

Legislative History for Connecticut Act

SB 967 PA 131 1979

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Sen: 1371-72 ; 1520

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MR. WILHELM (Continued): which is now called Jake's Restaurant. The holder of the restaurant permit there is a lessee and has itself entered into a sublease arrangement with the present operator of the motel, so there is certainly nothing in the present situation in Connecticut, either in the Statute or in its administration by the Liquor Control Commission which prevents or impedes this extremely common business practice in our industry.

Now, on the other hand, if the proposed Bills mean, as they appear to say, that a proprietor holding a restaurant or hotel Permit could sublease his food or liquor business while still holding the Permit, which is what it appears to say, then, if that's the objective, which is certainly not permitted by the present Statute, it seems to us, that that runs counter to the entire purpose and theory of the Permit in the first place, because if I can be the Permittee and continue to hold the Permit but, nevertheless, lease or sublease the operation to somebody else who may, at least as far as the bill is presently written, who may then, himself, lease or sublease to somebody else again, because there certainly is no limit on it, then you're going to lose -- you may as well not have Permits at all because you're going to lose the entire notion of accountability that is written into the or that is behind the notion of Permit. The purpose of a Permit is so that the Liquor Control Commission can make sure that it knows who is accountable for the operation and who is supposed to be operating the operation and, thereby, can make sure that the Laws are properly enforced. Now, obviously, in a -- if the holder of the Permit can, himself, not be the operator and can lease and sublease and maybe have several subleases, the entire notion of accountability is going to be totally lost. This notion is absolutely necessary insofar as the statement of purpose of the Bill goes because, as I said, this practice is extremely common of leasing and subleasing and other kinds of management arrangements. It's very common and it's going on now in Connecticut under the present Statute and there is no reason at all to cloud the accountability, which is the purpose of the Permit by amending that Statute. Thank you very much.

REP. GRANDE: Thank you. Any questions? Thank you very much.
George Montano?

MR. MONTANO: My name is George J. Montano. I am the Executive Director of the Wine and Spirits Wholesalers of Connecticut. I will be the only individual speaking on behalf of the Liquor Wholesalers so we can save some time in that area. It will give me some time to go over a number of bills. We are in favor of Senate Bill 967 which pertains to termination of

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MR. MONTANO (Continued): liquor and beer wholesaler franchises, Under the present Franchise Law, for liquor and beer wholesalers, there is no protection for the Connecticut wholesaler from an arbitrary or capricious termination of their franchise. Now all that is required of a supplier, and supplier is the company that sells to a Connecticut wholesaler, all that is required is that that supplier send the wholesaler a registered letter saying a year from today you don't have our product any more. Just envision yourself working many years to build a brand, and expending great deals of money, and then you receive a letter like that and there is nothing you can do about it legally. We recently had a case in Connecticut where a distiller terminated a Connecticut wholesaler and the Court decision was rendered in this fashion. That where there is a conflict in the Franchise Laws, the Law that is the more specific is the Law that applies, and in this case, the liquor wholesaler came under the Franchise Law in the wicker hat and there is no other requirement other than registered mail. What this Bill will do is say, yes, a supplier can terminate a wholesaler, but it must be just and sufficient cause and I think that that's not too much to ask and to protect the supplier from wanting to do business with another wholesaler which he has the right to do, this proposed Bill will cover that in that it will say, as relates to liquor wholesalers, the supplier can add an additional liquor wholesaler in six months, and as it relates to beer, they can add an additional beer wholesaler in one year.

REP. GRANDE: George, excuse me, just to interrupt you a moment. Who is to determine just and sufficient cause?

MR. MONTANO: All right, the Liquor Control Commission.

REP. GRANDE: Okay.

