dealers and the consumers who's able to purchase gasoline at prices which are a bargain when compared to the price of other things today. Our experience has proven that a well qualified independent dealer because he is operating his own business, works hard and intelligently to develop sales volume and takes a great interest in maintaining the property and equipment. Such a man will realize the greatest volume of business and profit for himself and for us for we are only as subbessful at each location as is the dealer who operates that location. Now, for these reasons the independent dealer is the keystone to our business. Often a dealer will occupy a station that represents a \$300,000 investment on our part and to find the right dealer requires advertising, screening, training, supervision and a break-in period. We look for the man who is going to be an aggressive dealer and who in the process of succeeding will certainly further our investment. This process normally cost the company in excess of \$6,500 for each new dealer. If the right man is found, how much money does he need to obtain a Shell service station? Normally as little as \$5,000 for it will qualify him; and this initial investment will be used to buy the stock, the gasoline, the batterys, the tires and some accessories; all of which he buys at wholesale prices; and in addition he buys his own tools. He must have cash with which to pay his help until he is able to generate an income from the sale of his inventory and his own labor. Thus for the most part his cash investment is for parts goods which he owns and controls. He is in a very liquid position with very, very little financial risk; and if a prospective dealer doesn't have the necessary investment, we usually give him some financial assistance. Last year we gave financial assistance to more than seventy-five percent of our new dealers and without this investment support, most of the small entrapeneurs that approached us for service stations would have been prevented from entering into the business. Thus the dealer with approximately \$5,000 in his pocket is ready to take over a quarter of a million dollar investment

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that will generate cash sales of over a half million dollars per year. At present all of our dealers, and I would like to really emphasize this point, at present all of our dealers are given a three-year lease. This lease can be terminated by the dealer without penalty at any time on ninety days notice. Shells only right to terminate, only right to terminate, comes at the end of the dealers first twelve months at the station. This first year has given us an opportunity to determine if we have the right man for the job. The three year lease is designed to give him confidence in the security of his relationship with Shell. The type of legislation that is being proposed by this bill can change all of this. It can cause companies to reevaluate their marketing posture. We feel that the limitations in this proposed bill will tend to lessen our ability to protect the value of our trademark and, and to generate a reasonable return on our investment. It would be difficult to terminate those dealers who would not observe quality and service standards.

In the case of our gasoline dealers, the bill would tend to lessen competition which ultimately works for the disadvantage of its public. I might say in two Canadian provinces where the gasoline service industry was over regulated, a lack of competition among the dealers developed, and service declined and prices on gasoline increased. Ultimately, this type of legislation will tend to degrade the quality of the service station in Connecticut, and will effect not only the citizens of this state but the millions of tourists who visit our state every year. A bill that protects and perpetuates mediocre dealers which this bill will do, results in poor service, high prices, bad judgment and customers and tends to diminish the image of the suppliers brand which will effect every other dealer within this state. When a motorist runs into a bad dealer, his impression of that dealer is often regulated or related rather to his supplier. This bill leaves us little or no room to respond to your complaints as customers when you are overcharged, when you receive poor service or you are a victim of a fraud.

Now there are several technical problems with the bill, and I am not an attorney; I don't pretend to be and we are going to submit to you our specific objections prepared by Shells legal department and briefly these objections cover the wording of the bill, its relationship to federal law, the problems of his administration and the impact on the judicial system of this state. I'll submit that to the law clerk at the end. Now if this bill is passed and enacted into law, the quality and standards as

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we as oil companies are seeking will be removed. We as good corporate citizens want clean service stations selling quality products at a fair and honest price. We want our stations to be known as those that are in the pursuit of excellence and a bill that would perpetuate mediocrity can only in the long run work to the disadvantage of the public. We are striving to up-grade, modernize and keep up with those things that the public demands from us. In a very positive way Shell has reacted to the needs and wants of the community. For example recently we won two awards from the city of Manchester for cleanliness and landscaping. We have just built a brand new, first of its kind service station in the redevelopment area of East Hartford. We are participating with the redevelopment authorities of New Britain to revitalize their downtown area. New Haven, in New Haven our unit across from Yale University has just been rebuilt. Units like this cost money. A bill such as 5081 would dampen our incentive for investment in Connecticut. All of these communities demand the finest type of dealers to be installed in these units so that together we can provide the community with what they want, which is quality products, service and clean stations. Economically, we don't want to terminate any dealers, except for good cause. As we pointed out before, the cost to replace a dealer runs into thousands of dollars; yet sometimes we must reluctantly replace a dealer for it is our obligation to the public to assure them of the best service, cleanest stations and satisfied customers.

In conclusion I would urge you to vote against 5081. It seeks to give an advantage to one party to an agreement without any off-setting benefits to another party or to the consumer. This bill is a vehicle to protect special interests and can only result in perpetuating uneconomic and inefficient dealerships; the cost of which must ultimately be born by you and me the consumer. Now if you have any questions I would be very happy to answer them and in the later testimony if there are any specifics about Shell dealers or their relationships, I would be most happy to meet with the committee and answer them.

Rep. Webber: Are there any questions?

Rep. Newman: You set gallon quotas for these franchise dealers, that is how many gallons they have?

Mr. Hewitt: You mean in a formal way?

Rep. Newman: Yes. Have certain periodical promotions for them to sell gas?

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Mr. Hewitt: And these promotions are presented to the dealer and it is up to him to accept or reject it.

Rep. Newman: Your company doesn't push them to sell an amount, certain amount of gas or anything like that?

Mr. Hewitt: Oh sure, you would advise them as a matter of competition that you want his station to be better than anybody else's station but certainly I don't think you would go in with a strong-arm method of persuading him to establish sales.

Rep. Webber: Well, that's not the kind of testimony we received from operators of gasoline stations; now I am not referring to Shell frankly.

Mr. Hewitt: Well that's all I can speak for.

Rep. Webber: For example, does your company ever require your dealers to buy stamps, premiums?

Mr. Hewitt: No sir. But I would say this. We would suggest to a dealer that if in a competitive market he finds that this would give him an advantage; yes, we would suggest it. We kind of see ourselves as a counselor in a business in say hey, this guy up the street is doing so and so, don't you think that you might want to respond in a competitive way. But the ultimate decision is his.

Rep. Webber: Well, maybe some of those testifying were not referring to Shell specifically, but some of the testimony presented to our committee, and we can get the transcript and show it to you, shows a real strong-arm method. As an example if you don't participate in some of our promotional programs, for some explainable reasons the gas doesn't get there on time. Well maybe Shell doesn't resort to that.

Mr. Hewitt: Again I am not an attorney, but our attorney tells us that would be a violation of the federal anti-trust laws. That's kids stuff.

Rep. Webber: But they are not kids, but that is their problems. They have to work seven days a week and very often eighteen hours a day to make a living, and some of them have to resort to automobile repairs and other.

Mr. Hewitt: You might be interested in this fact and I have to go in this respect. But recently we hired a market research firm of Belb and Gelb, which is world renowned, to make a profile study of our present dealers and our former dealers. We wanted to find out why dealers left us because again we have

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a pretty heavy financial investment. We found out for example that the average Shell dealer today makes \$1,056 per month net. That 27% or more, pardon me 27% of our dealers make more than \$1,250 a month net and that only 9% of the dealers in the company were making less than \$500 a month. So,

Rep. Webber: The dealership earn that money that \$1,000?

Mr. Hewitt: Yes sir. The average Shell dealer was making \$1,056 a month....

Rep. Webber: That's net profit. That's for operating.

Mr. Hewitt: Yes, sir.

Rep. Webber: If he employs two or three in help he winds up with very little, doesn't he?

Mr. Hewitt: Oh no, that's net, his take-home pay. 27% of the stations were making \$1,250 a month or more

Rep. Newman: What happens if the dealer doesn't follow your so-called suggestions during the first year, at the end of our first year, is he not suitable?

Mr. Hewitt: Oh no, what we would do. It is pretty obvious when you put a dealer in a station you know pretty fair how he is going to treat that investment and how he is going to run his service station. Now we have what we call regular counseling sessions where we invite the dealer to come into the office and sit down and mutually discuss his problems.

? Just how much notice do you give a dealer that his franchise has expired?

Mr. Hewitt: Sixty days, but we can't do that until the end of the first year. After the first year if he is still in the service station, we cannot terminate until after the end of the third year, for any reason whatsoever except if there is a commission of an illegal act or something along that line; if he goes into bankruptcy or doesn't pay rent or some good and valid reason.

