
OLR Bill Analysis

sHB 5234

AN ACT CONCERNING THE DEPARTMENT OF CONSUMER PROTECTION'S RECOMMENDATIONS REGARDING ALCOHOLIC LIQUOR REGULATION.

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Updates a required statement by alcohol purchasers whose age is in question and provides an electronic alternative to permittees

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Generally prohibits permittees from allowing intoxicated people from loitering on permit premises

SUMMARY

This bill makes various unrelated changes to the Liquor Control Act. Among other things, the bill allows the Department of Consumer Protection (DCP) to:

1. (a) refuse to accept an incomplete package store application or (b) establish a deadline for when a package store must open to the public for continuous operation;
2. investigate an applicant's backer and the suitability of a proposed permit premises;
3. impose additional fines;
4. allow more than one consumer service bar (i.e., place where food is primarily ordered); and
5. (a) confiscate alcoholic liquor that has been deemed a nuisance,

and (b) embargo and confiscate certain items during an investigation or inspection (e.g., unauthorized gambling devices, unauthorized pharmaceuticals).

Additionally, the bill:

1. generally allows a franchisor or landlord to receive profits from alcoholic liquor sales from a franchisee or tenant;
2. indemnifies and grants immunity to minors who participate in DCP alcohol-related investigations and enforcement actions;
3. updates a required statement that an alcohol purchaser whose age is in question must fill out and provides an electronic alternative to permittees;
4. generally prohibits permittees from allowing intoxicated people from loitering on permit premises; and
5. makes various minor, technical, and conforming changes (e.g., correcting internal references (§ 12)).

EFFECTIVE DATE: Upon passage

§§ 1, 3 & 6-8 — BUSINESS ENTITIES

Explicitly subjects specified types of business entities to the Liquor Control Act's provisions by defining them as "business entities" for purposes of the act; makes conforming changes

Definitions (§ 1)

The bill explicitly subjects specified types of business entities to the Liquor Control Act's provisions by defining them as "business entities" for purposes of the act. Under the bill, a "business entity" is any incorporated or unincorporated association, corporation, firm, joint stock company, limited liability company (LLC), limited liability partnership (LLP), partnership, trust, or other legal entity.

Generally, the new definition clarifies that the Liquor Control Act applies to certain types of entities (e.g., limited liability companies) that are not specifically included in the act's definitions under current law. The bill makes conforming changes to other (1) definitions in the Liquor

Control Act (e.g., adding business entities to the definition of “proprietor”) and (2) prohibitions and requirements in the act, as described below.

Prohibition of DCP Commissioner and Certain Employees in Alcoholic Liquor Market (§ 3)

Current law prohibits the DCP commissioner and its employees who have certain enforcement duties and responsibilities related to the Liquor Control Act from directly or indirectly having an interest in a partnership that deals or manufactures alcoholic liquor. The bill expands the prohibition to include being a member or owner of a business entity that deals or manufactures alcoholic liquor. As under existing law, being a corporation shareholder is allowed.

In-State Transporter Permits (§ 6)

The bill specifically prohibits all business entities from transporting alcoholic beverages into the state without an in-state transporter permit, among other tax requirements. Current law already specifically prohibits corporations, incorporated or unincorporated associations, partnerships, trusts, or other legal entities from doing so.

Catering Establishment (§ 7)

The bill expands the business types that may own or operate a catering establishment by specifically allowing joint stock companies, LLCs, LLPs, trusts, and other legal entities to do so. By law, a catering establishment may serve alcoholic liquor at a function, occasion, or event on its premises under certain conditions.

Temporary Permit for Noncommercial Entity (§ 8)

Under current law, the backer or permittee conducting a fundraising event, outing, picnic, social gathering, or auction must keep all profits from an auction or sale of beer, spirits, or wine, and no profits may be paid to any individual or corporation. The bill expands this prohibition to include all business entities.

§ 2 — FRANCHISOR OR LANDLORD PROFITS

Generally allows a franchisor or landlord to receive profits from alcoholic liquor sales from a franchisee or tenant

The bill generally allows a franchisor or landlord to receive profits from alcoholic liquor (e.g., beer, wine, and spirits) sales from a franchisee or tenant that may sell alcoholic liquor. The franchisor or landlord may do so if he or she does not:

1. control the permit premises' operations;
2. direct sales of alcoholic liquor from the permit premises; or
3. otherwise engage in activities indicating ownership or proprietorship of the franchisee or tenant.

