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LEGISLATIVE PROGRAM REVIEW  
& INVESTIGATIONS COMMITTEE

**State  
Liquor Permits**

DECEMBER 2004

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# Introduction

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## State Liquor Permits

The Department of Consumer Protection, through the provisions of the state liquor control act, currently administers more than 70 types of liquor permits with varying fees and regulatory requirements. Since Connecticut's regulatory structure is based on the nature of the business operation as well as type of alcohol, new permit categories must be created when new enterprises develop or operations change. The complexity of the current permit system has contributed to unintended consequences when new state policies, such as the recent workplace smoking ban, are implemented.

The Legislative Program Review and Investigations Committee authorized a study of the state's liquor permits in March 2004 with a goal of clarifying and simplifying the regulatory structure. In addition to analyzing the type, purpose, and associated fees of state liquor permits, the committee study examined how the current permit structure addresses local community concerns about regulated entities.

## Methods

A variety of methods were used to gather information for this committee study. Program review staff conducted a literature review, analyzed relevant statutes, regulations, and guidelines, reviewed the legislative history of current laws as well as recent proposals to change the existing permit system, and compiled data on systems in other states.

Key staff and officials of the Department of Consumer Protection (DCP) as well as the members of the state liquor commission, industry representatives, municipal officials, and staff from the state coalition to stop underage drinking were interviewed about permit issues. An informational public hearing to receive comments about the current permit system was held by the program review committee on September 15, 2004.

Liquor commission minutes from the past two years and files from a sample of permit applications involving local objections (remonstances) were reviewed. Committee staff also observed several commission meetings and administrative hearings, and accompanied DCP liquor control agents during a field enforcement assignment.

## Report Organization

Background information on the history of liquor control policies and governmental roles in regulating alcoholic beverages is presented in Chapter I. Chapter II describes Connecticut's current liquor permit system and alternative structures proposed in recent years to streamline this system are discussed in Chapter III. The fourth and final chapter of the report contains the committee's findings and recommendations for improving the state's liquor permit system.

It is the policy of the Legislative Program Review and Investigations Committee to provide agencies included in the scope of a review with the opportunity to formally comment on committee findings and recommendations prior to the publication of a final report. A written response to this report was solicited from the Department of Consumer Protection. The response submitted by the agency is presented in Appendix A.

# Chapter I: Background

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## History and Purpose

All states and the federal government regulate the manufacture, distribution, and sale of alcoholic beverages. The original intent of most liquor control policies in the United States was to prevent excessive consumption of intoxicating liquors. Most government regulation was aimed at limiting access to a substance inherently dangerous to the public health and welfare, particularly by minors and intoxicated persons. Alcohol regulation later became a significant source of government revenue through imposition of liquor-related taxes, fees, and fines.

The American temperance movement that began in the 18<sup>th</sup> century eventually led to the enactment of a federal law (the Volsted Act) and ratification of a constitutional amendment (the 18<sup>th</sup>) that prohibited the manufacture, sale, transportation or importation of alcoholic beverages in the United States effective January 1920. National prohibition continued in place until major enforcement issues and questions about its effectiveness led to its repeal by the ratification of 21<sup>st</sup> Amendment to the U.S. Constitution in 1933.

With the repeal of prohibition, primary responsibility for regulating consumption of alcoholic beverages and the liquor industry returned to the states. The federal government retained authority to control certain aspects of production and capacity, impose taxes, and protect consumers. New federal law was enacted to reinforce state authority for liquor control by specifying that interstate shipments of alcoholic beverages are subject to the laws of the receiving state.

**Three-tier system.** Federal and state laws establishing a three-tier distribution system for alcoholic beverages were also adopted when national prohibition ended. The three-tier system requires separation of producers from retailers as a way of avoiding market manipulation and pressure to increase alcohol sales regardless of the social consequences. Under the system, regulated producers sell to distributors, licensed wholesalers (or states acting as wholesalers) sell to licensed retailers, and those retailers sell to the public. To keep the tiers separate, most permittees in one class are prohibited from being permittees or backers (owners) in another class. Proponents of the three-tier system state that it promotes proper collection of liquor taxes and helps to prevent illegal sales to minors and intoxicated persons by requiring face-to-face sales transactions.

## Governmental Roles

Since the repeal of national prohibition, the federal government's role has centered on regulating industry business practices and collecting revenues (e.g., from special taxes on retailers and excise taxes on manufacturers and distributors). Federal liquor laws mainly encompass:

- permit requirements for production, importation, and distribution; and

- prohibitions against unfair or deceptive business practices, such as exclusive sales arrangements, false advertising, and misbranding.

The 21<sup>st</sup> Amendment gave states broad authority to regulate alcoholic beverages within their borders. In response, each state established its own laws to control sellers, buyers, the place and time of sales, and, through their own taxes and fees, the cost of alcoholic beverages. Despite considerable variation in the details of state liquor control systems, there are two main state regulatory models: control and license. Table I-1 lists the 18 control and 32 license states.

<b>Table I-1. Liquor Regulation Structures by State</b>			
<b>CONTROL STATES (18)</b>		<b>LICENSE STATES (32)</b>	
Alabama	Ohio	Alaska	Massachusetts
Idaho	Oregon	Arizona	Minnesota
Iowa	Pennsylvania	Arkansas	Missouri
Maine	Utah	California	Nebraska
Michigan	Vermont	Colorado	Nevada
Mississippi	Virginia	Connecticut	New Jersey
Montana	Washington	Delaware	New Mexico
New Hampshire	West Virginia	Florida	New York
North Carolina	Wyoming	Georgia	North Dakota
		Hawaii	Oklahoma
		Illinois	Rhode Island
		Indiana	South Carolina
		Kansas	South Dakota
		Kentucky	Tennessee
		Louisiana	Texas
		Maryland	Wisconsin

Source of Data: National Alcohol Beverage Control Association (NABCA) Survey Book, 2004 Edition.

Under the control model, states operate a monopoly system, controlling the sale of liquor at the wholesale level through government agencies. In some control states, retail sales for off-premise consumption are also controlled through government-operated package stores or state supervised outlets.

States following the license model license private sellers to conduct wholesale and retail liquor sales. License states generally require permits for all industry members (suppliers, wholesalers, and retailers) doing business within their borders. Some license states share administrative control of their liquor license systems with counties or municipalities while others retain sole authority for licensing. Most states, whether license or control, provide for local option, the policy that allows a political subdivision to decide through a vote to prohibit the sale of liquor within its borders.

**Current legal issue.** With the advent of electronic commerce, a number of U.S. wineries and other liquor manufacturers are seeking to distribute their products through internet sales. However, many states, in support of their three-tier regulatory structures, prohibit direct shipment of alcoholic beverages from suppliers to consumers. Lawsuits challenging direct shipment bans based on the claim they violate the commerce clause of the U.S. Constitution have been filed in a number of states.<sup>1</sup> Two cases that resulted in opposing rulings at the federal appeals level (New York's ban was upheld while Michigan's direct shipment prohibition was struck down) are now under review by the U.S. Supreme Court.

The Supreme Court's decision is expected to define the extent of state authority to regulate liquor in the future and could impact permit systems and structures. Thirty-six states including Connecticut have filed briefs arguing their direct shipment laws are necessary to prevent underage drinking and ensure reliable tax collection. Opponents claim states' rights to regulate liquor under the 21<sup>st</sup> Amendment do not permit them to discriminate against interstate commerce.

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<sup>1</sup> In essence, the commerce clause bars states from enacting laws that unduly burden interstate commerce and favor in-state businesses over out-of-state competitors.



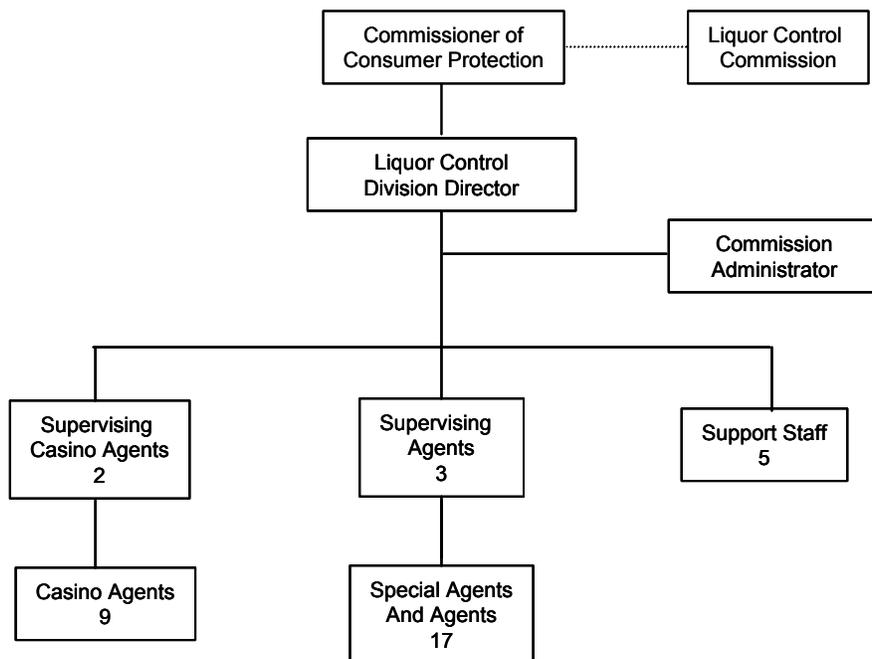
# Chapter II: Connecticut's Permit System

## Overview

Connecticut's system for regulating alcoholic beverages dates back to 1933 when the legislature created a centralized state license and enforcement structure overseen by a three-member liquor control commission. A variety of new permits have been added to the ten original categories, business restrictions have been revised and expanded over time, but the basic regulatory structure has remained in place without significant changes. The liquor control commission itself continued as an independent agency until 1995 when it was placed within the Department of Consumer Protection (DCP).

The state's current liquor control organization is shown in Figure II-1. The DCP liquor control division is responsible for regulating all persons and organizations involved in the distribution, sale, and dispensing of liquor in Connecticut. The liquor control commission, now composed of the consumer protection commissioner and two paid, part-time gubernatorial appointees, conducts formal and informal administrative hearings related to the liquor permit process and violations of the state liquor control laws (C.G.S. Chapter 545). The commission also oversees the provisional permit process and has been delegated authority by the DCP commissioner to review and approve final permits and certain other applications and requests.

Figure II-1. Connecticut Liquor Control Organization



As Figure II-1 indicates, the liquor control division is staffed by 27 General Fund positions to carry out inspections, investigations, and related administrative functions to ensure compliance with the state liquor control laws. The division director additionally oversees 11 liquor enforcement agents assigned to and funded by the two casinos operating in Connecticut. Division staff also perform a variety of public education, outreach, and referral activities. Liquor control permitting, enforcement, and adjudication activities are supported by DCP's centralized licensing, legal, and administrative services.

## **Permit Types**

To control the distribution and sale of alcoholic beverages, Connecticut has established multiple permit categories within all three industry tiers: 1) manufacturers, which covers all suppliers including shippers and transporters; 2) wholesalers; and 3) retailers. All permit categories are based on type of alcohol sold (e.g., liquor, which includes all alcoholic beverages, wine, or beer) as well as the primary nature of the business selling the alcohol. Retail permits are further categorized by where the alcohol sold will be consumed, either on- or off-premises.

At present, there are 71 different types of liquor permits defined in state statute plus provisions for registration of liquor brands and certification of wholesaler salespersons. The statutes also provide for several types of supplemental permits, which allow certain permit holders to conduct additional activities (e.g., guest room "mini bars" at hotels and casinos, additional bars within a restaurant or café), and for provisional licenses for nearly all permit categories.