Rep. Webber: Where you provide financial assistance to a newcomer into the business, what rate of interest do you charge for financial assistance?

Mr. Hewitt: 9%.

Rep. Webber: Any other questions? Thank you very much.

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Mr. Hewitt: Thank you gentleman and ladies. If there are any specifics about Shell stations later, I would be very happy to make myself available.

Rep. Webber: In the interest of time I think there are some seventy speakers listed, possibly on the other side of this issue I would like to call on one of the leading spokesman, Mr. Joseph Pansa, maybe he can summarize those taking his position and save some time. Mr. Pansa here?

Mr. Pansa: My name is Joe Pansa, Executive Director of the Connecticut Gas and retailers association. We welcome the opportunity to be able to come here and to be able to give you our side of the story. You will note we have quite a few of the boys who were able to make it here in the back which gives us a fair group, however it is in no way related to the number of members we've got throughout the state which is approximately 1,200. I have here in front of me here signed forms stating the position of more than 300 or so representing approximately forty towns throughout the state who are in favor of this bill. These forms will be sent to respective senators and representatives. I have been listening very carefully to the comments, very interesting, but above all gentlemen, the one thing we are concerned about is the dealers, the gasoline dealers in this state. Although I do know you take in from other areas, what they do and so forth, which I am prepared to give you some information on. We are concerned about the gasoline dealer in this state, the taxpayer of this state, with all respect to the supplier and what they represent, and when it comes to depending upon federal legislation to take care of our needs, well way back in 1965 they come out with the statement that the gasoline dealer is an economic.....But from 1965 to 1972 they are still talking. On February 15, 16th I believe of this month in Washington there are going to be hearings on a bill similar to what we are talking about and more hearings. In fact I have some information about that here. Now, what will become of those hearings. We hope that in the best interest of the gasoline dealers who we are concerned about, I hope we don't have to wait another five or six years to make up their minds that maybe that little guy down there should be taken care of. Now that's why we are here. We believe that this state here should be able to handle its own problem and as they have done in the past, only in the last session of the legislature, we have been coming here for eleven or twelve years and the same Connecticut assembly saw fit to put through a Connecticut anti-trust bill, which is about the only one in this part of the country, as far as I know; which showed everybody that this legislature is concerned about the little guy and that is what we are concerned about.

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Mr. Pansa cont.: Now, I brought here along copies of bills which have been introduced into the Massachusetts Legislature.

Rep. Webber: Can you confine your remarks, if you will please, to the complaint and the positions of your dealers as opposed to referring to other pending bills.

Mr. Pansa: Right. I brought here some contracts, leases and so forth. Our right in the past has been that a lot of these dealers tend to cancel ten days, thirty days and so forth. I will say this in some cases is justifiably so because nobody is perfect. In lots of cases we don't put the blame on the marketing part of the company, we put the blame on the people who communicate, who contact these dealers and it is our belief that if more time was spent with the representative when he does contact the dealer to give him help, assistance and outline the marketing part of the company, maybe some of these things wouldn't be brought about. But unfortunately that has not been the case. So in ten days, thirty days out. Lots of cases the merchandise is not even paid for. We talk about people with their investment, for example, over a \$250,000 station, wonderful; but remember this in the ten year period that station has paid back for and it might be in that period maybe ten or eleven or twelve dealers might have been there sinking their life-savings in there and lost it and started life all over again because of some petty nonsense or maybe some so called reasonable excuse. The fact is that that condition has existed. We have brought testimony here at the last session where stamps were tied into this field, with the contract which certainly is against any lawful arrangement. So we say that the things that this bill is asking for is not to a special interest as has been indicated. Since when were the gasoline dealers a special interest. It's the first I've ever heard of it. The fact is I'm glad that I consider to be in that particular category. We have come quite a long way in the last thirteen or fourteen years. The fact remains the things that are brought forth in this proposed legislation we believe is fair. There is nothing in that whole thing, that is harmful to anybody. Let's put it this way, all these years the gasoline dealer has accepted, been kicked around, not all the time or abused. 37 $\frac{1}{2}$ % of the gasoline dealers go out of business. This may be questioned, this may be argued depending on what part of the country you happen to be. I know in California it is 40%. Down in Florida it is 40 to 45%. I'm talking about the average. Maybe in this state it is only 25%, and with the present conditions be as they are now where a gas station six months is doing 60,000 gallons a month, tomorrow he is doing 24,000 because of the competitive conditions that are coming about, these unbranded gas stations that are coming out, so the

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Mr. Pansa cont.: guy that has been making \$1,000 a month a year ago I hate to think he is making \$1,000 a month today because I know of one particular company that had to get out because of that reason. So you see that some of the things that might have held true before are not going to be held true today. So when we are talking about how much money they are making, the average fellow not being a public accountant by trade, with all the figures, giving a little plus and minus, average \$7,500 to \$8,500 a year. That represents not forty hours a week but eighty hours a week and his wife most of the time is the bookkeeper. So we are not talking about a special interest and get back to this bill, proposed legislation we believe when we say give the man good cause, due cause, if one of the companies has that already in their arrangement already, then there is no fear for them to say we are abusing a privilege, fine, we welcome that. It's a step in the right direction. If they want to buy back their merchandise which some of them have not done, we have gentlemen in the room right now that got out of a station with \$5,000 of brand new goods which the company refused to take. Actually no reason at all, they didn't take it back.

Rep. Webber: Why?

Mr. Pansa: Mr. McCook can answer these questions. He's sitting in the room right here.

Rep. Webber: We are not going to entertain any comments from the floor. If you want to speak we will give you an opportunity at the table.

Mr. Pansa: What I am trying to say is everything that has been asked in this legislation we believe is fair. Those who have been abiding by it to some degree, we think wonderful. We hope that some of the others will follow suit. If they would follow suit I think some of the things that are happening today would not be abused. We say that as it stands right now, we are asking for due cause. We want due cause/we want to protect them. When they put a \$5,000 or \$8,000 investment in their company....inaudible....give them a chance at least to work his own problem out. If we are asking the company to pay back for the merchandise, there is nothing harmful about that as long as the merchandise is a branded merchandise and has not been abused, there is nothing wrong about that. So the things we are asking are plain. Now, could it be that possibly the control of the gas stations, the control of the operation could be effected, is that what we are concerned about. I hate like the devil to believe that. I believe that in all good business sense, if the man is doing his job and doing well

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Mr. Pansa cont.: it well need never worry about that, and if you look at the other side he is thinking along the same lines. So if you are only here together to work out the problems together if we want the government to regulate us that's something, but we believe that in the confines of our own state we can do the job, or if the legislature feels that the oil companies should be given an opportunity, we have a lot of opportunities, a lot of time to do it, and unfortunately they have been unable to do it; that's why we propose this type of legislation. That's the only reason for it. We believe we have waited long enough, and we believe at this time that you people will see fit to give it consideration. I think you are. The mere fact that all of you are assembled here, the questions that you have been asking. I know that you people are concerned about the little guy, and that's all we ask. We don't want no sympathy. All we want is just fair play and understanding. That's all we are looking for. And these people here can be multiplied by two and three times what we got here. They cannot all be here but we feel we have enough here to show you what we say is true. These people feel there is a need for this legislation. They all signed this. Some signed two because we want one to go to the senator and one goes to the representative. They want to make sure that their story is heard. All you have to hear is something about the franchise bill of the senate of the United States....inaudible...but we have seen this stuff before. Somehow we have more faith in the people who are in the legislative department of this state. They have been fair with us and been understanding. We haven't always got what we wanted and in fact in most cases we haven't got what we wanted, but we do know one thing; we have been able to come up here and give you our story and have been able to listen and you don't fall asleep on us. All you are wide awake because you know that we have a problem and you understand that. Thank you very much.

Rep. Webber: Thank you very much Mr. Pansa. I want to call on Mr. Arthur Lipman if I may very shortly. He has a classroom full of children waiting to be taught. We don't want to hold up the educational process.

Mr. Lipman: Thank you Mr. Chairman, ladies and gentlemen. Let me speak briefly; I understand I have to be out of here before a half hour since that's the rest time.

Rep. Webber: Please state your name for the record please?

Mr. Lipman: Dr. Arthur P. Lipman, Department of Pharmacy Services, Yale-New Haven Hospital. I'm here to speak briefly on

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Rep. Webber cont.: the last session and I thought we had reached an understanding that they were perfectly willing to support this measure and as a matter of fact all those who issue credit cards as long as it does not pertain to renewals. We want the original application. The bill is intended that way. The original application for a credit card to be so applied for in writing or the return of a signed card.