MR. MONTANO: And the Bill sets forth the definition of what just and sufficient cause is. It is the standard definition throughout the country. We happen to be one of the few States that does not protect a liquor or beer wholesaler from sudden termination. In fact, the Liquor Price Fixing Investigating Commission, two years ago, was very much surprised that the Liquor and Beer Wholesalers had no such protection and they recommended that something like this be submitted to Legislature. We are opposed to any Legislative action to repeal the statutory definition of cost as defined by the Liquor Control Act and more commonly known as minimum markup. The only purpose wholesaler markups serve is to prevent predatory pricing. Now predatory pricing destroys competition in the long run and leads to monopoly. Now let's

MR. MONTANO (Continued): look at 30-68E regarding the wholesale markup on spirits. It says, simply, total of invoice from supplier to wholesaler, all transportation charges from point of origin to point of destination, all applicable Federal and State taxes plus a minimum of 11% on such total. If you will note, 11% is applied to the cost and is not 11% on the wholesalers price to the retailer. Now, there is a difference. If a liquor wholesaler sold every item in his warehouse at 11% of his cost, he would be out of business in a short period of time because his actual cost of operation, in Connecticut, is 13.75 of his selling price to the retailer. I must emphasize, again, that the only purpose this Law serves is to prevent the larger and better financed wholesalers from driving out all competition and then most assuredly control what products will be sold in Connecticut, and at what price. Now, in 1959, there were 37 liquor wholesaler Permits in existence. In 1969 the number was reduced to 31. Today, there are only 19, and let me tell you, that figure is very misleading because one of those Permits is held by Heublein and it's only used for importing purposes. Four are held by wine wholesalers who are required, by Law, to have a Liquor Wholesale Permit to wholesale wine. Five are held by beer wholesalers who sell wine and need the Permit for the same reason. And one is held by United Liquors Limited which just sold out to McKetton Liquors. So, in reality, today we actually have eight liquor wholesalers in Connecticut.

Now an interesting point is that two of the eight are primarily in the wholesale pharmaceutical business. Now, I might also add that in 1959, we had 47 beer wholesalers in Connecticut and that number, percentage wise, is even worse, they're down to 23. Now what remains of the wholesale liquor industry in Connecticut must be preserved. Competition does not only concern price but concerns quality, availability of product, packaging design, advertising, sizes, novel ideas, delivery, integrity, variety and many, many more.

You know in April of 1978, Rex Davis, who is the Director of the Federal Bureau of Alcohol, Tobacco and Firearms, was speaking to the National Association of Liquor Store Owners and I'd like to quote a few sentences from his talk. It is very interesting because this is the Federal government speaking. "This piece of Legislation which we refer to as the Federal Administration Act, provides, in part that, if a distributor gives a retail of goods, services, money or anything of value which result in the exclusion or partial exclusion or competing products, then that distributor has violated the Act. People are often surprised to hear that a Law of this type is on the books but there are some very good

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MR. MONTANO (Continued): reasons for its existence. At the time of its passage in 1935, people still have a very clear recollection of the violence and corruption which had existed in the industry prior to and during prohibition. Organized criminal elements had a virtual lock on the entire industry. With the repeal of prohibition, Congress wanted to insure that the anti-competitive practices which deprive the consumer of freedom of choice, were eliminated from the alcoholic beverage industry. Now if you're sitting out there thinking that law is no longer relevant because gangsters waving Thompson sub-machine guns no longer run wild through the industry, you couldn't be more wrong. Anti-competitive practices, although not as lethal as those of the twenties and thirties, exist in the industry to this day. Today these practices are more subtle, free goods, money, equipment and the like, have replaced the machine gun. But the long term results are the same. Higher prices and limited choices of brands for the consumer." Now, that's the Federal government speaking.

An interesting point, the State of New Hampshire is the wholesale and the retailer. It makes available to its citizens and visitors, 1,364 different brands and sizes of wine and spirits. The Connecticut Liquor Wholesaler makes available to its retailers, who, in turn, make it available to the consumer, 17,739 different brands and sizes of wine and spirits. Now this figure does not include the private brands of wine and spirits or beer. True competition produces this wide availability, not predatory pricing. As we approach fewer and fewer liquor wholesalers, you will see the availability of choice reduce sharply.

