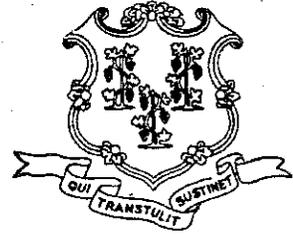


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Department of Consumer Protection



Testimony of William Rubenstein Commissioner of Consumer Protection General Law Committee Public Hearing February 21, 2012

Sen. Doyle, Rep. Taborsak, Sen. Witkos, Rep. Rebimbas and Honorable Members of the General Law Committee, I am William Rubenstein, Commissioner of Consumer Protection. Thank you for giving me the opportunity to appear before you today. Included on your agenda this morning are three bills that were introduced by my Agency, so let me start with my thanks for your agreeing to raise these bills for the committee's consideration. Also on your agenda is a bill on price gouging that would be enforced by the Department, so I would like to add my comments to that bill as well. With that, let me begin by offering testimony in support of the three DCP Agency Bills before you today.

First, Senate Bill 57, "Act Concerning the Licensure of Food manufacturing Establishments."

This bill is proposed to address difficulties in the inspection 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 in the State that manufacture or store food for wholesale

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 way of 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 quality and wholesomeness of some of these ingredients are not always up to standards. 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 proposal will work to 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, the State's ability to provide a quick response 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 to determine any problems 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, we would note that both the Department of Public Health and the Department of Agriculture have been involved with the crafting this proposal, and we thank them for their time and expertise in this matter.

Next, House Bill 5056, "An Act Concerning the electronic Prescription Drug Monitoring Program."

This bill proposes to make two separate modifications to our current Prescription Drug Monitoring Program.

By way of background, Public Act 06-155 created the program that requires information about all transactions for controlled substances (Schedules II-V) dispensed in Connecticut to be reported to the Department of Consumer Protection Prescription Monitoring Program. Pharmacies—both in state and out of state—must submit their data to the Department electronically at least twice per month.

The data is then uploaded into a central database which can then be used by prescribers and pharmacists in the active treatment of their patients, and also by law enforcement officials to assist in prescription fraud investigations.

Now, back to our proposal: The first recommended change is to expand the universe of required participants in the program to include "other dispensers," such as Doctors' offices in cases where they are actually dispensing controlled substances from their offices. This change will provide a more comprehensive list of controlled substance transactions involving Connecticut patients.

The second change proposed would give the Commissioner authority to identify and include dispensed products other than Schedule II-V substances in the PMP program. The language is intended to clarify that the "other products," is limited to herbal or chemical substances or drugs. Making this change would allow the Commissioner to promptly add products that are being prescribed by Doctors that don't fall into Schedule II-V, such as non-controlled substances. Examples include drugs like "Tramadol" which is prescribed and dispensed as a pain-reliever, but is not yet listed on the schedule of controlled drugs; as well as some antibiotics (which are not scheduled drugs), that could

assist in tracking their use to benefit the general welfare in the case of public health emergencies.

Our third proposal is House Bill 5054, "An Act Making Minor and Technical Changes to Department of Consumer Protection Statutes."

This proposal, consisting of 23 separate changes is submitted following our agency's review of many existing functions over the last year or more. We have identified areas where statutes have required unnecessary, cumbersome or outdated steps. We have also identified certain antiquated statutory provisions that interfere with the intended statutory enforcement. In order to become a more efficient and responsive agency, we recommend your approval of the minor and technical changes contained here that will allow us to reduce unnecessary paperwork, increase the efficiency of agency work flow, conform laws to customary practices and to remove or update antiquated provisions of the law.

Now to the details: Sections 1-6 of this proposal are offered primarily as cost savings measures by eliminating the requirement to publish brochures and reports when alternatives are readily available. Section 1 makes it permissible to satisfy the requirements of Section 30-7 by having the agency's Liquor Control regulations posted on the agency's website, as we currently do. Similarly, Section 2 makes it permissible to comply with the requirements of the printing of pamphlets for DCP's Gaming Division by posting our regulations on-line. Section 3 allows for the posting of minutes and a roster of licensees on-line, rather by paper publication. Section 4 allows for the posting of a roster of registered Interior Designers on the Department's website, rather than in paper form. Section 5 allows for the posting of a roster of well drillers on the Department's website, rather than in paper form. Section 6 eliminates the requirement for a written report of the testing done in DCP's weights & measures division, replacing it with a requirement that we maintain those records and make them available for inspection.

Also in Section 6 we suggest a minor change within our Weights & Measures statutes that closes a loophole and which we believe is consistent with the original intent

of the law. Under present law DCP is statutorily required to calibrate dealers' testing equipment every other year and may not charge a fee for this service. We are aware that this requirement has allowed numerous out-of-state businesses to impose this burden on the Department. We propose a change to in Sec. 43-3 to honor the purpose of the no-fee provision by clarifying that it applies to Connecticut residents and businesses with an office in Connecticut. We believe this is fair, and that the effect will be that out-of-state businesses will simply receive the service in their own state. Consequently, we do not expect this change to raise significant revenue, but rather, significantly reduce the workload to DCP's weights & measures laboratory.

Sections 7-9 of this proposal make changes to DCP's Gaming Division statutes. Section 7 removes an unnecessary and antiquated provisions requiring that certain employees be residents of the state of Connecticut. Section 8 eliminates the requirement that a monthly report be prepared and sent to the office of the State Treasurer. The Director of the Cash Management Division of the Treasurer's Office has told us that this is not needed because the information is readily available to them via CORE-CT. Section 9 makes a minor change in Section 7-173, pertaining to individuals applying to operate a bazaar or raffle. This minor change removes unnecessary and overly restrictive requirements that applicants be "electors of the municipality" and replaces with a more reasonable, "residents of the state."