Under the bill, DCP may require a franchisor or tenant to get approval as a backer to receive these profits. In determining whether to give approval as a backer, DCP must consider the percentage of the profits the franchisor or landlord receives and evaluate whether the franchisor or landlord may:

1. supervise, hire, retain, or discharge those employed on the permit premises;
2. set menu selections or prices or establish hours or days of operations for the permit premises;
3. decide whether or when a patio may be used on the permit premises;
4. order or accept alcoholic liquor deliveries for the permit premises;
5. arrange advertising for the permit premises, including advertising on the Internet or through social media;
6. dictate decorations for the permit premises;
7. access banking accounts related to the permit premises;
8. incur debt on behalf of a permit backer; and
9. enter into agreements with other entities on a backer's behalf.

§ 4 — PACKAGE STORE APPLICATIONS AND OPENING DEADLINE

Allows DCP to refuse to accept an incomplete package store application and to establish a deadline for when a package store must open to the public for continuous operation

The bill allows DCP to (1) refuse to accept any incomplete package store permit application or (2) establish a deadline for when a package store permit applicant must open to the public for continuous operation.

Under the bill, if a package store applicant does not meet the DCP-established deadline, the department may deem the application withdrawn and expired to prevent placeholdering (i.e., applying for the last available package store permit in a town and failing to open before the deadline). By law, DCP may issue one package store permit for every 2,500 residents as determined by the most recent census.

§ 5 — WHOLESALER TERMINATION OR ADDITIONAL APPOINTMENT NOTICE

Allows DCP to prescribe how the copy of a notice it receives is sent when a manufacturer or out-of-state shipper permittee wants to terminate or diminish a wholesaler's territory or appoint an additional one

Under current law, if a manufacturer or out-of-state shipper permittee wants to terminate or diminish a wholesaler's territory or appoint an additional one, it must send written notice by certified or registered mail, return receipt requested, to the wholesaler, and a copy must be simultaneously sent to DCP. The bill instead allows DCP to prescribe how the notice is sent.

Under the bill, the actions where this is applicable are when a manufacturer or out-of-state shipper permittee seeks to:

1. terminate or diminish a wholesaler permittee's territory after six months or more or
2. appoint one or more additional wholesalers to distribute within the territory (a) alcohol, spirits, or wine or (b) beer.

The bill requires that the additional beer wholesaler notice include the name of each additional wholesaler and give a detailed description of the just and sufficient cause necessitating the appointment.

§ 8 — DONATIONS

Expands the permittees that may donate to a noncommercial entity permittee and allows all of them to offer tastings

Existing law allows a manufacturer permittee, a wholesaler permittee, or package store permittee to donate to a temporary liquor permittee for a noncommercial entity, any beer, spirits, or wine they manufacture, distribute, or sell, respectively.

The bill expands the permittees that may donate and allows all of them to offer tastings for the noncommercial entity permittee. The expanded permits include those for restaurants, cafes, out-of-state retail shippers, and out-of-state shipper's for alcoholic liquor, for wine, and for beer.

§ 9 — APPLICATION-RELATED INVESTIGATIONS

Allows DCP to investigate an applicant's backer and the suitability of a proposed permit premises

The bill allows DCP to investigate (1) whether a permit should be issued to an applicant's backer (i.e., proprietor) or (2) the suitability of the proposed permit premises. Existing law allows DCP to investigate whether a permit should be issued to an applicant.

§§ 10 & 14-16 — PENALTIES AND DCP AUTHORITY

Allows DCP to impose additional fines; extends certain existing penalties to applicants and certain backers (e.g., disciplinary actions on the permit, fines, compromise instead of suspension); and allows applicants whose permit application is denied to appeal

DCP Reasonable Belief of Certain Actions (§ 10)

The bill allows DCP to impose a fine of up to \$1,000 for instances when the department reasonably believes an applicant or permittee has committed certain actions (e.g., used alcohol in excess, willfully made false statements in a material matter, or was convicted of violating liquor laws). Existing law allows DCP to suspend, revoke, or refuse to grant or renew a permit for these actions.

Under current law, a backer is subject to the same disqualifications as a permit applicant or permittee for these actions. The bill expands the actions to any disqualifications under the Liquor Control Act and its regulations and applies it to an applicant's backer.

Various DCP Disciplinary Actions (§ 14)

Existing law allows DCP to revoke, suspend, or place conditions on any permit or provisional permit or impose a fine of up to \$1,000 per violation for cause as determined by a hearing. The bill extends these disciplinary actions to an applicant, backer, or proposed backer.