Now in '77 and '78, we had a liquor price fixing investigation study. They conducted a study of wholesale prices in Connecticut and we also conducted a study of wholesale prices in Connecticut and, as it turned out, both of our studies ended up with the same result, that wholesale liquor prices in Connecticut are in the majority of cases lower than they are in New Jersey, New York, Massachusetts and Rhode Island. I am leaving one copy of that study here for the entire Committee and the other quotes I will have I'll leave in an envelope for each member of the Committee. I would just like to quote shortly and briefly from the Liquor Price Fixing Investigating Committee report, and it states: "It is also the conclusion of the staff that prices from Connecticut wholesalers to Connecticut retailers are basically competitive with prices charged by wholesalers to retailers in neighboring states. In any given month, on any given product, Connecticut prices may be insignificantly higher or

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MR. MONTANO (Continued): lower than prices charged by wholesalers in other states. Since the mandatory minimum at the wholesale level is frequently exceeded in Connecticut, it would appear that the market rather than the statutory markup is keeping Connecticut prices at the competitive level." Now, it's easy for someone to say, let's repeal the minimum markup for wholesalers or abolish their territories, and it's easy for a legislative body to change the law and thereby change the game plan of every liquor wholesaler. However, the liquor wholesaler can't change his past or present agreements and every liquor wholesaler that has a labor contract has negotiated on the basis of the present system of laws. Now, to pull the carpet from under a liquor wholesaler is not fair, it serves no public interest.

For your information, the average liquor wholesaler truck-driver earns \$20,500 annually, plus \$5,500 in fringe benefits. The average warehouseman earns \$19,900 annually, plus \$5,500 in fringe benefits. The average liquor salesman earns \$20,000 annually, plus \$3,000 in benefits and you wonder why they're still salesmen, knowing that the drivers get more than they do. So when a liquor wholesaler closes his doors, jobs with substantial wages are lost, not very easy to replace. I urge your committee to reject any proposed bill that would repeal minimum markup or substantially, or lower minimum markup because it does not the public interest. I urge your committee to reject any proposal that would phase out the minimum markup or take away from the Liquor Control Commission its power to enforce it.

We are also opposed to proposed House Bill 5148, which is confusing. The statement of purpose is different than the proposed enactment regarding the geographical territories of distributors of alcoholic liquor. If the statement of purpose is what the proponents have in mind regarding territories then there is no need for this legislation because it was enacted in 1978. However, if the proponents wish to repeal or abolish all geographic territories for liquor wholesalers, then I wish to make the following remarks. Of the eight liquor wholesalers remaining in Connecticut, four are statewide and four are regional, or operate in territories consisting of one or two counties. The abolition, the abolishment of territories would bring about the demise of at least, or out of the four wholesalers that operate in counties or regionally, the statewide wholesalers would immediately start selling the same products of the regional wholesalers in the latter's territory. By the time the

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to the consent calendar.

THE CLERK:

Turning to page 6 of the calendar, calendar 365, File 297, Favorable Report of the Joint Standing Committee on General Law. Substitute for Senate Bill 967, An Act Concerning Termination of Liquor Wholesaler's Distributorships.

SENATOR CUTILLO:

Mr. President.

THE CHAIR:

Senator Cutillo.

SENATOR CUTILLO:

I move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

Question is on acceptance and passage. Will you remark, Senator?

SENATOR CUTILLO:

Yes, Mr. President. This is a bill that would guarantee that wholesalers in the State of Connecticut would not arbitrarily be discontinued by the organization that has their franchise. They would have to have proper notice and have a proper time element in which they would be terminated if that were the case. In that case, should a wholesaler be terminated, the company could not, again, arbitrarily, go out and establish another franchise in the State of Connecticut. Here again, there would have to be a

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time prohibition. This, Mr. President, would protect a Connecticut wholesaler against the arbitrary termination and I move its passage. If there's no complications, I move it to the consent calendar.

THE CHAIR:

Question is on acceptance and passage. Will you remark on acceptance and passage? The motion is to place the item on consent. Is there objection? Will you remark? Hearing none, it is so ordered. The item is on the consent calendar.

THE CLERK:

Calendar 366, File 292, Favorable Report of the Joint Standing Committee General Law. Senate Bill 1517, An Act Allowing Resident Spouses To Sit On The Boards Of Directors Of Condominiums.

SENATOR CUTILLO:

Mr. President.

THE CHAIR:

Senator Cutillo.

SENATOR CUTILLO:

I move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

Question is on acceptance and passage. Will you remark, Senator?

