

Legislative History for Connecticut Act

SB 351	PA 332	1984
House 5167-5198		(32)
Senate 1276-1278, 1461		(4)
General Law 101-105, 119-124, 146-148, 178-181, 195-199, 204-206, 210-212, 255-259		(34)
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House of Representatives Thursday, May 3, 1984

CLERK:

Senate Bill 604 as amended by Senate Amendment
Schedules "A" and "B".

Total Number Voting	143
Necessary for Passage	73
Those Voting Yea	141
Those Voting Nay	2
Those Absent and Not Voting	8

SPEAKER STOLBERG:

The bill is passed.

CLERK:

Calendar 619, File No. 268, Substitute for
Senate Bill No. 351, AN ACT CONCERNING APPLICATION
OF THE WHOLESALE PRICE OF SPIRITS, WINE AND BEER.
Favorable Report of the Committee on General Law.

REP. MOSLEY: (72nd)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Maurice Mosley.

REP. MOSLEY: (72nd)

I move acceptance of the Joint Committee's
Favorable Report and passage of the bill, Mr.
Speaker.

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SPEAKER STOLBERG:

Will you remark?

REP. MOSLEY: (72nd)

Mr. Speaker, briefly, Connecticut currently has affirmation on spirits, alcohol and beer and not wine. This bill would essentially do two things. It would include wine in the overall affirmation scheme, and also it will address a federal court's decision and it would specifically allow out-of-state shipper permittees to change their prices and any other state during calendar months covered by Connecticut posting to address the court's decision.

I move passage of the bill, Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further on the bill? Will you remark further? Rep. Mordasky.

REP. MORDASKY: (52nd)

Mr. Speaker, the Clerk has LCO 3352. Would the Clerk please call and I ask permission to summarize.

SPEAKER STOLBERG:

The Clerk has an amendment, LCO 3352, House Amendment Schedule "A". Will the Clerk please call.

CLERK:

LCO No. 3352 designated House Amendment Schedule "A", offered by Reps. Mordasky and Mushinsky.

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SPEAKER STOLBERG:

Is there objection to summarization? Seeing none, please proceed.

REP. MORDASKY: (52nd)

Thank you, Mr. Speaker. Very briefly, Mr. Speaker, this amendment puts forth the provisions that the savings be passed on to the retailers and hopefully this way to the consumer.

I move its adoption.

SPEAKER STOLBERG:

Will you remark on House "A"? Will you remark on House "A"?

REP. MOSLEY: (72nd)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Mosley.

REP. MOSLEY: (72nd)

Just very briefly in opposition to the amendment, Mr. Speaker. The amendment is not practical, not enforceable, and not needed. Presently in checking with the Liquor Control Commission on the affirmation of alcohol spirits and beer, the savings are being passed on. We have gotten lower prices, so the amendment is not needed. Additionally, in terms of

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the different brands of wine that are being sold in computing the gross profit, it will be extremely difficult. And also checking with the Liquor Control Commission it will be a cost to the State of approximately \$75, \$76 per year if the amendment passes.

So I'd like to speak in opposition to the amendment, and I also would like a roll call vote on the amendment, Mr. Speaker.

SPEAKER STOLBERG:

The request is for a roll call vote. All those in favor of a roll call vote, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

Adequate number is arrived at. When the vote is taken it will be taken by roll.

REP. MORDASKY: (52nd)

Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further on the amendment?

Rep. Mordasky.

REP. MORDASKY: (52nd)

A question to Rep. Mosley, please.

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SPEAKER STOLBERG:

Please frame your question, sir.

REP. MORDASKY: (52nd)

Thank you, sir. Through you, sir, I also got that fiscal note from OLR, and maybe I can't figure it out. I didn't do so good last night, but on lines 4, 5, and 6 and 7, on the file copy which says there's no fiscal impact, it says each manufacturere, wholesaler, and out of state shipper permittees shall post with the department on a monthly basis, etc.

On my bill, on line, on the amendment on line 35 it says "at time of posting of the bottle" etc. What difference does it make?

SPEAKER STOLBERG:

Rep. Mosley, do you care to respond?

REP. MOSLEY: (72nd)

Yes. I believe in the amendment they have a number 6 which indicates the gross mark up, and I believe that would have to be determined. The wholesaler doesn't have to hire somebody to determine that, and in order to check that according to the fiscal note, I believe the Liquor Control Commission will need two additional accountants and probably a clerk to adequately monitor and check those procedures.

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REP. MORDASKY: (52nd)

Mr. Speaker, through you to Rep. Mosley, another question, please.

SPEAKER STOLBERG:

Please frame your question.

REP. MORDASKY: (52nd)

Rep. Mosley, through you, sir, do you mean to tell me they're not going to check on the monthly basis at all? They're not going to send anybody out there?

SPEAKER STOLBERG:

Rep. Mosley, do you care to respond?

REP. MOSLEY: (72nd)

Mr. Speaker, through you, I really don't understand the question. Perhaps he could restate it. I don't understand the question, sir.

SPEAKER STOLBERG:

Rep. Mordasky, could you restate the question.

REP. MORDASKY: (52nd)

Mr. Speaker, on the file copy, through you, sir, it says on a monthly basis the bottle, can and etc. case price is going to be posted. Are they not going to send a man out to check that on a monthly basis?

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REP. MOSLEY: (72nd)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Mosley.

REP. MOSLEY: (72nd)

Mr. Speaker, I believe they would have to. However, under this amendment you would need additional people power in the Liquor Control Commission to adequately supervise and monitor and implement this amendment.

REP. MORDASKY: (52nd)

Mr. Speaker, through you.

SPEAKER STOLBERG:

Rep. Mordasky.

REP. MORDASKY: (52nd)

This is the question. It seems that if they send the same man out to look at the monthly listing of the prices, why can't he check it all at once?

SPEAKER STOLBERG:

Rep. Mosley.

REP. MOSLEY: (72nd)

Through you, just briefly, it's my understanding that a man is not sent out but prices are sent to a Liquor Control Commission, and most of the checking is

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done in-house, and under this bill in terms of checking for gross profits, you're going to need additional individuals, additional accountants to check.

REP. MORDASKY: (52nd)

Through you, Mr. Speaker, another question, please.

SPEAKER STOLBERG:

Please frame your question.

REP. MORDASKY: (52nd)

Thank you, Mr. Speaker. Through you, why can't they send the whole business into the liquor commission and let the liquor commission check it out?

SPEAKER STOLBERG:

Rep. Mosley.

REP. MOSLEY: (72nd)

Through you, Mr. Speaker. You have to have additional accountants checking the material, checking the work that's being sent in, and according to the fiscal note, that's approximately \$76,000 for the entire fiscal year.

REP. MORDASKY: (52nd)

Mr. Speaker, I had a little confusion when I read this file copy and found that there was no

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extra cost, and I called the Office of Fiscal Analysis about the money that they charge me on the amendment, and it says, and this is what they sent back.

While the amendment does not specifically require the Department of Liquor Control to perform additional duties, and thus can be construed to have no fiscal impact, the department has indicated that the need for staff to do compliance audit of the wholesalers. I don't understand it. They audit the wholesalers now, don't they? Through you, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Mosley, do you care to respond?

REP. MOSLEY: (72nd)

Through you, Mr. Speaker. I think I adequately answered your question. Through you.

SPEAKER STOLBERG:

Rep. Mordasky, you have the floor.

REP. MORDASKY: (52nd)

That's all. Thank you very much, sir.

SPEAKER STOLBERG:

Will you remark further on the bill? Will you remark further? Rep. John Woodcock.

REP. WOODCOCK: (14th)

Mr. Speaker, members of the House, the question

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before us with this amendment and mostly with this bill, who do we believe? In 1981 we deliberated on an affirmation bill which was one of the most heavily lobbied bills in that session.

In 1984 the same situation exists. The '81 statute was ultimately struck down by the Supreme Court of the United States as being unconstitutional, as being price-fixing, as being a restraint on trade, and as being one that interfered with the commerce clause. At the same time, the 1981 House and General Assembly received information from the wholesalers here in our state that affirmation would save our consumers money.

There is no evidence or no proof that I have seen yet that affirmation saved money. In fact, the work that has been done by the Office of Legislative Research has indicated that prices went up after affirmation went on the books. Also, when affirmation was struck down, prices stabilized. They did not go up as one would expect if indeed affirmation was holding prices down for the general public. I think what we have to do here is we've got to decide who we want to represent. Do we want to represent the people that make wine, the people that make

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beer, the people who sell beer on a wholesale basis in this state? Because what the special interests are asking us to do today is cut the pie so they can share it in the way that they wish to share it.

This is one of the most heavily lobbied bills that the House has seen this entire session. I would not even want to estimate what the payroll has been for lobbyists on this, and I must commend the lobbyists for the job that they have done. They have presented their case in a very coherent and sometimes plausible fashion.

One does not know which to believe. But I think if we're truly going to be paying attention to the public's best interests then we should leave the marketplace alone and let the marketplace dictate what prices will be. And if we're really looking after the public, then we should pass this consumer bill advocated this afternoon by Rep. Mushinsky and Rep. Mordasky. The question is are we really in favor of a consumer pass-through? We have no evidence whatsoever that affirmation has saved any consumers any money. We have plenty of evidence to the opposite that the special interests want this bill very much. Please support the amendment.

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SPEAKER STOLBERG:

Will you remark further on the amendment? Rep. Mushinsky.

REP. MUSHINSKY: (85th)

I'm not convinced that the bill itself will lower prices. Beer is a different animal than the more commonly affirmed hard liquor. It's true that hard liquor affirmation has lowered prices. You can see that if you check the figures. But if you ask OLR for figures on beer affirmation the short time we had it, OLR concluded it did not appear to have a great effect on prices to Connecticut wholesalers.

Three of the major brands went up. Four of the major brands went down, and two had no change. I asked them what could we do to this bill to get the possible savings down to the consumers, and they said you really would have to price fix all the way down to the consumer's level, but that would be impossible to regulate. You would have so many staff required. This amendment doesn't go all the way to the bottom, but it's as far as we can go at a low cost. It's as close as we can get to the consumer, bringing it down to the 5,000 number of retailers and we urge your adoption of the amendment. If this amendment fails,

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we urge your rejection of the bill.

SPEAKER STOLBERG:

Will you remark further on the amendment?

Rep. Walkovich. Rep. Scully was first, and then

Rep. Walkovich.

REP. SCULLY: (75th)

Mr. speaker, I rise in opposition to the amendment. The people who fought this bill all along were both the wholesalers and the people who manufacture these products. Now, if they were against it, there must be something good about it. We also have to remember that beer pricing has a great deal of flux through New England because of the question of the bottle bill.

