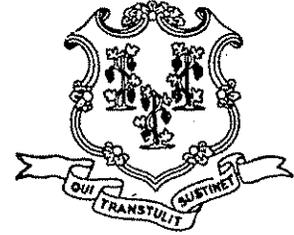


Department of Consumer Protection



Testimony of William Rubenstein General Law Committee Public Hearing March 8, 2011

Sen. Doyle, Rep. Taborsak, Sen. Witkos, Rep. Rebimbas and Honorable Members of the General Law Committee, I am William Rubenstein, Gov. Malloy's nominee as Commissioner of Consumer Protection. Thank you for affording me the opportunity to appear before you today. Included on your agenda this morning are four bills that were introduced by my Department, so let me start with my thanks for agreeing to raise these bills for your consideration. Also on your agenda is Gov. Malloy's legislative proposal for the consolidation of four agencies into the Department of Consumer Protection. I am privileged to offer my comments in support of this bill, as well. With that, let me begin by offering testimony in support of four DCP Agency Bills:

H.B. 6355 AN ACT CONCERNING UNIVERSAL PRODUCT CODING AND THE LICENSURE OF FOOD MANUFACTURING ESTABLISHMENTS.

This bill has two components—let me first address the section that relates to problems regarding the inspection and licensing of commercial food processors and storage facilities that are currently not licensed under existing statutory requirements. The intent of this proposal is not to require multiple or dual licensing but to ensure that

all such facilities that manufacture or store food in the State are registered and thus can be inspected for compliance with current hygiene and sanitary requirements.

We believe that this law will modernize the way Connecticut Uniform Food and Drug Act (UFDA) inspections are conducted and hygienic practices enforced. By background, the UFDA was codified in the early part of the 20th century when most of Connecticut food was produced, packaged and consumed in Connecticut. However, much of the food purchased and consumed today comes from other countries, including from sources overseas. The absence of a comprehensive registry of Food Manufacturing Establishments in Connecticut is thus a significant concern in this era. In the event of a food recall of certain products this legislative change would modernize our food-safety system and ensure that points of distribution are checked sooner and more consistently and that enforcement will be streamlined.

Further, the Department has a history of finding small facilities engaged in the manufacture of food that possess neither access to potable water or the ability to sanitize food processing equipment -- facilities where the conditions for processing of food are simply unacceptable. This law will add the necessary teeth to require those facilities to register with the Department and operate under proper guidelines.

The bill will also serve to facilitate new commercial enterprises through the approval of commercial kitchens capable of supplying local entrepreneurs. Local Health officials have raised questions related to whether a product that a local food purveyor is handling has been inspected or approved. Without appropriate registration and inspection, providing quick and easy answers has proven difficult. Registration of food manufacturing enterprises will allow the Department to create a list of approved sources that can also be posted on the Department's website. Local health officials could easily access that information in a timely manner and facilitate introduction of products from those sources into commerce through local outlets. Such registration would also improve the response time to reported problems and help the Department to determine if an inspection was recently conducted and the types of issues that were noted during an inspection. Recalls if needed could be initiated earlier and be more effective in safeguarding the health of the citizens.

Finally, the Department has worked with the Department of Public Health and the Department of Agriculture in crafting this proposal, and we thank them for their time and expertise in this matter.

Let me next address the part of the bill that seeks to make a change in the Item Price Exemption (IPE) from the current one-time fee to an annual license. Frankly, this seems to only make sense. DCP staff make annual inspections to stores seeking the exemption, and yet the stores only pay the one-time fee. Currently there are 663 IPE stores on file and this number grows every year. This exemption, on average, saves each store \$20,000 to \$30,000 per year in labor costs and would generate \$200,000 to \$300,000 in fees to the State if the license was required to be renewed annually.

H.B. 6354 AN ACT CONCERNING THE PHARMACY PRACTICE ACT AND PRACTITIONER CONTROLLED SUBSTANCE REGISTRATION.

This proposal makes three separate changes to DCP's pharmacy statutes. First, we propose a change to conform to our current practice related to pharmacist testing and associated fees. The present language has in fact been pre-empted by changes required of pharmacists by the National Association of Boards of Pharmacy (NABP). Since 2007, that association has administered the test required to be a pharmacist, and, consequently, the Department has not been administering the tests identified in statute. We offer this language to conform with current practices of the industry.

