

PA 11-037

HB6299

General Law	747-756, (1054), 1079-1080	13
House	1129-1132	4
Senate	2043, 2082-2085	5
		<hr/>
		22

**JOINT
STANDING
COMMITTEE
HEARINGS**

**GENERAL
LAW
PART 3
744 – 1092**

2011

1
mrc/gbr GENERAL LAW COMMITTEE

February 24, 2011
10:30 A.M.

CHAIRMEN: Senator Doyle
Representative Taborsak

VICE CHAIRMEN: Representative Baram

MEMBERS PRESENT:

SENATORS: Kissel, Musto, Witkos

REPRESENTATIVES:

Altobello, Aman,
Bacchiochi, D'Amelio, Esposito,
Nafis, Nicastro, Rebimbas, Reed,
Robles, Tallarita

SENATOR DOYLE: Good morning. Good morning. Are you all set? I call to order the General Law Public Hearing, and at this point, the first hour is generally reserved for legislators, agency heads and municipal officials. We have two people signed up. I don't think they're here, so we will put -- you know, we'll invite them up when they arrive.

Is Representative Ed Jutila here? Is Representative Pat Widlitz here? Neither is here, so we're going to head to the public, and then we will -- when they arrive, we'll try to sneak them in.

Okay. So we go to the public. The first public member is Attorney Christopher Stone and Tim Shepherd, Keith Sheldon, Al Rizzo. Chris Stone, is he here? Good morning, Mr. Stone.

CHRISTOPHER STONE: Good morning, Mr. Chairman, and thank you for welcoming me and having me here to testify. I appreciate the opportunity, both of you, Representative Taborsak, congratulations to both of you upon your

HB6299

ascension to the co-chairmanship.

I'm here on behalf of 7-Eleven, and I'm here on a particular bill that you have before you. It's House Bill 6299.

The underlying law that we have in place is that certain entities are entitled to take advantage of what's called chain store pricing for the sale from a distributor to a retailer of cigarettes.

What we're proposing -- and the law goes back to 1990 when we first came up with the differential treatment of cigarette sales at the wholesale level. It was modified in 2005. I happened to be on the Committee at that time, and it was modified because we wanted to make sure that truly either chain stores or entities that had a vested interest in the retail establishment would be able to take advantage of chain store pricing as opposed to those what I'll call classical or standard franchisee-franchisor relationships in which the bigger company, the larger company, the franchisor, doesn't really have much to say or much control over the franchisee. They allow them to use their logos, their product, and then thereafter the retailer is on their own.

In this particular case -- and I think that the amendment that's before you addresses a very particular issue -- 7-Eleven has a rather unique relationship with its retail outlets, most notably of which is that it shares in the profits of each of its retail stores, so it's more akin to the Wal-Mart as a national company or international company and a local Wal-Mart, say, the Wal-Mart in Manchester. It's more akin to that relationship than it is to your standard franchisee-franchisor relationship.

What this would allow 7-Eleven to do is to sell cigarettes to each of its outlets at the chain store price -- it's a lower price. Fortunately, it has no effect on revenues; it's revenue neutral; there is no fiscal note. I know it hasn't been to OFA yet, but we anticipate no fiscal impact.

I've attached to my testimony a copy of the fiscal note from 2005 where we went somewhat in the other direction. That indicated no fiscal impact. I don't think that this minor carve-out, not a repeal, but a minor carve-out or clarification of the 2005 amendment would have any fiscal impact either.

I think it's important to note here that 7-Eleven, they have 51 stores in Connecticut. They employ on average about ten people per store, so approximately 500 people are employed by 7-Eleven in the state of Connecticut. You have an opportunity as the General Law Committee to do things both for business and for the consumer, which is kind of a unique position I hear at the legislature, quite frankly.

This particular bill, revenue neutral to the state, and it provides a vehicle for business to succeed, putting 7-Eleven on a fair and equal footing with other similarly situated businesses, but also provides for the retailer, our outlets, to succeed and be competitive with the market as well. As well, it's passed onto the consumer, and I know we're dealing with cigarettes, but it's still a product that is still prevalent today, and we're putting our retailers and our customers in the same position as everyone else, so it's a bill or an amendment that helps business, it's an amendment that helps the retailer, and

it's an amendment that helps the consumer.