SENATOR CUTILLO:

Yes, Mr. President. Currently, spouses, either male or female,

HB 6112, SB 518, SB 1077, SB 1084, SB 1447, SB 1558, SB 496, SB 515, SB 857,
SB 963, SB 967, SB 1517, SB 145, SB 1516, HB 5755, HB 7698, HB 5225, HB 6966,
HB 5797, HB 5959, HB 6790, HB 7135, HB 5989, HB 7153, HB 5594, HB 6078, HB 7699,
HB 5095, HB 5267, HB 7102, HB 7799, HB 5228, Wednesday, April 18, 1979
SB 1341, SB 446, SB 75, HB 6035, SB 405, SB 423

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363, 364. On page 6, calendar 365, 366, 367, 377. On page 7, calendars 380, 381, 383. On page 8, calendar 384, 388, 389. On page 9, calendar 390, 391, 393, 395. On page 10, calendars 398, 399, 400, 401. On page 11, calendars 402, 403, 406, 407. On page 13, calendar 417 and 418. On page 15, calendar 433. On page 18, calendar 451. On page 20, calendar 464 and on page 30, calendar 269. That completes the consent calendar.

THE CHAIR:

Thank you, Madam Clerk. The machine will be opened. Have all Senators voted? Have all Senators voted? Machine will be closed. The Clerk will take a tally. The vote is 35 yea, 0 nay.
The consent calendar is passed.

SENATOR BARRY:

Mr. President.

THE CHAIR:

Senator Barry.

SENATOR BARRY:

Mr. President, we have now page 2 of the Senate Agenda for today's date on our desks and I would move that all items thereon be acted upon as indicated and that the Agenda thereon be incorporated by reference into the Senate Journal and the Senate Transcript.

THE CHAIR:

You have heard the motion. Those in favor indicate by saying

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House of Representatives

REP. JOHNSTON: (51st)

Mr. Speaker.

SPEAKER ABATE:

Rep. Kevin Johnston.

REP. JOHNSTON: (51st)

Mr. Speaker, ladies and gentlemen, at this time, we have several other items to be placed on today's Consent Calendar and one for removal. I would refer you to page 15 of the Calendar, in the middle of the page, Calendar No. 674, House Bill 7299, File No. 475, AN ACT CONCERNING THE SALE OF BULK GRAINS, FEEDS AND FEEDSTUFFS, on the top of page 17, Calendar No. 687, House Bill 5365, File No. 527, AN ACT ALLOWING THE TOWN OF WESTON TO PAY EXPENSES OF THE GEORGETOWN FIRE DISTRICT ATTRIBUTABLE TO THE WESTON SECTION OF THE DISTRICT. Turn to page 21, Calendar No. 729, House Bill 7888, File No. 543, AN ACT CONCERNING PRACTICES OF LAND SURVEYORS, Calendar No. 731, House Bill 6358, File No. 544, AN ACT CONCERNING THE VISIBILITY OF MOVIE RATINGS. On page 25, in the middle of the page, Calendar No. 757, Senate Bill 857, File No. 293, AN ACT CONCERNING OPEN-END CREDIT PLANS and Calendar No. 758, substitute for Senate Bill 967, File No. 297, AN ACT CONCERNING TERMINATION OF LIQUOR WHOLESALER'S DISTRIBUTORSHIPS. Mr. Speaker, I move that these items be placed on today's Consent Calendar.

SPEAKER ABATE:

The motion is that the following designated items be removed

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of the day is at 12:00 o'clock and after we pass the budget hope we will do some more business. So we intend to have a busy day again tomorrow. Thank you Mr. Speaker.

REP. JOHNSTON: (51st)

Mr. Speaker.

SPEAKER ABATE:

Rep. Kevin Johnston.

REP. JOHNSTON: (51st)

Mr. Speaker, at this time I would I would like to move for acceptance and passage of the items on today's Consent Calendar.

SPEAKER ABATE:

The question is on acceptance and passage of all those items removed from today's regular Calendar to the Consent Calendar. All those in favor please indicate by saying aye.

REPRESENTATIVES:

Aye!

SPEAKER ABATE:

HB 5580, 5712, 5653, 5151; SB 1517, 212, 349, 75, 496, 515, 857, 967, 5365, 6358, 7299, 7888

Opposed no. The ayes have it. The bills pass. At this time the Chair will entertain points of personal privilege, announcements, introductions, matters of similar nature. Hearing none, is there further business on the Clerk's desk?

REP. GILES: (4th)

Mr. Speaker. Mr. Speaker.