

Testimony of Alan Wilensky
Owner of Max's Package Store, East Lyme
President, Connecticut Package Stores Association

In 1920 Max Wilensky, a Russian immigrant, came to the Flanders section of East Lyme to establish a general store specializing in hay, grain, shoes and boots. In 1946, this same man asked his son to help him start a liquor store on the same property. This April, that same liquor store, still owned by the same family, will celebrate our 66th anniversary.

I started working on weekends alongside my father when I was 8 years old. It was at that time that I decided that I wanted to go into the family business. Seeing my father so active in the industry, I decided to attend my first Connecticut Package Stores Association (CPSA) meeting when I was 13 years old.

I learned the business and how to operate a business; I took educational courses on wine and spirits; I joined local coalitions to prevent alcohol sales to minors. I became a delegate to our national retail association and I learned about the industry, the special nature of the products that we sell, and the need for statutes and regulation governing the sale of this unique product. I also learned the history of the beverage alcohol industry and how we got to where we are today.

Until about two months ago, there was not a doubt that this third generation family business would continue to be a stable, venerable landmark in town. There was never a time when I was doubtful that I would finish my working career in this store and possibly pass it on to the fourth generation.....until now. Over the past few weeks, for the first time in my life, because of the proposed bill before us today I have been conversing with my family about the possibility of being forced out of the liquor business, looking for a new job and leaving the state of Connecticut.

The bill before this committee described as the "modernization" of the liquor industry is nothing less than the elimination of the independent liquor retailer; just like what has happened to the independent pharmacies, hardware stores, bookstores, toy stores, and electronics stores.

The drastic changes proposed will create massive disparity in the industry that favors only the largest corporate entities at all levels of the industry. Retailers and wholesalers are sacrificed while manufacturers are left whole and are the only players left standing.

I refer to this proposal as the "Reverse Robin Hood bill" for it surely takes from the have-nots and gives to the haves. The sacrificing of the independent business community is not what I thought the governor meant when he said that Connecticut was "open for business".

There are some who call us a "protected industry" due to the many statutes associated with our industry. Let me remind you of the products that we sell and the sensitive nature of them. Remember that one does not get arrested for selling a can of tuna fish to a 16 year old; nor are we worried about their ability to drive a car after eating too many sandwiches made from that tuna.

What is in the bill?

The elimination of all pricing postings:

-Currently wholesale pricing is provided to retailers uniformly on a monthly basis. The elimination of all price posting means that wholesale prices are undefined and could change hourly and for any reason. Retailers could be discriminated against for any reason and bigger retailers would gain an unfair advantage.

The legalization of discounts, rebates, free goods and inducements:

-Quantity discounts will actually raise prices on 95% of products and decrease the selection of products available for sale. Prices increase at the one-case level in order to subsidize the larger volume discounts.
-It will be a financial burden purchasing in large volume in order to get the same price that we pay now. e.g. In Mass., a store must buy 50 cases of Beringer White Zinfandel in order to get our 1 case price. The investment in that one brand precludes the purchasing of 31 other mid-price brands.
-CT prices are already less expensive than MA and we are competitive with all but the largest stores in MA.

Removes the restriction against sales below cost:

-Larger stores and chains will be at a competitive advantage in their ability to purchase and then sell at predatory prices at or below cost in order to drive out competition. (By the way, the State of Connecticut itself has a "sale below cost" prohibition; it's called a balanced budget provision)

Raises the permit limit from 2 to 9:

-Connecticut is one of the last bastions of independent retailers in the nation. Allowing the ownership of nine permits fundamentally changes this and virtually guarantees the destruction of the independent entrepreneur. Connecticut is a small state and several chains of 9 stores each could easily eliminate the locally owned store.

Eliminates the 1/2500 population restriction on package store permits:

-The value of stores is dependant on location, goodwill and the density of stores in the area. Having the 1/2500 limit provides stability in the marketplace and in every town in the state.

Establishes a "Convenience Store Beer Permit":

-This would add hundreds of additional liquor permits in the state in locations like gas stations, convenience stores, food stores and, without the arguably arbitrary square footage restriction, could include stores like Target and Wal-Mart etc.

Allows sales on Sunday, certain holidays and until 10:00 p.m.:

-Our historic arguments still stand in our opposition to the extension of days and hours of sale. There is no definitive data to support the assertion of an increase in consumption due to an increase in hours of availability.