Current law requires the department to give 10 days' written notice of the hearing, setting the particulars required in the civil pleadings and the charges for the proposed disciplinary action. The bill instead requires that the notice be provided in keeping with the Uniform Administrative Procedure Act (UAPA). Among other things, the UAPA requires that the parties be given reasonable notice that includes a short and plain statement of the matters asserted.

Under the bill, withdrawing an application does not prevent DCP from suspending or revoking the permit. (It is unclear how DCP could suspend or revoke the permit if an application is withdrawn and no permit is issued.)

Compromise in Lieu of Suspension (§ 15)

The bill allows DCP to accept an offer to compromise, in a certain amount considering the circumstances, instead of suspending the permit from an applicant and his or her backer. Existing law allows the department to make this offer to a permittee or backer.

Appeals for Denied Permits (§ 16)

Under existing law, applicants for a permit whose application is refused may appeal the decision under the UAPA procedures. The bill also allows an applicant whose permit is denied to do so.

§ 11 — HOLDING TWO PERMITS

Allows (1) certain out-of-state shipper permittees to also hold an out-of-state retailer shipper's permit for wine and (2) a restaurant permittee to hold a Connecticut Craft Cafe permit

By law, with certain exceptions, permittees of one class (i.e., tier) are not allowed to be a permittee of another class (CGS § 30-48(a)).

The bill creates additional exceptions by allowing the following:

1. an out-of-state shipper's permittee for alcoholic liquor other than beer, an out-of-state winery shipper's permittee for wine, or an out-of-state shipper's permittee for beer to also hold of an out-of-state retailer shipper's permit for wine; and
2. a restaurant permittee to also hold a Connecticut craft cafe permit if the permit premises are located at two different addresses.

§ 13 — PORTION OF BUILDING USED AS PERMIT PREMISES

Allows permittees where a portion of the building is not used as a permit premises to separate the portion rather than have it effectively closed

Current law allows an alcoholic liquor permittee to use a building where a portion is not used as the permit premises only if the applicant signs an affidavit affirming that access from the other part of the building to the permit premises is effectually closed, unless DCP allows otherwise. The bill instead requires that the respective portions be separate. It correspondingly allows DCP to (1) examine the premises to see that the portion is effectively separate and (2) designate the manner of the separation. (Under current law, the department may do these things with respect to closings.)

Under current law, if a new way of accessing the permit premises is opened after the permit is issued and without DCP's consent endorsed on the permit, the permit is forfeited and is null and void, with or without notice. The bill eliminates the permit forfeiture penalty. As under existing law, permittees and backers that open a new unauthorized means of access are subject to the general permit penalty provision that allows DCP to revoke, suspend, or place conditions on a permit or impose a fine of up to \$1,000 per violation after a hearing for which written notice must be given (CGS §§ 30-55 & -113).

§ 17 — CONSUMER BARS AND CONSUMER SERVICE BARS

Allows, rather than requires, DCP to adopt regulations on consumer bars; allows DCP to adopt regulations to allow more than one consumer service bar (i.e., place where food is primarily ordered)

Current law requires DCP to adopt regulations to allow more than one consumer bar in any premises where on-premises alcohol consumption is allowed. The bill instead makes adopting regulations

permissive. By law, a consumer bar is a counter, with or without seats, where a patron may consume or purchase alcoholic liquor.

The bill also allows DCP to adopt regulations to allow more than one consumer service bar in any premises where on-premises alcohol consumption is allowed. A consumer service bar is a counter without seats where a patron can buy alcoholic liquor, but its main function is for buying food.

The bill allows alcoholic liquor to be served to a patron across the consumer service bar but prohibits a patron from sitting or consuming the alcohol or food at the bar. It allows minors (i.e., those under age 21) to stand at the consumer service bar to order and receive food.

The bill prohibits a premises from having both a self-pour endorsement and a consumer service bar endorsement.

§ 18 — NUISANCE AND EMBARGOING OR CONFISCATING CERTAIN ITEMS

Allows DCP to (1) confiscate alcoholic liquor that has been deemed a nuisance and (2) embargo and confiscate certain items during an investigation or inspection (e.g., unauthorized gambling device, unauthorized pharmaceuticals)

Nuisance

The bill allows the DCP commissioner or his authorized agent to confiscate alcoholic liquor that has been deemed a nuisance (i.e., alcoholic liquor, along with its container, that the owner or keeper intends to be illegally manufactured or sold).