The bottle bill was passed early in this state, but the other states have just been following, so the beer prices have really been in flux. You can't make some very fair comparisons on the beer prices. Last but not least, just three years ago we did away with minimum mark up in this state. Many of you here voted for doing away with minimum mark up. What this amendment will do is put back minimum mark up again, something that the people didn't want, which we didn't want, which we supported doing away with. To support

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this amendment I think is the wrong thing to do at this time.

SPEAKER STOLBERG:

Will you remark further?

REP. BENVENUTO: (151st)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Benvenuto.

REP. BENVENUTO: (151st)

I'd like to excuse myself for a possible conflict of interest.

SPEAKER STOLBERG:

The Journal will so note, sir. Rep. Walkovich.

REP. WALKOVICH: (109th)

Mr. Speaker, a question through you to the proponent of the amendment.

SPEAKER STOLBERG:

Please frame your question.

REP. WALKOVICH: (109th)

Rep. Mordasky, is there any cap on the amount of increase which a retailer can charge after he has received the product from the wholesaler?

SPEAKER STOLBERG:

Rep. Mordasky.

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REP. MORDASKY: (52nd)

Through you, sir, there is no cap. And we hope that the 5,000 retailers would be in enough competition with each other to bring a lower price to the consumer. You know, it's a combination of 19 wholesalers and 5,000 retailers.

REP. WALKOVICH: (109th)

Mr. Speaker, speaking in opposition to the amendment, I think Rep. Mordasky has just proven that this is a false pass-through. We're saying that shifting a cap on the amount of increase that the wholesaler could charge to the retailer, and yet the retailer can charge whatever he pleases. If the cap is good for the wholesaler, it should be good for the retailer.

If the open market competition is good for the retailer, it should be good for the wholesaler. Mr. Speaker, this is a false amendment. It's an attempt to kill the bill. This amendment couldn't even get a sponsor in the Senate. Therefore, I would move opposition to the amendment.

SPEAKER STOLBERG:

Will you remark further on the amendment?

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REP. MOYNIHAN: (10th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Moynihan.

REP. MOYNIHAN: (10th)

Mr. Speaker, I rise to speak in opposition to the amendment. I think it's interesting that the amendment is being fostered upon this body by the group that really has been lobbying most of the session and going back three years to kill the whole issue of affirmation.

It really has nothing to do with pass-through. If that was the case, then they would have been in favor of affirmation over the last three years with an affirmation amendment. Instead, they want the courts to strike our affirmation law. Let me give you a little history about how we got to this perspective to start off with.

For several years we fought the issue of repeal of minimum mark up, going to a free market. When the compromise finally came up three years ago and we decided to open up competition among our retailers and among our wholesalers so they were no longer protected by minimum mark up. What we are concerned is the leverage of the State stores had in purchasing and the

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border states, the very large states, and the enormous size of their wholesalers and retailers, that our wholesalers and retailers would be at a disadvantage because so many of our consumers had gotten in the habit of going across the border.

At that time, as part of the compromise, for those of you who were here, the bill sat on the Senate Calendar for six weeks. If you think this issue was lobbied, you should have been here then. And the tugging and pulling that went back and forth, and as part of the final agreement, beer affirmation was put in. We've always had liquor affirmation, and wine affirmation was given a moratorium. I think the moratorium has passed, and I think it's appropriate. Let us find out. Let us open the market to see that prices are realistically offered in Connecticut as they are in adjacent states, and let us see.

And if we find out that it is the case where there are not savings that come to the consumer, then I think we ought to address it. But we should not go back to trying to price fix margins in terms of relationships on individual purchases as this amendment tries to do. Bearing in mind that this amendment is being brought to you by those that have opposed affirmation

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for the entire session. We did get into it before we went to repeal the minimum mark up. We did get into an issue of when distillers and vintners primarily go for post-offs on pricing, that that was able to be passed through on a monthly basis to retailers. We tracked that very carefully in the late 70's, and we found out the evidence is clearly there that those post-offs and reductions in prices were passed from the wholesalers to the retailers and ultimately to the consumers.

And those were the specials that you began to see offered in the late 70's in our package stores before we went the full route of repeal. I think the bill is proper. I think the amendment before us does not come well-grounded in good intentions. And as I say, if it was, this is the issue that you would have seen discussed in committee and in the process for the last several months. It would have been the issue of this amendment, but instead it was the issue of let's kill affirmation. That's why it's here today. I urge defeat of the amendment.

SPEAKER STOLBERG:

Will you remark further on the amendment? Will you remark further? Rep. Fuscas

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REP. FUSSCAS: (55th)

Thank you, Mr. Speaker. I have some questions about the amendment. I'm confused. And through you, if I may, to Rep. Mordasky, could you tell me, sir, what this would cost to implement at the wholesale basis, one wholesaler?

SPEAKER STOLBERG:

Rep. Mordasky.

REP. MORDASKY: (52nd)

Through you, Mr. Speaker, I don't have any idea, but the 19 wholesalers make \$420 million. They ought be able to hire a secretary to take care of it.

REP. FUSSCAS: (55th)

Thank you, Rep. Mordasky. Another question, it's new, section d. And in reference to wine, is it my understanding that if you had a gross mark up of let's say 50¢ per bottle of wine, which is the average gross mark up through the past 360 days, if that wine was to go up in cost to the wholesaler, he could not charge more than that 50¢ average gross up?

REP. MORDASKY: (52nd)

Through you, Mr. Speaker, I don't believe he could. It would be the average.

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REP. FUSSCAS: (55th)

If I may, through you, Mr. Speaker, pose one more question.

SPEAKER STOLBERG:

Rep. Fusscas.

REP. FUSSCAS: (55th)

Wine in a bad year sells at a discount. Suppose we had a very good year and it was selling at a premium, and let's say that it doubled and tripled in cost. Are you saying then that a bottle of wine the wholesaler bought for \$5 that he's now buying for \$15, he's getting the same small percentage?

REP. MORDASKY: (52nd)

It is a percentage, through you, sir, it would be a percentage and therefore as percentage would follow through. A percentage of the previous 12 months.

REP. FUSSCAS: (55th)

One more question, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Fusscas.

REP. FUSSCAS: (55th)

If his average gross mark up in a percentage was 10%, then he could charge 10% of the \$15 as well as the \$5. Is that correct?

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REP. MORDASKY: (52nd)

It would be the percentage of the profit that he would make, yes.

REP. FUSSCAS: (55th)

I have no other questions.

SPEAKER STOLBERG:

Will you remark further on the amendment?

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

I don't know that I wish to inquire of the proponent as perhaps Rep. Mosley. There was just debate a moment ago which I think I understand as I read this. The last part of well, really, lines 29 through 32, as I read the amendment, it says if you introduce a new product unlike the part from lines 23 through 29, or 28, if you, which says each item. If you introduce a new product, your mark up is tied, on line 31½ to the permittee's average gross mark up on all items sold by such permittee during such period. Through you, Mr. Speaker, to Rep. Mosley, as I understand it, profits will vary from wine to beer, historically, indeed even when there

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was minimum mark up, the fixed mark ups were quite different, and I suspect in a semi-free market are to this day. If you had to introduce a new item and say it was a wine and it was historically marked up considerably more than say beer was, would you not be in trouble under the second part of this new subsection d in that the beer, the historic 12-month average of all the beer items you were selling would pull down any permissible mark up perhaps to a price which makes it unworkable?

REP. MOSLEY: (72nd)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Mosley.

REP. MOSLEY: (72nd)

That's correct, Mr. Speaker.

REP. VAN NORSTRAND: (141st)

People can feel whatever they want to about whatever they want to do as consumers, but I think they can't deal with this amendment. It is seriously flawed in that regard because the second part says "all items" and that average could be very low.

SPEAKER STOLBERT:

Will you remark further on the amendment? Rep. Miscikoski.

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REP. MISCIKOSKI: (65th)

Thank you, Mr. Speaker. Mr. Speaker and members of this House, you know it's always fascinating. Every time there's a bill that comes up involves drinking, you know, the State rips everybody off now. There's nobody that pays these licenses. You've heard the story before. Now we're discussing their profits. We never discuss the profits the lawyers make, the doctors make, the dentists, or anybody else. The auto industry that keeps ripping us off, that's why their profits are great.

That's why you have to pay for the price of the car the way it is. We don't debate that here. We're always picking on one industry. I only regret that 22 years ago I didn't start screaming like I been screaming lately, because the people in the liquor industry, they're constantly being criticized one way or another and constantly being ripped off by government. Every time they want taxes, they go up and bag them.

You know, what's the difference how much money they make? They're in business to make money. They create jobs. It's like I said, my father always said that I hope the Torrington company makes a lot of money. Then he says, I'll always have a job. You know, it's getting tougher and tougher and tougher to do

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business in this state. We're constantly bagging the people that create jobs.

If it isn't taxes, it's some stupid law, and boy, do we pass a lot of stupid laws here, and the public out there is sick and tired of the garbage that we do here. If you don't believe me, go out there and ask them in the street. I used to live with the public when I ran a restaurant. You know, it's about time. Let's go after some other people. Why pick on the same industry over and over, I don't give a damn what it is?

It's the only industry that they pick on, and I'm only sorry that I didn't start this campaign to start working in their behalf 22 years ago. Because most of the people who are involved in this business are constantly working hard and they have to take all the crap that we give them from government. Thank you.

SPEAKER STOLBERG:

Will you remark further on the amendment? Oh, I'm sorry, I thought that was the concluding remark we just had. Rep. Prague.

REP. PRAGUE: (8th)

I just have a question, Mr. Speaker. Far be it from me to push the liquor industry, but business is business, and I would like to ask through you, Mr. Speaker,

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a question of Rep. Mordasky.

SPEAKER STOLBERG:

Please frame your question, madame.

REP. PRAGUE: (8th)

Rep. Mordasky, if a wholesaler is tied, you know, to a price of beer that was sold to him by the brewery for a whole year, what happens if in his business the cost of his electricity goes up or his telephone goes up or the variables that exist in any business? Is he as a businessman entitled, you know, to increase his charges depending on his costs?

REP. MORDASKY: (52nd)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Yes, sir.

REP. MORDASKY: (52nd)

Through you, Mr. Speaker, the lobbyist told me that there was any cost and increase in labor that the industry would have to eat it, and I don't think that's any different from the dairy industry. Axle weights are going to cost the price of hauling milk 8\$ a hundred. It's going to cost my sons and I \$2,000 a year. We got to eat it.

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REP. PRAGUE: (8th)

Rep. Mordasky, through you, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Prague.

REP. PRAGUE: (8th)

It's not fair. It's not fair, and I agree with you that the dairy industry, that's not fair.