Section 10 makes a minor change in DCP's public charities section, by extending the time that charities must renew their registration with the Department after their fiscal year from five months to eleven months; while removing the provision that grants the Commissioner discretion to extend the requirement to register by 6 months. In practice, many charities request such an extension and it is universally granted. The net effect of current practice is that charities are granted the full time limit (11 months) to renew. The change will simply acknowledge current practice without requiring the burden of application and approval of the extension. This change will provide relief to the charitable community, and a decrease in unnecessary resource deployment in the Department.

Section 11 makes a minor and conforming change to our customary practice within DCP's Real Estate licensing Division. This change simply recognizes the

correct effective dates of license renewals for Real Estate Brokers and Real Estate Salespeople.

Section 12 similarly makes a minor and conforming change regarding late license renewals of New Home Construction Contractors. It clarifies that a late renewal will be valid for the normal full two year period.

Section 13 makes a minor and technical change within the Home Improvement Guaranty statute. It clarifies that contractors' rights to a hearing before the Commissioner are not forfeited while making payments in accordance with a court judgment.

Section 14 makes a minor change in DCP's statutes pertaining to "Buying Clubs." This change would extend consumer protection to the purchase of "services" offered by a company to consumers, in addition to the "goods" as currently written. A particular area of recent buying club activity in the State involves, not products, but travel services. These travel clubs are expensive and often sold through high-pressure sales techniques. This change is needed to clarify that companies engaged in selling such travel services are to be covered by the existing requirements set forth in Sec. 42-310, such as a mandatory three-day right of cancellation. The Department feels strongly that this minor change will provide much needed consumer protection in today's marketplace.

Section 15 makes minor changes within the Home Improvement Contractor statute. These changes are needed to clarify that the existing penalties encompassed within the law are able to be enforced by the Department. A minor change within the definition section of the Act is offered here to include "the solicitation of work" by the illegal contractor and also to remove the word "cash" from the price charged by the contractor. The Department believes that the registration requirements of the Home Improvement Contractor statutes, and the rights granted to consumers, were always intended to apply whenever a contractor is offering such services not just in those circumstances where a consumer was actually convinced to enter into a contract. These changes will lead to an improvement in our ability to keep the public safe from illegal and fly-by-night contractors.

Section 16 makes a minor change within the Real Estate Appraisal statute. This change is made to comply with recent federal requirements that real estate appraisal

instructors be made subject to approval. This change will allow DCP to amend our regulations to conform to new federal requirements. Without such a change our Real Estate Appraisal program will lose its federal certification.

Section 17 makes a minor conforming change in the elevator license section. The current language states that those eligible for an elevator craftsman's license may include someone with at least two years experience in the field. However, the DOL apprenticeship program specifies a four year experience period, making current language obsolete and conflicting with current requirements. This proposal simply makes the minor change to conform to the appropriate requirements.

Section 18 makes a minor change which would enable to the Department or licensing board to reinstate a license which a licensee has failed to renew in a timely manner. Under present law, any license holder under CGS chapter 393 who fails to renew their license within one year of expiration shall be required to retake their licensing examination if they wish to reinstate their license. This proposal increases that limit to two years, which we believe to be fairer to the tradesperson who through human error or due to circumstances beyond their control have failed to renew their license. Allowing reinstatement within two years will assist the boards, the Department and license-holders in streamlining the reinstatement process.

Section 19 makes the same changes proposed in Section 19 applicable to license types contained in CGS chapter 394.

Section 20 removes an obsolete and unused provision that allowed for a temporary permit within the Radio & Television licensing chapter.

Section 21 makes a minor change regarding the amount of fine the Department may charge an applicant for "bounced check" costs. Under current statute a fixed fee of \$20 may be charged in such cases, however, presently banks are charging DCP more than \$20 and therefore the Department is losing money and unable to even recoup the amount banks impose on the Department. This change would enable the Department to charge an applicant in such cases a fine amount commensurate with the cost imposed on the Department by the bank.

Section 22 makes a conforming technical change in CGS Sec. 21-33b. Specifically, PA 09-3 (June Special Session) increased certain fees and in CGS Sec. 21-

28 increased from one hundred to two hundred dollars annually the amount an applicant must pay into the Itinerant Vendor Guaranty Fund. However, a corresponding change was not made at that time to the Guaranty Fund section (CGS 21-33b). This proposed change simply conforms the two sections at the two hundred dollar amount.

Lastly, I'd like to offer some comments on Senate Bill 60, "An Act Prohibiting Price Gouging During Severe Weather Events."

Let me start with comments that harken back to my testimony to you last year on a similar piece of legislation. The Department is fully supportive of efforts to protect consumers from unconscionably excessive pricing during times of severe weather emergencies. We receive a large number of calls and complaints from consumers who feel they are being taken advantage of, particularly during times of severe weather. While the Department has the ability to address unconscionably excessive pricing through the general proscriptions of Connecticut Unfair Practice Act, we applaud additional legislative proposals, such as SB 60, which, if passed will bring needed clarity to the rules thus enabling improved enforcement and prosecution of those that engage in this practice. In particular, Senate Bill 60 specifically recognizes that price-gouging in services is equally likely to occur as for commodities. In recent severe weather events, consumer complaints to the Department regarding excessive pricing included such things as removal of snow from roofs during last winter's record snowfalls and the cost of hotel lodging during the wide-spread power outages caused by Storm Albert. Senate Bill 60 also provides workable standards for measuring when prices are unconscionably excessive. The Department stands ready to work with the proponents of this legislation to enact meaningful improvements to Connecticut's anti-gouging laws to benefit the citizens of our state.

Thank you for the opportunity to deliver these remarks to you today. I would be happy to take questions regard these bills or any other matters you wish to discuss.