It is apparent that neighboring state laws were "cherry-picked" for inclusion in this bill. However there are neighboring laws that were ignored: Rhode Island's 1-permit limit and lack of a bottle bill; New York's 1-permit limit; and Massachusetts's 1/5000 population restriction, non-price discrimination, residency requirement to own a permit, price posting law and their prohibition on moving a liquor permit out of the town in which it is established, to name a few.

The fact is that even if there was anything beneficial for the retailers in this bill, and there is not, revolutionary change of this magnitude would have necessitated a task force study for a year or two, not a statute that changes 66 different sections of the General Statutes that is to be implemented in four months.

Encl: OLR report on cigarette and liquor sales 1/12/10
Comparison of states liquor laws
U.S. per capita spirits consumption (NIAAA)
DISCUS map of Sunday sales (From the DISCUS website)

Location:

BLUE LAWS; LIQUOR; SMOKING



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CIGARETTE AND LIQUOR SALES

By: Duke Chen, Legislative Analyst

You asked why there is a minimum mark-up for cigarettes and a prohibition against selling alcohol below cost. Also, you asked why there are defined hours for the sale of alcohol to be consumed off premises.

SUMMARY

Connecticut law imposes a minimum mark-up for cigarette sales (CGS § 12-326b) and prohibits selling alcohol below cost (CGS § 30-68m). The rationale behind these laws is to prevent monopolies in these industries. The laws protect smaller merchants from being forced out of business by larger merchants, who may have the ability to sell their products below costs, thus creating a monopoly.

The law restricting the time of liquor sales serves a different purpose from the minimum pricing laws. Under the Twenty-first Amendment of the Constitution, which repealed Prohibition, states are given great amounts of authority to regulate the production and distribution of alcohol. One of the ways Connecticut regulates the distribution of alcohol is by statutorily limiting when it may be sold.

Currently, Connecticut allows the sale of alcohol for consumption off premises to be between Monday and Saturday from 8:00 a.m. to 9:00 p.m. (CGS § 30-91(d)). Since the inception of the Liquor Control Act, the deadline for sales has changed several times, from 6:00 p.m. in 1933, to 11:00 p.m. in 1939, to 9:00 p.m. in 1957, to 8:00 p.m. in 1967, and back to 9:00 p.m. in 2003.

MINIMUM PRICING LAWS

The reasoning behind mark-ups and prohibitions against selling below costs is to prevent monopolies in certain industries. Generally the purpose of these laws is to protect small independent merchants from larger merchants, who could, in theory,

sell items below cost and drive out their competitors, thus creating a monopoly.

Cigarettes

Connecticut prohibits cigarette distributors and dealers from selling below cost. The law presumes that their cost includes a percentage mark-up that depends on the type of seller and transaction (CGS § 12-326b). The law defines "cost" as the basic cost of cigarettes and the cost of doing business. The "basic cost of cigarettes" means the sum of the lower of the invoice or replacement cost plus the face value of tax stamps minus any trade discount for something other than cash. The "cost of doing business" means costs related to the sale of cigarettes, as calculated for federal income tax purposes, including labor, rent, depreciation, selling costs, maintenance, delivery, interest, licenses, taxes, insurance, advertising, pre-opening expenses, and central and regional administrative expenses.

Alcohol

Connecticut prohibits retailers of alcohol for off premises consumption from selling at a price below their cost. For this purpose, "cost" means the posted bottle price from the wholesaler plus charges for shipping or delivery to the retailer's place of business paid by the retailer (CGS § 30-68m(a)). (Attachment 1 is an OLR report (2009-R-0171) providing information on minimum pricing laws.)

HOURS FOR ALCOHOL SALE

Authorization to Regulate

Unlike other products, the manufacture, sale, or transportation of alcohol was originally prohibited by the Eighteenth Amendment of the U.S. Constitution, which was adopted in 1919. The amendment was subsequently repealed in 1933 by the Twenty-first Amendment, which also allowed states to regulate the production and distribution of alcohol. Connecticut subsequently passed the Liquor Control Act in 1933, which

regulates the production and distribution of alcohol within the state, including the hours when alcohol may be sold. Currently, Connecticut allows the sale of alcohol for consumption off premises to be between Monday-Saturday from 8:00 a.m. to 9:00 p.m. (CGS § 30-91(d)).

Legislative History

1933 and 1939. The statute for when alcohol may be sold has changed several times. The Liquor Control Act originally allowed package stores to stay open until 6:00 p.m. In 1939, package store owners successfully sought legislation allowing them to stay open until 11:00 p.m. There are no records concerning the legislative rationale for extending the hours because the legislature did not transcribe the public hearings or floor debates.