SPEAKER STOLBERG:

Will all members please be seated. Will staff and guests.

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

Just to put this in perspective, just so there's not another group for Rep. Miscikoski to defend, I think we all know the dairy industry's been milking us for a long time.

SPEAKER STOLBERG:

Will you remark further on the amendment? Rep. Zajac.

REP. ZAJAC: (83rd)

Yes, Mr. Speaker, and thank you. I think we've

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gone astray in our deliberations on this really. I think the bottom line you have to ask yourself and there seems to be some doubt in this Chamber whether affirmation in the past has worked. Some feel it has, some feel it hasn't.

I think Rep. Mushinsky in her own statistics she threw out on the floor said that in four cases it worked and in three not. Well, I'd point out that that's across the line of various brands, but I ask you to ask yourself, do you see constituents now shopping more so than ever in Connecticut than they used to, instead of going to Springfield to Town & Country or to Sturbridge Village or across the line in New York? Affirmation, I think you can look at your local papers and the ads within the paper.

And you have seen some real competitive prices, so much so that they're exactly the same price as up in Massachusetts now that they do have a bottle bill, and the fact that the sales tax and collection is different, the bottle prices are so close that people feel they don't have to travel to Massachusetts. It's not worth the extra gas. So affirmation, in fact, is working, has worked, but you have to dig down deeper to evaluate that with the bottle bill situation, sales tax, all the

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other various mechanisms that are attached within the price structure.

And I really think that if you evaluate it that way, you and your constituents know that they are seeing some good prices right now and the pass-throughs are there. So your bottom line is do you need a bill that says pass it through, or is it in place now?

SPEAKER STOLBERG:

Will all members please be seated. Will staff and guests come to the well of the House. Will you remark further on the amendment?

If not, the machine will be opened.

CLERK:

The House of Representatives is now voting by roll. Will the members please return to the Chamber immediately. The House of Representatives is now voting by roll. Will the members please return to the Chamber immediately.

SPEAKER STOLBERG:

Have all the members voted? Have all the members voted? If all the members have voted, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally.

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CLERK:

House Amendment Schedule "A" to Senate Bill 351.

Total Number Voting 146

Necessary for Adoption 74

Those Voting Yea 21

Those Voting Nay 125

Those Absent and Not Voting 5

SPEAKER STOLBERG:

The amendment is defeated.

Will you remark further on the bill? If not,
will members please be seated.

REP. MORDASKY: (52nd)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Mordasky.

REP. MORDASKY: (52nd)

On the bill, Mr. Speaker.

SPEAKER STOLBERG:

On the bill.

REP. MORDASKY: (52nd)

Rep. Moynihan talked about a free market. If
there's a free market, affirmation doesn't come into a
free market. Rep. Zajac said that things were very good
now and we were in line with our competition without

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affirmation, so what do we need the bill for? We want a free market, we don't need affirmation. If things are good now, we don't need affirmation.

I'm against the bill. Vote it down.

SPEAKER STOLBERG:

Will you remark further? Rep. Woodcock.

REP. WOODCOCK: (14th)

Mr. Speaker, just a few things I'd like to share with the Chamber. Again I'd like to state that there is no hard evidence of any kind that affirmation has led to lower prices for the public. In fact, there's only one state that has beer affirmation, and that's the State of New Mexico, and no one was able to furnish me with any information indicating that affirmation had a positive effect with respect to the public's purchasing power.

So I think it's important that the record should reflect that. Also, the State of Connecticut has been put on notice at the public hearing that was held before the General Law Committee in this session that there will be another challenge to this statute. And I'd like to share with you some of the comments of the Assistant Attorney General who spent two years defending our 1981 statute, which was ultimately struck down by our Supreme Court. Attorney General Richard Sheridan said that the

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affirmation statute was something that was hard to police. It would not lower prices to the public. It would only lower prices for wholesalers, and that the State of Connecticut had spent well over \$150,000 in defending that particular statute.

I would suggest to you that you're going to see this case in court again, and I don't want to sound like a prophet, but I would not be a bit surprised if our statute is once again ruled unconstitutional. I urge the defeat of the bill.

SPEAKER STOLBERG:

Will all members please be seated. Will staff and guests come to the well of the House. Will you remark further on the bill? If not, the machine will be opened.

CLERK:

The House of Representatives is now voting by roll. Members please return to the Chamber immediately. The House of Representatives is currently voting by roll. Members please return to the Chamber immediately.

SPEAKER STOLBERG:

Have all the members voted? Have all the members voted? If all the members have voted, the machine will be locked, and the Clerk will take a tally.

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Will the Clerk please announce the tally.

CLERK:

Senate Bill 351.

Total Number Voting 145

Necessary for Passage 76

Those Voting Yea 133

Those Voting Nay 12

Those Absent and Not Voting 6

SPEAKER STOLBERG:

The bill is passed.

CLERK:

Page 9, Calendar 568, Substitute for Senate Bill 533, AN ACT CONCERNING COMMUNITY RESIDENCES FOR MENTALLY ILL ADULTS. Favorable Report of the Committee on Planning and Development.

REP. GARAVEL: (110th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Paul Garavel.

REP. GARAVEL: (110th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
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120-27
PART 4
1977-1985

SENATE

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THE CHAIR:

Do you wish to remark further on the Amendment? If not, all those in favor of it signify by saying aye. Those opposed, nay. The ayes have it. The Amendment is adopted. Senator Skowronski.

SENATOR SKOWRONSKI:

Thank you Mr. President. I would now move the Bill as amended and Senator Larson's explanation of the Amendment really included an explanation of the Bill so I think the Bill has been discussed and I would move it to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Calendar 186, File 268, Substitute for Senate Bill 351, AN ACT CONCERNING AFFIRMATION OF THE WHOLESALE PRICE OF SPIRITS, WINE AND BEER, Favorable Report of the Committee on General Law. The Clerk has an Amendment.

THE CHAIR:

Senator Dorr.

SENATOR DORR:

Yes Mr. President. I move adoption of the Joint Committee's Favorable Report and passage of the Bill.

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THE CHAIR:

Clerk please call the Amendment.

THE CLERK:

Clerk has Senate Amendment, Schedule A, LCO 3307.

THE CHAIR:

Senator Dorr.

SENATOR DORR:

Yes Mr. President. That Amendment's been withdrawn.

THE CHAIR:

The Amendment is withdrawn. Any further Amendments?

THE CLERK:

No Mr. President.

THE CHAIR:

Senator Dorr.

SENATOR DORR:

Yes Mr. President. This measure, with respect to this measure, presently manufacturers and out of state shippers of alcohol and spirits are prohibited from selling their products to Connecticut wholesalers at prices which are higher than the lowest price charged for those products in any other state or the District of Columbia and must affirm that fact under oath. Similar affirmation is required of manufacturers and out of state

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shippers of beer who must charge Connecticut wholesalers the lowest price they charge in bordering states. The prices so affirmed Mr. President, prevail for the entire month after they are posted with the Department of Liquor Control.

This Bill, Mr. President, would alter existing price affirmation requirements and would include wine in the new price posting affirmation system. Prices on all alcoholic beverages sold in Connecticut would be posted on a monthly basis with the Division of Liquor Control but any affirmation as it reflects prices charged anywhere else in the country would apply only to the price existing at the time of posting and not for the entire month after as is currently required, Mr. President.

This Bill would specifically allow manufacturers and shippers to change wholesale prices on all other states and the District of Columbia at any time during the calendar month covered by the Connecticut posting. Mr. President, if there is no objection to this measure, I would ask that it be placed on the Consent Calendar.

THE CHAIR:

Hearing none, so ordered.

THE CLERK:

Calendar 214, File 17, Substitute for House Bill 5166,

1984 GENERAL ASSEMBLY

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LFU HB5166-SB367

Senate. Will all Senators please take their seats. An SB536-SB484

immediate Roll Call has been called for in the Senate. SB571-HB5526

Will all Senators please be seated. HB5656-HB5181

THE CHAIR: HB5596-H5503

Please give your attention to the Clerk as he pro- HB5725-HB5204

ceeds with our rather extensive Consent Calendar. SB95-SB555

THE CLERK: SB596-SB355

On page 1, Calendar 392. On page 2, Calendar 393, SB458-SB427

394, 395. On page 3, Calendar 167, 186, 214. On page SB453-SB474

4, Calendar 231, 236. On page 5, Calendar 252. On page SB192-SB310

6, Calendar 277, 282, 286. On page 7, Calendar 290, 297. SB422-SB496

305. On page 8, Calendar 315, 323, 327. On page 9, SB577-SB197

Calendar 329, 333, 334. On page 10, Calendar 337, 339, SB276-SB227

340, page 11, Calendars 343, 344, 346. Page 12, Calendar SB266-SB495

349, 350. SB548-SB589

Page 13, Calendar 360, 361, 362, 364. Page 14, SB592-SB215

Calendar 368, 369, 370, 371, 372. Page 15, Calendar 373, SB281-SB331

374, 375, 376 and 378. Page 16, Calendar 379, 380, 381, SB400-SB578

383. On page 17, Calendar 386, 387, 388, 389, 390. Page SB456-SB194

18, Calendar 391, 396, 397, 398, 399, 400. Page 19, SB419-SB520

Calendar 401, 402, 403, 404, 405. Page 20, Calendar 406, SB603-SB606

Calendar 407, 409, and 410. HB5790-HB5600

Page 21, Calendar 413, 414, 416, 417. On page 22, HB5144-HB5358

Calendar 420 and 421. Page 23, 424, 425, 526, 427, 428, HB5639-HB5575

HB5644-HB5075

HB5173-HB5547

HB5649-HB5726

HB5758-H5760

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JOINT
STANDING
COMMITTEE
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MR. ROSS HOLLANDER: Chairman Dorr, Chairman Mosley, members of the General Law Committee, good morning. My name is Ross Hollander and I am President of Hartford Distributors a wholesale distributor of malt beverages in Hartford and Tolland Counties.

I appear before you today in opposition to Raised Committee Bill 351, better known as price affirmation. I respectfully request that your Committee take no action on this misguided legislation. The following are some of my thoughts on affirmation.

This is a special interest legislation and as such, we don't feel warrants your time and consideration, particularly during the abbreviated session. The legislation will not appreciably benefit the consumer. While FOB prices may vary slightly from state to state, for some brewers, the amounts are so infinitesimal that it is unlikely that these savings, if any, will be passed on to the consumer. The largest difference in prices in different states is on barrel beer. Is it likely that your local tavern will lower its price of draft beer by one cent or two cents? I doubt it.