The number of state permit categories continues to grow over time, primarily in the retail area, reflecting a steady expansion of places where sales of alcoholic beverages are allowed. In 1949, 25 permit categories were authorized under the Connecticut General Statutes. In subsequent legislative sessions through 2004, 43 new categories were added; all but five were for new types of on-premise consumption retail establishments. During the same period, at least three permit categories were eliminated and several others were revised to authorize sales of additional types of alcohol.

Table II-1 lists all the categories of liquor permits currently administered by the state consumer protection department. Over 70 percent of the categories (52) are for on-premise consumption retail establishments. In contrast, there are only four different types of off-premise consumption retail permits and just five wholesaler and 10 manufacturer permit categories. The table organizes the wide variety of on-premise retail permits by the primary purpose of the establishment:

- dining and drinking, which covers restaurants, cafes, taverns, and hotels;
- other commercial or social activity, which includes private clubs, casinos, and various recreational and transportation facilities authorized to sell alcoholic beverages on their premises; and
- nonprofit and other time-limited activities involving alcohol sales, such as charitable organization fundraising events and temporary social activities.

**Table II-1. Current Connecticut Liquor Permit Categories  
(Number = Active Permits as of May 2004)**

RETAILER			WHOLESALER	MANUFACTURER
<i>On Premise</i>		<i>Off Premise</i>		
<i>Dining/Drinking</i>	<i>Other</i>		<i>Time-Limited/Nonprofit</i>	
Brew Pub* (see mfg)	Airline (5)	Charitable Organization (4 day max) (45)	Druggist (10)	Broker (0) Manufacturer: Apple Brandy & Eau de Vie (0)
Café (676)	Airport Bar (0)	Nonprofit Corporation (per event) (n/a)	Farm Winery* (see mfg)	Warehouse: Bottling (0) Manufacturer: Beer (3)
Farm Winery* (see mfg)	Boat (16)	Nonprofit Corporation-TV (for auction period) (n/a)	Grocery Store Beer (842)	Warehouse: Storage (1) Manufacturer: Brew Pub* (10)
Hotel: Beer & Cider (0)	Bowling: Beer & Wine (2)	Nonprofit Golf Tournament (8 day max) (n/a)	Package Store (1,030)	Wholesaler: Beer (5) Manufacturer: Cider, Apple Wine (2)
Hotel: Liquor A (19)	Bowling: Liquor (34)	Nonprofit Public Museum (days open to public) (5)		Wholesaler: Liquor (53) Manufacturer: Farm Winery* (16)
Hotel: Liquor B (39)	Casino (1)	Nonprofit Theater (days of performance + 12 days) (18)		Manufacturer: Liquor (0)
Hotel: Liquor C (24)	Caterer (64)	Special Club Picnic (per day) (n/a)		Shipper: Out-of-State: Small Winery (55)
Restaurant: Airport (0)	Club (374)	Temporary Outing, Picnic, Social Gathering – Liquor (per day) (12)		Shipper: Out-of-State: Beer (83)
Restaurant: Beer (34)	Club: Airport Airline (1)	Temporary Outing, Picnic, Social Gathering – Beer (per day) (6)		Shipper: Out-of-State: Other Alcohol (281)
Restaurant: Beer & Wine (583)	Club: Nonprofit (67)			Transporter: In-State (42)
Restaurant: Caterer (40)	Club: No-Permit town (0)			
Restaurant: Liquor (1,313)	Club: Golf Country (6)			
Restaurant: Special Sporting Facility (5)	Club: Special (1)			
Tavern (16)	Coliseum (4)			
	Coliseum Concession (4)			
	Concession (annual)** (16)			
	Military (1)			
	Railroad (1)			
	Racquetball Facility (0)			
	Resort (1)			
	Special Outing Facility: Beer (0)			
	Special Outing Facility: Liquor (6)			
	Special Sporting Facility: Bar (16)			
	Special Sporting Facility: Concession (5)			
	Special Sporting Facility: Emp. Recreation (0)			
	Special Sporting Facility: Guest (1)			
	University: Beer (2)			
	University: Beer & Wine (7)			
	University: Liquor (1)			

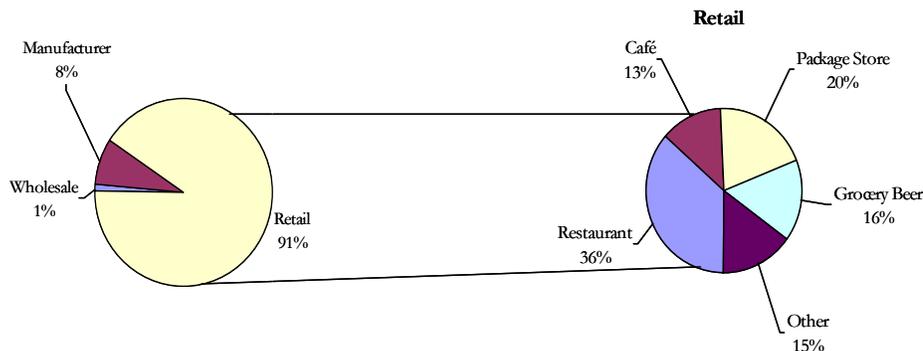
\* Brew Pub permit allows manufacture & sale on premise; Farm Winery permit allows manufacture and sale on and off premise  
 \*\* Concession permit also available on semi-annual and per day basis

n/a = not applicable; a seasonal permit not active in May  
 In addition to above permits:  
 Brand Registrations = 23, 386  
 Wholesaler's Salesman Certificates = 484

Table II-1 also shows the number of active permits in each category as of May 2004. Excluding the time-limited categories, all active permits in Connecticut totaled 5,818. Permits currently active within each category range widely, from more than 1,000 for two types of retailers (package stores and restaurants serving liquor) to just a handful in a number of cases. At this point in time, eight categories had only one active permittee and another 11 had none.

As Figure II-2 shows, retail tier businesses account for the bulk (91 percent) of all active permittees; 8 percent are in manufacturer categories and the remaining 1 percent is within wholesaler categories. Four types of retail establishments account for 77 percent of total active liquor permits. Restaurants and cafes together account for 45 percent of all permittees while package stores and grocery stores authorized to sell beer combined make up another 32 percent of total active permanent permits.

**Figure II-2. Active Permanent Permittees by Type: May 2004**  
**Total Number = 5,818**



The main regulatory distinction among the various dining/drinking retail permits is the type of food service required. By definition, restaurants must serve hot meals and food must be served at all times liquor is served in hotels. Some type of food (e.g., sandwiches, soup, or other fresh, frozen, precooked or processed food) must be available in a café for consumption on premises while food service is completely optional for taverns, brew pubs and farm wineries.

In many cases, cafes and restaurants operate in the same way, with both providing full meals. Ensuring cafes meet the requirement of having food available, however, is a common enforcement issue for establishments focused on drinking and not interested in food sales. Division staff note it is also necessary to closely regulate restaurants since there can be incentives to obtain the permit but not intend to operate in compliance with all meal service, kitchen, dining room and staffing requirements. These include the fact that the restaurant permit fee is less than that of a cafe (\$1,200 versus \$1,750), restaurants may be open 24 hours (but only sell liquor during state and local prescribed times), and some towns through zoning ordinances only allow restaurants within their borders.

Food is also a major regulatory matter for one type of off-premise retailer, grocery store beer permittees. Determining whether an establishment meets the definition of a grocery store and is engaged primarily in retail sales of food can require considerable research by liquor

control division staff. It has also become a relatively frequent subject for commission hearings as a wider variety of establishments (e.g., convenience stores, specialty markets, etc.) seek permits to sell beer as grocery stores.

Overall, grocery stores selling beer must meet the same regulatory requirements as package stores in terms of required recordkeeping, hours of sales, and other operations. One major difference is employees of package stores must be 18 to sell alcohol while in grocery stores the minimum age for an employee selling beer is 15. Enforcement action for violations also impact the two main off-premise retail permittees differently. If a package store is found by the commission to have sold alcohol to a minor, a fine is imposed and all business must be suspended for a certain number of days. A grocery store beer establishment under the same circumstances is also fined and prohibited from selling beer for a set time but it can remain open for all other activities.

**Other states.** An analysis prepared by the Office of Legislative Research (OLR) in 1996 compared the number of different types of liquor permits in Connecticut with those in comparable states (i.e., other states that license all three industry tiers and do not vest significant permit authority to political subdivisions). The OLR comparison focused on the main permits used to regulate the industry -- manufacturer, wholesaler, retailer -- and excluded permits for individuals (e.g., salespersons, bartenders, etc.), duplicate and temporary or seasonal permits, subcategory permits such as those based on business volume, square footage, or population, and supplementary permits (e.g., those allowing additional bars or Sunday sales).

The results of this analysis, summarized in Table II-2, show that Connecticut had the second highest total number of liquor permits (51) and the highest number of retail permits (42 total) of the 24 states examined. Connecticut had by far the largest number of permits for retail on-premise consumption (39), reflecting its regulatory structure that distinguishes type of establishment selling as well as type of liquor sold. Program review staff reviewed current permit information for the states surrounding Connecticut as well as California and found no significant changes in their permit numbers since the OLR analysis was completed.

## **Permit Fees**

Current statutory fees for each type of retail permit are shown in Table II-3. Table II-4 presents the statutory fees for permits in the wholesaler and manufacturer categories. In general, fees are based on the type of alcohol sold, with permits allowing liquor sales having the highest rates and those allowing only beer the lowest. Permit fees are also higher for businesses likely to have the largest sales volumes and presumably the highest revenues, such as liquor wholesalers and manufacturers, and certain retailers like casinos, coliseums, and cafes. Nonprofit and charitable organizations are charged nominal permit fees.

**Table II-2. Liquor Permits in Connecticut and Selected Other States: 1996**

STATE	TOTAL PERMITS	MANU-FACTURER	WHOLE-SALER	RETAIL TOTAL	ON-PREMISES RETAIL	OFF-PREMISES RETAIL
CALIFORNIA	56	10	13	33	31	2
CONNECTICUT	51	5	4	42	39	3
NEW YORK	43	7	5	31	23	8
DELAWARE	33	6	5	22	20	2
FLORIDA	32	5	5	22	19	3
TEXAS	32	10	6	16	11	5
KENTUCKY	27	9	2	16	13*	4
COLORADO	25	6	5	14	11	3
NEW MEXICO	24	10	8	6	5	1
TENNESSEE	24	3	2	19	18	1
INDIANA	23	6	5	12	9	3
MISSOURI	23	6	4	13	10	3
NEW JERSEY	23	9	4	10	6	4
RHODE ISLAND	23	4	3	16	14	2
GEORGIA	21	6	6	9	8*	2
MINNESOTA	21	6	8	7	4	3
ARIZONA	19	6	3	10	7	3
NEBRASKA	19	5	2	12	9	4*
ALASKA	17	4	2	11	8	3
KANSAS	17	4	5	8	7	1
NORTH DAKOTA	14	4	2	8	4	4
SOUTH DAKOTA	13	3	2	8	7*	2
SOUTH CAROLINA	8	3	1	4	2	2
LOUISIANA	7	2	1	4	3	1

\* Allows sales for on- and off-premises consumption

Source of Data: OLR Research Report 96-R-1147, Sept. 4, 1996.