1957. In 1957, the General Assembly moved the closing time from 11:00 p.m. to 9:00 p.m. by amending on the floor a liquor price bill.

The Liquor Control Committee held public hearings on an earlier bill that proposed an 8:00 p.m. closing time. During the hearing, the package store owners, who were the major group advocating for the earlier closing time, expressed their fear of being robbed due to the late closing hour. This fear was brought about by Mad Dog Taborski and his partner Culombe, who committed a series of robberies, pistol whippings, and execution-style murders that took six lives in late 1956 and early 1957.

The 9:00 p.m. closing time that was ultimately agreed to was a compromise between the 8:00 p.m. proposal heard before the Liquor Control Committee and the existing 11:00 p.m. closing hour.

1967. In 1967, the General Assembly moved the closing time back from 9:00 p.m. to 8:00 p.m.

The original bill had a closing time of 7:00 p.m. At the hearing, the majority of package store owners supported the earlier closing time, again expressing concerns about keeping the stores open past 7:00 p.m. They also stated that there were relatively few shoppers after 7:00 p.m. and an earlier closing time would give them a chance to do more social and community work.

Grocers, on the other hand, generally opposed the proposed earlier closing time, because it would force them to cover shelves and turn away potential customers.

During the legislative debate, legislators made many similar arguments. They finally agreed on an 8:00 p.m. closing, and the bill passed with a substantial majority. (Attachment 2 is an OLR report ([2000-R-0918](#)) providing more information on the 1957 and 1967 public hearings and legislative debates.)

2003. In 2003, Connecticut changed the closing time of package stores from 8:00 p.m. to 9:00 p.m. as part of the budget bill. The bill was sent to the floor through a procedure known as "Emergency Certification," which means the speaker and president pro tempore jointly propose a bill and send it directly to each chamber floor for action without any committee referrals or public hearings. The House and Senate transcripts on the bill do not mention the later closing time or indicate legislative intent.

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Comparison of some state liquor laws

Alabama	Beer containers may not exceed 16 ounces Twenty-six of Alabama's 67 counties do not allow the sale of alcohol.
Alaska	Sellers/servers may not, for any reason, give a person alcohol for free or sell it for less than its cost.
Arkansas	Alcohol sales are generally prohibited on Sundays, but exceptions can be made through local option
Colorado	Liquor stores and liquor-licensed drug stores may have only one location
Delaware	No person under 21 may enter a liquor store or taproom for any reason even for the intent of purchasing only tobacco or lottery tickets
Wash D.C.	No singles sold Liquor stores must close on Sundays (except on December 24 and 31 when those dates fall on Sunday). Grocery stores, which are allowed to sell beer and wine only, can sell alcohol on Sundays.
Florida	Sale, processing, or consumption of any liquor or spirit of greater than 153 proof is illegal. Beer must be sold in quantities of 32 or fewer ounces or greater than 1 gallon. Forty- and 64-ounce beverages are illegal.
Georgia	Sunday off-premises sales from 12:30 p.m. to 11:30 p.m. allowed only by local referendum
Indiana	Sales limited to on-premises in restaurants, wineries and breweries on Sundays. No sales on Christmas. Minors, including babies, are not allowed to enter a liquor store. No sales of cold beer in grocery stores or gas stations.
Kansas	29 counties still do not permit the on-premises sale of alcohol. 59 counties require a business to receive at least 30% of revenue from food sales to allow on-premises sale of alcohol. Only 17 counties allow general on-premises sales. Not all communities which allow off-premises sales allow sales on Sunday. Sales are prohibited on <u>Christmas</u> and <u>Easter</u> .
Kentucky	Approximately 39 counties in the state (mostly eastern and southern counties) are dry,
Louisiana	Packaged alcoholic beverages of any strength may be sold in supermarkets, drug stores, gas stations, and convenience stores 24 hours a day. Local municipalities may not restrict this. As a result, dedicated "liquor stores" are mostly specialty stores in larger cities, and some supermarkets have large selections of liquors and wines, and compete on the basis of liquor prices and selection.
Maryland	Variable by locality <u>Baltimore County</u> prohibits the sale on Sunday in some areas. In the counties of <u>Montgomery</u> , <u>Somerset</u> , <u>Wicomico</u> , and <u>Worcester</u> sale of alcoholic beverages are controlled directly by the county Liquor Control Boards, there is exceptions in Montgomery where some liquors are still sold in grocery store due to being grandfathered before the change of the law. Garrett County prohibits the sale on Sunday except in some areas. The sale of alcohol at grocery and convenience stores varies by county. There are no dry counties, but some individual voting districts within counties restrict or prohibit alcohol on a local-option basis.
Mass.	No individual, partnership, or corporation may have more than three off-premises licenses in the state, or more than two in any city, nor more than one in any town. No individual, partnership, or corporation not resident or headquartered in Massachusetts may apply for a license, although one may devolve thereupon. ¹ Off-premises sale of alcohol is prohibited on the last Monday in May (Memorial Day), Thanksgiving Day, Christmas Day, and the day after Christmas if Christmas falls on a Sunday.