Relative also to beer, this legislation in my opinion, is not needed. Attached to the hand out I just gave the clerk, you will find that the wholesale prices to retailers for Budweiser 24-12 ounce which is an item that we happen to sell, compared to our bordering bottle law states of Massachusetts and New York we are the lowest of those states. Now, there are some differences, depending on the particular market in New York but the ones that I surveyed I have on that sheet, we are about \$1.00 a case less than those other markets as of 1-30-84. That was when we took that survey.

As I said, interestingly enough, our prices in Connecticut are lower than our adjacent states. The breweries will unequivocally challenge the law in the courts if we do repair it and pass it again; effectively pass it again. As I said in my previous note on the price differential, the variation is so small therefore such a minimal reward is it worth a long expensive litigation? Is the risk worth the reward, the reward worth the risk?

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MR. HOLLANDER: (continued)

This legislation also serves to disrupt an otherwise calm brewer-wholesaler relationship. It also reduces consumer options. Brewers who are not already doing business in the state of Connecticut most likely will not choose to introduce their brands here. Some probably will withdraw from Connecticut. This is even more exasperated in the wine industry.

The 21st Amendment to our Constitution gave the states the right to govern the sale of alcoholic beverages within their respective borders. This encumbers brewers with 50 different sets of laws and regulations with which to cope while trying to market their products. Pricing is one of many marketing tools available to a brewer which allows them to compete in these varying environs.

Ladies and gentlemen, each of you decided to run for public office in the hopes of helping to enact legislation which is in the best interest of your constituents while being fair and equitable to all. If Anheuser-Busch wishes to run a special promotion indiginous to New York City or Boston, is it fair and equitable for them to have to lower their prices in Connecticut to do so? Thank you for your time. If you have any questions now or in the future, I'll be happy to answer them.

SEN. DORR: Questions of Mr. Hollander? I just have one question. You said that the price that you're purchasing right now is the same price that they're selling it for in the State of New York or Massachusetts?

MR. HOLLANDER: No, I said what eventually becomes the important factor is the price that is from the wholesaler to the retailer. The price--there are different costs of doing business in different states. But the price--I will say this. Th at other than draft beer, there are very, very small differences, at least in the Anheuser-Busch line and that's all I can--and the Hilemon line. It's a very, very infinitesimal difference.

SEN. DORR: Are you getting your beer from the manufacturer at the same prices that they're paying in New York?

MR. HOLLANDER: Within reasonable--within a few cents. I may be from one month a couple cents higher on one item and a couple of cents lower on another item but it certainly is within a couple of cents on most packages, with the exception, possibly, of draft beer.

SEN. DORR: I see. Any further questions? Representative Zajac.

REP. ZAJAC: Yes. You said that you had litigated or the industry would litigate and test it in court. It seems to me that at least the idea of affirmation has been tested in hard liquor and has held up. Why do you feel that you would win this one?

MR. HOLLANDER: I don't know at what point it was challenged on hard liquor. I will say on beer, the actual spirit of the legislation was not really tested in the court in this last go round. The last time it was tested, it was tested, it didn't get beyond a technicality on pricing when it was posted during the month so they really didn't get a chance to get into the real meat and the spirit of the legislation so I don't really think that part has been tested yet.

REP. ZAJAC: You mentioned if Budweiser was to promote beer at a special price in New York, I think that's the concern, at least of myself and perhaps the Committee, in that with the consolidation in the beer business that's happened in the last two years, there are probably only three major breweries left as they have merged and bought out all the others. And it becomes monopolistic to the point where, if they want to promote in the big cities such as Chicago, New York, Newark, Detroit, whatever, at a special price and cater to the metropolitan areas, and charge less but make up their advertising costs in the smaller states such as Connecticut, I don't think that's fair.

MR. HOLLANDER: I don't think that's fair either and I don't think that's the case. In my opinion, there are certain reasons why a brewer would need to meet a competitive challenge in a certain area, maybe even a beer that isn't in Connecticut and is in New York or a reason like that where they have to compete in New York and meet a

MR. HOLLANDER: (continued)
competitive challenge in New York, a challenge that they're not facing in Connecticut and it's, as I said, indiginous to that particular region for that particular time and they have a reason for running a promotion then. Whether-- for whatever reason it be.

I feel as though they should be able to do so without having to calculate their cost of doing business in Connecticut for that same period.

REP. ZAJAC: Okay, that's probably where we disagree because with only three major brewers I don't know what you allude to as far as a special reason. I imagine a competitive reason, but if there's only three, you see the competition is dwindling down to three and at that point there will be no competition.

MR. HOLLANDER: Well, there are still a lot more than three. There are several brewers left and are competing vigorously in the marketplace. If it was monopolistic, in nature, at this point, I don't think that they would be fighting as they are today. They are fighting tooth and nail just as they always did, very competitive industry.

REP. ZAJAC: Thank you.

SEN. DORR: Further questions? I have one further question for Mr. Hollander, if you don't mind. I've always been interested in the consumer viewpoint, when affirmation was instituted in Connecticut previously, did you lower your prices to your customers?

MR. HOLLANDER: We adjusted our draft beer price to meet a competition from our--as Representative Zajac said, our major other brewer here in Connecticut. We did lower that to match a competitive situation from a brewer whose price was already lower. Our package beer did not get lowered at all--I mean I'm not saying that there weren't promotions but there are promotions now, on a monthly basis a different package which is promoted, but overall prices did not decline at all.

SEN. DORR: The answer to the question would be yes, you did

SEN. DORR: (continued)
lower your prices?

MR. HOLLANDER: I think that's too simplistic.

SEN. DORR: I see, okay, very good. I thank you. Further questions? The next speaker--thank you Mr. Hollander. The next speaker, Richard Meek to be followed by Michael Rosenthal.

MR. RICHARD MEEK: Thank you Senator Dorr. My name is Richard Meek. I'm Counsel for the Connecticut Automotive Trades Association. Our Association represents the more than 400 new car dealers of the state of Connecticut.

SEN. DORR: Excuse me, Richard. Could you speak closer to the microphone?

MR. MEEK: I'm here to support the passage of SB 396. The law being amended concerns the procedure for an auto manufacturer opening a new dealership in Connecticut. The law is not concerned with existing dealers who wish to sell their dealership to a buyer. The law comes into play in those cases where a manufacturer wishes to open a new dealership at an entirely new location or where they wish to reopen a plant which has closed because the prior dealer went out of business.

It is the intent of the law that if there is a protest from a dealer of the same make located within fourteen miles of the proposed new dealership or reopened point, that a hearing be held by the Motor Vehicle Department at which the manufacturer is required to introduce a marketing study to demonstrate that there is a need for the new dealership.

This law is already in place but the Connecticut Attorney General's Office introduced a new element into the law by giving an opinion to the Motor Vehicle Commissioner to the effect that the word additional meant an increase in the total number of dealers in a relevant market area and so a hearing would not necessarily be held if previously there had been a dealer in the area. He did not say how far back we should go to find a previously existing

MR. LEVI: (continued)

I myself, have bought stolen merchandise from teenagers but I do it on purpose. This way they can be caught and I get reimbursed by the police. I have a good working relationship with the Greenwich detectives. Anytime a teenager comes in with a tiffany bowl, we know it's no good so we buy it and immediately call the police and in this particular case, a police form is not even necessary. Usually I have to send--and we all have to send our police forms every Friday in certain areas. In Greenwich, every Friday we have to send a police form to the detective agency.

Now, when we send that, usually we hold the material anyway, if it's a little suspicious because we call immediately. I call immediately to the detectives and even the police form is unnecessary. But if they go to somebody in back of a liquor store or something, they're going to still do that. Their best chance of having things recovered is going to us honest dealers.

SEN. DORR: Thank you. Further questions? Thank you. The next speaker is Charles Mokriski, to be followed by Sylvia Stieber.

MR. CHARLES MOKRISKI: Senator Dorr, Representative Mosley, my name is Charles Mokriski--

SEN. DORR: Speak closely into the microphone.

MR. MOKRISKI: I'm an attorney practicing in Hartford and I'm representing today the Anheuser Busch Company in opposition to Senate Bill 351, An Act Concerning Affirmation of the Wholesale Prices of Spirits, Wine and Beer.

I've got a prepared statement which I will submit to the Committee and not take up your valuable time in reading it here, but I'd like to point out a couple of things and respond to a couple of points that were made earlier by a couple of the Committee members.

First of all, this Bill, as it is drafted, will not provide or ensure one penny in price reduction to either retailers of alcoholic beverages or to the consumers of those

MR. MOKRISKI: (continued)
beverages. I think Mr. Hollander earlier testified to that effect.

SEN. DORR: Will you speak louder, Mr. Mokriski?

MR. MOKRISKI: So far as the beer industry is concerned, there is only one other state in the country which has affirmation on beer prices and that's the state of New Mexico and that system is now under court scrutiny before the United States Supreme Court.

Connecticut had beer price affirmation for a very short period of time. It was struck down by the 2nd Circuit Court of Appeals and the U. S. Supreme Court upheld that. I think it would be folly for this Committee to march back into the area of price affirmation on beer when it is demonstrable that under this Bill, not one penny of any savings that anybody might achieve is required to be passed on to either retailers or the consumers when the cost of litigating the issue and the uncertainty in the Constitutional sense, are going to sap the strength of the state for the next couple of years.

Liquor, spirits, stand on a slightly different footing than beer and one of the reasons we've had price affirmation on spirits for a number of years and the constitutionality of such a system has been upheld, is that in spirits we have a national distribution system in which many states play a very primary role in the distribution. Affirmation started out in the so-called monopoly states where we don't have private enterprise in spirits distribution but in fact we have state stores that sell spirits. Therefore, any savings that are achieved under those systems by price affirmation go right into the coffers of the state and are used for the general fund.

Beer distribution across the country is wholly different. It is a system dominated by private enterprise. In the state of Connecticut, we have exclusive territories for beer distributors. We at Anheuser Busch think those are a good idea because they enable distributors to maintain freshness of product which is important in beer. It's not a consideration in liquor, in spirits. It also enables

MR. MOKRISKI: (continued)

our distributors to repay deposits on containers because we have a container Bill in this state. But if you have the exclusive territories and somehow you require one tier of the distribution system, that is the brewers, to sell at an artificially low price, a price which could be driven down because of competitive conditions in a neighboring state, you have no competition on that next distribution level among distributors of the product.

There are situations in New York City, for example, particularly in the stadiums, particularly in big events where it might be necessary, at times, to price promote for a short period of time. It is not fair to the brewery industry to acquire any temporary price promotion in a very competitive situation to be matched in a wholly different competitive circumstance such as in this state.