**Table II-3. Connecticut Retail Liquor Permits: Current Fees**  
(annual fee unless otherwise noted)

	LIQUOR	\$	BEER&WINE	\$	BEER	\$	WINE	\$
<b>ON PREMISE</b>								
<b>Food Optional</b>								
	airport bar	300	tavern	240				
	airport airline club	650						
	boat	400						
	brew pub	240						
<b>Food Required</b>								
	cafe	1,750	restaurant	560	hotel	240		
	caterer	350			restaurant	240		
	hotel	1,200 – 2,400			special outing facility	240		
	restaurant	1,200						
	restaurant airport	1,200						
	restaurant caterer	1,200						
	restaurant special sporting facility.	1,200						
	special outing facility	1,200						
<b>Other Activity</b>								
	airline	400	bowling	350	coliseum concession	1,000	farm winery	240
	bowling	2,000	concession	240	military	15		
	casino	2,400	club special	0	spec. sporting fac. employee recreation	240		
	club	240	spec. sporting fac. concession	240	university	240		
	club non profit	650	university	560				
	club golf country	800						
	club no permit town	800						
	club special picnic (per day)	25						
	coliseum	2,000						
	railroad	400						
	racquetball	2,000						
	resort	1,200						
	spec. sporting fac. bar	300						
	university (UConn)	240						
<b>Temporary/ Nonprofit</b>								
	temporary outing (per day)	25			temporary outing (per day)	25		
	charitable (per event; 4 day max)	25	nonprofit corp. tv (per auction)	25			nonprofit corp. (per event)	25
	nonprofit golf tournament	200						
	nonprofit museum	200						
	nonprofit theater	200						
<b>OFF PREMISE</b>								
	druggist	425			grocery store beer	85	farm winery	240
	package store	425						

Supplemental permit fees: additional consumer bar = \$150 each; hotel/casino guest bar = \$50 each

Any Provisional Permit: \$500

<b>Table II-4. Current Annual Fees for Connecticut Supplier Permits</b>			
	<b>BEER</b>	<b>WINE</b>	<b>LIQUOR</b>
<b>WHOLESALER</b>	\$800	n/a	\$2,400
<b>Broker</b>	n/a	n/a	\$160
<b>Warehouse: Bottler</b>	n/a	n/a	\$160
<b>Warehouse: Storage</b>	n/a	n/a	\$35
<b>MANUFACTURER</b>	\$800	n/a	\$1,600
<b>Apple Brandy</b>	n/a	n/a	\$320
<b>Brew Pub</b>	\$240	n/a	n/a
<b>Cider</b>	n/a	\$160	n/a
<b>Farm Winery</b>	n/a	\$240	n/a
<b>SHIPPER</b>			
<b>Small Winery</b>	n/a	\$250	n/a
<b>Out of State (Conn./Other State)</b>	\$40/\$1,000	n/a	\$45/\$1,000
<b>TRANSPORTER</b>	n/a	n/a	\$1,000

At present, annual retail establishment fees range from \$15 for a military facility beer permit to \$2,400 for casinos and certain hotel liquor permits. In the wholesaler and manufacturer categories, the lowest annual permit fee is \$40 for a Connecticut-based out-of-state beer shipper while liquor wholesalers have the highest permit fee (\$2,400).

None of the current state permit fees are based directly on sales volume or other measures of business activity. Thus, all permittees within a category pay the same amount regardless of the size of their operation. For example, a package store permit is \$240 whether it is for a large volume discount store or a small volume neighborhood shop. Similarly, every grocery store authorized to sell beer pays \$85 for a permit whether it is a local market or a national chain super store.

The only current permit category with a sliding scale for fees is hotel liquor, although the scale is unrelated to volume. Instead, hotels located in towns with populations under 10,000 pay \$1,200, those in towns with populations between 10,000 and 50,000 pay \$1,600, and those in towns with populations over 50,000 pay \$2,400.

When a new liquor permit category is created in statute, the related statutory fee is usually determined by considering the fee set for comparable activities and current market conditions. Once established, the state rarely revises liquor permit fees. The last systematic review and revision of the liquor permit fee structure occurred in the early 1960s. As a result, inconsistencies and inequities have developed over time.

For example, the brew pub permit remains set at the beer only rate of \$240 even though such establishments are now allowed to sell all types of liquor. The high rate for bowling alley and racquetball facility liquor permits (\$2,000) was set when market conditions indicated such establishments would experience high volumes of alcohol sales. Current market conditions may not warrant a fee at that level. Overall, Connecticut's permit fees appear to have little relationship to either the revenues alcohol sales generate for a business or to the state's cost to regulate the type of permittee.

### **State Permit Process**

The state consumer protection department, through its liquor control division staff and the commission, issues and enforces all liquor permits. The liquor control statutes and related case law give the department broad authority to assess the eligibility and suitability of applicants and current permittees and grant or deny permits.

In making determinations on liquor permits, the department may investigate and may hold hearings on new applications or renewals. DCP must hold a hearing on a new permit or renewal whenever it receives a remonstrance petition. A remonstrance is a formal objection from residents of the town where the establishment is located and the process is described in detail below. The statutes mandate permit refusals in some cases and outline standards for the department's discretionary refusal, suspension, and revocation of a liquor permit in other cases.

**Application process.** For new permits, applicants must by law submit a sworn application to DCP showing:

- the name and address of the applicant and backer, if any;
- the location of the business to be operated under the permit; and
- a financial statement with all details of any business transactions connected with the application.

The application must also include a detailed description of the type of live entertainment to be provided and indicate any criminal convictions of the applicant and backer, if any. The department's permit application form, which is the same for all permit categories except transporter, further requires signatures from the following local officials:

- the local zoning officer certifying the location complies with town zoning ordinances and bylaws;
- the town clerk certifying the proposed hours of sale comply with town ordinances; and
- for any on-premise consumption permit except airline, boat, caterer, or railroad, the local fire marshal approving the premise's safety .

Documentation of approval by the local public health department is also required for establishments serving food.

Once the liquor control division has received a complete and correct application with the proper permit and filing (\$100 in most cases) fees, the applicant is sent information necessary to meet public notice requirements. By law, most applicants for new permits must publish in a local newspaper at least once a week for two consecutive weeks, a notice containing:

- the name and residence of the permittee;
- the type of permit applied for;
- the location of the proposed business; and
- the type of live entertainment to be provided.

The applicant is also required to place a placard with the same information on the outside of the proposed premises or, if the premises is not yet constructed, on a six- by- four foot sign on the proposed site in a place that is clearly visible to the public.

A liquor control division agent conducts an investigation of each applicant that includes: a criminal background check; an on-site inspection of the proposed premises; a check of all required documentation; and an evaluation of the applicant's conformance with all relevant statutes, regulations, and policies. A report summarizing the results of the agent's investigation is prepared and submitted to the commission. As discussed below, if the commission receives a remonstrance petition concerning the application, a hearing must be held on the suitability of the applicant or location before a decision is made on whether to grant the permit.

If the commission is satisfied that the applicant complies with all requirements, a vote is taken to grant the permit on a final or conditional basis. A conditionally approved applicant can receive a provisional permit allows the business to operate while final documentation is processed and subject to any conditions the commission may impose. If the permit is refused, the applicant can request a hearing before the commission and if denied a permit after the hearing, the applicant has the right to appeal to the courts.

By law liquor permits expire annually. Permits can be renewed by submitting a sworn renewal application and the appropriate fee to the department. DCP recently simplified the renewal process and now requires permittees to attest to the information they provide on four questions. The questions concern: ownership or shareholder changes; criminal convictions; trade name changes; and live entertainment provided, if any.

No summary statistics on permit-related activities, related either to administration (e.g., applications received, reviewed, approved, denied, or appealed) or enforcement (e.g., complaints received/alleged violations reported, investigated, hearings held, outcomes, or enforcement actions taken ) are readily available from DCP. In general, the only way to track liquor permit activities is by reviewing commission meeting minutes. The liquor control division director compiled basic data related to the permit process for the past year at the request of program review committee staff.

**Mandatory refusal.** The department is statutorily prohibited from issuing permits for the sale of alcohol in no-permit towns and where prohibited by local zoning. By law, DCP must

refuse state liquor permits (unless it is an out-of-state shipper, boat or airline permit) to the following persons:

any state or judicial marshal, judge, prosecuting officer, or member of a police force; any current first selectman acting as chief of police in town where the permit premises is located; a minor (i.e., person under age 21); or a constable involved in criminal law enforcement.

In 1986, a statutory limit on the number of package store permits within a town went into effect following a five-year moratorium on new permits (C.G.S. Section 30-14a). By law, DCP may issue one package store permit for every 2,500 residents of a town as determined by the most recent census, subject to certain grandfathering provisions.

In general, state law also prohibits permittees or backers of one class of permit from being the permittee or backer of any other permit class except for airport, railroad, airline, and boat permits. However, to date, over a dozen additional exceptions to this permit limit have been enacted (e.g., a person can be a backer for both hotel and restaurant permits or a person can at the same time be a holder and backer of a brew pub, restaurant, and café).

**Discretionary refusal.** State law (C.G.S. Sec. 30-46(a)) gives DCP discretionary authority to suspend, revoke, or refuse to grant or renew a permit based on the location or character of the premises, if there is reasonable cause to believe:

- the proximity of the permit premises will have a detrimental effect on any church, school, convent, public or private charitable institution, hospital, veteran's home or armed forces camp, barracks, or flying field;
- such location is in such proximity to a no-permit town that it is apparent the applicant is seeking the patronage of that town;
- the number of permit premises in a locality is such that the granting of a permit is detrimental to the public interest, and in reaching this conclusion, DCP may consider the character and population of the town, the number of like permits, the number of all permits in the town and immediate neighborhood concerned, and the effect a new permit may have on the town or neighborhood and like permits existing in the town or neighborhood;
- the place has been conducted as a lewd or disorderly establishment;
- the backer does not have the right to occupy the permit premises;
- drive-up sales of liquor are being made at the premises; or
- any other reason provided by state or federal law or regulation that warrants refusal.

According to the liquor control commissioners, they generally do not use this discretionary authority unless local residents have filed a remonstrance petition. It is the department's view that if local officials, as required, indicate their approval of a permit on the application form, they consider the location suitable and that determination should prevail absent a remonstrance.

The department also has discretionary authority under another statutory section (C.G.S. Sec. 30-47) to suspend, revoke, or refuse to grant or renew a permit based on the qualifications of the applicant or permittee, if it has reasonable cause to believe the applicant or permittee:

- appears to be financially irresponsible or neglects to provide for his or her family or neglects or is unable to pay just debts;
- has been provided with funds by any wholesaler or manufacturer or has a forbidden connection with other class of permittee;
- is in the habit of using alcoholic beverages to excess;
- has willfully made a material false statement to the department;
- has been convicted of violating any federal liquor law or the liquor law of any state, or has been convicted of a felony or has such a criminal record that it is reasonable to believe the person is not suitable to hold a permit;
- has not been delegated full authority and control of the permit premises and all business conduct; or
- has violated any liquor control act provisions or regulations.

The commission reports it rarely refuses to grant or renew a permit under this provision. Usually, if there is clear evidence of unsuitability for any of the statutory reasons, the person withdraws from the permit application process before the commission takes any action.

## **Remonstrance**

State law provides local residents a formal opportunity to object to the suitability of a new or renewing liquor permittee or proposed place of business through what is known as the remonstrance process. The right of citizens to remonstrate, or protest and seek redress of grievances from the government, is included in both the Connecticut and U.S. Constitutions. The specific right to remonstrate against a state liquor permit was established by a 1935 amendment to the state liquor control act.

Under the provisions of C.G.S. Section 30-39(c), any ten residents of the town where a regulated business is located may file with DCP a written remonstrance objecting to the suitability of the permit applicant or location. A remonstrance must be submitted within three weeks from the filing date of an initial permit application or 21 days before the renewal date of an existing permit. The department is mandated to hold a hearing upon the filing of a remonstrance and give at least five days notice before the hearing is held. Since 1995, remonstrants have been required by law to designate agents for service to receive all department notices.