I ask the Committee for a favorable consideration. There may be some tweaks to the language that we may have to look at, and I'd be more than happy to work with the Committee and its LCO to work those out as well.

SENATOR DOYLE: Thank you. Any questions? Senator Kissel?

SENATOR KISSEL: Thank you very much, and you're all too humble as a former Chair of this Committee. You did a great job while you were serving in the legislature.

I'm just wondering. This bill proposal will bring 7-Elevens from what set of competitors to what new set of competitors? In other words, this will drive the prices, I guess, down for the cigarettes for the consumer, which is a benefit to the 7-Eleven stores, but who are they sort of competing with price-wise now and who will they then be competing with if this goes through?

CHRISTOPHER STONE: Right now, they get retail -- retail pricing consideration, so the distributor sells at a -- I don't know the exact percentage higher, but at a higher rate than what is being the chain store price. In your definitions under your statutes, you provide for a definition of distributor, the distributor and what they can sell or how much they can sell their cigarettes for, and you include within that definition chain stores, chain stores which own at least five retail outlets within the state of Connecticut.

They're allowed to provide their five retail outlets a lower price for those cigarettes.

We are akin to that chain store in that we have a vested interest in the success of each and every one of our stores. Under a standard franchise-franchisee arrangement, you pay a franchise license fee, and you're off on your own. You're independent; if you make money, that's great; if you don't make money, you still pay your fee to the larger entity, the franchisor.

In this case, that's not what 7-Eleven is. That's not the way we do business. We don't fit under the classic chain store definition. We really don't fit under the classic franchisor-franchisee definition. This amendment would allow us to take advantage of that lower chain store price because we'll now be included or put back into that definition with a caveat. We have to continue to share in the vested interests of our retail establishments.

I don't know how much lower it is, Senator, but it is markedly lower and lower enough so that I believe it's three dollars a carton less, so you figure that out. It could be substantial given a certain volume. Fifty-one stores across the state of Connecticut, several thousand stores internationally, it has an impact. Obviously, this would just be applicable in Connecticut.

SENATOR KISSEL: So, the franchisor-franchisee model is probably like a Cumberland Farms or other similarly situated convenience stores where it's the more traditional model, and you want to move to a more Stop-and-Shop kind of model where they have sort of a corporate parent and --

CHRISTOPHER STONE: I'm glad you brought that up, Cumberland Farms, because they are a chain

store. They're not franchisees. I didn't know that, but they own all of their stores.

SENATOR KISSEL: So would they benefit from this as well?

CHRISTOPHER STONE: They would -- no impact. They're not -- right now, they're considered a chain store distributor.

SENATOR KISSEL: So they're being treated the way you want 7-Eleven to be treated?

CHRISTOPHER STONE: Exactly. All we want to do is be on a fair and equal footing with stores like that.

SENATOR KISSEL: Okay.

CHRISTOPHER STONE: A franchisor-franchisee would be like your Mobil. Mobil gas stations are, I believe, franchisor relationships.

SENATOR KISSEL: Thank you. Thank you, Mr. Chair.

SENATOR DOYLE: Thank you. Any further questions? Representative Baram?

REP. BARAM: Thank you, Mr. Chairman. For those of us who weren't here in 2005, could you briefly explain why do we even regulate the price of cigarettes with regard to the classification of stores whether it's a chain or franchise, or whatever? Why did the legislature delve into that?

CHRISTOPHER STONE: You'd have to go back, Representative, to 1990. 2005 was merely a minor modification, but in 1990 when the bill was passed, Senator DiBella and Senator McLaughlin were discussing it on the Senate floor, and there was very scant testimony as

to why the differential came about in the first place. I think in part it's because these chain stores have a vested interest in the success of their retail outlets. They own them -- they have -- if they succeed, and they're, in fact, selling to themselves.