Embargo

The bill allows the DCP commissioner or his authorized agent, during an inspection or investigation of a permittee, to embargo (i.e., affix a tag or other appropriate markings) certain items that violate or are suspected to violate the Liquor Control Act. The commissioner or agent must give prior written notice to the permittee disclosing the violation, or suspected violation, and embargo. The commissioner or agent may do so if he or she has probable cause to believe that the permittee possesses the embargoed item, or it is on the permit premises.

The bill allows DCP to embargo the following:

1. unauthorized gambling devices, illegitimate lottery tickets, or illegal gambling or bookmaking equipment;
2. driver's licenses or identification cards or imitations that a person uses, other than the person's own driver's license or identification card, to unlawfully (a) enter, or try to enter, the premises, or (b) purchase, or attempt to purchase, alcoholic liquor;
3. pharmaceutical drugs offered or made available for sale by any unauthorized individual;
4. high-THC hemp products or synthetic cannabinoids (presumably, if the permittee had an intent to sell); and
5. tobacco products sold without a stamp or by any person other than an authorized dealer.

The bill prohibits anyone from removing or disposing of any embargoed item, by sale or otherwise, unless the commissioner or his authorized agent first give written consent to do so.

Confiscation

In addition to any embargo, the bill allows the DCP commissioner or his authorized agent to confiscate any driver's license or identification card or their imitations for the same reasons as for being embargoed. The commissioner or agent must give the permittee a written inventory of the items that have been confiscated along with a narrative description for the confiscation.

Within two days after any confiscation, the commissioner or agent must submit to the law enforcement agency with jurisdiction over the permit premises a written notice disclosing the confiscation.

Hearing

Under the bill, within 15 days after a permittee receives written notice of the violation, embargo, or confiscation, the permittee may submit a

written request to DCP for a hearing to remove the embargo or revoke the confiscation. The commissioner must hold a hearing within 45 days after the department receives the request, and the hearing must be held in accordance with the UAPA.

Liability

Under the bill, if the embargo is removed or confiscation is revoked, neither the commissioner or the state may be held liable for any damages incurred for any injury sustained because of the embargo, as long as a court with proper jurisdiction finds there was probable cause to impose the embargo or make the confiscation.

§ 19 — IMMUNITY FOR MINORS PARTICIPATING IN ENFORCEMENT ACTIONS

Indemnifies and grants immunity to minors who participate in DCP alcohol-related investigations and enforcement actions

The bill grants immunity from personal liability to minors who participate in alcohol-related investigations or enforcement actions initiated by, or operated in conjunction with, DCP. It does so by deeming them to be state officers under statutes relating to immunity and indemnification for state officers and employees.

Under the bill, the minors are not liable for damage or injury that is caused by actions they take at DCP's direction related to the investigation or enforcement action as long as they are not wanton, reckless, or malicious (CGS § 4-165).

The bill also requires the state save harmless and indemnify these minors from financial loss and expense from a claim, demand, suit, or judgment from alleged negligence or deprivation of a person's civil rights, or other acts or omissions causing damage or injury. This provision applies as long as the minor did not act wantonly, recklessly, or maliciously (CGS § 5-141d).

§ 20 — STATEMENT OF PURCHASER'S AS AGE

Updates a required statement by alcohol purchasers whose age is in question and provides an electronic alternative to permittees

The bill updates a required statement from alcohol purchasers whose

age is in question. It does so by (1) revising the statutory form to include those born in the 2000s and (2) providing an electronic alternative to permittees.

Existing law requires permittees to print these statements and furnish them to DCP for approval. The bill also allows the permittee to electronically display these forms on electronic devices capable of allowing the person whose age is in question to electronically complete and sign the statement. Under the bill, a statement that is completed and signed electronically must be stored in an electronic medium immediately accessible from the permit premises, alphabetically indexed, and in an electronic format that is accessible to DCP or any of its agents or inspectors at any reasonable time.

By law, paper statements must be kept on file on the permit premises, alphabetically indexed, in a suitable file box and available for inspection at any reasonable time.

§ 21 — LOITERING

Generally prohibits permittees from allowing intoxicated people from loitering on permit premises

Existing law prohibits alcoholic liquor permittees or their employees from allowing certain groups of people (e.g., minors) to loiter on the permit premises or be in the room where alcoholic liquor is kept or served. The bill extends this prohibition to an intoxicated person.

It also extends to an intoxicated person existing law's exemption that allows unaccompanied minors to stay on the permit premises while waiting for and consuming food prepared on the permit premises. This exemption applies to barrooms with only one room and premises with no effective separation between a barroom and dining room.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 22 Nay 0 (03/07/2024)