You might have a situation in which a small market, Rhode Island being smaller than Connecticut, has a particular local market situation which requires price competition for a limited period of time in order to establish the brands' prominence, in order to establish a greater share of market. It would be impossible for a brewer to price to match that price in a larger volume state such as Connecticut and therefore, we're going to have to foreclose us from marketing vigorously in those other states.

Finally, on the legal issues, the 2nd Circuit Court did not get to, did not dispose of the issue of price affirmation once and for all with the Connecticut law. It merely said the way our old Connecticut affirmation law was written was clearly unconstitutional. It said you might be able to write a law that's constitutional, but I would submit to Committee members that there's no benefit to be gained by Connecticut consumers to writing this law and whether or not it might be ultimately upheld because there is no requirement that the cost savings be passed on to either retailers or to the consumers. And I would urge the Committee to read the statement that I've submitted and to consider very carefully, whether they want to enlist this Committee on the side of just one tier in the distribution system on the side of just one special

MR. MOKRISKI: (continued)

interest and to do something that really is totally at odds with the free enterprise system that we've got in this country.

SEN. DORR: I have one question. In your mind, is there some way that we could make sure that the price reduction reaches the consumers? I mean is there some way that this Bill could be constructed so that the consumers ultimately would benefit because obviously that's the intent of the Committee at this point.

MR. MOKRISKI: Senator, this Committee, if it wants, can write a very thorough-going statute that regulates prices of liquor products at every tier of distribution and in so writing such a framework, you could provide that there be a maximum markup on liquor prices or on beer prices. However, this Committee decided three years ago, that it was going to get the state out of the business of administering prices and let the market mechanism do it. We submit that that is the proper way to approach the pricing of product. It is neither appropriate to mandate a minimum markup or a maximum markup. You ought to let the competitive situation take over. The consumer as in the end, will be the beneficiary. Every time this government of this country has gone into price administration, whether during the war or during the early 70's, there has been a heckuva turmoil. The whole foundation of the economic system is the free pricing of commodities according to the market and I'd urge you to support and to continue that system in the area of alcoholic beverages as well.

SEN. DORR: Further questions? Further questions from the Committee? Thank you Mr. Mokriski. I'm sorry, Representative Torpey.

REP. TORPEY: Sir, you mentioned that the retailers and the consumers won't benefit by this. Someone earlier testified that this was a special interest Bill. Who is the special interest that will benefit by this?

MR. MOKRISKI: The way the Bill is drafted now, Representative Torpey, the distributors of alcoholic beverages, wine and beer will be required to receive the product at a price no

MR. MOKRISKI: (continued)

lower than in a number of other states. It differs for wine or beer and spirits. Those distributors of spirits, beer and wine have no obligation to pass those price savings on to the next tier of distribution, the retailers. Therefore, as written, the Bill purely caters to the distribution, the wholesaler level of--the wholesale tier of the distribution system and we would submit that in that respect, it is special interest. That is the special interest being accommodated here.

REP. TORPEY: I appreciate the--not trying to control the price and I think that's your position also, but I don't understand how you support the idea of setting up certain areas for distributors. Why wouldn't that same thing apply there? Let the market, let the competition go into whatever area they please.

MR. MOKRISKI: The Bill is not before the Committee, but let me submit there are two reasons supporting the exclusive distributorship system in regard to beer itself. There are considerations of freshness in product price. Anheuser Busch products are very carefully controlled as to quality. We have requirements that our wholesalers get the products off the shelf if they're not sold within a certain limited period of days because beer is a food and it goes stale and it goes bad and unless we can control exactly which distributor or which wholesaler is putting the product into which territories and into which markets, if bad, stale Budweiser or Michelob beer gets sold and it starts to diminish the taste of the public and the image of our product before the public, then we'd like to have somebody to hold responsible and if we can know which of the wholesalers is dealing with that territory, it's that wholesaler's responsibility so it's a question of product and quality control.

Similarly, distributors are required to originate the deposit on beverage containers and to redeem those beverage containers. It wouldn't be fair to allow a distributor to ship his product all over the state and to impose the burden of redeeming the deposit containers, the containers, on another distributor in another territory.

MR. MOKRISKI: (continued)

I don't know if those two reasons are persuasive to you, but those are two of the reasons why we support the system of distribution prevailing in Connecticut at the present time.

REP. TORPEY: Thank you.

SEN. DORR: Further questions? Thank you. Sylvia Stieber, followed by Harold Kritzman.

MS. SYLVIA STIEBER: I'm Sylvia Stieber, an independent theater owner. I own a single installation in Avon, Connecticut. I came here to speak on An Act Concerning Motion Picture Distribution, Number 350.

In all due respect to the people who have introduced this Bill and to their sentiments to help the independent and other exhibitors in the state of Connecticut, I would like to state that at this time, I think it is the wrong time for this Bill. I would like to state that our main objective now, is to eliminate the very onerous taxes that are put upon us by the state of Connecticut and namely, the admissions tax and the tax on the sales tax on film rental.

I'm an independent and with your forbearance, since I have a very short statement, I would like to introduce the current President of Connecticut Association of Theater Owners, Bud Levy from Translux.

SEN. DORR: Thank you.

MR. BUD LEVY: Thank you Sylvia.

SEN. DORR: Mr. Levy, welcome.

MR. LEVY: Mr Chairman, I am the President of CATO, the Connecticut Association of Theater Owners. I also am the President of Translux Corporation in Norwalk, Connecticut. I heartily agree completely with Miss Stieber's sentiments. As far as this Bill is concerned, right now, we feel, the majority of CATO feels that the taxation is much more important and that our priorities in the organization is for the elimination of taxation and at this time we do not

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MS. KRITZMAN: (continued)

states, and I quote, any American citizen can buy, sell, own, or transfer gold in any form, without restriction, either in the United States of America or abroad.

SEN. DORR: Thank you.

MS. KRITZMAN: One more point, may I please make? I feel with a holding period on the items that we buy in our store, the items that I buy for my valued clientele that I worked very hard to establish over eleven years that I've been in business, the items that I buy from them and myself, are being discriminated against by any suggestion of a holding period of any length. What about people who buy oriental rugs? They're stolen out of homes. What about people who buy stereo and video equipment to use? They're stolen out of homes. People who buy used car parts, people who buy used cars, people who buy scrap metals of a nature besides gold and silver and platinum.

They're all second hand items. They're all stolen in burglaries and so forth. Why is it just our industry that's being discriminated against? I feel somehow I'm losing my equal protection under the law which is granted to me by the Constitution. I'm finished.

SEN. DORR: Thank you. Further questions from members of the Committee? Thank you. The next speaker Leo Wilensky, followed by Bourke Spellacy.

MR. LEO WILENSKY: Senator Dorr, Representative Mosley, ladies and gentlemen of the General Law Committee, my name is Leo Wilensky and I am the President of the Connecticut Package Store Association and a member of the National Board of Directors of the National Liquor Store Association and I will be very brief in the interest of all.

I'd like to call your attention to the fact that we are in favor of the Senate Bill 351, An Act Concerning the Affirmation of the Wholesale Price of Spirits, Wine and Beer. I'd like to call your attention to the fact that the wholesalers and the distributors in the state of Connecticut were recently visited by members of the BATF,

MR. WILENSKY: (continued)

the Bureau of Alcohol, Tobacco and Firearms in regard to the fair trade practices that go on within the state of Connecticut. It is right and it is just that all people should be treated equally and this is one of the reasons I feel that this Act is as important to the people of the state of Connecticut as it is anywhere else. I call your attention to the fact that there are 38 states which have affirmation on spirits. There are 16 that have affirmation on wine and four states have affirmation on beer.

I feel that it's only right that we should be competitive within the various states. We should not be put in a price disadvantage by the trade practice of selling in one state lower than they do in another. I see nothing wrong with the affirmation of the price that says they will sell at the lowest price in Connecticut that they sell anywhere else. I think that's a good, fair business practice. I don't like to be put at a disadvantage and I don't like to be put in a competitive atmosphere where I have to go into competition with people in New Hampshire as was presented to me this past week.

I have polled our membership and we are in favor of affirmation at the wholesale price of spirits, wine and beers.

SEN. DORR: With regard to that, Mr. Wilensky, I have one question. I will ask you the same question that we asked or I asked earlier. In your experience, when Connecticut did have affirmation, was the price passed on to the retailer? Was the price differential, the lower price, passed on to the retailer and then ultimately to the consumer?

MR. WILENSKY: I'm afraid I really can't answer that question accurately.

SEN. DORR: Well, okay, that's honest.

MR. WILENSKY: I would like to be able to do that. I know that there are now indeed, with the liquor industry being de-regulated, we do find that liquor prices and beer prices

MR. WILENSKY: (continued)

coming down in a great degree and we are relatively competitive. I don't like to be placed at a disadvantage by someone coming into me and saying he's going to buy 25 cases of Heineken Beer for a wedding up in New Hampshire when I can't meet that price and I think that if this might be a means of stopping this type of a practice.

SEN. DORR: Thank you.

MR. WILENSKY: The other proposal that I would like to concern myself with is the House Bill 5558, An Act Concerning the Size of Alcoholic Beverage Containers. In the last two days, I have personally contacted a major wholesalers in the state of Connecticut relative to the sizes that are being sold in the state of Connecticut at present. We have no argument with the sizes that are presently available. I just took a reading of the sizes that are presently on the shelves of the retailers of the state of Connecticut and we come up with 14 sizes that are already available. Some of which are no longer current; some of them have been replaced by other sizes, but I think that my people in the wholesale--in the retail liquor business are unanimously opposed to the 100 millimeter size. We have no argument with the 50 millimeter size and we would like to stand on record as being wholeheartedly opposed to the 100 millimeter size and the retention of the 50 millimeter size.

SEN. DORR: Thank you.

MR. WILENSKY: The last thing that I would like to talk on is the Bill 337, An Act Concerning Identity Cards for Persons of the Drinking Age. And this I would wholeheartedly be in favor of. We need something that is a concrete, valid identity card for those people who are attempting to purchase alcoholic beverages in the state of Connecticut who are not drivers of automobiles.

Many people come in who when we ask for identification and they say, well, I don't have anything that's valid. When you say what about a driver's license which is according to law, the only prima facie evidence of age today and they say, well, I don't drive a car. It seems to me that we have disenfranchised those people who are not

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MR. PASTORINO: (continued)

But if it's handled tastefully and done properly, there's no problem as far we see sir.

REP. DICKINSON: So the answer is yes.

MR. PASTORINO: If they wanted to sell that in their stores, I would sell it to them, yes, sir.

REP. DICKINSON: Thank you.