You've got these distributors considered as chains stores selling to their retail outlets. They should be able to take advantage of that lower price that they receive and pass that on to their retail stores.

Again, we operate under the same premise. They call us something different, but, in fact, we are akin to that.

That's -- there was very -- we looked at that. There was very little testimony, little legislative history on that. I can get that to you, Senator -- Representative if you'd like that for your perusal. Maybe you can glean something outside of it than I can, sure you can, but there's not that much.

REP. BARAM: I (inaudible).

CHRISTOPHER STONE: It's even less in 2005, by the way. They didn't let me talk a lot on the House floor, so there's even less in 2005.

REP. BARAM: If you have that information, I would appreciate it.

CHRISTOPHER STONE: Sure.

REP. BARAM: Thank you.

SENATOR DOYLE: Thank you. Any further questions? Seeing none, thank you very much. Oh, sorry. Representative -- Representative Reed, sorry about that. I apologize.

REP. REED: Thank you. I'll keep it short.

I'm just trying to figure out how much of a part of your business in Connecticut is the cigarette aspect of it, and how much do you think you might be losing because of the way the law is currently constructed.

CHRISTOPHER STONE: Well, less and less with, you know, the cessation programs, the taxes on cigarettes, et cetera, so it's less than it used to be.

Let me introduce if I can, Representative Reed, with your permission, Mr. Chairman, this is Steve Watson from 7-Eleven. Steve has worked with us on the bill. He flew in -- last night, Steve?

STEVE WATSON: Yes.

CHRISTOPHER STONE: Last night from Texas, and you heard the Representative's questions. If you don't mind, Steve, because --

REP. REED: I'm just trying to figure out --

SENATOR DOYLE: Excuse me, Steve. If you pull the mike to your face and then hit the right button, so -- there you are. Thank you.

STEVE WATSON: Thanks.

SENATOR DOYLE: Thank you.

REP. REED: I promise to keep this really short. Now, I'm just trying to get a sense of it. Is this a major windfall we're talking about? Are we talking about a shrinking market? What percentage of the Connecticut 7-Elevens, what percentage of the market is cigarette sales?

STEVE WATSON: The size of the market -- how much do we sell?

REP. REED: Yes.

STEVE WATSON: Percentage-wise in our stores?

REP. REED: Yes. Do you have a sense of it?

STEVE WATSON: It's probably in the mid like 20 percent, 20-something percent of our sales.

REP. REED: And then I guess just the last part of my equation, how much money are you losing because of the way the law is currently constructed?

STEVE WATSON: Well, we're eating the increase. We can't raise the price because we need to be competitive at the store level, so our franchisees are just eating the increase.

REP. REED: So -- and does that when it brings them in to get the best price for cigarettes, they buy other things as well; that's sort of part of the equation?

STEVE WATSON: A little bit, not as much, but a little bit.

REP. REED: Okay. That's all I need to hear. Thank you. Thank you, Mr. Chairman.

SENATOR DOYLE: Thank you, Representative Reed. I'm simply clarifying. I'm not rushing you, Representative Reed.

STEVE WATSON: No, no. I just didn't see you. No problem.

SENATOR DOYLE: Chairman Taborsak?

REP. TABORSK: Thank you, Mr. Chairman. Mr. Stone, it's good to see you again. I wanted to thank you for your service as a Chairman on this Committee. It's good to see you back here before the legislature, and I appreciate the detail you went into here on getting into the legislative history here, and also addressing the fiscal question. This information is very helpful, and we look forward to following up with you on any questions we have, but it's good to see you again.

CHRISTOPHER STONE: Thank you very much, Representative. I would want to indicate that Bob Shea also contributed to that, that effort, so he should be noted as well. Thank you.

SENATOR DOYLE: Thank you. Any further questions from Committee members? Seeing none, thank you very much. The next speaker is Tim Shepherd, Keith Sheldon, Al Rizzo, Rob Romano. Tim Shepherd?

TIM SHEPARD: Good morning, Mr. Chairman. I'm here to speak against Bill 910. I'm just going to talk a little bit about our company and how this bill affects us.