Mr. Scully: Well that is fine but the way the bill is written at the present time it does not take care of that section.

Rep. Webber: Do you withdraw your objections as it were if we...

Mr. Scully: We would withdraw our objections when we see the revised bill.

Rep. Webber: On the assumption that that would be....

Mr. Scully: If we are to assume that that would be covered in it we would depending on the language and wording of it at that time. OK.

Rep. Webber: Thank you. Mr. Allan Nair.

Mr. Nair: Ladies and gentlemen of the Committee, my name is Allan Nair. I'm an attorney in Bridgeport, I'm president of the Connecticut Consumer Association. I would just like to comment briefly on two bills before you this morning. Class actions and franchising. The legislative counsel for our Committee are T. Gilroy Daly who is here also to comment when called on the interest rate bill.

Briefly on the franchising bill gentlemen and ladies I testified on behalf of this bill last year and I do so again this year with the admission on the part of Attorney Sills of the Department of Consumer Protection that Section 4 of the anti-trust provision really aren't necessary as provisions of the legislation. They are amply covered both under the state and anti-trust laws. If that is a stumbling block I would urge its deletion.

Second I would also comment that because of a case that will be filed later this week in the United States District Court in the District of Connecticut I am very limited in what I can say about the claims of the oil companies and the way business is done in this state. I would only comment as follows that in franchising generally we are dealing on the one hand with franchisors who are

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Mr. Nair cont.: multi-million dollar corporations and we are dealing with franchisees, individuals, couples or families that are small, they are individuals. The economic imbalance is quite dramatic. It is true in the oil companies, it's true in fast food franchising, it's true in any other kind of franchising. There hasn't been the enactment of franchising laws in state governments. California is one example. For no reason, the reason is that there is a severe economic imbalance. Now Mr. Brown of the International Association of Franchising said that he would prefer California type bill that deals almost exclusively with disclosures. Now disclosures are important but in California franchising is treated more as a security, like a stock security than it is a marketable commodity. So I would only say that while disclosure the true facts are important to be known by the prospective franchisee, it's not the only important problem. The problem exists in franchising generally. The franchisees are not compensated for their goodwill, the goodwill that they have built up over the years when they are terminated and they are terminated frequently. I will also suggest to the Committee that the problems that have been suggested are not insurmountable. That the alleged effect on interstate commerce or the alleged drying up of investments in the state of Connecticut....inaudible...just about any time any regulation is proposed that effects any industry, and I would only ask that you with your customary incisiveness examine these suggestions and treat them accordingly.

As to consumer class actions I would only ask this that the most, most important question you might ask is why is this consumer class action necessary. Ladies and gentlemen of the Committee, the existing substantive law generally to protect consumers against fraudulent unfair trade practices is in general is adequate if you build on cases that have already been decided in the Federal courts and in various state courts, although Connecticut is still fairly sparse in case law in consumer protection. But the machinery in consumer protection is quite inadequate. We are talking now about the machinery of protection when we talk about class action. I submit that it is not enough to merely beef up existing agencies which are frequently limited in personnel, in time and availability and frequently stumble over their own procedures. Another principle reason why consumers cannot properly be protected under the existing process is that their individual claims are invariably too small and in this state they cannot be aggregated into class action. Every lawyers in general practices have seen a client come in with a small case, maybe \$50 or \$100 to try it against the mammoth financial resources of a major company which is insurmountable.

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Rep. Webber cont.: leave this room at approximately ten minutes to clear the room for a finance hearing. Now the last major area as I see it on the speaker's list are those who wish to offer testimony on the credit bills. There are some individuals who want to testify on the various bills, so I would suggest to those who would like to testify on the credit bills if you wish you may leave now and we will reconvene at 2:00 in room 4 $\frac{1}{2}$ upstairs. For the next minutes we will call on some of the individuals. I'm sorry. Would you make that 2:30 instead of 2:00.

Mr. MiColka: Chairman, ladies and gentlemen, my name is Lewis MiColka...

Rep. Webber: Excuse me for a second. Will you just wait until they leave the room. Could you kindly go out in the hall to talk please so we can continue the hearing. All right sir would you identify yourself for the record.

Mr. MiColka: Mr. Chairman, members of the Committee, my name is Lewis MiColka. I'm president of the Connecticut Gasoline Retailers Association and I'm in favor of Committee bill 5081. The reason I am in favor of this franchise bill is that I was a Shell dealer for six years and some of the statements Mr. Hewitt are not true. I had trouble with Shell. I went to the stockholders meeting which I reported at the last meeting that I was threatened by my sales representative. I think also I told you I had a meeting with Mr. Hewitt after the stockholders meeting. Now I will explain a lease renewal with Mr. Hewitt. I went to Hartford to renew my lease and we got in the room and there was Mr. Hewitt, his assistant and my sales representative, Pete. I forget his last name. Mr. Hewitt starts the meeting. I don't know if I want to renew your lease or not. And I says why. I say you may not like my terms or the company's terms, I can't remember the exact words. What are the terms? Well you are going to have to have your station open from six to midnight, you are going to have to be open Christmas and Easter, my two holidays which I am closed. You will have to go to school for five weeks. I said for what, just to learn that. What do you think I have been doing for the past sixteen years. And we kept on and I said don't you think me a successful businessman. He says no. I never bought their products, in only what I wanted of their products and as far as stamps, I had stamps, I gave them up; and when I did give them up the sales representative, Mr. Clark Newcombe, was after me for giving up stamps. I said look Mr. Newcombe, I'm here to make a buck, not to give stamps away. He said well your gallon has dropped. Sure my gallon has dropped. To you people it dropped 2,000, to me it dropped 1,500 a month.

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Mr. MiColka cont.: Those stamps for the month cost me \$250, 2,000 gallons of gasoline at 7¢ a gallon profit is \$140, did I lose money or make money last month. He didn't answer that question. Now we'll go down to financing or helping a dealer in financing. Sure they help a dealer, but when they help him he signs his life away. I borrowed \$3,000 when I went into business with Shell in 1964.

Rep. Webber: You borrowed it from Shell?

Mr. MiColka: From Shell. I signed my life away. I signed my house to them and everything if I didn't pay it back to them. I paid it back. I was broke when I went into that station. He called me a poor dealer. When I left that station later on, six years, I give Sunoco a financial statement over \$70,000 and Mr. Gallagher is here to prove that statement. I'm an aggressive dealer. When my lease wasn't renewed there were five other dealers up for leases at the time. One dealer was up two per cent in sales, one was down five per cent, another was down ten per cent. I think one was as high as thirty-five percent. The dealer that was up 2% his sales were not renewed because he was not scared to stick up for his rights. We had a sales promotion meeting up at the Valley Inn in Orange and this is after the meeting with Mr. Hewitt and I asked Pete my sales rep what's new on my lease. He said oh Mr. Hewitt I spoke to him today, he put it in the mail. Who speaks with a fork tongue. Me or the oil company. There's a rep. who tells me, witnessed by two other dealers, that my lease is in the mail coming to him, he will be down to see me tomorrow or the next day with it for me to sign. I never heard a word until I got a registered letter at home which made my wife very sick that said my place of business was being cancelled.

Rep. Webber: How much notice did they give you?

Mr. MiColka: Thirty days, no sixty days as he claims. And in January of that year, 1970, Shell progress came out with a report they do not dictate hours of operation to a dealer. They do not tell them what hours to open or close. I was being dictated by Mr. Hewitt that I had to be open from 6 in the morning to midnight and I had to be open on Christmas and Easter and I had to do this and I had to do that. Incidentally, I'm supposed to have a very dirty station yet I moved from a Shell station to a Sunoco station, I'm at an Esso station; I brought my customers from the Shell, to the Sunoco to the Esso station. And this morning, Miss Agnes Kiley who is a retired school teacher she said where are you going. I said I am going to Hartford on a franchise

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Mr. MiColka cont.: hearing, she said why. Because of what happened at the Shall station, they kicked me out because I had a very dirty station. She look at me and said he Lou. I have been dealing with you for eight years now and I have followed you all around, I don't think you have a dirty station. As far as their paid training, that is a farce today because the new rulings at the Motor Vehicle, a dealer can no longer get a license unless he has six months experience with a licensee and he has to give him a letter stating that. Plus the dealer has to show his own financial statement and the letter from two people stating that he will be able to handle this type of business. Now I went up for my license last Thursday, I spoke to the inspector, he gave me the new rules and he told me he turned down twelve dealers who came up for licenses because they were not talk, told by their own oil company that they have to have this new ruling and also this plot plan 300 feet from their station mentioning everything, buildings, driveways, school, church, etc. This is things that we have to put up with. I was going to call these people up this afternoon after the meeting with Commissioner Ryan if I can have it where they stand on this here ruling. Now as far as no gas deliveries being made, back in I think December or January, there was a Shell dealer in New Haven who called me up saying he was having a problem. Yes, this man admitted he was a thief, he did this and did that. But when the salesman tells him he cannot have gas unless he continues his savings, this is wrong.