The department reports it receives about a dozen remonstrance petitions each year. Remonstrance hearings, like other liquor related hearings, are carried out by the commission. In assessing remonstrance objections to suitability, the commission uses the standards outlined in the discretionary refusal provisions of the liquor control act (i.e., C.G.S. Sections 30-46(a) concerning premise location, and 30-47 concerning applicants or permittees).

According to the commission, permits are rarely denied because of a remonstrance. This is due in part to the fact that most remonstrances are filed regarding a new permit application but the residents' objections are related to premises' past activity under the prior permittee. In other cases, it turns out the remonstrance was initiated by a competitor of the proposed establishment and there are no legitimate grounds for the objection. In addition, it is not uncommon that a remonstrance is dismissed because no remonstrants appear at the hearing to present testimony about their objections.

Program review staff reviewed 12 remonstrance cases that occurred between June 2003 and April 2004. The remonstrances concerned a variety of establishment (four restaurants, three cafes, three package stores, and two grocery stores), and 10 were related to new applications while two were for renewals. In one case, the permittee of a café gave up his permit before the remonstrance hearing was held as department investigators and the police had found numerous serious violations following the filing of the petition.

The other 11 remonstrances were dismissed and the permits were granted. In three cases, no remonstrants appeared at the hearings and, it turned out, business competitors actually had initiated two of those proceedings. Three remonstrances were dismissed because the commission found no grounds for the objections and five other cases were dismissed due to lack of substantial evidence. Three of the remonstrances that lacked substantial evidence involved residents' concerns about possible future problems because of a change in the premises' permitted use (e.g., a former restaurant was proposed as a café with live entertainment). It is commission policy to advise the remonstrants in such cases that they can file an objection at the time of renewal if problems develop and they believe there is evidence of unsuitability.

In general, it appears there is little awareness of the opportunity to remonstrate at the time of renewal since unlike new permits, there is no public notice requirement. Further, while detailed information on permit holders, including renewal dates and compliance history, should be available to the public on the department's website, the electronic data are not necessarily complete or accurate.

Whatever the outcome, the remonstrance process does offer citizens the opportunity to raise concerns about potentially detrimental effects of state permitted liquor establishments on their communities. In recent years, there has been at least one case where, as the result of a remonstrance, the commission denied a permit application because the public interest would be adversely affected by the addition of a new café in the neighborhood. The commission's decision was upheld upon appeal to the courts.<sup>2</sup>

## **Local Regulation**

Connecticut's local option law (C.G.S. Section 30-9) allows individual towns to vote to ban the sale of alcohol, either completely or by one or more types of state permit categories. At present only two towns (Bridgewater and Eastford) have exercised the option to be "dry."

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<sup>2</sup> See *Angel Rivera v Liquor Control Commission, et al.*, No. CV 97-0568655, 1997.

Municipalities also can regulate alcoholic beverages within their borders in a number of ways through zoning and other local ordinances. Any town, by ordinance or by a vote, can require more restrictive sales hours than those established by state statute. Towns can and have adopted zoning rules that essentially ban certain types of permitted establishments in their community (e.g., allow businesses with restaurant liquor permits but not cafes or taverns, or allow grocery store beer permittees but not package stores) or impose requirements for a minimum distance between liquor establishments or between permitted premises and other types of places (e.g., schools, churches, or hospitals). Other types of local liquor control ordinances cover public consumption of alcoholic beverages, underage drinking, and noise.

There is no central source of information on current local ordinances so it is difficult to determine how many Connecticut municipalities have adopted, through zoning or other rules, their own controls on liquor sales and establishments. Program review staff research has identified a number of alcohol-related ordinances in place in communities throughout the state. Town information compiled by staff to date is summarized in Table II-5.

<b>Table II-5. Selected Connecticut Towns: Liquor-Related Local Ordinances</b>				
<b>HOURS OF SALE</b>	<b>LOCATION REGULATION</b>	<b>NOISE/ NUISANCE</b>	<b>PUBLIC CONSUMPTION</b>	<b>UNDERAGE DRINKING</b>
Ansonia	Old Saybrook	Ansonia	Ansonia	Berlin
Darien	Wallingford	Bethel	Bloomfield	Cheshire
Groton	West Hartford	Branford	Branford	Cromwell
New London		Derby	Cromwell	Darien
Old Saybrook		Farmington	Darien	Ellington
Orange (nightclub)		Manchester	Derby	Farmington
Rocky Hill		Mansfield	Glastonbury	Glastonbury
Stamford		Middletown	Groton	Newington
Stonington (nightclub)		North Branford	Hartford	Norwalk
Tolland		Norwalk	Manchester	Orange
Waterford		Old Lyme	Middletown	Rocky Hill
Westport		Old Saybrook	New London	Stratford
Wethersfield		Orange	Old Lyme	West Hartford
Wilton		Rocky Hill	Stamford	Westport
		Stratford	Stratford	Winchester
		Stonington	Stonington	
		Tolland	Tolland	
		West Hartford	Waterford	
		Westport	Westport	
		Wethersfield	Wethersfield	
			Wilton	

Details of these local ordinances vary. However, the general intent of each type of ordinance reviewed by committee staff was found to be similar and can be summarized as follows:

- *Hours of Sale:* enumerates the hours that alcoholic beverages may be sold on Sundays and holidays. Some towns also elect to specify the closing times for nightclubs (a former permit category) as well.
- *Location Regulation:* establishes a minimum distance between any two off-premises permit locations and between an on-premises or off-premises permit location and a school, place of worship, charitable institution, library or hospital.
- *Noise/Nuisances:* defines any loud conduct that is an annoyance to others or unreasonably interferes with the peace and enjoyment of others as disorderly.
- *Public Consumption:* declares that the possession of an open container of alcohol or the intent to consume alcohol in certain public areas (parks, schools or school grounds, highways, streets, sidewalks, etc.) is unlawful except when pre-approved by the proper authority in such cases as a festival or function.
- *Underage Drinking:* states that no minor shall be in possession of alcoholic beverages whether in opened or unopened containers within the town or city unless accompanied by a parent, legal guardian, or spouse who is of age 21 or older. Typically towns provide exceptions for individuals who are over the age of 18 and an employee of a permit holder where sale or delivery is made in the course of their employment.

Overall, municipal police powers, in combination with the remonstrance process, seem to provide communities with considerable opportunity for local input and control regarding the sale and consumption of alcoholic beverages. The time and expense required to develop new or revise existing ordinances, however, may limit the number of cities and towns that use this authority to establish their own liquor regulations.



## Chapter III: Alternative Structures

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### Proposed Structures

Various alternatives to the existing state liquor permit system structure have been proposed over the years. Two major efforts to simplify and clarify state liquor permits, one resulting from the legislature’s sunset review process in 1982 and another based on an executive branch proposal in 2000 for consolidating liquor permit categories and standardizing fees, are outlined briefly below. The potential advantages and disadvantages of a streamlined system and possible revisions to the current permit fee structure are also discussed.

#### 1982 Sunset Recommendations

In January 1982, the program review committee issued its sunset review report on the state department of liquor control. The committee’s recommendations contained in the report called for consolidating all liquor permits into six main categories and establishing a progressive fee structure based on gross receipts or the state alcohol beverage tax.

The recommendations were aimed at simplifying the permit process and reducing administrative processing times. Fees would also be more equitable under the sunset proposal because they would be based on business volume rather than type of business. Legislation to implement the committee’s proposed permit structure was introduced in the 1982 session but was not enacted.

The proposed changes resulting from the consolidated structure recommended in the sunset report are summarized as follows:

<b>On Premise:</b>	<b>Off Premise:</b>	<b>Temporary:</b>	<b>Wholesaler:</b>	<b>Manufacturer:</b>	<b>Supplier:</b>
33 existing combined into 3 permits: - Beer - Beer & Wine - All Liquor	3 existing permits maintained: - Grocery Beer - Druggist - Package Store	4 existing combined into 1 permit	5 existing combined into 1 permit	5 existing and Farm Winery combined into 1 permit	2 out-of-state shipper permits combined into 1 permit

#### 2000 Permit Consolidation Bill (HB 5851)

Legislation initiated by the governor’s office and supported by the consumer protection commissioner during the 2000 session would have consolidated all state liquor permits into seven main classes for fee-setting purposes and collapsed or eliminated a number of existing permit categories. The changes were intended to reduce confusion as well as the time and money businesses spend in identifying and complying with state liquor mandates.

Under the bill, liquor permits would be issued based on type of business and permitted use rather than a specific permit category. The structure created under HB 5851 organized liquor permits into three different business groups and types, with standardized fees, and is summarized in Table III-1.

<b>Table III-1. Proposed Permit Structure under HB 5851, 2000 Session.</b>			
<b>Type</b>	<b>Group 1: Manufacture/Distribute</b>	<b>Group 2 Off Premise Retail</b>	<b>Group 3 On Premise Retail</b>
<b>A</b>	Manufacture, Wholesale or Transport Beer and Other Liquor; or Nonresident Out of State Shipper (\$800)	Liquor (\$300)	Liquor, With or Without Food (\$900)
<b>B</b>	Manufacture, Ship, Distribute, Store, or Bottle Wine, Apple Brandy or Cider; or Resident Out of State Shipper (\$150)	Beer (\$85)	Beer or Wine, With or Without Food (\$240)
<b>C</b>			Nonprofit Organization Liquor, With or Without Food (\$240)

The proposed legislation also would have eliminated several obsolete and redundant permits, combined similar types of permits, and created one new permitted use – casino liquor. The eliminated permits were broker, resort, and the following beer permits: university, restaurant, hotel and special outing facility. Combined permits included: railroad, boat, and airline into transit; bowling and racquetball facility into recreational; manufacturing permits for apple brandy, eau-de-vie, and cider; coliseum and coliseum concession; the five special sporting facility permits; the three Bradley airport establishment permits; and warehousing bottling and storage permits. The only provision of the proposed structure that was adopted in the 2000 session was the creation of the new casino permit category.

### **Comparison of Current and Streamlined Structures**

Ideally, a permit structure should promote effective regulation of the activity it is intended to control. For the state’s liquor control system, preventing access to alcohol by underage and intoxicated persons is generally believed to be the most important regulatory goal. A model permit system should also be simple to administer and enforce, and result in consistent treatment of similar entities.

Connecticut’s current permit structure, since it is based on type of liquor and the nature of a business, makes it possible to establish different fees and different regulated practices for every category of regulated activity. This allows permit conditions to be tailored to reflect any special characteristics of a business, which can strengthen regulatory control. It can also make it relatively easy for towns to control specific liquor operations. Rather than developing their own definitions, municipalities can just reference certain state permit categories in their local zoning or other ordinances.

However, the present system is not simple to administer. DCP staff as well as local officials and enforcement personnel need special training and reference materials to correctly apply eligibility and operating requirements for each of the 60 plus active permit types. A major advantage to a streamlined structure is simpler administration just because there are fewer and less complicated permit categories. A business classification structure like that proposed under HB 5851 also promotes consistent treatment of similar operations.

A major disadvantage to the current structure is legislative action is required to add a new category or revise an existing activity. Further, with such a large number and variety of permits, it is often difficult to anticipate the impact state policy changes will have on businesses in each of the categories. As a result, inconsistent treatment of essentially similar businesses can occur, like the situation that developed in 2003 with implementation of the state's secondhand smoke in the workplace law (P.A. 03-45).