My family, the Shepherd family, has been in tobacco in one form or another since 1861. We were either growing tobacco or processing tobacco, and so forth. I'm president of the New Way Tobacco Company, which is -- was formed in 1955 for the purpose of manufacturing what's called homogenized tobacco, reconstituted tobacco, and this product goes perhaps in 85 percent of the cigars sold in the U.S. The product is used by cigar manufacturers, traditional cigar

OFFICE OF FISCAL ANALYSIS

Legislative Office Building, Room 5200

Hartford, CT 06106 ◊ (860) 240-0200

<http://www.cga.ct.gov/ofa>(HB6299)

sSB-1256

AN ACT CONCERNING THE DEFINITION OF "CHAIN STORE" FOR PURPOSES OF CERTAIN CIGARETTE TAX STATUTES.

OFA Fiscal Note***State Impact:***

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Department of Revenue Services	GF - None	None	None

Note. GF=General Fund

Municipal Impact: None***Explanation***

The bill has no fiscal impact because it is not anticipated to alter the revenue generated from taxes imposed on cigarettes.



7-Eleven, Inc.

TO: MEMBERS OF THE GENERAL LAW COMMITTEE
FROM: 7-ELEVEN, INC.
DATE: FEBRUARY 24, 2011

**PLEASE SUPPORT HOUSE BILL 6299: AN ACT CONCERNING CHAIN STORE
CIGARETTE DISTRIBUTORS**

The purpose of House Bill 6299 is to make a clarification to a 2005 law (Public Act 2005-96) relating to the classification of "chain stores" under the Connecticut cigarette distribution laws.

In 2005, the definition of a "chain store" distributor was amended under Public Act 05-96; and it appears to us from a review of the limited legislative history that the intended purpose of the 2005 change was to clarify that totally independent retail stores (non-chain stores) should not be classified as "chain store" distributors and should not be able to avail themselves of chain store pricing.

The 2005 change in the law has been interpreted to effectively prohibit 7-Eleven from being a chain store distributor. The chain store law was first enacted back in 1990; and at that time, companies such as 7-Eleven were included in the chain store law. This continued from 1990 – 2004 (the year before the 2005 Public Act, 2005-96).

Today, although 7-Eleven has franchise agreements with its retail stores, it has a somewhat unique arrangement with its stores in that 7-Eleven and the individual store operator share, through a gross profit sharing arrangement, in the economic success of each store. This arrangement is markedly different than a classic franchise relationship, and in this respect, is more akin to the relationship between a national company and its individual chain stores. Simply put, chain store companies rely on the amount of sales to the retail consumer, and in turn gross profits, as a measure of success. This is the arrangement that 7-Eleven has with the folks who operate our 51 Connecticut stores. In Connecticut, 7-Eleven has a vested interest in working with our store operators to ensure their success and to help them achieve maximum profitability. We believe that this similar type of arrangement also exists for most-if not all-other chain store companies.

As noted above, these types of chain store arrangements held by 7-Eleven and other chain stores is completely different from the situation in the more typical "franchise" arrangements where the company (the franchisor) obtains a predetermined fee from the store operator (the franchisee), and the company receives the predetermined fee regardless as to whether the operator does well with sales. The store operator is basically on his/her own – truly independent as to sales volumes. Again, with respect to 7-Eleven and our operators, we have a tight-knit relationship with our operators on many levels. Our franchise agreements: (1) require the sharing of gross

profits; (2) require the operators to purchase at least 85% of products and services only from 7-Eleven's approved vendors; and (3) require 7-Eleven to make commercially reasonable efforts to obtain the lowest cost for products and services to be purchased by our retail stores.

We respectfully contend that House Bill 6299 does not run afoul of the intent of the 2005 law. The 2005 law was clearly enacted to prevent companies who don't have a direct stake in the success of its store operators from being allowed to be chain store distributors.

As a practical matter, in the very competitive Connecticut marketplace, if 7-Eleven can once again obtain chain store pricing for the cigarettes that are sold in our retail stores, then our stores will be able to compete fairly with our other chain store competitors. Note: A review of the Department of Revenue Services List of Licensed Distributors demonstrates that many, if not most of 7-Eleven's competitors seem to be licensed as chain store distributors.