SEN. DORR: Rep. O'Neill:

REP. O'NEILL: Just a question. An awful lot of people today have been talking about special interest legislation, if there ever was a piece of special interest legislation, this is it right here.

SEN. DORR: Thank you, Rep. O'Neill. Gail Markels. I'm sorry Daniel Adams is next.

MR. DANIEL ADAMS: Thank you. Chairman Dorr, Chairman Mosely, members of the General Law Committee, ladies and gentlemen. my name is Daniel Adams, the regional vice president for the United States Brewers' Association. We are located with offices in Albany, New York. Our headquarters offices is in Washington D.C. The USBA is strongly opposed to raised committee bill 351 in relation to price information. Our formal testimony was submitted --

SEN. DORR: Mr. Adams, could you speak closer into the microphone.

MR. ADAMS: Yes, sir. My -- in the final report of the Beverage Container Handling Fee Commission which was charged with a number of aspects of regulation in the Alcohol Beverage Field including the study of price affirmation. I also testified last year on raised committee bill No. 968 which was also with the General Law Committee and was sent to interim study. I'd like to relate the overall significant contribution first and foremost of the brewing industry in the State of Connecticut. Our total tax contributions raised from beer based on beer sales into the state exceed \$58 million.

MR. ADAMS: (continued)

Our state beer exercise tax alone is \$5.7 million and the state and county license fees exceed \$2.8 million. Overall the value of beer in the state is and exceeds \$421 million per annum. Per capita with beer is about 19.2 gallons per person and it's based on a market size of approximately \$1.95 million barrels of beer. The reason for the price affirmation in the past history of the state followed the deletion of the minimum mark of stature. And then the initiation of price affirmation. And the reason for the removal of one statute and the addition of the other, was to move the state to a more healthful climate in relation to border-crossing which were then prevalent from the Connecticut area into the State of New York and perhaps elsewhere.

During the raised committee bill agenda on 968, USBA testified that there were significant new changes coming about in the Northeastern sector. One was the advent of the Massachusetts bottle bill and one was the fact that the bottle bill in the state of New York would take effect on September 12, 1983. We argued preliminary on the face of the prices, I think we proved conclusively at that hearing that even then in the advent of the Massachusetts bill that the Connecticut consumer was at an advantage buying in the State of Connecticut.

Since that time, however, a number of items, a number of things have come to pass in New York. Number one is the bottle bill. And the New York City marketbasket survey in their price survey could see that over 22% increase due to the bottle bill in the New York City area. The Consumer Protection Board of the State of New York did a statewide survey and concludes that the prices for beer are up 18.3% in New York and furthermore the state's attorney general has made statements to the effect that beer prices have risen over 30%.

Now, we argued before this bill took effect, we also mentioned and gave to the General Law Committee a record of beverage pricing. That beverage pricing survey was conducted along the borders prior to the law and then after on the bottle bill.

MR. ADAMS: (continued)

Today in Connecticut on the two border states of New York and Massachusetts, the Connecticut consumer is at an advantage in purchasing within the state. In fact, looking at over 2/3rd's of the market on all leading brands, the New York average price is \$3.18, the Massachusetts price is \$3.27. And the Connecticut price in November of 1983 all done in equal periods is only \$3.14.

It seems that the Connecticut consumer remains at an advantage buying within the state. And I might add on Thursday of this week we're facing another challenge with continual legislation in the State of Rhode Island.

SEN. DORR: Mr. Adams, do you have that documentation that you will submit to the clerk for the members of the committee.

MR. ADAMS: Yes, I do, I have it all here.

SEN. DORR: Very good, thank you.

MR. ADAMS: At the best the gentleman from the package store said everybody should be treated equally. Sir, we feel' the issue of affirmation which sets only the price of the brewer is not treating the three tier system equally. He also added that he believed the price should be set at the wholesale level. This bill, however, sets that price at the brewer level. I can only conclude the bill in front of you is not good legislation for the consumer and based on the fact of what has happened and transpired in New York and Massachusetts as a result of such an enactment here, the Connecticut Consumer may indeed, in fact, pay much more for his beer. Thank you, sir.

SEN. DORR: Thank you. Questions for Mr. Adams from members of the committee. YOU will leave your testimony with the clerk, Mr. Adams.

MR. ADAMS: Yes, sir.

SEN. DORR: Thank you. Gail Markels to be followed by James Crawford.

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MR. ADAMS: Mr. Chairman, can I make one correction based on the statement by the Package Store Association.

SEN. DORR: Yes, you may, please proceed.

MR. ADAMS: There is only one state in the country that is enacted price affirmation for beer and that is the State of New Mexico.

SEN. DORR: We're aware of that.

MR. ADAMS: Presently there is a _____ with the state and it is not in effect. We are not forced to having beer affirmation, sir. And the matter is in front of the supreme court at this time.

SEN. DORR: Despite some of the comments you may hear, I would like just to remind you that it does -- I think people do have to get up rather early in the morning to pull one over on the members of this committee, so, we were not fooled by the comment that there was four states to be sure. We're aware of that.

MR. ADAMS: Thank you.

MS. GAIL MARKELS: Thank you, Chairman Dorr, Chairmen Mosley, members of the Joint General Law Committee. My name is Gail Markels and I'm counsel to the Motion Picture Association of America. And on behalf of the members of the Motion Picture Association of America which includes such film distributors as Paramount Pictures, Warner Brothers, 20th Century Fox and Columbia. I'd like to thank you for allowing me to voice my opposition to SB 350 which in the opinion of the film distribution industry is a bad bill.

Now SB 350 is a very complex bill and it attempts to regulate a very complex nationwide industry. In the few moments I have allotted to my testimony, I cannot raise with you every objection the film industry has to this bill so I prepared a number of documents so I can distribute it to the committee. One is a memorandum, one is a fax sheet and one is a sheet of quotations quoted from the Trade Press which I hope will explain in more detail the film distributors position on this

MR. JAMES CRAWFORD: Chairman Dorr, Chairman Mosley, members of the committee, my name is Jim Crawford. I'm the Director of Economic Research for Wine Institute. I'm here regarding Bill 351, which we're opposing on affirmation in Connecticut. Before I get started I'd like to respectfully clarify an earlier statement made on the number of affirmation states. In fact, there are only 5 affirmation states on wine. There used to be 6 and the Kentucky legislature repealed their affirmation statute as it was not in the consumer interest in their opinion.

That was in 1982. We will submit documentation to that effect. I'd first like to start off with giving you an overview on the grape and wine industry. I think it's necessary to look at the international scene on wine, because once looking at the international scene you'll get a real quick and good handle on what that means on individual markets such as Connecticut. Right now, currently, there is a long-term glut in the world market. There's about 10 billion gallons of wine produced every year. 80% of that is in the European community, and the Soviet Union's included in that. In the last 5 years the European countries such as France, Italy, Spain, Portugal, experienced significant declines in per capita consumption anywhere in the neighborhood from 12 to a 21% decline in their consumption.

The productive capacity in Europe has not declined proportionately, mainly because of subsidies and because of political pressure to maintain the productive capacity of grapes and wine in those countries. What this means is that there is international pressure, both economic and political, to find a home for that wine. Well, they found a home for the wine, and a good part of it comes to the United States. To give you some idea of what kind of numbers we're talking about, the United States consumes on the average of about 2 gallons per person. The European countries consume anywhere from 20-25 gallons per person. And the European community produces about 80% of the 10 billion gallons annually, so we're talking many, many gallons of wine.

Now, what this means is in the market prices, the market prices for wine are not determined by the domestic industry. They are determined by the world competitive

MR. CRAWFORD: (continued)

situation for wine. To give you some idea, in the last year the consumer price index for wine has actually declined. That's in spite of overall inflation of increases, so there has been an absolute decline in the price of wine nationwide.

There's also been significant shakeups in the wine industry which has reflected this tremendous competitive situation. The bottom line is there are interbrand price, the interbrand price competition is so intense that prices cannot be held up above the competitive low price that it is now. But affirmation intends to fix prices when prices are already at the competitive low. Affirmation also provides, magnifies anyway, problems, marketing problems for the small wineries, and I'll get into that a little bit later, but keep in mind the small wineries in particular are hurt by this measure, not the least of which are the Connecticut wineries.

I'm going to the bottom line also on, I think, one of the major or main points that we would like to make is that a wine affirmation bill basically interferes with the voluntary exchange system, and what it does is that somebody gains at someone else's expense, and they use the police power of the State to enforce their economic interest. What are some of the effects of affirmation? One is that they do not consider the economic factors that are different in Connecticut versus other states. For example, small wineries will want to go into another state to promote their wines. They will use special discounts on those wines. They will try and do that to meet local conditions.

Sometimes local wineries in other states get special tax treatment. Our wineries need to respond to that. They need to reduce their prices accordingly. What this means is now the states won't do that or won't come into Connecticut. They either won't do that or they won't come into Connecticut simply because they are forced to lower their prices and not be able to take advantage of the flexibility in pricing with regard to their markets. There's also some serious questions as to whether, what the expense is on enforcing a measure such as this, because there's thousands of brands, possibly thousands

MR. CRAWFORD: (continued)

of labels, anyway, of wine items that would need come under the affirmation law. The question is, how is this going to be enforced, and can it actually in fact be enforced ethically. It seems to me that, at least the Wine Institute feels that there's a good possibility that actually enforcement will not be what it probably should be, and the ethical suppliers and suppliers will be harmed at the less ethical.

One of the other claims, one of the claims made by proponents of affirmation is that it reduces consumer prices. We have not found this to be true. There was a study done by Dr. Alfred Parker, chairman of the Economics Department in New Mexico. This was done for the Attorney General in New Mexico. It was also done for the Department of Commerce there. That study showed that it was not in the consumer's interest. There was no evidence of that, that the prices go on to the consumer, and there's good economic reason why it wouldn't, because if the market is there and the price is there, then the middlemen, the wholesalers and retailers would certainly take advantage of that.

It's in their interest to. So they're not going to pass that on to the consumer. We've also found, Wine Institute has also found, by analyzing several, in 1980, for example, analyzing the affirmation in Tennessee vs. Florida and Georgia, we've found that prices in Florida and Georgia were actually higher, rather, actually lower than Tennessee. In Tennessee they were actually higher. In 1983 we did a followup study similar kind of thing, comparing New Mexico with Texas, Arizona, and Colorado. We found the same thing, well, they weren't significantly higher, but they weren't significantly lower. So there wasn't anything being passed on as a result of affirmation in New Mexico.

Basically, what affirmation does is reduce consumer choice because in effect what it does is it limits the incentive mechanism from the suppliers to enter a state and when they lose that incentive, the smaller ones are going to say I don't want anything to do with it, and as a result, they do not list their brands, and that is what, apparently, that was the conclusion of the New Mexico study as well.