Rep. Webber: His what?

Mr. MiColka: His savings. In other words when we save to pay back money to the company we will pay a penny, half a penny or two cents a gallon towards the loan or whatever it is. Well this man had \$800 or some odd dollars to the good. He wanted his savings to be discontinued and he said he would not get gas unless he kept his savings up.

Rep. Webber: And I understand he had a credit with the company for over \$800?

Mr. MiColka: He already paid \$3,500 or some odd dollars back that he committed fraud on with credit cards with the company. And then I understand the man had also committed another fraud with this subsistance that we get now on gasoline. Well this has been proven true. I don't want to know nothing about this man being in trouble with the oil company. But now how can a man tell he will not get gas unless he continues his savings. These are some of the things we are up against. As far as the counsel sessions

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Mr. MiColka cont.: that they have, I was with the company for six years not once did I get called to any of these meetings where I could get up to speak my piece because I am not a.....They have called one dealer twice, they called another dealer twice. Neither one of these men will speak up for their rights. And one of these dealers right now is in rough financial condition. This man was forced to open his station twenty-four hours a day. He couldn't afford it. As far as man going into business for \$5,000, that's a laugh. Back in '64 when I went into business it cost me \$7,500 and if a man can go into business today for \$5,000, he's lucky. So whether you are good or bad with the oil company, you always get the short end of the stick. I moved across the street to Sunoco when my lease was terminated by Mr. Hewitt. I had to put up a \$5,000 deposit with Sunoco, I had to show them a financial statement of what I was worth and right now I am still waiting for that \$5,000 deposit and some \$2,700 that they owe me since last December waiting for a problem to be cleared up. I also had the same problem with Shell. They claimed that I didn't pay any bills. They took money out of my savings and credited the payment of the bills. I had cancelled checks to show for that. I waited three months before I got the money they owed me. As far as him saying they cancel a dealer out for good cause, that's a laugh. That really is. You know the old story about Hilter, well that's what we have in Mr. Hewitt since he took over the district. Like I say, I went to that stockholders meeting, I told me what was happening to me and they raised the roof up here in Hartford and I got the name of Lou MiColka, the trouble maker. The following year I went to the stockholders meeting again I was denied the right to speak my piece on the floor there. I couldn't say what I wanted to say. I was cut short by the president of the company.

Rep. Webber: Well, this Committee is not concerned with the internal functions of the oil company.

Mr. MiColka: I understand that sir. I'm just showing you what we have to do with these companies and the different things we have to do to try to help ourselves out. That's about it.

Rep. Webber: Ok. Thank you very much. Mr. Mattis it looks like.

Mr. Mattis: Mr. Chairman, members of the Committee, my name is Charles Mattis from West Hartford, Connecticut and I am here to speak in favor of bill 5081. I think we can really cut through all of the dialogue that is going on here this morning. You heard several comments regarding legislative terminology, efficiencies

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Mr. Mattis cont.: terminology, defeciciencies in this bill, but why all this concern about a reasonable termination notification. I can't understand it. Mr. Hewitt stated they are willing to give sixty days. That's all we want, with cause. We don't, we are unable to run a successful business when you have to plan at the end of your one, two or three year lease they may be able to come in and say sorry, we don't want you any more. The comments in regard to giving opportunities to minority groups, we are in favor of that, but that is no reason for me to be concerned or any other dealer about at the end of my lease there not renewing the lease except for reasonable cause. That's all we are asking. The two substantial things in this bill are first reasonable cause for not renewing, and second, the opportunity for the dealer if he goes through choice or for good reason, the company purchasing back the saleable items, and we can give you case after case where dealers have either been terminated or terminated on their own volition and they were told the product belonged to you. Now as I said those are the two substantial things in the bill. I have heard several comments from oil company executives stating they are not in disagreement, so what are we arguing about then. I favor the bill, I think it's a good bill and I request your support.

Rep. Webber: Thank you very much. Mr. Robert Rocini, and gentlemen this will be the last speaker in this mornings session.

Mr. Rocini: My name is Robert Rocini, I'm a Shell dealer in West Hartford, Connecticut and I'm in favor of house bill 5081. I just want to add one thing I wasn't going to add about the termination of a Shell lease which I am a Shell dealer of eight years. You can be terminated for any reason whatsoever, whether you have a three year lease or a year lease within thirty or sixty days notice and all they have done is say they want the premises back. That's all I want to add to this about cancellation. They can terminate you. And this menial tool investment that you have in a station my size, we have over \$25,000 worth of equipment so we are not talking about a couple of hand tools. That's all I have to say.

Rep. Webber: Thank you very much. I'm sorry, there will be one last speaker, Mr. Haughn.

Mr. Haughn: Mr. Chairman, members of the Committe, my name is Richard Haughn, I'm ~~manager~~ of the Hartford Hilton and I reside at 10 Forbes Street. I'm here to state my opposition in stead of my associates also the members of the hotel association to bill no. 5074, the truth=~~in~~=accomodations billing and I shall be brief in it. In today's business

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Mansfield, Somers, South Windsor, East Windsor, Bolton and Windsor Locks. The major aim of this project will be to provide special training for exceptional students so that they can develop vocational competency for employment. For example, there will be a food service laboratory to train students to be valuable workers in the food field. Also an industrial laboratory to train students in assembly work, building maintenance, automotive service and training for job stations in local communities. Please pass this bill.

THE SPEAKER:

Further remarks on the bill. If not, the question is on acceptance and passage. All those in favor indicate by saying Aye. Opposed. THE BILL IS PASSED.

mr. AJELLO: (118th)

Mr. Speaker, I would direct the Clerk's attention to Page 5, Cal. 317, Sub. for H.B. 5081. AN ACT CONCERNING FAIRNESS IN FRANCHISING. File 378. Mr. Speaker, I move that this item be removed from the Foot of the Calendar.

THE SPEAKER:

Is there objection. Hearing none, this item will be removed from the foot of the calendar. The Chair recognizes the gentleman from New Haven, Rep. Webber from the 113th, WHO moves acceptance and passage.

MR. WEBBER: (113th)

Thank you, Mr. Speaker. This bill represents a modest but a vitally necessary step in an area of our economy which cries

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out for state intervention to help some of our gasoline station dealers who have been the victims of some very bad situations over the years. In too many cases, the major oil companies, Mr. Speaker and ladies and gentlemen, make lavish promises about the lucrative profits which their franchises will ostensibly yield. And then they set up conditions which are virtually impossible for the franchisee to meet. Over the past years, I would say over the past four to six years, Mr. Speaker, our committee has heard testimony from many franchisees who have literally sunk their life savings into their businesses and then have seen their investments and their labors go down the drain. Our committee gave the unanimous and favorable report to this bill, Mr. Speaker because we strongly believed that limits must be set on the too often, arbitrary and free-wheeling operations of some of the giant franchising companies. We believe our State must assume a minimum level of protection to the small business man from a corporation which suddenly and capriciously snatches away his livelihood. Mr. Speaker, this bill imposes no great burden upon the franchisor. If you read the bill you will find it is a very simple bill. It merely requires that franchisees be given sixty days advance notice before a franchise can be canceled. When a franchisee is voluntarily abandoning his franchise the notice period is only fifteen days. The 60-day notice period does not pertain if a franchisee is convicted of a serious crime related to the franchise business. The bill also requires the franchisor to compensate the franchisee who

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is losing his franchise for that inventory and equipment and supplies he has purchased only from that franchisor providing, however, that equipment and stock is clean and salable. And finally the bill enables the franchisee to obtain injunctive relief in pursuit of the right established in this bill. Mr. Speaker, this is a long overdue bill. I think we owe our neighborhood gasoline station dealers this chance to function and operate in a manner that is profitable and in a manner that is fair and I hope that this Assembly sees fit to support this bill unanimously.

THE SPEAKER:

Further remarks on the bill. Rep. Morano of Greenwich.