Public Act 03-45 bans smoking inside most places that serve alcoholic beverages as well state and local buildings, health care institutions, retail food stores, and college dormitories. The effective date of the ban was set at October 1, 2003 for most liquor establishment and other facilities but was extended to April 1, 2004 just for cafes, taverns, and bowling alley bars. (Private clubs with liquor permits issued before May 1, 2003 are totally exempted from the ban.) Many criticized the differential application of the smoking ban as not creating a "level playing field," an important characteristic of government regulation. Some restaurants whose operations were essentially the same as cafes serving hot meals complained they experienced a competitive disadvantage between the October and April implementation dates.

Another example of unintended consequences of new policies applied to different categories of permit holders is related to legislation known as the wine "doggie bag" law (P.A. 03-228). The initial law which allowed patrons to take home unfinished bottles of wine if ordered as part of a full-course meal only applied to restaurants. In the 2004 legislative session, the provision was extended to the other establishments that serve wine with full-course meals, specifically hotels and cafes (P.A. 04-33). Some enforcement officials and groups involved in preventing underage drinking now are concerned that allowing patrons to take alcohol off premises, particularly from places that tend to attract a younger clientele, could make access by minors easier.

Overall, the most critical consideration for any permit structure is whether it makes the state's primary regulatory goal – controlling access to alcohol by minors and intoxicated persons – easier or harder to achieve. The impact of either the current or streamlined systems on enforcement efforts is difficult to assess as the data necessary for such an evaluation are not readily available.

However, streamlining the permit structure might reduce the amount of time DCP staff currently spend determining if an applicant is eligible for a permit category and if a permittee is in compliance with specific permit conditions (e.g., required food service, proper volume of grocery business, legitimate club membership, etc.). Staff time could be reallocated to the department's key enforcement efforts aimed at preventing underage drinking and sales of alcohol to intoxicated persons.

## Alternative Fee Structure

According to experts and academic studies, the key goal of a government fee system is to be fair and appropriate. Some models call for fees to be based on the costs to administer the activity they cover. If the fees are for regulatory purposes (like liquor permits), it is suggested they be set at levels that provide incentives for compliance.

Connecticut's current fee structure for state liquor permits fails to meet most the goals of the academic models. Fee amounts do not take into account business size, which produces inequities within and among permit classes. Further, the fee amounts are not related to administrative or enforcement costs and most are at levels unlikely to impact permittee compliance.

Progressive fees based on business volume as recommended in the 1982 sunset study would result in a more equitable system and, for that reason, the concept is supported by many involved in liquor control. The main problem with a volume-based fee structure is the data needed for implementation are not readily available. For example, while the state revenue services department has a variety of sales and tax information for Connecticut businesses, it is not compiled in a way that can easily isolate the different types of liquor permittees. Similarly, while state liquor regulations require most permittees to keep sales records, this information is not centrally collected by DCP or available electronically.

In addition to obtaining data on business volume, a methodology for determining appropriate fee amounts is required to develop a progressive fee structure. The legislative oversight committee in Mississippi, the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER), recently completed a study outlining a model process for setting government fees. A summary of the PEER fee-setting model is presented in Appendix B.

**Fee-setting model.** Under the PEER model, there are five main steps to setting fair and appropriate fees. Step one is to determine who benefits from the fee activity – the general public, private individuals, or both. In the case of liquor permits, both the public and private individuals benefit from the regulatory activity. In step two, the appropriate sources of revenue for the activity – taxes, user fees, or both -- are determined based on who benefits. Because both the public and private individuals benefit from liquor regulation, the PEER model would suggest a combination of taxes and user (permit) fees be used to fund the activity.

Determining the purpose of the fee is the third step. Based on the PEER model, the primary purposes of liquor permit fees are: to influence behavior (e.g., provided incentives for compliance with liquor control laws); and to cover government's cost to administer and enforce the permits. In step four, factors that influence fee levels are determined. Factors to be considered for liquor permit fees would include the size of the business, the impact on users, and fees in other states.

The last step in the model is identification of cost data, ideally through a cost accounting system. Based on these data, the minimum expenses of operating the service or activity, both direct (staff salaries and fringe benefits, equipment and supplies) and indirect (agency administrative overhead), should be evaluated. For liquor permits, this step would require

identifying all consumer protection department resources applied to administering and enforcing state liquor control laws. At this time, detailed cost data for all activities related to liquor regulation are not available through the department's accounting systems.



## **Chapter IV. Findings and Recommendations**

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### **State Liquor Permits**

The primary purpose of Connecticut's liquor control laws is to protect public health and safety by preventing underage drinking and sales of alcoholic beverages to intoxicated persons. The state's liquor permit system, the key component of its alcohol regulatory structure, is intended to promote this goal by ensuring sales are conducted in accordance with all relevant liquor laws and regulations.

The program review committee found streamlining the current state permit structure could strengthen liquor law enforcement efforts as well as simplify administration. Recommendations to reduce the number of different permits and create coherent permit classes focused on major regulatory goals are presented below. Proposals to modify liquor permit fees to make them more equitable are also outlined.

The committee's review additionally examined how the state permit structure addresses local concerns about liquor establishments. The extent of local control over alcohol sales and permitted operations is discussed. Several ways to improve opportunities for public input regarding the suitability of permit applicants and locations are recommended.

Finally, in the course of this study, program review staff encountered deficiencies within the Department of Consumer Protection (DCP) information system that impede effective management of state liquor permits as well as its other regulatory programs. Proposals to strengthen the agency's management information, the foundation of a strong permit system, are included in this section.

### **Permit Structure**

Like other states, Connecticut has three main liquor permit categories – manufacture, wholesale, and retail – and within the retail category, distinctions are made between on- and off-premises sales establishments. These main categories reflect the long-established three-tier nature of the industry as well as the need for different approaches to regulating the distribution of alcoholic beverages versus direct sales to consumers.

Connecticut also has among the highest number of different types of liquor permits (71) of all states with a similar regulatory model. As noted earlier, because Connecticut's permit system is based on the nature of the business selling alcohol as well as the type of alcohol sold, new categories proliferate with the steady expansion of retail sales locations. In 1949, there were 25 permits defined in statute; in subsequent legislative sessions, over 40 new types have been created.

In addition, out-dated categories are rarely eliminated. For example, the druggist license, which was created during Prohibition to authorize the use of alcohol in compounding prescriptions and retail sales of liquor, remains in place with less than a dozen active permits. For several years, there have been no active racquetball facility on-premises liquor permits, a

category established in 1983 during that sport's peak of popularity, and a legitimate broker's permit has never been issued.

As outlined in Chapter III, one advantage to the state's current system is it can allow for close control of activities at each type of permitted establishment as well as for individualized fees. Revisions to permit definitions or fee amounts, however, require legislative action. Another drawback to the state's increasingly complex permit structure is it can complicate policy making and result in inconsistent treatment of similar businesses. Among the recent permit-related problems was the differential implementation of the 2003 state secondhand smoke in the workplace law that some restaurants believe gave a competitive advantage to cafes serving hot meals.

Another disadvantage to a complicated permit structure is with growing types of permits and special requirements, more staff time and training is needed to determine initial eligibility and assess continued compliance. Further, many of the distinctions among liquor permits are unrelated to alcohol regulation. The program review committee believes under a streamlined system, resources currently focused on verifying that a permittee has proper food services or meets other standards not based on liquor control laws (e.g., club membership requirements, nonprofit status) could be reassigned to the system's primary enforcement goal – preventing underage drinking and sales to intoxicated persons. Furthermore, reducing the overall number of permits and redefining categories would simplify administration and clarify policy making.

**Therefore, it is recommended the existing state liquor permit structure be repealed effective January 1, 2008, and replaced with a system that groups like business activities and uses, focuses regulatory resources on liquor control goals, and incorporates a fee system based on business volume, as outlined in detail in the following section.**

**The new system should retain the three main regulatory tiers: manufacture; wholesale; and retail, and within retail, the distinction between sales for on- and off-premises consumption of alcoholic beverages. The system should also continue to allow for provisional licenses issued at the department's discretion.**

**Three new categories should be established to cover all on-premises consumption retail establishments: 1) *primarily drinking* with food service optional; 2) *primarily dining* with full food service required; and 3) *other primary activity*. The on-premises consumption permit categories should further include distinctions for sales by nonprofit establishments and temporary sales periods.**

**Two new categories should be established to cover all off-premises consumption retail establishments: *primarily alcohol*; and *primarily grocery*.**

**The new system should allow the DCP commissioner to issue endorsements to permits to cover any special requirements, such as limiting the type of**

**alcohol sold, the number of permits that may be held, or particular restrictions on a permittee's operations or physical plant.**

Table IV-1 summarizes the permit structure proposed under the committee recommendation. Under this proposal, permit categories and definitions are based on key enforcement goals concerning the primary liquor-related business activity rather than requirements tangential to the sale of alcohol. As the table shows, the main regulatory purposes for both the manufacture and wholesale categories are ensuring fair business practices (and separation of industry tiers) as well as promoting accurate revenue collection. For retail permits, the overriding concern is preventing sales to minors and intoxicated persons.

The proposed structure treats like businesses the same and the nature of the alcohol-related business activity is made clear to policymakers, law enforcement personnel, and the public. A variety of similar establishments are collapsed within the new on-premises categories of *primarily drinking* (cafes, taverns, clubs, and other places centered on serving alcohol) and *primarily dining* (restaurants, caterers, hotels, and any other facility with a full range of food services). *Other primary activity* includes establishments centered on neither drinking nor dining and with special jurisdictional requirements. At this time, the category would include two permit types – one for casinos, which are operated by tribal nations, and one for transit-related facilities (boats, railroad cars, airplanes), which operate in multiple locations. Both types have been exempted from local option laws and standard liquor sales hours because of their jurisdictional status.

Similar broad categories are established for off-premises permits. Distinctions are based on primary activity and in these cases are: *mostly alcohol sales*, which would cover current package stores; or *mostly grocery*, which would apply to stores mainly engaged in food sales but authorized to also sell certain types of liquor such as the present grocery store beer permittees.

The recommended structure reduces the total number of permits defined in statute. With the volume-based fee system recommended below, it is possible to eliminate permits for each type of alcohol sold in order to allow for different charges (e.g., higher fees for liquor than beer). The department, through endorsements, could set permit-specific operating requirements, such as limits on type of liquor sold, and conditions regarding additional activities as happens in limited cases now (e.g., patio service and live entertainment permit provisions).

With broader permit categories and the greater use of endorsements, it would not be as necessary to create new permit categories or seek statutory changes to reflect expanded or altered business operations. Authorizing the department to set certain permit conditions and restrictions does allow greater administrative discretion over regulated operations but agency decisions would still be subject to appeal. In addition, state permits and any associated endorsements would continue to be subject to local review for compliance with zoning and other municipal ordinances, and to public comment through the remonstrance process unless specifically exempted by law.