The Department next recommends a statutory change to ensure that the registration of a Controlled Substance Provider may only be maintained or renewed by an individual when he or she is duly authorized by an appropriate state licensing board or agency. The change we propose to Sec. 21a-319 and 320 would allow the Department to hold an administrative hearing to determine the worthiness of an applicant in cases where "suspension, revocation, expiration, surrender or other disciplinary action taken against any professional license or registration held by the practitioner," has occurred.

Finally, in our efforts to improve efficiency and reduce costs, the Department proposes amending the statutes to provide for a biennial, rather than an annual license for pharmacists. By doubling the current annual fee for pharmacist licenses from \$60 to

\$120 biennially, the department estimates a savings of nearly \$5000 every other year due to savings in paper and postage. We believe this to be a worthwhile change that will not serve as an undue hardship to those license-holders.

S.B. 985 AN ACT AMENDING THE LIQUOR CONTROL ACT.

This proposal makes five separate changes within the Liquor Control Act. First, it makes it permissible for institutions of higher education to make and dispense wine and appropriate wine tasting and/or wine education classes subject to all other liquor laws and regulations. Second, it permits a café-permit holder to open for business at 6am for the service of food only, rather than the current 9am requirement. This change would not affect the days & hours of alcoholic liquor sales in any way. Third, it would permit holders of café and tavern permits to allow certain individuals to maintain their presence on the property after hours under a very narrow exception—the production of motion picture filming and only for those production companies that meet the definition contained in CGS 12-217jj(4). Our fourth proposal is to prohibit the sale of distilled spirits “by the bottle” to any person at an establishment permitted for on-premises consumption. The Department has received inquiries about the legality of this practice and concurs that sale by the bottle is a problem because control of the alcohol is not adequately maintained by the seller. This increases the possibility of service to minors and/or to intoxicated persons. Finally, the Department proposes making a change to the Wholesaler’s Salesman Certificates by making them annual certificates rather than the present one-time only registration. By charging a very modest \$10 annual fee, the Department will be able to maintain and keep current the actual registry of Salespersons.

S.B. 1089 AN ACT PROHIBITING PRICE GOUGING DURING SEVERE WEATHER EVENTS AND MAKING MINOR AND TECHNICAL REVISIONS TO THE UNIFORM ADMINISTRATIVE PROCEDURE ACT AND DEPARTMENT OF CONSUMER PROTECTION STATUTES.

The Department submitted SB 1089 as a proposal to make several “minor and technical” changes to DCP statutes, which I shall describe. During the drafting phase of the bill the Department learned that Legislative leadership favored creating better protection for consumers from price gouging during times of severe weather emergencies. Consequently, the bill before you contains language designed to accomplish this. The Department is fully supportive of efforts to protect consumers from unconscionably excessive pricing during times of severe weather emergencies. Following our review of the language, we would also respectfully suggest some modifications to the language to assist in that regard. Specifically, we propose a change in Sec. 1 (d) to allow, in appropriate circumstances, the Commissioner to pursue price gouging during a declared severe weather emergency through the Commissioner’s existing administrative hearing procedures. In some circumstances, this would allow an enforcement tool that is swifter and less costly for consumers than requiring that only court litigation be pursued. Another change in Sec. 1 (f) would allow the Commissioner, in appropriate cases and after an administrative hearing, to assess civil penalties as the court is currently permitted to do under the Connecticut Unfair Trade Practices Act (CUTPA). Finally, the language of a new subsection would make sure that this new statute would not undermine or limit current protections that may be in place through other laws designed to protect consumers from unconscionable pricing behavior.

Moving to the following sections of this bill, the Department proposes several changes that would eliminate the need for notifying individuals of actions by “paper” or by “mail,” and instead provide our office with the flexibility of using email when it makes sense. Specifically, Section 2 of the bill eliminates the requirement of notifying or providing notices “by mail” of individuals that wish to be placed on a list of the Department’s proposed regulation changes. And section 3 reflects the mutual desire to provide license renewal information electronically rather than “by mail.” Finally, the department suggests eliminating an unnecessary and cumbersome “Administrative Fee” within DCP’s liquor statute. Our proposal modifies several sections within our Liquor statutes to make this revenue-neutral change.

Thank you for the opportunity to provide comments on these four pieces of legislation. I look forward to taking your questions.