MR. MORANO: (151st)

Mr. Speaker, In listening, I concur with some of the remarks made by the gentleman from New Haven but I would like to point out that when a manufacturer appoints a dealer, known as the franchisee, he sometimes requests that the franchisee purchase equipment, displays or other materials that aid in selling his product from a private company, a company approved by the manufacturer to supply to the franchisee equipment in connection with the mutual interests of the manufacturer and the retailer. And as I understand from the gentleman from New Haven that the franchisor would pay for only equipment purchased from him since part of the franchise depends many times on equipment designated by the franchisor that the selling dealer purchase in order to comply with his franchise. I think that should be included in

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the detailed section that the gentleman from New Haven spelled out. Mr. Speaker, a question to the gentleman from New Haven.

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THE SPEAKER:

The gentleman from New Haven is about to be posed a question if Judge Carrozzella would defer his present action.

MR. MORANO: (151st)

To the gentleman from New Haven - I believe he was engaged in a conversation and for that reason I have the following question to ask, merely to get his attention. Mr. Speaker, through you, Mr. Webber are you aware that many franchisors, manufacturers, demand at times that the franchisee, the selling dealer, purchase equipment, retail selling aids if you will, tools to aid in selling, tools to aid in servicing, from an independent source and it is by mutual agreement that they purchase from the independent, that consideration should be given in the event of termination of the contract, that the franchisee be able to sell back to the manufacturer any equipment they bought from an independent supplier.

THE SPEAKER:

Would the gentleman care to respons.

MR. WEBBER: (113th)

It's a very long question but I think, Mr. Speaker, through you, that if my very dear friend, Rep. Morano, reads the bill thoroughly he will find that that provision is well taken care of in the bill.

MR. MORANO: (151st)

Mr. Speaker, through you to the gentleman from New Haven,

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I listened very attentively when the gentleman from New Haven explained the bill, at no time did he indicate that if any equipment or retail tools that were recommended by the manufacturer to be purchased from an independent supplier was included in this bill.

THE SPEAKER:

Further remarks on the bill. I believe a question is implied in the statement and Rep. Webber may respond further.

MR. WEBBER: (113th)

Thank you, Mr. Speaker. I did not go into every line of the bill. However, I again remind Mr. Morano that if he reads, I think it is line 52 in the bill, he will find that problem well cared for.

THE SPEAKER:

Mayor Mortensen of the 24th.

MR. MORTENSEN: (24th)

Mr. Speaker, I rise to support this bill. I have had the experiences of both ways, being the owner of the gas station and also having a franchise on the gas station and I am going through this problem right now. I certainly would hope that everyone in the House here would give the gasoline operators a break for once. They have been here for many years trying to get this bill through and now we have it before us and I would urge that everyone support this bill. If they are every acquainted with any gasoline dealers who is operating under a franchise, talk to him and see how it is a one-sided affair.

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It is something terrible to read one of these leases and see the fine print in there. I have had the experience and I would urge everyone to support this bill.

THE SPEAKER:

Further remarks on the bill. Rep. Owen Clark, West Hartford.

MR. CLARK: (14th)

Mr. Speaker, on behalf of the constituents of West Hartford, an operator of a large gasoline station with roughly, I understand about 18 employees, who asked me to rise and support this bill, he has been in business a long time and apparently he was formerly a president of a gasoline retailers association of Connecticut. It's a good bill and it should pass.

THE SPEAKER:

Further remarks on the bill. Rep. Dice, Cheshire.

MR. DICE: (83rd)

Mr. Speaker, I am certainly in favor of the bill but I do have a question to the proponent. In the wording of it for legislative intent, is this intended to cover automobile franchises also?

THE SPEAKER:

Will anyone respond to the question. Rep. Morano care to respond.

MR. MORANO: (151st)

Mr. Speaker, I believe I can respond to that question. The automobile dealer has a long and elaborate contract with its dealers and embraces many areas relative to the franchise agree-

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ment and I would at this time believe that it does not include the auto dealer and I would believe that the independent contracts between manufacturer retailer have mutual understanding with their contracts and I believe that in the event of termination they would act on the contract in their possession. roc

THE SPEAKER:

Rep. Dice still has the floor.

MR. DICE: (83rd)

Mr. Speaker, I think that was the purpose of the question. There is a Federal bill called the Dealers Day in Court bill which I am wondering if this bill is intended to take its place or supplement it or not. That was the purpose of the question, for legislative intent to find out so that we do have it on the record whether it does or does not cover the area of our automobile dealers.

THE SPEAKER:

Further remarks. Rep. Frazier.

MR. FRAZIER: (10th)

Mr. Speaker, I rise to support this bill. In my town of Hartford, on the corner of Tower Avenue and Barbour Street there is a Gulf Station that has had nine, mind you nine different operators attending this station. What they do is get a small amount of money down, say \$2,000, it's small to them, that is small to the owners but to the operators it isn't small, it's a lot of money. They take anywhere from 2 to 3 thousand dollars down, let the man keep the station for approximately nine months

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to a year and then raise his rent. I think this is unfair, as I stated before I have seen as many as nine different operators.

THE SPEAKER:

Further remarks on the bill. Rep. Pugliese.

MR. PUGLIESE: (33th)

Mr. Speaker, speaking in favor of the bill also. I think there is just entirely too many gas station operators being forced out of business by the type of contracts they have to find themselves involved in. If half of the complaints that we hear from the individual operators are correct and some oil companies seem to be running their businesses like the old time robber baron. It is a well-known fact that the oil companies go into most of the communities and buy up properties on all the street corners, establish their gas stations, sometimes three and four to a corner, and if these gas stations, the operators who lease these stations are not able to make a living, it doesn't do the operators any good, it doesn't do the community any good and in the end it does no one any good. I think it is time we took some action along these lines and I think this bill is the action that ought to be taken.

THE SPEAKER:

Representative Ajello of the 118th.

MR. AJELLO: (118th)

Mr. Speaker, I rise to support the bill also. I would like to point out, I think there was some misunderstanding a moment ago as to whether or not this applies to the automobile dealer situation. I think clearly from the language of the bill

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that it does apply, in fact one of the reasons I support it is some of the newer automobile companies, not referring to the kind of companies that only the Beloved One does business, but those newer ones do not have sufficient protections in their franchise agreements, if any, with the result that in several communities in our State very recently people who thought that they had a secure franchise to merchandise particular kinds of automobiles have been suddenly had that particular rug out from under them with the result that whatever investment they had made in plant and equipment was simply down the drain. And I think that this is one abuse that would be reached by this bill, certainly in the area of oil companies and in many other franchise areas as is the recognition that the franchisee has rights and must be protected from the occasional company which either because of financial difficulties or through the kind of management that seeks to take advantage, will take advantage of unsuspecting persons and will lure them into situations in which they can be hurt very badly and forced into a bankruptcy or worse. I think it is a good bill and we should adopt it.

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THE SPEAKER:

Further remarks on the bill. Rep. Bruno from Bridgeport.

MR. BRUNO: (132nd)

Mr. Speaker, on behalf of many of the gas stations' operators in Bridgeport, I support this bill.

THE SPEAKER:

Rep. Irving Stolberg of New Haven.

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MR. STOLBERG: (112th)

Mr. Speaker, the growth of franchising in this country in the last decade has been phenomenal and still is not fully understood by the public nor is the public or the franchisees fully protected. I speak in favor of this bill. I think it is the first step in that direction.

THE SPEAKER:

Rep. Howard Newman from Norwalk.

MR. NEWMAN: (146th)

Thank you very much, Mr. Speaker. Historically automobile dealer franchises under the anti-trust laws have been sort of exempted from the regulations that have been applied to other franchisees for various historical reasons. This bill attempts to at least give the franchisee some rights against the franchiser, even in the field of automobile dealerships. The General Law committee held a very extensive public hearing on this and some of the gasoline dealers that came before us told us some very pathetic stories. Many of them were practically faced with bankruptcy. They would get these franchises, they would buy a lot of merchandise and material and if they didn't go along with the big oil companies, that was the franchiser and give away stamps or other giveaways, they would find themselves out of the franchise, cancelled out for the ensuing year, the company wouldn't renew and they were stuck with all of this merchandise. The franchiser operated on sort of a company store basis. The franchisee would have to buy all the materials or a major part

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of them from the oil company and would go in the hole on the
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THE SPEAKER:

Mrs. Ruth Clarke.

MRS. CLARKE: (101st)

Mr. Speaker, I think that this is a much-needed bill and on behalf of the constituents in my area who have suffered because of the lack of such a bill, I would like to urge its passage.

THE SPEAKER:

Rep. Darius Spain.