Comparison of some state liquor laws

	Sale of alcohol is prohibited during polling hours on election days (subject to local exceptions)
Michigan	maintains a monopoly over wholesaling of distilled spirits only.
Minnesota	No alcohol off-sale on Sunday.
Mississippi	In most counties, alcohol cannot be sold on Sundays
Nebraska	No on- or off-premises sales of spirits before noon on Sundays.
New Jersey	Though there is not a ban on selling alcoholic beverages at grocery stores, New Jersey limits each chain to two licenses, so except for a few exceptions, most supermarkets/convenience stores/gas stations/pharmacies do not sell alcoholic beverages.
New Mexico	An additional Sunday permit is available which allows sale (on and/or off premise) on Sundays from noon until midnight. Exceptions are the prohibition of alcohol sale on Christmas, regardless of the day it falls on, and a Sunday permit allowing of sale (on and/or off premise) until 2:00 a.m. January 1, if December 31 falls on a Sunday. Sunday permits are only available where approved by voters within a local option district
New York	All liquor stores must be owned by a single owner, who owns that store and lives within a certain distance of it — effectually banning chain liquor stores from the state.
North Car.	State stores closed on Sundays. Bottled liquor must be sold in ABC Packages stores, open from 9 a.m. to 9 p.m., Monday through Saturday.
N. Dakota	No off-sale on Thanksgiving Day. No Christmas Day on-sale, nor sales on Christmas Eve after 6 p.m.
Oklahoma	Liquor Stores closed on Sundays and some holidays.
Rhode Island	All alcohol may be sold only in liquor stores. Thus, convenience stores and supermarkets in Rhode Island are dry.
S. Carolina	No hard liquor sales after 7 p.m. and none on Sundays.
Tennessee	Wine is only sold in liquor stores. Sales of liquor are limited to on-premises in restaurants on Sundays. Beer above 5% ABW / 6.3% ABV must be sold in liquor stores. <u>Open container law</u> only applies to drivers, not passengers.
Texas	Liquor stores statewide closed all day Sunday.
Utah	State-controlled stores close on Sundays and cease operations no later than 10 p.m. the rest of the week
	No alcohol may be served on Election Day until 8 p.m.
Washington	A handful of state and contract stores are open Sundays from 12 midday to 5 p.m.
Puerto Rico	Dry law during elections and <u>tropical storm</u> emergencies