**Table IV-1. Proposed Liquor Permit Structure**

<b>MANUFACTURE</b> <i>Prevent unfair trade</i> <i>Revenue collectio</i>  1 category	<b>WHOLESALE</b> <i>Prevent unfair trade</i> <i>Revenue collection</i>  1 category	<b>RETAIL</b> <i>Prevent excessive consumption, control access by minors, intoxicated persons</i>			
		<b>On Premise</b>			<b>Off Premise</b>
		<b>For Profit</b> 3 categories	<b>Nonprofit</b> 1 category	<b>Temporary</b> 1 category	2 categories
Manufacturer permit with volume-based fee; covers all current, categories, i.e., liquor, wine, beer, apple brandy, cider, farm winery (with endorsements for on-premises and off-premises retail sales), brew pub (with endorsement for on-premises retail sales) --and establishes endorsements for type of alcohol	Distributor permit with volume-based fee; covers all current categories, i.e., wholesaler, warehouse shipper, transporter – and establishes endorsements for type of alcohol	<b>Primarily Drinking</b> <ul style="list-style-type: none"> <li>– <b>Authorized to sell alcoholic beverages; food optional</b></li> <li>– <b>Hours of operation limited to alcohol sales hours</b></li> <li>– <b>Minors access limited</b></li> <li>– <b>No operation if permit suspended</b></li> </ul> One main permit with endorsements as needed for type of liquor and any special requirements (e.g., restrictions on type of service, physical plant, etc.) to cover: café, tavern, concession, all special sporting facility, bowling, coliseum (and make coliseum concession a supplemental permit), all clubs	<b>Same as for profit except bone fide nonprofit entity</b> One main permit with endorsements as needed to cover all current categories, i.e., theater, public museum, university, nonprofit club	<b>Same as nonprofit except time-limited sales period</b> One main permit with endorsements as needed to cover current temporary concession, outing, and all charity fundraisers ( i.e., charitable organization, nonprofit corporation, nonprofit golf tournament)	<b>Primarily Alcohol</b> <ul style="list-style-type: none"> <li>– <b>Authorized to sell alcoholic beverages; restrictions on other items sold</b></li> <li>– <b>Limited alcohol sales hours</b></li> <li>– <b>Restrictions on other items sold</b></li> <li>– <b>Quota on permits (per capita limit by town)</b></li> <li>– <b>No operation if permit suspended</b></li> </ul> Continue package store
		<b>Primarily Eating</b> <ul style="list-style-type: none"> <li>– <b>Authorized to sell alcoholic beverages; full food service required</b></li> <li>– <b>24 hours of dining operation allowed</b></li> <li>– <b>Access by minors allowed</b></li> <li>– <b>Food sales allowed if permit suspended</b></li> </ul> One main permit with endorsements as needed to cover type of liquor and any special requirements (e.g., limits on caterer locations) to cover: restaurant, special outing facility, caterer, hotel			<b>Primarily Grocery</b> <ul style="list-style-type: none"> <li>– <b>Authorized to sell beer; food item sales of certain volume and scope required</b></li> <li>– <b>Limited alcohol sales hour</b></li> <li>– <b>Exempt from employee minimum age</b></li> <li>– <b>Food item sales allowed if permit suspended</b></li> </ul> Continue grocery store beer
		<b>Primarily Other</b> <ul style="list-style-type: none"> <li>– <b>Authorized to sell alcoholic beverages; primary purpose other than drinking or dining</b></li> <li>– <b>Exempt from local option and public notice requirement, alcohol sales hours limits</b></li> </ul> Continue casino and create transit to combine current boat, railroad, airline			
Current Number of Categories					
5	10	14	29	9	3

Obsolete permits like broker and hotel beer that have had no active permits holder for years could be eliminated under the recommended structure. Out-of-date categories -- those with very small or shrinking numbers of permittees and archaic purposes, such as resort, druggist, and tavern -- could be phased out (i.e., no new permits issued after a specified date). It would also be possible to collapse many duplicate on-premises permits. For example, the five existing special sporting facility permits could be made one primarily drinking permit with an endorsement related to gaming activities. Similarly, the various club permits could also come under either the main drinking or dining categories, again with endorsements established by DCP as needed.

A major change from current policy under the committee recommendation is making food service optional for all establishments within the primarily drinking category. At present, cafes, which make up the second largest permit group, must have food available. This requirement is based on the idea that eating mitigates intoxication. However, it has not been applied to all establishments that serve liquor, including taverns, clubs, and bowling alleys. The committee believes most establishments provide food regardless of any permit requirement because it is a good business practice. Many cafes in fact now operate like restaurants with full kitchens and menus. Eliminating food requirements for places that are primarily drinking establishments can focus the department's attention on efforts to enforce liquor laws at the places most likely to have incidents of underage drinking and sales to intoxicated persons.

### **Permit Fees**

Committee staff analysis presented in the previous chapter found current state liquor permit fees are inconsistent and outdated. The present structure is only loosely related to the size of a business and has little relationship to administrative and enforcement costs, two criteria government fee setting models recommend. Some fees, the \$85 permit for grocery stores selling beer, for example, appear to be at levels too low to provide any incentive for compliance, another component of model regulatory fee structures.

No formal criteria guide initial decisions about permit fee amounts and once established, fees are seldom revised. Since the fees are set at flat rates in statute, any modifications require legislative action. The last systematic revision of liquor permit fees occurred in the early 1960s.

The program review committee believes the state liquor permit fee structure needs to be revamped to eliminate inequities both within and among permit categories. One of the best ways to achieve a fair system is to base fees for commercial establishments on a measure of business volume, such as annual liquor sales. In addition, a volume-based progressive fee structure would eliminate the need to: a) seek statutory changes to revise rates over time; or b) establish separate permit categories so fees can be graduated by type of liquor sold (i.e., beer only, wine and beer, and all liquor).

**Therefore, the program review committee recommends that current liquor permit fees be repealed and replaced with a fee structure based on volume of business by January 1, 2008.**

**The new fee structure should include a minimum fee for all annual commercial permits that is related to the average cost of initial permitting functions (e.g., process the application, conduct a routine inspection). Every commercial permit holder should pay the minimum fee or a volume-based fee, whichever is greater.**

**The DCP commissioner also should be authorized to establish reasonable fees for temporary permits and for permits issued to noncommercial (e.g., charitable and nonprofit) organizations.**

**A task force composed of personnel from the revenue services and consumer protection departments, appointed by the commissioners of those agencies, should be established to develop the details of a proposed volume-based liquor permit fee structure for the legislature's consideration. Specifically, the task force should study and report on:**

- the most accurate, comprehensive, and accessible source of information on volume of business for liquor permittees;**
- an appropriate permit fee rate (e.g., percentage of annual liquor sales) that is related to regulatory costs and will generate total revenues at least equal to current state liquor permit fees; and**
- any statutory changes required for implementation.**

As noted in Chapter III, the data needed to implement the recommended fee structure are not readily available. There are two potential sources of business volume data -- the alcohol excise and retail sales tax information collected by the Department of Revenue Services (DRS) and the liquor sales records certain permittees are required to maintain for review by the Department of Consumer Protection. Both have limitations at present.

The Department of Revenue Services collects and audits the alcoholic beverages tax, a volume-based excise tax on in-state liquor sales paid just by distributors, as well as the state sales and use tax, which all retail businesses including liquor establishments pay. DRS does not currently require alcohol beverage taxpayers to report on sales to individual purchasers and retailers do not separately report liquor sales in their sales and use tax returns. The department reports it would be possible to change reporting requirements for either or both types of taxes to capture liquor sales information, but not before the agency's new computer system is in place. The new DRS integrated tax administration system is anticipated to be fully operational in about two more years.

DRS also is restricted by law from sharing most taxpayer information with other entities. Current statutory language would need amending to permit the department to provide DCP with taxpayer data for the purposes of implementing a volume-based liquor permit fee structure.

Under the liquor control act, four types of retail establishments (cafes, restaurants, package stores, and druggists) must keep daily records of their alcohol sales. Manufacturers and

wholesalers are also statutorily required to maintain complete records of all sales made to each of their purchasers. However, no data related to alcohol sales have been automated or compiled in any systematic way by DCP. At this time, the department lacks the staff, expertise, and computer resources needed to collect and audit liquor sales information from any of its permittees.

Financial information necessary for calculating DCP costs to administer and enforce liquor control laws, including the permit system, is also lacking at present. The consumer protection department, like all agencies, uses the recently instituted statewide accounting system, CORE-CT. Although CORE-CT was expected to allow detailed cost reporting and analysis by activity, a number of problems have impeded full implementation of the system. Once in place, the system could produce the type of information needed to identify direct and indirect costs associated with DCP alcohol regulatory functions.

In the meantime, it would be possible, with special effort, to develop estimated regulatory costs from existing budget information. These estimates could be used to set a minimum permit fee amount and help determine a percentage rate for volume-based fees, as recommended above. For example, preliminary analysis by program review staff indicated liquor division salary and fringe benefit costs associated with processing a routine new permit application (e.g., reviewing and verifying submitted information, conducting a site inspection, reporting results) are at least \$300 at present. To accurately reflect basic permit costs, general administrative overhead and DCP licensing center costs (e.g., initial application intake) should be added to this figure. The department was unable to provide committee staff with this information within the study timeframe.

It is clear more research is needed to evaluate the various options for instituting a more equitable and, in the long run, simpler fee structure that is based on business size and related to regulatory purposes. The committee recommendation is intended to bring together officials and staff from the two agencies with an interest and experience in monitoring alcoholic beverage sales to study the matter and determine the most efficient and effective mechanisms for achieving a volume-based liquor permit fee structure. The work of the task force could then be used by the committees of cognizance to develop specific legislative language needed to create the new fees upon the proposed termination of the existing system in 2008.

## **Local Concerns**

The program review committee found municipalities have significant control over the sale and consumption of alcoholic beverages; there is also considerable opportunity for local input regarding permitted establishments. Under the state's local option provision, towns can vote to prohibit all or some types of alcoholic beverage sales within their borders. Towns that allow liquor sales at present could opt to go "dry," provided current permit holders are allowed to continue operating until they voluntarily cease operations.

Through municipal zoning authority, towns can regulate and even prohibit activities within a zone for public health, safety, and general welfare purposes. Developing local ordinances can require a significant commitment of resources and time by municipal officials and staff. However, as outlined in the committee briefing report, many towns have adopted a

variety of ordinances aimed at controlling liquor establishments in their communities. These range from minimum distance requirements and noise standards to zoning bans on certain types of permitted establishments (e.g., cafes, package stores).

By law, the state cannot issue a liquor permit that is in conflict with local zoning. To ensure compliance, the consumer protection department requires town officials (i.e., zoning enforcement officer, town clerk, local fire marshal and sometimes local police departments) to sign off on new liquor permit applications. In addition, no new or renewed final permit is effective until it is recorded with the town clerk of the community where the permitted premises is located.

Local sign off is not required for permit renewals but annual approval by the local fire marshal is required for all on-premises consumption retail establishments. Local law enforcement officers are also encouraged to refer reports regarding liquor law violations at permitted establishments within their communities to the DCP liquor control division. This information can help division enforcement staff identify patterns of noncompliance and make the commission aware of problem establishments. The division director told committee staff a substantial number of local police referrals are received; however, since they are not tracked by the division, data on the actual volume, type, location, or final enforcement outcome of the referrals are not available.

**Remonstrance.** As described earlier in this report, local residents have had a specific statutory right to remonstrate against state liquor permits in their communities since 1935. Under state law, if 10 residents file a written objection to the suitability of a new or renewing permit applicant or to the location of the place of business, the Department of Consumer Protection must hold a hearing. Following a remonstrance hearing, the department can use its broad discretionary authority to refuse to grant or renew a permit if it finds reasonable cause to believe the permit premises or the permittee is unsuitable for a variety of reasons outlined in statute.

The department does not routinely collect or summarize liquor permit data (e.g., new and renewal applications received, reviewed, denied, approved, withdrawn), but reported to committee staff that each year thousands of new and renewal permit applications are approved and only a dozen or so remonstrance petitions are received. Program review staff analysis presented in Chapter II found few petitions are filed, many cases are dismissed due to insufficient evidence or grounds, and applications are rarely denied because of a remonstrance.

The program review committee believes the low number of legitimate remonstrance petitions may be due in part to a lack of awareness and understanding about the process. The department has no written materials or any information on its website describing the remonstrance process in plain language for the general public. Anyone wanting to review prior remonstrance cases for guidance on procedure and policy needs to consult individual permit files and liquor commission minutes; DCP does not compile any information related to remonstrances at present.