MR. CRAWFORD: (continued)

That the consumers basically lose because they want the products but they're not going to be provided by the, in terms of the numbers of brands, they're not going to be provided.

It's interesting to note that it's always the wholesalers who initiate the push for this type of legislation, never consumer groups per se. The acid test is in many states where an amendment was added to require all savings experienced by the wholesalers be passed through to the retailer and consumer. The wholesalers have backed off, and an example of that was Alaska. The wholesalers in Connecticut already have what's called intrabrand monopoly. That means that let's say Gallo distributor sells a Gallo brand. There's no other distributor competing with him. So in effect he has a monopoly on that brand. That's not the same thing in Massachusetts, for example, which is an affirmation state. We've also looked at the situation with regard to Connecticut, and we've looked at it, I'll have to say we haven't had the time to really look at it in minute detail, but we have just quickly looked at it, and it's almost blatantly clear that the FOB prices are not that much different.

In fact, in many cases like Gallo, for example, they're the same prices. They are affirmation prices here. What you find is 50¢ a case in some cases and in some cases it's more, but when they are more, when they are significantly more, they don't stay there for long because they're pulled down by the competitive environment that exists here.

: Any questions?

MR. CRAWFORD: I have a few more points I'd like to make if I can.

: I'm sorry. I didn't mean to, sir, excuse me. We'd appreciate it. We are taking written testimony. If you could summarize your remaining points and leave us the testimony we'd appreciate it. We assure you that we will read the testimony.

MR. CRAWFORD: We don't have any written testimony. But I will summarize my points. The bottom, I guess, the bottom line on our analyzing FOB prices and retail prices is FOB prices are basically the same, with very minute differences, but retail prices are higher in Connecticut, and the reason they're higher is because of the wholesale and distribution system. They have higher markups and they have a monopoly on the area, basically.

That's one point. Another point is that if you really want a law to help consumers, pass one that passes through the price savings. Also, pass one that requires that if a supplier sells a brand to any wholesaler in the state, it must offer the product to every other wholesaler in that state or you'll get competition, and you'll get lower prices if you do that, but I would bet you that won't happen. Because basically this is a special interest bill. OK, that's summary number two. And that's the main points I want to make. I could summarize my points of the whole talk, but if you don't have time, that's fine.

REP. MOSLEY: Thank you very much. Questions? Roy Rouivseville. I believe the speaker who just spoke was James Crawford and the next one was Roy Rouivseville.

MR. ROY ROUVISEVILLE: I'm Roy Rouivseville. I'm president of M&R Enterprises Inc., which is the owner of 5 retail liquor stores in surrounding Hartford. I went into the business in 1953, and in 1963, they made a law in the state of Connecticut that said that you can only own two liquor stores. At that time I had 7 or 8, and my wife acquired a few more, and now we are down to 7 stores in the family. I reached the age of 62 and wanted to retire. My sons have worked for me ever since they've been 18 years old, 19 years old, whatever the age was that was legal for them to go to work. They're basically running the business now.

And I went to Reid and Reiger and they told me that I should transfer my interest in M&R to my children for tax purposes, and we applied to the Liquor Control Commission to do that, but in 1980 or '81, they rewrote Section 30-48A that says that nobody can acquire an interest in two or more stores and by my giving the stores

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CHIEF KNAPP: (continued)

regard to two bills presently before you, House Bill 5557 and Senate Bill 352, both of which deal with solicitations by charitable organizations.

While we support the spirit of House Bill 5557, that is an attempt to create new law to regulate amongst other things, police solicitation of charitable contributions from the public, we believe that that is abusive and should be stopped. The Attorney General's office and the Department of Consumer Protection people tell us that the current law is satisfactory and can control that, and that what's needed is to transfer it to the Attorney General's office for expertise purposes. Somewhat reluctantly it's our position to say OK, let them try to regulate it, and if it doesn't work out that way, then we'd like to come back in the future, but we're opposed to police solicitations of the public, and therefore we support Senate Bill 352. Thank you.

SEN. DORR: I have one question for you. Would you agree that some sort of limitation should be set by the legislature to prohibit professional fundraisers from taking a majority of funds raised for groups, charitable groups in the state? For instance, certain professional fundraisers charge 60, 70, or 80% of the take. Would your group object to us placing a maximum amount on the amount of monies that could be charged as a percentage with respect to this?

CHIEF KNAPP: I have no objection to your doing that. It would please me very much if you prohibited them. But in the absence of that, place a maximum on it.

SEN. DORR: Thank you. Beatrice Wood. George Montano.

MR. GEORGE MONTANO: Chairman Dorr, Chairman Mosley, distinguished members of the committee, my name is George J. Montano, and I am the executive director of the Wine and Spirits Wholesalers of Connecticut. I'm here this afternoon to speak in favor of Senate Bill 351, An Act Concerning Affirmation Of The Wholesale Price Of Spirits, Wine, And Beer. Presently in Connecticut, the statutes require affirmation on spirits, alcohol, and beer. The affirmation on spirits was legislated some 10, 12 years ago.

MR. MONTANO: (continued)

In 1981, the legislature, this legislature, enacted a very lengthy bill deregulating many sections of the Liquor Control Act, and many sections, new sections were adopted to aid not only the consumers but the people in the industry, and adding beer affirmation was one of them.

Now this was challenged in court, and the court ruled, well, the district court first upheld the statute. The second circuit court of appeals in New York reversed it. The U.S. Supreme Court refused to hear it. I want to leave with you, and I won't read it, I will leave with you the conclusion of the board so you can review it. Now, I just can't imagine why the breweries here and the Wine Institute, because all this statute does is require that the out of state shipper, on the day that they post their price, they must make sure that that price is no higher than the lowest price elsewhere in the country on wine and spirits and alcohol and the bordering states on beer. And then for the next 30 days, those wineries and breweries can change their prices around the country and in the bordering states.

So they're locked in for the price that they charged on one day. Now, it's obvious the reason is because they are charging Connecticut the higher price. Now I'd like to clear up a little confusion about affirmation and the number of states. There are two kinds of states in this country. There are those that are monopoly states that operate the alcohol/liquor business, and there are licensed states. The monopoly states operate under the Des Moines Warranty, the licensed states operate under where they have passed legislation under affirmation laws. There are 18 monopoly states that have Des Moines Warranty contractual obligations for the suppliers, and there are 20 licensed states that have affirmation statutes on spirits and alcohol.

There are eleven monopoly states that require the Des Moines Warranty on wine, and there are five states that require affirmation on wine. There are two monopoly states that require the Des Moines Warranty on beer, and there are two licensed states, New Mexico and Connecticut that have affirmation on beer. Now, there

MR. MONTANO: (continued)

for all practical purposes there is no difference between the Des Moines Warranty and affirmation. One is a contractual obligation, and one is a legal obligation, but they both do the same thing. They require that the prices charged are no higher than the lowest prices charged in a designated area. Now the problem in Connecticut is that we are located geographically between two big markets, the Boston market and the New York market.

And added to that is our old problem state, New Hampshire, which has no alcohol tax and no sales tax. And they are getting better prices. Now, I'd just like to read something. It's one sentence. I didn't write it. It was written by the attorneys representing the 7 breweries that brought action in the Federal court, and this is what they said. "Plaintiffs affidavits show that a good many brewer and importer prices to wholesalers in states bordering Connecticut are currently lower, many substantially lower than the Connecticut prices for the same brand of beer and the same size of container."

Now that's their language. As far as the wine prices, I won't go through it, but I will leave with the committee the last study we did on the difference between the wine prices being charged the wholesalers in Connecticut and the wine prices being charged the wholesalers in Massachusetts. Now, if the wineries can live with affirmation in Massachusetts and they can live with it in Rhode Island, and they can live with the Des Moines Warranty in New Hampshire, why can't they live with it in Connecticut.

Now someone said how, and the wholesalers here have monopolies for the whole state. Well, that's because the suppliers want it that way. You mentioned Gallo wine. Gallo can appoint as many wholesalers as he wants. The Gallo winery decides to have one, it's they who are making the exclusive wholesaler. I know time is short, and I would like to certainly rebut some of the speakers before me, but I know you're looking to get out of here. I'd like to mention House Bill 5558. We originally requested that that bill be raised, and what that bill does is it prohibits the miniatures, which are 50 ml. and

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MR. BROOKS: Yes, we would. However, that's not in either of the bills.

SEN. DORR: Well, we could. We could correct it.

MR. BROOKS: Yes. We would certainly be in favor of that. I know no problem at all.

SEN. DORR: Thank you. Daniel Tearno, followed by Peter Keating.

MR. DANIEL TEARNO: Thank you, Sen. Dorr. For the record, my name is Daniel Tearno, and I'm the Northeast Government Affairs Manager for the Miller Brewing Company. First of all, I want to say that the Miller Brewing Company strongly opposes proposed legislation on price affirmation, specifically Committee Bill 351. You've heard a lot of testimony, which I believe offers strong arguments against the affirmation of beer prices. There are just a few things I'd like to add.

Number one, to correct a few comments, the product of beer does not come under the monopoly term of the Des Moines Warranty for all practical purposes. The state of New Hampshire was referred to as a no alcohol tax state. The fact is that New Hampshire is tied with Maine for the highest beer tax in New England at 30¢ a gallon, compared with the state of Connecticut, which has a beer excise tax of slightly less than 13¢ a gallon. The proposal to allegedly provide flexibility on affirmation of prices sounds nice in a vacuum, but the problem is that you have to deal with conflicting laws and regulations in other states.

The fact is that prices in Massachusetts must be posted with the Alcoholic Beverage Control Commission the first day of the month preceding the month for those prices. So when the price would be affirmed in Connecticut, which brewery prices must be posted in this state the 13th day of the month previous, by that time, it's 12 days too late to change prices in Massachusetts. So if this bill is enacted, you would in effect be precluding Massachusetts from having any price promotions to make the price at any time in any market on any package lower than any price

MR. TEARNO: (continued)

in Connecticut. In addition to that, you have a tremendous number of discrepancies in the markets of the bordering states, such as New York City, which as we all know is a unique market for beer as well as for other alcoholic beverages.

You have some states with forced deposit laws and one hopefully, will continue to not have a deposit law, and that's the state of Rhode Island. We're hopeful that this committee will see the reasoning behind not doing anything with the bill at this time because as was stated, the New Mexico affirmation law, which is the only affirmation law in effect at this time in the United States is currently before the Supreme Court. The Supreme Court, as I understand, had three meetings on this law, and I also understand that one of the provisions in that contested law is a similar provision to Bill 351 which allows for flexibility in pricing after that affirmation date. So it would seem to me that this committee and the legislature, if they enacted this bill, it certainly could be the subject of a Supreme Court challenge and could be in fact thrown out even on the New Mexico decision.