APPARENT CONSUMPTION OF DISTILLED SPIRITS BY STATE, IN WINE GALLONS

	January - December		Percent	12 Months Ending December		Percent
	2010	2009	Change	2010	2009	Change
LICENSE STATES						
? Alaska	1,498,592	1,525,838	-1.8%	1,498,592	1,525,838	-1.8%
Arizona	10,405,688	9,062,331	14.8%	10,405,688	9,062,331	14.8%
Arkansas	3,802,262	3,756,644	1.2%	3,802,262	3,756,644	1.2%
California	52,244,411	51,467,312	1.5%	52,244,411	51,467,312	1.5%
Colorado	10,088,259	9,849,857	2.4%	10,088,259	9,849,857	2.4%
Connecticut	6,309,806	6,099,754	3.4%	6,309,806	6,099,754	3.4%
? Delaware	2,461,627	2,391,373	2.9%	2,461,627	2,391,373	2.9%
Dist. Columbia	1,809,577	1,882,138	-3.9%	1,809,577	1,882,138	-3.9%
Florida	35,705,445	35,073,557	1.8%	35,705,445	35,073,557	1.8%
Georgia *#	12,510,658	12,232,484	2.3%	12,510,658	12,232,484	2.3%
Hawaii	1,973,365	1,944,834	1.5%	1,973,365	1,944,834	1.5%
Illinois	18,468,813	19,449,167	-5.0%	18,468,813	19,449,167	-5.0%
Indiana @	9,496,810	9,158,767	3.7%	9,496,810	9,158,767	3.7%
Kansas	3,796,414	3,649,729	4.0%	3,796,414	3,649,729	4.0%
Kentucky	5,674,884	5,582,919	1.6%	5,674,884	5,582,919	1.6%
Louisiana	7,503,392	7,509,218	-0.1%	7,503,392	7,509,218	-0.1%
Maryland	10,280,085	9,863,177	4.2%	10,280,085	9,863,177	4.2%
Massachusetts	11,254,218	11,188,827	0.6%	11,254,218	11,188,827	0.6%
Minnesota	11,007,707	9,765,694	12.7%	11,007,707	9,765,694	12.7%
Missouri	9,698,511	9,817,395	-1.2%	9,698,511	9,817,395	-1.2%
Nebraska	2,895,006	2,761,747	4.8%	2,895,006	2,761,747	4.8%
Nevada @	6,450,586	5,922,224	8.9%	6,450,586	5,922,224	8.9%
New Jersey	15,178,269	15,036,259	0.9%	15,178,269	15,036,259	0.9%
New Mexico	3,235,892	2,884,692	12.2%	3,235,892	2,884,692	12.2%
New York	27,660,464	27,545,986	0.4%	27,660,464	27,545,986	0.4%
North Dakota	1,615,657	1,514,344	6.7%	1,615,657	1,514,344	6.7%
? Oklahoma	4,573,702	4,573,702	0.0%	4,573,702	4,573,702	0.0%
Rhode Island	1,909,131	1,823,562	4.7%	1,909,131	1,823,562	4.7%
South Carolina *	7,130,266	6,980,481	2.1%	7,130,266	6,980,481	2.1%
South Dakota	1,474,850	1,407,496	4.8%	1,474,850	1,407,496	4.8%
Tennessee	7,844,471	7,666,802	2.3%	7,844,471	7,666,802	2.3%
Texas	28,723,907	27,617,944	4.0%	28,723,907	27,617,944	4.0%
Wisconsin	12,787,302	13,107,646	-2.4%	12,787,302	13,107,646	-2.4%
LICENSE TOTAL	347,470,028	340,113,904	2.2%	347,470,028	340,113,904	2.2%
CONTROL STATES						
Alabama	5,501,040	5,427,669	1.4%	5,501,040	5,427,669	1.4%
Idaho	2,151,887	2,084,474	3.2%	2,151,887	2,084,474	3.2%
Iowa **	4,445,162	4,307,850	3.2%	4,445,162	4,307,850	3.2%
? Maine @	2,309,757	2,280,350	1.3%	2,309,757	2,280,350	1.3%
? Michigan @	16,211,517	16,134,061	0.5%	16,211,517	16,134,061	0.5%
Mississippi	4,081,151	4,063,949	0.4%	4,081,151	4,063,949	0.4%
Montana	1,752,064	1,728,827	1.3%	1,752,064	1,728,827	1.3%
? New Hampshire @	5,054,598	4,919,240	2.8%	5,054,598	4,919,240	2.8%
North Carolina	10,861,684	10,653,734	2.0%	10,861,684	10,653,734	2.0%
Ohio @	13,755,782	13,580,873	1.3%	13,755,782	13,580,873	1.3%
Oregon	6,402,302	6,286,376	1.8%	6,402,302	6,286,376	1.8%
Pennsylvania	16,239,132	15,202,579	6.8%	16,239,132	15,202,579	6.8%
Utah	2,397,455	2,330,308	2.9%	2,397,455	2,330,308	2.9%
Vermont	918,966	904,801	1.6%	918,966	904,801	1.6%
Virginia	9,487,653	9,252,143	2.5%	9,487,653	9,252,143	2.5%
Washington	9,792,052	9,844,881	-0.5%	9,792,052	9,844,881	-0.5%
West Virginia **	1,686,571	1,678,643	0.5%	1,686,571	1,678,643	0.5%
Wyoming **	1,186,342	1,178,128	0.7%	1,186,342	1,178,128	0.7%
CONTROL TOTAL	114,235,116	111,858,885	2.1%	114,235,116	111,858,885	2.1%
U.S. TOTAL	461,705,145	451,972,789	2.2%	461,705,145	451,972,789	2.2%

SOURCE: License state statistics based on state treasury tax collections except where noted.

Control state statistics come from NABCA, based on retail sales by state liquor stores except where noted.

NOTE:

* Based on shipments from distillers to wholesalers. Georgia and South Carolina unable to provide

** Based on shipments from state liquor boards to private retailers and other

Georgia consumption includes supplier shipments to AAFES.

@ Figure includes low proof

? Value estimated as data is presently not available from the state.

States Allowing Sunday Sales of Distilled Spirits