MR. SPAIN: (166th)

Mr. Speaker, a question through you, sir, to Rep. Webber. Mr. Webber do I correctly read this bill as including every franchisee, including the Avon Lady, the Tupperware lady and every other franchisee in the State?

THE SPEAKER:

Avon calling, Rep. Webber.

MR. WEBBER: (113th)

Mr. Speaker, Avon answering. It will apply, through you, Mr. Speaker, to every franchisee. However, I would point out that the major franchisees are beyond the scope of this bill. Most of them, the major companies have more than a 60-day cancellation notice and they do in fact buy back any and all of the merchandise.

THE SPEAKER:

Representative Spain still has the floor.

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MR. SPAIN: (166th)

Mr. Speaker, most of the comments here today have been in regard to the petroleum and automobile industry and I certainly agree that there are problems there. It seems to me that this bill is far too broad to meet only those problems and for that reason, I don't think I can go for it.

THE SPEAKER:

Further remarks on the bill. Rep. Roy Ervin from Fairfield.

MR. ERVIN: (140th)

Thank you, Mr. Speaker. I, to a degree, agree with Mr. Spain that the bill does go very far. It does cover all franchises in the State. Although technically the General Law Committee wanted to put on a fair basis the gasoline dealers in our State, the station owners. However, it was felt that this presented certain legal questions whether we could just pass legislation affecting only one segment of the franchise industry and a bill that wouldn't affect all franchises. I believe we are following what Massachusetts and some other states have already done and in fact their law is even broader than this. The main complaints did come from gas station dealers and this is going to solve the unfair treatment that has been afforded them. Again the major oil industries, they say that they are already living up to the terms of this bill and I suppose it's the nonreputable dealers that we are going to affect the most. But it is a bill that is good for the people of Connecticut and it should pass.

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THE SPEAKER:

Further remarks on the bill. Rep. Sarasin. I warn the gallery, now that we have heard from the fans of Rep. Sarasin (applause was heard from the gallery).

MR. SARASIN: (95th)

I think that was for Mr. Ervin because I agree with the remarks of Rep. Spain. I submit, Mr. Speaker, that although the comments that have been bandyed about today do indicate that there is abuse of the gasoline station vendors and I agree with that problem. This bill I believe goes too far. And it goes too far because it seems to do too much, perhaps for too many. I would point out that in addition to the Avon lady and the Tupperware lady, this bill apparently applies to Holiday, Ramada and Howard Johnson motels, applies to all of the fast-food service operations in the State of Connecticut and applies to actually every kind of franchise arrangement that we can think of. And because of that and because of the language of the bill we have some rather strange circumstances. One is, in line 38, section two, where it talks about the grounds of a conviction which would give rise to the right of a franchiser to terminate an agreement, it has to be a conviction directly related to the business conducted pursuant to the franchise. So regardless of whatever horendous crime the franchisee may have been involved in and regardless of the image that this may give to the or the bad image it may create for the franchiser, he has no recourse in this area. In addition to that the crime itself has to be a conviction so even if the situation is the franchisee of an inn,

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such as Holiday Inn or Howard Johnson, the individual holding the franchise can be robbing him blind and the franchisor can't do a thing until there is a conviction. I think that this is unreasonable and certainly not what should have been intended by the bill but obviously it is what happened to the bill or happens under the bill. In addition in Section B starting on line 47, the franchisor is required to purchase back at fair and reasonable compensation all of the material that has been purchased from him by the franchisee. This means again that the franchisee who has committed a crime directly related to the business in direct violation to his agreement to the franchisor now except for the penalty for the crime gets his money back. I hardly think this is fair or reasonable or equitable and for those reasons I certainly oppose the bill.

THE SPEAKER:

The debate has continued to the point where the Clerk is in possession of House Amendment Schedule A. Would the Clerk please call House A.

THE CLERK:

House Amendment Schedule A from Mr. Carrozzella of the 81st, with L Seal No. 676, ⁱⁿ subsection (b) of section 1, line 15, add a comma after "franchisor", and add the following: "provided nothing contained herein shall be deemed to create a franchisor-franchisee relationship between the grantor and grantee of a lease, license or concession to sell goods or services upon or pertinent to the premises of the grantor, which

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premises are occupied by the grantor primarily for its own independent merchandising activities"

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THE SPEAKER:

The gentleman from the 81st. Rep. Carrozzella.

MR. CARROZZELLA: (81st)

Mr. Speaker, I move adoption of House Amendment Schedule A.

THE SPEAKER:

Would you remark on A.

MR. CARROZZELLA: (81st)

I think there has been some comments in the debate that the bill before us very broad and is too broad insofar as it might affect the Fanny Farmer arrangement where the department store would rent space in a store to a concession and certainly I don't think it is our intent that that should create a franchisor-franchisee relationship. This would limit it. The bill, however, would still apply to the gas stations, the auto dealerships, etc., but this would avoid the situation of the Fanny Farmer who rents a little part of the store. That would not be a franchisor-franchisee relationship. I move adoption of the amendment.

THE SPEAKER:

Question is on adoption of Amendment A. Will you remark further on A. Rep. Webber from the 113th.

MR. WEBBER: (113th)

Thank you, Mr. Speaker. I have no strong objection to the amendment. I can recognize Rep. Carrozzella's point and as a

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matter of fact, I think it might clear up some of the questions raised by Rep. Sarasin. I would support the amendment and I think it makes the bill a good bill somewhat stronger and in lieu of this I support the amendment.

THE SPEAKER:

Further remarks on House A. Rep. Dice.

MR. DICE: (83rd)

Mr. Speaker, I question whether or not this amendment knocks out the gas stations because gas stations are set up on a lease-leaseback arrangement and this amendment itself knocks out the very thing that everyone is trying to put into this. As a result of that, on the face of it without a lot more study, I oppose the amendment.

THE SPEAKER:

Rep. Carrozzella.

MR. CARROZZELLA: (81st)

Through you, Mr. Speaker, I can answer that. It says which premises are occupied by the grantor, the grantor being the oil companies and certainly is not occupying the premises. It's the leasee who occupies.

MR. DICE: (83rd)

Mr. Speaker, through you, I would request Mr. Carrozzella to explain - does not the grantor oftentimes lease to the oil company and then lease back again or vice versa on reverse leases so you end up with the grantor oftentimes being the person that occupies the premises or in reverse if the lease is worked in

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reverse.

THE SPEAKER:

Further remarks on the amendment. Rep. Robert King.

MR. KING: (48th)

Mr. Speaker, I think the amendment as far as curing part of the defects in the principal bill concerned is good, but there is a problem, it seems to me, in the bill in chief which is not cured by the amendment and which, it also seems to me, is far too broad,- Covering generally as it does a franchisee-franchisor relationship. It literally cuts through a system of merchandising that has developed over the years. You can go into any hardware store in this state and you will know from the merchandise displayed, if you know any of the background of the particular company involved, that the dealer has a franchise for a particular product for a particular territory. Literally dozens of items within that store are operated on many, many franchises. Now the bill in chief, it seems to me, strikes at that and very seriously affects the arrangement. The amendment, as I understand it, does nothing to limit or cure that defect in the bill in main. Therefore, Mr. Speaker, I am going to oppose the amendment and oppose the bill.

THE SPEAKER:

Question is on adoption of Amendment A. Rep. Lenge.

MR. LENGE: (13th)

Mr. Speaker, I rise to support the amendment. I think it clarifies a very narrow area. But I think we are hearing a

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lot of misgivings and a lot of misunderstandings on the basic bill and what this amendment does to it. I support the bill basically and I support the amendment because it does aim at and achieves one simple thing. It says that it does not undo any of the contract arrangements, all it does is provide a lead-time in the event of termination, whether the termination is for conviction of a crime, whether it is because of poor management or for any other reason. It says you will have 60 days notice under one instance, 15 days notice under another instance. What's wrong with giving the small businessman, the entrepreneur a leadtime and even if he is convicted of a crime what about his family, what about his investment. And there is no question about the fact that it not only applies to those items which he purchased from the franchisor but it also applies to those items which he bought from somebody designated by the franchisor. So that misgiving ought to be put to rest. And lastly, all it does is say that if the business is wound up, whether it is on the terms of notice as provided for in this bill or any other conditions that he will receive fair compensations for the items that he has bought which really comprise his part of his investment in that franchise operation. It relates to a system that we understand. It is not undoing a long-standing situation of Fanny Farmer candies or some other item in the hardware store or anything else. This is a good bill. It is long overdue and I think we ought to support it and pass it.