So we would be very hopeful that this committee would move not to approve this bill and leave things as they are at least for the period of time until a decision is rendered on the New Mexico law. Thank you very much, Mr. Chairman, and I'll be very happy to answer any questions if I can.

SEN. DORR: I have one question concerning the ability in our proposal to amend the prices at any time. Could you comment on that and what flexibility that would provide you?

MR. TEARNO: Well, as I said earlier, regarding the Commonwealth of Massachusetts, there would be no flexibility because the prices have to be set in Massachusetts by law earlier than they have to be set in Connecticut. So for April 1 the prices had to be set in Massachusetts on March 1, and in Connecticut we have another week to set prices. So in fact, that flexibility section is totally meaningless regarding Massachusetts.

SEN. DORR: Let me ask you, what causes the rapid fluctuation in beer prices? You would think it's a relatively stable commodity and that the price should remain fairly constant from state to state with respect to shipping charges, of course, we can't control that. But you would think that the commodity should be relatively stable in price. Why would there be such rapid fluctuation in your eyes?

MR. TEARNO: Well, I'm certainly not a marketing person, Senator, but my perception of that is that markets around the country are as diverse as night and day.

SEN. DORR: To be sure.

MR. TEARNO: And the beer industry is not a growth industry at this time. It's been flat for the last two years, and the -- our beer is never flat, and neither is the beer of our friends down the aisle -- but the situation is a very competitive business. The large and small beer companies are always looking to increase market share, and they'll do any number of things to increase market share because that's the only way to get growth.

SEN. DORR: So you would increase market share through pricing?

MR. TEARNO: That's been really the operative marketing tool over the past few years because of the economy and because of the flatness of the market.

SEN. DORR: I understand. I understand. And the pricing would lead to the increase or decrease of the cost of your product in a particular area.

MR. TEARNO: Well, only partially, because once the beer leaves our brewery in Fulton, New York, or in Milwaukee or anywhere else, we do not own that beer anymore and we have absolutely no control over the price. That's why this bill really has no mandate to do anything for consumer prices. All it does is it makes it difficult for us to compete.

SEN. DORR: Thank you, Dan. Questions? Thank you. Peter Keating?

MR. MONGREEN: The wife went and remortgaged their house in there for those tickets. And, that'll happen again and then they think it's too late.

REP. ZAJAC: Thank you.

SEN. DORR: Further questions? I thank you. James Crawford, to be followed by Fred Schnaars.

MR. JAMES CRAWFORD: Chairman Dorr, Chairman Mosley, members of the committee, my name is Jim Crawford. I'm the Director of Economic Research for Wine Institute. We represent over 430 wineries, most of which are small wineries. We're here in opposition of bill number 351, the affirmation bill. Before I make my comments, I'd like to correct an earlier statement that was made by one of the components of the bill and -- stating that there was 16 affirmed states. We want to clarify that there are only five affirmed statutes in other states and only five states with affirmed statutes. We'll submit the evidence.

SEN. DORR: We thank you.

MR. CRAWFORD: You're welcome. There were six, by the way, there were six affirmed states. Kentucky was one whose legislature say fit to repeal it after they apparently felt that it was not in the consumer's interest for the affirmation. I would like first to give an overview of why the wine industry feels affirmation is a very important issue. They felt it was important enough for me to fly from San Francisco to here to speak on this particular bill.

One of the important aspects in understanding the wine industry is to look at the world situation of market for wine. The wine market, worldwide, there is a tremendous glut. There's a tremendous oversupply. It comes mainly from Europe. Europe produces roughly, including the Soviet Union, produces roughly 80% of the world production. In the last five years we've noticed declines in four of the five major producing countries in Europe -- reductions in their home consumption in the neighborhood of anywhere from 12 to 20% and one of them is over 20%. The productive capacity in Europe has not declined. What this has caused is significant long-term, both political and econo-

MR. CRAWFORD: (continued)

mic pressures on the world wine market to find a home for that wine. They have found a home for part of the wine and it is the United States. This is why there has been a lot of public statements about subsidies and so forth is because the governments over in Europe have saw fit to subsidize their wine industry and as a result the wine is coming into this country at lower prices, lower absolute prices than they have several years ago.

What this means, in terms of the bottom line, is that the market for wine, in terms of interbranch competition is probably the lowest it's ever been. At least it's the lowest it's ever been since I've been working for a wine institute, which has been 10 years. As an aside one of the other things that exasperates this problem is the current dollar situation. The current dollar situation makes imports even more attractive so we've noticed in the last two or three years that the problem has even become worse.

But the bottom line, the real important thing to understand is that the wineries, particularly the small wineries are in, you might say, in economic difficulties currently and they are in an environment where the prices for their products are very, very competitive. Now that -- I wanted to go over that to set the -- to kind of set the stage in terms of the affirmation bill per say. The affirmation bill per say is thought as a consumer issue. We don't really feel, we don't really feel it is a consumer issue we feel that it is a wholesaler issue.

The consumers -- the consumers in every study that we have undertaken or have looked at, it appears that the consumers do not benefit from affirmation. What happens is that when an affirmation is applied in a given state the wholesalers take their benefits and do not pass them on to the consumer. A study was done by Dr. Alfred Parker who is the Chairman of the Economics Department in New Mexico. He concluded that affirmation is definitely not a consumer bill. It's a special interest or a consumer -- not in his case -- well he didn't say consumer bill, he said consumer legislation.

SEN. DORR: Excuse me. One of the issues that we heard earlier was that as a result of affirmation the prices to con-

SEN. DORR: (continued)
sumers were lowered. One of the wholesalers from beer testified to that fact.

MR. CRAWFORD: I don't know about beer, but all our indications are that they're not. In fact -- in fact in Connecticut, an interesting phenomenon occurs. We know that the FOB, FOB meaning the prices that go from the wineries to the wholesalers here in Connecticut are practically in at least the minimum prices that are available to them over a three month period, are practically all the affirmationed prices. When they go up they go up in order -- the go up for marketing reasons. They go up in one month and they come down on specials in the next month. Other than that phenomenon you get the predominant prices are the prices that are in the affirmationed states.

What we noticed, however, was that the cost to the retailer was actually lower in many cases in Connecticut than it was in Massachusetts or Rhode Island. Now what has occurred there, I'm not saying that that was the wholesaler's mark ups. Primarily that was not. The difference mainly was taxes. The tax differential in the two states. However, even though it started out lower at the retail level, by the time it got to the consumer, prices tend to be higher in Connecticut. And I think that's an important point to understand.

Another point on that issue to understand is in Connecticut, the wholesalers control the mark up of the retailers. In Massachusetts that's not true. And, that's an important point to understand. It's interesting to note that it's wholesalers generally, it's the wholesale industry, wholesaler industry, distributor industry that initiates this kind of legislation. I don't know of any consumer groups that are responsible for the legislation. The acid test in many states what we've found where there's affirmation where we've added an amendment or been able to add an amendment to require all savings experienced by the wholesalers to be passed on to the retailers and the consumers the wholesalers have backed off. An example of that --

SEN. DORR: Excuse me, David. Do you have a -- I mean Jim -- Do you have a copy of that proposal, because that was one of the things that we addressed earlier in the day was getting this savings passed on to the consumer. If you

SEN. DORR: (continued)
have an mechanism for doing that, or any language which I think members of the committee would be most interested in seeing that.

MR. CRAWFORD: Okay. I don't personally. I don't. We may have it. I was told that a similar proposal in Alaska was submitted. It would be -- I'd have to say we wouldn't be in favor that because that's basically price fixing. However, if your objective is to lower prices to the consumer, to be consistent with that objective, you definately should tag on constraints at the wholesale and retail level. If you'd be interested in that I'll see what we can do.

SEN. DORR: Okay. Thank you. Questions? Representative Zajac.

REP. ZAJAC: Yes. Yes ultimately we're, you know, interested in consumer prices but I guess the other part of that is, the other side of that coin is, is that we some of us at least find it difficult to justify shipping FOB through Connecticut and delivering lower prices, say to Rhode Island. What is your justification? Freight is more, everything else is more and what is the fear of an affirmation law is -- Mr. Montana pointed out that an out of state shipper would price no higher on that given day and it only locks you up for one day. I know that beer people have a different problem with that because they have reasonable breweries on shipping points are different, but from California to ship through Connecticut to another state and charge us more, that sits in our crawl.

MR. CRAWFORD: Yeah, well I would -- I would -- The first thing that comes to my mind is why the one day? It's my understanding that if that were -- if our people were actually -- we're actually to exercise that right, they may be in violation of affirmed state, out of other affirmed states such as Rhode Island.

In other words, if you're not going to take advantage of the affirmation law, why is that point put in there? If it isn't -- if their intent of the law really isn't to control the prices --

REP. ZAJAC: Well I say it is. As a matter of fact that is

REP. ZAJAC: (continued)
the problem. You mentioned Rhode Island and we can get, you know, competitively over the line again. Rhode Island liquor prices, wine prices, beer prices, are usually a lot cheaper than ours. And that must attest that affirmation if Rhode Island is an affirmed state that it is passed on the consumer.

MR. CRAWFORD: Well I beg to differ with that. Because when I looked at the figures, I agree that the retail value in Rhode Island, the retail prices in Rhode Island and Massachusetts as well, tended to be lower. They did tend to be -- not in every case. They were lower and what we did is trace in some of the representative items, particularly the big items. And now I will have to qualify. We didn't have a lot of time to prepare an exhaustive study, but the ones I looked at, there were significant items where they would actually come into Connecticut at FOB prices very similar or exactly the same as they went to Rhode Island. But, by the time they go through the distribution system, that is where the mark ups make it higher. First of all there's two reasons.

One reason is that there is a tax differential. Connecticut is a lower tax rate so that's going to make -- that accounts for most of the differential. The other -- the other thing that you -- the other aspect I think you need to understand is that there is a basically a monopoly mark-up system in Connecticut. That's my understanding that it is controlled by the wholesalers and they control the mark-up system in Connecticut. Now in Massachusetts, for example, even though it's an affirmed state, there is still significant price competition among the -- among a given brand. It's called -- we would refer to that as intrabrand competition.

Two Gallo distributors, three Gallo distributors or more might compete for that same brand. In Connecticut you have a monopoly. So, we view basically this just an exasperation of a problem that we -- that shouldn't be rewarding them, but rather making them more competitive. I hope that answers the question.

REP. ZAJAC: Thank you.

REP. MOSLEY: Any further questions? Thank you very much.