The main trigger for a remonstrance petition is the public notification requirement for new permits and, since 2003, for proposed changes in live entertainment by existing permittees

at time of renewal. By regulation, legal notices and on-site signs about permits must contain a general statement that objections can be submitted, noting where and by when. They do not, however, indicate to the public that a remonstrance can be filed regarding subsequent renewals as well as initial permits.

It also appears the current statutory timeframe for filing a remonstrance petition may be unintentionally restrictive. A remonstrance petition must be filed within three weeks of the filing date of a new application. Given the timing of the required public notice (i.e., once a week for two consecutive weeks immediately after filing the application), local residents may not even become aware of the proposed permit until just a few days before the deadline for a remonstrance.

The program review committee also found that one major category of permitted premises, grocery stores authorized to sell beer, is not subject to the remonstrance process. The legislation originally establishing this permit category also exempted it from the statutory provision for discretionary refusal of an application on the basis of location (C.G.S. Section 30-46(a)), which provides the grounds for denying a permit following a remonstrance hearing on suitability of location. The legislative history of the grocery store beer permit is silent as to the purpose of or need for the exemption. The committee was unable to identify a reason for treating grocery stores selling beer differently from other retail liquor establishments in terms of community input about suitability.

The program review committee believes several administrative and statutory changes are needed to: a) better inform the public about the remonstrance process; and b) improve opportunities for expressing local concerns about state liquor permits. Therefore, **it is recommended that:**

- **information about the right to remonstrate regarding renewals as well as initial permits be included in the public notices required for new permit applications (e.g., published legal notices and on-site signs/placards);**
- **a plain language description of the remonstrance process be prepared by the Department of Consumer Protection, posted on its website, and made available in written form for interested parties upon request;**
- **the Department of Consumer Protection collect and analyze descriptive and outcome information on remonstrance cases, compile all remonstrance hearing decisions, and each year prepare a report summarizing remonstrance activities for inclusion on the agency website;**
- **the statutes be amended to change the timeframe for filing a remonstrance petition for new applications to within 21 days of the end of the public notification period (rather than 21 days after the application filing date); and**

- **the statutes be amended to make permits for grocery stores selling beer subject to the remonstrance process.**

The remonstrance process can be an effective means for local residents to express their concerns to state officials about the detrimental effects of permitted liquor establishments on their communities. As noted in Chapter II, while many cases are dismissed for lack of grounds or substantial evidence, the process has resulted in the denial of a permit, upheld by the courts, based on the adverse impact the additional liquor establishment would have on the neighborhood.

The committee recommendations are intended to make the remonstrance process more accessible by expanding public notification, extending the filing period, and generally providing more and better information about procedures and policies. Giving the public more information about the process, particularly regarding hearing decisions and other outcomes, also improves state agency accountability. Efforts to improve local residents' understanding of remonstrance procedures and the grounds for denying a permit could result in fewer inappropriate petitions as well as stronger cases when there is substantial evidence of unsuitability.

**Public nuisance abatement.** Another way communities can address problem liquor establishments is through the public nuisance abatement statute (C.G.S Section 19a-343 et. seq.). The law authorizes state prosecutors to bring civil nuisance actions against persons and property involved in certain kinds of illegal activity, including violations of liquor sales laws (e.g., sales to minors, sales to intoxicated persons, after hours sales). The other areas of illegal activity included under the nuisance abatement law are: drug trafficking, illegal gambling, prostitution, obscenity involving minors, motor vehicle "chop shops," inciting injury, murder, sexual assault, and felonious assault.

The state can bring an action to abate a public nuisance if there are at least three arrests (or issuance of three arrest warrants) in one or more of the ten specified crime areas that indicate a pattern of criminal activity on a property during the year before the action is brought. While the law requires a minimum of three arrests to trigger nuisance abatement action, in practice the prosecutors rarely proceed without 10 or more arrests. After a nuisance abatement is filed, a prosecutor can seek a court order or negotiate a stipulated agreement for whatever relief is necessary to stop the criminal activity underlying the nuisance. Depending on the property, a number of remedies, including closing the premises, are available.

The Nuisance Abatement Unit, a specialized unit within the Office of the Chief State's Attorney, works with other prosecutors, police departments, municipal officials, and neighborhood groups to use the public nuisance law to address problem properties and quality of life issues in communities throughout the state. A total of 58 nuisance abatement actions have been filed regarding properties in 21 cities and towns since the law went into effect in 1998. According to the unit, the majority of its actions involve liquor establishments, although the arrests are not necessarily alcohol related. Over the past year, the unit has initiated or resolved 10 actions; five involve permitted liquor premises.

The unit staff noted a number of referrals are received from citizens concerning activities at liquor establishments that cannot be addressed through the nuisance abatement process. Many

times, the complaints are about noise, fighting, or loitering after hours. Although such activities may constitute breach of peace or disorderly conduct and result in arrests, they are not among the criminal areas covered by the public nuisance law. There has been some discussion about expanding the definition of public nuisance but the best way to include these types of activities is a matter of considerable debate.

Another factor complicating the use of the public nuisance law to address problem liquor establishments is DCP's administrative enforcement process for liquor law violations. The liquor control act prohibits DCP from suspending or revoking a permit based upon an arrest that has not resulted in a conviction. Thus, an administrative disciplinary action cannot be taken against a permittee who is guilty of selling alcohol to a minor but is granted accelerated rehabilitation, a common outcome for first time offenders. To ensure administrative penalties can be imposed on a permittee, it is department policy not to seek an arrest when enforcement staff find sales or other violations. However, because these violations do not involve arrests, they cannot be used toward a nuisance abatement action.

The consumer protection department has considered submitting legislation to address this problem. According to nuisance unit staff, amended language severing the link between criminal and administrative actions for liquor permit holders was proposed by the chief state's attorney's office several years ago (Senate Bill 996, 2001 legislative session). The changes were opposed by members of the industry, who cited possible double jeopardy issues, and no action was taken on the proposed legislation.

This issue and the earlier question about expanding the definition of public nuisance, are essentially enforcement matters beyond the study scope. While related to the committee's examination of how the state liquor permit system responds to local concerns, both are complex policy issues needing in-depth review within the broad context of liquor law enforcement. Further study would likely prove worthwhile by identifying ways to strengthen enforcement efforts and augment tools for local action against problem establishments.

### **Management Information System**

The foundation of any effective regulatory program is accurate, comprehensive, and accessible management information. Good data on activities and outcomes are essential for effective management and critical to program accountability. Throughout this study, the program review committee staff found serious deficiencies in the management information systems for state liquor permits.

The primary source of automated data on liquor permits is DCP's centralized electronic licensing system. It was initially designed to track new and renewal applications, maintain rosters, and produce mailings for all agency licensing programs. One desirable feature of the system is rosters of various license holders including liquor permittees can be accessed by agency staff and the general public. However, there have been and continue to be problems with the accuracy and completeness of these automated records.

Further, while it is the department's intention to expand the licensing system to cover enforcement and compliance information for all license holders, it is of little use for those

regulatory purposes now. In fact, individual permittee compliance histories, which were available under a prior version of the system, are no longer accessible to staff on-line. Past enforcement information must be developed from hard copy files. The current system cannot even be used to track compliance with the state package store quota (i.e., a limit of one store for every 2,500 residents of a town).

Overall, DCP is unable to easily produce summary information that liquor control division and other agency managers need to monitor and plan. As noted earlier, the department was unable to provide program review staff with summary information on liquor permit applications received, reviewed, withdrawn, denied, or approved. Through a special effort, the liquor division was able to supply numbers of new applications approved by type of permit and a current count of all active permits by type. Any summaries of liquor division enforcement activities (i.e., compliance meetings and formal hearings held) and outcomes (i.e., suspensions, revocations, fines imposed) must be compiled by reviewing commission meeting minutes and individual case files.

The department's financial information is also lacking despite the fact that DCP, like all state agencies, recently instituted the new statewide financial accounting system, CORE-CT. While it was anticipated CORE-CT would be capable of providing detailed cost data for various agency functions as well as sophisticated financial reports, implementation has been difficult. Revenue and expenditure data are not easily compiled and reported. It also appears there is no systematic way to reconcile regulatory activities and associated fees (e.g., numbers of permits issued by type and respective fee revenues collected).

Acknowledged weaknesses in current accounting functions are expected to be addressed as the system is fully implemented. At this time, however, regulatory cost data must be compiled or developed from a variety of sources throughout the agency.

According to the consumer protection commissioner, the department is in the process of addressing the data reliability problems of its existing licensing system. It is also moving to automate and integrate data from each major agency function (i.e., licensing, inspection, enforcement, and revenue collection) in a comprehensive information system for use by all DCP divisions. However, there is no formal plan guiding this effort or any internal staff structure dedicated to its implementation.

A strategic plan for DCP computer systems was developed several years ago but has not been updated. At present, the commissioner, with the help of two division managers, is overseeing the corrections and enhancements to the department's information systems on an ad hoc basis. The committee believes a more structured approach is needed to ensure the actions needed to create an effective agency management information system occur in a timely manner.

**Therefore, the program review committee recommends the Department of Consumer Protection make improving its automated information systems a priority. It should establish a formal management team charged with: 1) identifying the management information needs of the all agency divisions; and 2) developing a plan and timetable for correcting, expanding, and integrating its current systems by July 1, 2005.**

**The integrated system should be capable of generating routine and customized reports on licensing, compliance, and enforcement activities and outcomes for use by liquor division managers, the agency's top management, and policymakers.**

**On January 1, 2006, January 1, 2007, and January 1, 2008, DCP shall submit to the legislative committee of cognizance a report summarizing key liquor division licensing, compliance, and enforcement activities for the preceding year. The report should include but not be limited to data on: applications received, reviewed, withdrawn, approved and denied; the fees associated with issued permits; remonstrance petitions received and case outcomes; complaints received, investigations conducted, and administrative actions taken; and informal and formal hearings held and their outcomes (e.g., permits suspended, revoked, voluntarily revoked, and fines or other penalties imposed).**

Quality program and financial information systems are essential for accountability. They contribute to efficient resource allocation and enable regular assessment of regulatory effectiveness by top management. An accurate, reliable electronic database should be available to the public as a resource for administrative and enforcement information on all regulated establishments. Requiring basic programmatic data to be reported to the legislature should also promote agency accountability and begin focusing management attention on the outcomes and broad regulatory goals of its liquor permitting activities.



# **Appendix A**

## **Agency Response**





STATE OF CONNECTICUT  
**DEPARTMENT OF CONSUMER PROTECTION**  
165 CAPITOL AVENUE, HARTFORD, CONNECTICUT 06106

EDWIN R. RODRIGUEZ  
COMMISSIONER

M. JODI RELL  
GOVERNOR

BY HAND DELIVERY

January 28, 2005

Carrie E. Vibert, Director  
Legislative Program Review and Investigations Committee  
State Capitol Room 506  
Hartford, CT 06106

This document is the formal response of the Department of Consumer Protection (hereinafter referred to as "Department") to the report issued by the Legislative Program Review and Investigations Committee of the State Legislature entitled "State Liquor Permits".

Before proceeding further, the Department would like to acknowledge and commend the staff members of the Legislative Program Review and Investigations Committee (hereinafter referred to as the "Committee"), and in particular Ms. Jill Jensen, for their level of cooperation and dedication demonstrated throughout this period of study and examination.

Like any study and examination, there is a level of agreement and in some instances a level of disagreement. For the Department, this study has provided an opportunity for introspection, and an opportunity to look at the core mission of the Department as it relates to the Liquor Control Division, and where possible, to adopt recommendations of the Committee. Where disagreements form, be assured that they represent a legitimate difference of opinions based on experience.