THE SPEAKER:

The question is on the adoption of the amendment. All

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those in favor will indicate by saying Aye. Opposed. Amendment A roc

is adopted and ruled technical. Will you remark further on the bill as amended by Amendment A. Rep. Webber, I believe speaking for the second time.

MR. WEBBER: (113th)

Mr. Speaker, I would say to you and the ladies and gentlemen of this ASsembly, really this bill represents a lot of work as simple as it appears. We went through almost every conceivable franchise contract that we were able to get hold of and we recognized that this may not be the perfect bill but we do recognize, and very clearly and I am sure you do, that this bill as pointed out by Rep. Lenge will solve or at least help to arrest a problem that exists in all of our communities and unfortunately growing. I am saying to you and I plead with you, pass the bill as amended and if we have problems with this bill the way it presently reads, we will be back in six months and we can amend it further. Let's give these poor gasoline station dealers and other franchises who have been cheated unfortunately, let's give them all a break and show them we care about them.

THE SPEAKER:

Rep. Earl Holdsworth.

MR. HOLDSWORTH: (125th)

Mr. Speaker, this is a peoples bill. Basically all of the people that are involved in this are hard-working people struggling to make a living and this is/going to give them a square shake for the first time. And I think we will be remiss in our duties

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if we don't pass this bill unanimously, Mr. Speaker.

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THE SPEAKER:

Are you ready to vote? Rep. Morano.

MR. MORANO: (155th)

Mr. Speaker, I rise to support the bill as amended. There might be some members in the House who thought I was objecting. I was not objecting. I think it is a good bill. It's a start. My only regret is that instead of 60 days it was six months. I support the bill.

THE SPEAKER:

The question is on acceptance and passage of the bill as amended. All those in favor indicate by saying Aye. Opposed. THE Chair is not in doubt, THE BILL IS PASSED, as amended.

I would remind our good friends in the gallery that the last time that happened (applause), the bill was reconsidered and it was almost lost.

MR. AJELLO: (118th)

Mr. Speaker, directing the Clerk's attention to Page 3, Cal. 254.

THE SPEAKER:

The Clerk will call on Page 3, Cal. 254, AN ACT CONCERNING STATE EMPLOYEE RELATIONS ACT. File 312.

The gentleman from the 165th.

MR. COLLINS: (165th)

Mr. Speaker, we have an amendment on that which is just being run off on the Xerox machine right now. I wonder if that

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CHAIR:

Senator Caldwell.

SENATOR CALDWELL:

Mr. President may we now go to page 3. Cal. 487. AN ACT CONCERNING FAIRNESS IN FRANCISING.

CHAIR:

If there is no objection, we will proceed. Appropriate motion will have to be made by the moving party concerning suspension of the rules.

CLERK:

Cal. 487. File 378. Favorable Report Joint Standing Committee on Judiciary. H.B. 5081. AN ACT CONCERNING FAIRNESS IN FRANCISING.

CHAIR:

Senator Jackson.

SENATOR JACKSON:

Is that General Law or JUDiciary. the Calendar shows General Law.

CHAIR:

The jacket says Judiciary but I realize that is an error. I will correct the error.

SENATOR JACKSON:

Mr. President I move suspension of the rules for immediate consideration of the bill.

CHAIR:

If there are no objection, it is so ordered. Hearing none, you may proceed with the bill.

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SENATOR JACKSON:

Mr. President I move acceptance of the Joint Committee's Favorable Report and passage of the bill and I now inquire if the Clerk has an amendment from the House.

CLERK:

Clerk has a House Amendment A. which was adopted by the House.

CHAIR:

I was wondering since it is not in our file for the purpose of clarification if the Clerk would read the amendment if it is a short one. Senator Jackson I know you would agree with me. I have been here some years and there was some feeling of confusion and rush before so I suggest that we go very slowly so that we can understand exactly what has occurred. We are now reading the House Amendment which does not show on our Calendar and does not say as amended by House Schedule A. Is that correct?

Will you read the House Amendment which is part of the law as it comes up to this Chamber for consideration.

CLERK: your Files, file No. 378

In your Files, file No 378. this is House Amendment Schedule A. Sub. H.B. 5081.

In Sub Section B. of Section 1. Line 15. Add a comma after "franchiser" and add the following;

Providing nothing contained herein shall be deemed to create a franchise or franchisee relationship between the grantee and grantor of a lease. A license or concession to sell goods or services upon or pertinent

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to the premises of the grantor which premises are occupied by the grantor primarily for its own independent merchandising activities.

CHAIR:

Senator Jackson are you prepared to explain the House Amendment since it is not in the file?

SENATOR JACKSON:

I believe that it is basically self explanatory Mr. President. It shows that the bill is not going to change any of the basic franchise agreements or change any of the contract arrangements.

CHAIR:

Thank you sir.

SENATOR JACKSON:

Mr. President , in that case, I would ask for acceptance of the Joint Committee's Favorable Report and passage of the bill as amended by House Amendment Schedule A. even though it is not shown in the file.

CHAIR:

Will you remark?

CLERK:

Clerk has a Senate Amendment to this bill Senator. This is offered by Senator Murphy of the 19th.

CHAIR:

Senator Murphy.

SENATOR MURPHY:

Mr. President I move the adoption of the amendment. Will the Clerk read the amendment?

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CHAIR:

Will the Clerk please read the amendment slowly?

CLERK:

Add Sections 5 and 6 as follows:

Section 5. Section 4 of House Bill 5516 of the current Session is repealed and the following is substituted in lieu thereof:

If being a cafeteria worker, class room aid, kindergarden aid, school cafeteria worker, school crossing guard, employed by or working for a Board of Education or employed by or working for a non-profit private or elementary secondary school where any child may legally fulfill compulsory school attendance requirements which complies with Section 10-188 or an aid employed by a municipal health department to work in a school system such person is unemployed during his school vacation period, holiday or holiday recess and will resume such employment at the conclusion of such period, holiday or recess. Section 6. Section 5 of this act shall take effect upon passage.

CHAIR:

Senator Murphy.

SENATOR MURPHY:

Mr. President briefly the amendment is self explanatory. I move adoption Mr. President. It takes into consideration those employees with in the definition that are in private institutions as well as public institutions and I urge its adoption.

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CHAIR:

Senator does this in any way change the contents of the Franchising Bill?

SENATOR MURPHY:

In no way would it affect. As far as the Franchising bill would be just technical in nature.

CHAIR:

Senator Jackson.

SENATOR JACKSON:

As I indicated I believe previously that I was under the impression that some of these amendments were going in under another bill but perhaps that we just stand at recess for just a second.

CHAIR:

Senator Caldwell, Senator Ives is there general agreement on this amendment? The Chair has no further question.

The question is on adoption of the amendment will you remark further? Senator Crafts you'd better speak to Senator Murphy before you raise the question.

Senator Mondani will you have Senator Murphy speak to Senator Crafts before he asks me what he is going to ask me? Senator Crafts.

SENATOR CRAFTS:

Thank you Mr. President I thought you'd never recognize me. I believe the subject matter that is presented by Senator Murphy is not all germane not at all germane to the subject of Franchising and I ask you to rule whether it is germane or not before a vote is taken.

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CHAIR:

I rule that it is not germane. Senator Murphy.

SENATOR MURPHY:

Mr. President I question the ruling of the Chair.

CHAIR:

The question is on the ruling of the Chair. Is there a second.

SENATOR:

I'll second it Mr. President.

CHAIR:

There is no debate the appeal is on the ruling of the Chair. The Chair is ruling that the amendment is not germane.

I think it would be helpful to the audience if I explained what is going on. When an amendment has very little to do with the bill before us has been put on because it is late in the session and they want to get the amendment passed the question of germane means does it relate to the bill to which it is attached as more or less a tail fish. The question having been raised I had to rule that it is not germane and does not relate. There is now an appeal from the ruling of the Chair which is not debatable and has been seconded and if you wish to uphold the appeal of the ruling and overrule the Chair you will vote yes. If you wish to uphold the Chair's ruling that it is not germane and has nothing what so ever to do with the bill you will vote no. The matter is not debatable. If we can have quiet in the House we will proceed to a vote.

All those who wish to uphold the appeal, over turn the ruling of the

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Chair make this matter germane and part of this bill you will vote yes. If you wish to not uphold the ruling of the Chair you will vote no.

All those in favor of the appeal will signify by saying aye. Opposed nay. The Chair is in doubt. All those in favor of appealing the ruling of the Chair upholding the appeal overruling the Chair, making this germane, that is those who would have voted yes please rise immediately. Will you please be seated.