House Bill 6299 amends the relevant statutory provisions to allow entities such as 7-Eleven who have gross profit sharing arrangements in their franchise agreements to be considered chain store distributors. We believe that this change will not "open up the floodgates" to somehow allow truly independent retail stores to avail themselves of chain store pricing.

We also believe that this proposal will have a no fiscal impact based upon the fact that when the chain store definition was changed back in 2005, the Fiscal Note attached to the bill concluded as such (we have attached a copy of the 2005 Fiscal Note for your review). In addition, it's our understanding that chain store pricing at the distribution level does not affect the amount of taxes that are collected when a pack of cigarettes is sold at the retail level.

Thanks very much for your consideration of House Bill 6299. Please contact Attorney Robert Shea (860-989-5567) or Attorney Christopher Stone (860-214-0503).

H – 1095

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2011**

**VOL.54
PART 4
1040 – 1385**

rgd/md/gbr
HOUSE OF REPRESENTATIVES

72
April 27, 2011

one one six.

THE CLERK:

On page 8, Calendar 116, it is Substitute for House Bill Number 6299, AN ACT CONCERNING CHAIN STORE CIGARETTE DISTRIBUTORS, favorable report of the Committee on General Law.

DEPUTY SPEAKER RYAN:

The Chair recognizes Speaker Taborsak of the 109.

REP. TABORSAK (109th):

Thank you, Mr. Speaker.

I move for acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER RYAN:

The question is acceptance of the Joint Committee's favorable report and passage of the bill.

Representative Taborsak, you have the floor.

REP. TABORSAK (109th):

Thank you, Mr. Speaker.

House Bill 6299 addresses a current inequity in our state cigarette distribution laws by allowing franchises that meet the requirement of this legislation to obtain already existing chain store cigarette distributor licenses, putting these franchises, Mr. Speaker, which are very similar to

chain stores as we know them, on a level playing field with chain stores when it comes to the purchase of cigarettes from wholesalers in this state.

In essence, qualifying franchises will be subject to the same minimum markup laws as the chain stores currently are. At this point in time, they are not allowed to be considered chain stores under the current law.

What this bill does not do, which is equally important, is it does not raise taxes on the consumer ultimately purchasing cigarettes. It does not decrease the cost of cigarettes to the consumer making them more available to the public, and it does not result in a fiscal impact to the State.

For all of these reasons I move adoption.

DEPUTY SPEAKER RYAN:

Will you remark further on the bill?

Representative Sawyer of the 55th.

REP. SAWYER (55th):

Thank you, Mr. Speaker.

I would like to thank the good Representative for bringing up this bill. When he describes the equity, absolutely what this bill does is -- take a certain group of stores that, because of one situation, they

rgd/md/gbr
HOUSE OF REPRESENTATIVES

74
April 27, 2011

didn't fall under our laws, and it cost them a monetary hardship as well.

Mr. Speaker, we are the only State in the nation that disqualified this particular chain. So I'd like to thank Representative Taborsak for bringing this forward, and I will be supporting it today.

Thank you, sir.

DEPUTY SPEAKER RYAN:

Thank you, Representative Sawyer.

Representative Rebimbas of the 70th.

REP. REBIMBAS (70th):

Thank you, Mr. Speaker.

I also rise in support of this bill as it does extend the definition of a chain store to include franchisors of five or more retail stores.

As it has been already stated, this is a fair competition between them, and for that purpose we do believe that this is also a very good business bill.

So I do rise, Mr. Speaker, in support of this bill and ask that my colleagues, as well, support this bill.

DEPUTY SPEAKER RYAN:

Thank you, Representative Rebimbas.

Will you remark further on the bill? Will you remark further on the bill? If not, will staff and

rgd/md/gbr
HOUSE OF REPRESENTATIVES

75
April 27, 2011

guests please come to the well of the House. Will the members please take their seats. And the machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber.