Our response will mirror the outline as presented in the Committee's report.

Chapter I: Background

The Department has reviewed the information presented in Chapter I of the report and has found it to be accurate and recognizes that the primary source information was provided to the Committee by the Department. The United States Supreme Court has heard oral arguments on the matter referred to in Chapter I and the Department is monitoring the outcome of this case.

Chapter II: Connecticut's Permit System

The Department has reviewed the overview prepared by the Committee and found it to be accurate as to the subcategories entitled "Overview", "Permit Types", and "Permit Fees". On page 16 of the report, it

states, in part, that *“No summary statistics on permit-related activities, related to either administration (e.g. applications received, reviewed, approved, denied, or appealed) or enforcement (e.g., complaints received/alleged violations reported, investigated, hearings held, outcomes, or enforcement actions taken) are readily available from DCP.....The liquor control division director is compiling basic data related to the permit process for the past year at the request of program review committee staff.”*

The record should indicate that the information as requested by the committee staff was, in fact, provided to Committee staff.

### Chapter III: Alternative Structures

The Committee staff report indicates that a major disadvantage to the current structure is that legislative action is required to add a new category or revise an existing activity. To support that position, the Committee cites the state's Secondhand Smoke in the Workplace Law, CGS 19a-342, as amended by P.A. 03-45. The Department does not agree that the current structure was a major disadvantage in the development of this law. Rather, the Legislature was able to examine and determine specifically the different business types of liquor establishments in the state to which this law would be applicable. The Department recognizes the ability of the Legislature to include some businesses, exclude others, and transition in a responsible manner other businesses over time. Rather than impede the Legislature, the Department recognizes and acknowledges the flexibility the Legislature was able to exercise under the current structure.

The Committee staff included CGS 30-22, as amended by P.A. 03-228 Wine Ordered With Restaurant Meals, as an example of how the current structure somehow contributed to “unintended consequences of new policies”. The Department opposed this legislation, but acknowledges that the Legislature carefully considered our position prior to its adoption by law. The Department maintains that the Legislature made an informed decision and voted accordingly.

The Committee acknowledged that an alternate liquor permit structure was considered during the 2000 legislative session. The Department recognizes and acknowledges that the Legislature, through the legislature committee structure, considered and did make some modification to the liquor permit structure at that time. The Department recognizes that the Legislature, in its judgment, revised the liquor permit structure as necessary at that time. The Department believes that a restructuring of permit types as proposed in the 2000 legislative session would be beneficial and worthy of consideration, but that a fee structure based on volume would result in the need for additional personnel resources.

### Chapter IV: Findings and Recommendations

The Department recognizes the need for a regulation process, particularly as it relates to the liquor industry. The Department believes that the current structure can be modified, but not to the extent as devised by the Committee.

The Department believes that the current liquor structure is responsive to the needs of local communities, and is consistent with our objectives to discourage underage drinking and discourage service to intoxicated persons. The Department does believe, however, the broker permits and hotel beer permits can be eliminated by the Legislature.

The Department firmly believes that requiring food service mitigates intoxication. The Department believes, and its experience supports the belief that a significant number of establishments would not provide food

service if not required by their permit classification. The Department does not agree with the Committee's statement that "A major change from the current policy under the committee recommendation is making food service optional for all establishments within the primary drinking category....Eliminating food requirements for places that are primarily drinking establishments can focus the department's attention on efforts to enforce liquor laws at the places most likely to have incidents of underage drinking and sales to intoxicated persons." The Department does not support the position of the Committee when it states as fact that "most establishments provide food regardless of any permit requirement because it is a good business practice". At a time when other states are emphasizing hospitality training by requiring the mandatory training of alcohol servers and the service or availability of food as a means to encourage responsible consumption of alcoholic beverages, the Department believes that it would send the "wrong message" to the persons we regulate if the Committee's recommendation is adopted in this area.

The Department recognizes that permit fees are set at flat rates in statutes, that permit fee restructuring was considered in the 2000 legislative session but not adopted, and believes that a raise of permit fees at a relatively modest ten to fifteen percent should be considered by the Legislature.

The Department notes that although the Committee recommends the creation of a task composed of personnel from the Department and the Department of Revenue Services (DRS), there appeared to be no input sought from DRS regarding this matter. The sharing of tax information by the DRS may require legislative review and approval, and should not be undertaken without very careful scrutiny and review. The fees based on volume may require additional personnel and expertise, and require software that would be able to quickly and accurately send liquor renewals with new fees as opposed to the flat rate structure now in place. The Department believes that setting fees based on volume may result in undue delays and increased workload and may necessitate an increase in personnel.

The Department welcomes the recommendations as they relate to the remonstrance process. A plain language description of the remonstrance process is being prepared and will be posted on the Department website, and will be made available in written form for interested parties upon request. The Department is updating its website to include information about the remonstrance process, a category that indicates when a remonstrance is filed and hearing date, and the outcome or decision of the remonstrance hearing in a timely manner.

The Department would support the statutes to be amended to change the timeframe for filing a remonstrance petition or new applications to within twenty-one days of the end of the public notification period, rather than twenty-one days after the application filing date as presently found in statute.

The Department would support the statutes to be amended to make permits for grocery stores selling beer subject to the remonstrance process.

The Department acknowledges that improving its automated information systems is a priority and that the Department has taken affirmative measures in that regard.

Sincerely,



Edwin R. Rodriguez  
Commissioner

# **Appendix B**

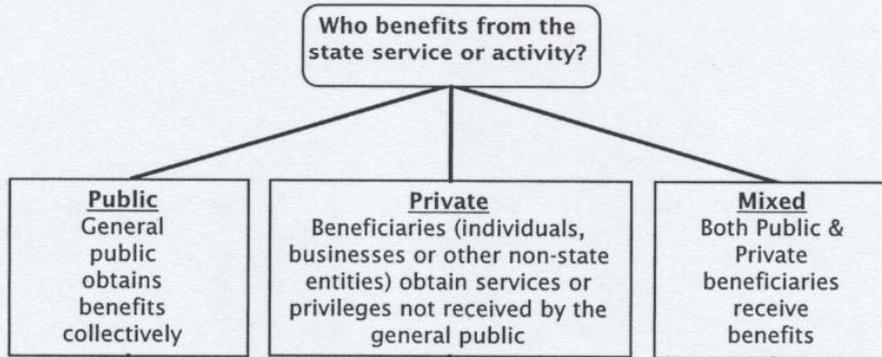
## **PEER Decision Model for Government Fee Setting**

(Exhibit A from *Report to the Mississippi: State Agency Fees: FY 2001 Collections and Potential New Fee Revenues*, December 17, 2002, Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER))



**Exhibit A: Theory of Fee Setting in State Government Decision Model**

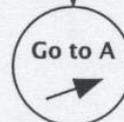
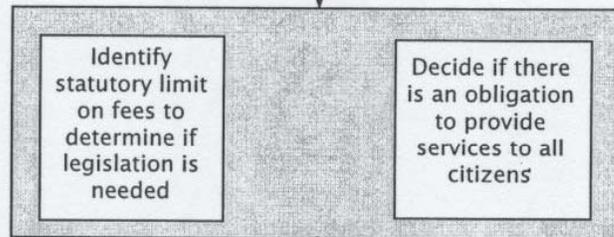
**Determine Beneficiary**



**Determine Sources of Revenue for Funding**



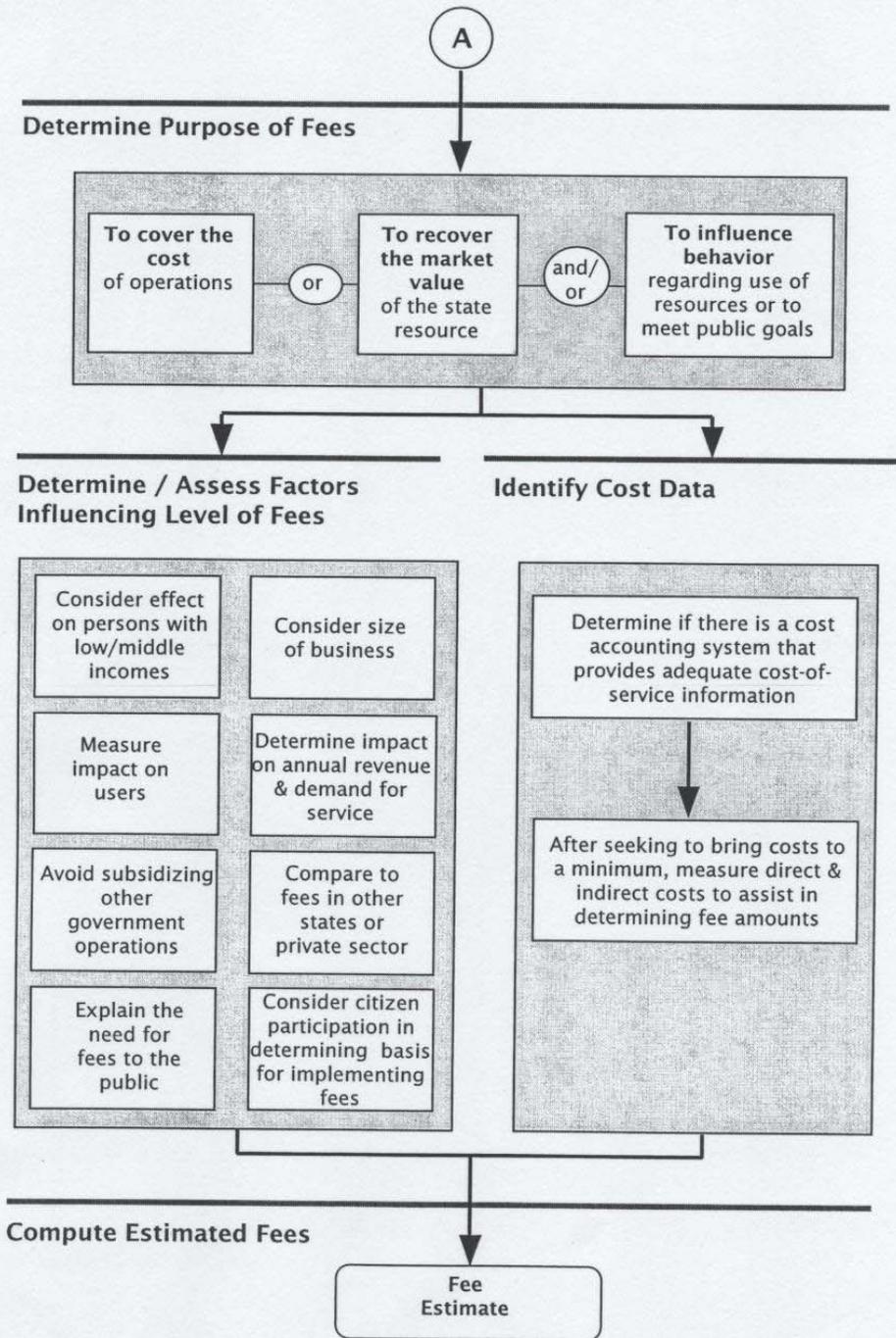
**Determine & Analyze Legal Issues**



\* Excise taxes, such as for motor fuel, could be used in lieu of a fee if an entire class of users is to be taxed, but charging for the exact amount of use per individual would be cost prohibitive (e.g., calculating the amount of highway travel per person).

SOURCE: PEER analysis of public finance and economics textbooks and articles and literature and policies of various governments on user fees

**Exhibit A: Theory of Fee Setting in State Government Decision Model (Continued)**



SOURCE: PEER analysis of public finance and economics textbooks and articles and literature and policies of various governments on user fees