Those opposed please rise.

Nineteen to fifteen, the Chair is overruled as expected. The amendment is ruled germane and is before us. Will you remark on the adoption of the amendment? Senator Hammer.

SENATOR HAMMER:

Mr. President you think it is a bother to explain. I think I would like to have a word of explanation on this amendment. I have sat in this hall and in another one many many times and seen odd things and not very admirable things done in the last couple of days in legislation but there is absolutely nothing wrong no chicanery about this amendment which is attached to this bill. In an earlier education bill we made an error and the Legislature voted it through that way and this is simply to correct it. It's a good cause and as long as we all understand exactly what we are doing, it's been done many times before, it has been done recently here and I do urge adoption of this amendment.

CHAIR:

Senator Hammer the Chair agrees with you entirely. Senator Buckley.

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SENATOR BUCKLEY:

Mr. President I personally subscribe to the purposes of the amendment but I will vote against it for the simple reason that I think the amendment will kill the bill. I believe that the greater issue here and the issue which came to us from the House was the one we should consider. We have within our power now if this amendment is rejected to pass the so-called Fairness in Franchising sections which are a part of the bill. I believe the the Fairness in Franchising is an important thing to protection to give to the people of Connecticut who are at the mercy of the Franchisors and I do not question anybody's motives but I suspect that part of the reason possibly for adding this amendment on it is to possibly kill the major portion of the bill. I would ask those people who are concerned about Franchising, those many many hundreds of people with in their own district who are at the mercy of the Franchisor to reject the amendment. The amendment which corrects a mistake, as Senator Hammer said, or an omission probably, that was in the previous bill can certainly be handled in the next session of the Assembly.

CHAIR:

The question is on adoption of the amendment. Will you remark further? Senator Strada and then Senator Hammer.

SENATOR STRADA:

Mr. President for the exact same reasons as stated by Senator Buckley I intend to vote against the amendment.

CHAIR:

Senator Hammer.

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SENATOR HAMMER:

Through you a question to Senator Buckley. Is it merely because of the technical arrangement that he thinks this amendment might kill the bill otherwise it would seem to me if it meant it is passed or not passed it would not make any difference as to how we are going to vote on the bill. Does he mean because it won't have time to go to the House or what?

CHAIR:

Senator Buckley if you will.

SENATOR BUCKLEY:

Mr. President the day before the Constitutional adjournment is a bad time to put any amendment on any bill because it has to go back to the House and there may be a problem if suspension of the rules is denied to get it back on the House Calendar. A hundred million things can happen to it. I want the Fairness in Franchising Bill. I am unhappy the mistake was made but I really don't feel that hanging a substantial chance for defeat on the hopes of all those people who worked so hard to get Fairness in Franchising here before us when we can now adopt it is the correct way to deal with the problems of the people who are at the mercy of Franchisors.

CHAIR:

Will you remark further on adoption of the amendment? Hearing none, all those in favor say aye. Opposed nay. The ayes have it. The amendment is adopted. Senator Buckley. Do you question the vote? I'm glad you did. I don't like the responsibility of trusting my ears in such an important matter. All those in favor of adoption of the amendment

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will please stand. Senator Hammer are you standing or not? Please seat.
All those opposed. The amendment is defeated 20 to 15.

The bill is now before us for action. Will you remark on the bill?

Senator Caldwell.

SENATOR CALDWELL:

Mr. President I yield.

CHAIR:

Senator Rome.

SENATOR ROME:

Mr. President I believe there is another amendment I had given to
the Asst. Clerk earlier.

CHAIR:

I was not so informed. Senate will stand at ease a moment.

CLERK:

Clerk will call this Senate Amendment B. so there will be no confusion.
Offered by Senator Rome.

CHAIR:

Senator Rome.

SENATOR ROME:

Mr. President I move the adoption. Would the Clerk please read the
amendment?

CLERK:

Sub-section B. of Section 1. Line 15. Add a comma after Franchisor
and add the following:

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Providing nothing herein shall be -----

CHAIR:

Senator Rome.

SENATOR ROME:

Excuse me Mr. Clerk. Mr. President by way of clarifying it while the Clerk reads it I want this to be clearly understood. This is amendment to correct what I think were some inaccuracies in the House amendment. I realize the danger that Senator Buckley alluded to but in my opinion the language of the House amendment and if you listen to this carefully the language of the House amendment for all intents and purposes said that the retail gasoline owner under a lease, not owner but lesee, under a lease is not a franchisee and I want this clearly understood that I intend or we intend that he would be a franchisee and if the Clerk would continue to read on I would appreciate it.

CHAIR:

The Clerk go back to the beginning of the reading of the lesson.

CLERK:

Sub-section B. of Section 1. Line 15. Add a comma after Franchisor and add the following:

Providing nothing contained herein shall be deemed to create a Franchisor Franchisee relationship between the grantor and grantee of a license or concession which sell goods or services upon or pertinent to the premises of the grantor or between the grantor and grantee of a lease of the premises of the grantor to permit the sale of goods or services thereon by the grantee which premises are occupied by the grantor primarily

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for its own independent merchandising activity.

CHAIR.:

Senator Rome.

SENATOR ROME:

Mr. President I think if we could read this carefully in conjunction with the language that has been written in on the House Amendment Schedule A. I think you can see, or it appears to me there is an important distinction. I do not intend, and if others in this Circle indicate clearly that the legislative intent on this House Amendment was to provide that service station operators were Franchisees, fine, but I don't think their present language covers it and I am concerned and that is the reason for this amendment.

CHAIR:

Will you remark on this amendment? Senator Jackson.

SENATOR JACKSON:

Mr. President I have the House amendment in front of us and I believe it is possible by legislative intent that to incorporate the purpose of Senator Rome's amendment which is laudatory. I don't believe that grantor and grantee of the lease would operate the language grantor and grantee of a lease tend to put the gas station operator out of the purvue of this bill. I believe it would be covered and also I believe there is something more than just a lease in the arrangement between the operators and the oil companies themselves so I would hope that by legislative intent and also the actual language of the House amendment it would be clear that we do not intent what you fear, or what you read into it Senator Rome.

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CHAIR:

Will you remark further on the amendment? Senator Buckley.

SENATOR BUCKLEY:

Mr. President I would agree with Senator Jackson's remarks. I certainly feel again that the purposes outlined by Senator Rome in submitting the amendment are very worthwhile and possibly valid. I would announce that I am going to vote against the amendment for the same reason that I did before and I believe that Senator Jackson's reading the intent into the record will take care of Senator Rome's problem.

CHAIR:

Remark further on the amendment. Senator Rome.

SENATOR ROME:

Mr. President I would like to have my remarks reflect that I would like to agree with the interpretation and do agree with the interpretation of the Senate Co-Chairman, the Senate Chairman on Judiciary and would hope that the record would show clearly that it is the intent of this legislature that the House Amendment Schedule A, does provide or does not preclude the construction of a tenant operator of a service station from being the franchisee.

CHAIR:

Will you remark further on the amendment? If not all those in favor of the adoption of the amendment signify by saying aye. Opposed nay. The nays have it. The amendment is defeated.

Are there further amendments Mr. Clerk? If not will you remark on the main bill? If not all those in favor of the bill signify by saying

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aye. Opposed nay. The ayes have it. The bill is passed. Senator Caldwell.

SENATOR CALDWELL:

Mr. President on page 3. Of the Calendar may we now proceed to Cal. 354.

CHAIR:

There being no objection we will proceed with the item on the bottom of page 3.

CLERK:

Page 3. unde the heading Committee on Conference Disagreeing Action. Cal. 354. File 551. Favorable Report Joint Standing Committee on transportation. Sub. H.B. 5044. AN ACT CONCERNING THE CONSTRUCTION OF INTER STATE ROUTES 291 AND 86 IN THE GREATER HARTFORD AREA. (As amended by House Amendment Schedule A. and Senate Amendment Schedule A.) And the House in turn then rejected Senate A.

CHAIR:

Just a minute Senator Mondani. May the Senate stand at ease a moment. Senator Cashman.

SENATOR CASHMAN:

Mr. President as Chairman of the Senate Committee on Conference with the House the Senate has agreed by a two to one vote to accept the House action on the bill which was to reject Senate Amendment Schedule A. Senate Amendment Schedule A. deleted the I 86 portion of the bill. Now it is my understanding that having made that report I should now move to Delete Senate Amendment Schedule A. I so move.