DEPUTY SPEAKER RYAN:

Have all members voted? Have all members voted? Will the members please check the board to determine if your vote is properly cast. If all members have voted, the machine will be locked and the Clerk will take a tally.

The Clerk will please announce the tally.

THE CLERK:

House Bill 6299.

Total Number voting 146

Necessary for adoption 74

Those voting Yea 146

Those voting Nay 0

Those absent and not voting 5

DEPUTY SPEAKER RYAN:

The bill passes.

Representative Rowe of the 123rd.

S - 617

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2011**

**VOL. 54
PART 6
1735- 2085**

rgd/md/gbr
SENATE

31
May 20, 2011

SENATOR DUFF:

Thank you, Madam President.

If there's no objection, may this item be placed on the consent calendar?

THE CHAIR:

Seeing no objection, so ordered.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, for some additional markings. First of all, calendar page 11, Calendar 400 should be marked passed temporarily.

And I have several items now to place on the consent calendar. Madam President, beginning on calendar page 12, Calendar 414, House Bill 6299; move to place that item on the consent calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Also calendar page 12, Madam President, Calendar 417, House Bill 6462; move to place that item on the consent calendar.

THE CHAIR:

So ordered.

rgd/md/gbr
SENATE

70
May 20, 2011

Thank you, Mr. President.

Also on calendar page 13, Calendar 423, House Bill 6286, Mr. President, move to place that item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

And additionally on calendar page 27, Calendar 92, Senate Bill 912, Mr. President, move to place that item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, if the Clerk would call the items on the first consent calendar and if we might proceed to a vote on that consent calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Immediate roll call has been ordered in the Senate on the consent calendar. Will all Senators please return to the Chamber. Immediate roll call

rgd/md/gbr
SENATE

71
May 20, 2011

has been ordered in the Senate on the consent calendar. Will all Senators please return to the Chamber.

Mr. President, those items placed on the first consent calendar begin on calendar page 11, Calendar Number 373, Substitute for Senate Bill 951; calendar page 12, Calendar 414, Substitute for House Bill 6299; Calendar 416, House Bill 6345; Calendar 417, Substitute for House Bill 6462; calendar page 13, Calendar 419, Substitute for House Bill 6310; Calendar 420, House Bill 6419; Calendar 423, Substitute for House Bill 6286; Calendar 425, Substitute for House Bill 5174.

Calendar page 19, Calendar Number 479, House Bill 5468; calendar page 26, Calendar Number 56, Substitute for Senate Bill 28; calendar page 27, Calendar Number 92, Senate Bill 912; and calendar page 32, Calendar Number 190, Substitute for Senate Bill 957.

Mr. President, that completes the items placed on the first consent calendar.

THE CHAIR:

This is an inquiry, was Calendar 416 on page 12 among those items that you called?

rgd/md/gbr
SENATE

72
May 20, 2011

THE CLERK:

Yes, Mr. President. Calendar Number 416, which was House Bill 6345 was called and placed on the first consent calendar.

THE CHAIR:

Thank you.

THE CLERK:

The Senate is now voting by roll call on the consent calendar. Will all Senators please return to the Chamber. Immediate roll call has been ordered in the Senate on the consent calendar. Will all Senators please return to the Chamber.

THE CHAIR:

The machine is open.

Senators, please check the board to see that your vote is properly recorded. If all members have voted and if all votes are properly recorded the machine will be locked. Would the Clerk please take a tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1.

Total Number voting	36
Necessary for adoption	19

rgd/md/gbr
SENATE

73
May 20, 2011

Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The consent calendar is passed.

SENATOR LOONEY:

Mr. President.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Yes. Thank you. Thank you, Mr. President.

I have some additional items to mark go at
this time.

THE CHAIR:

You may proceed, sir.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, first, on calendar page 6,
Calendar 229, Senate Bill 205 might be marked go.
Next, Mr. President, calendar page 36,
Calendar 273, Senate Bill 1115 is marked go. And
then, Mr. President, moving back to calendar page
9, Calendar 330, Senate Bill 3673 is marked go.

THE CHAIR: