

Legislative History for Connecticut Act

PA 16-18

HB5428

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2016**

**VOL. 59
PART 4
1033 - 1367**

cf
SENATE

177
April 27, 2016

001264

THE CHAIR:

Please proceed, sir.

SENATOR DUFF (25TH):

Thank you, Madam President. Calendar page 22, Calendar 446, House Bill 5428. I place that item on the Consent Calendar.

THE CHAIR:

I'm sorry, could you do that one more time, sir? A little bit slower.

SENATOR DUFF (25TH):

Sure. Calendar page 22, Calendar 446, House Bill 5428. I'd like to place that item on the Consent Calendar.

THE CHAIR:

Thank you, sir. Seeing no objection, so ordered, sir.

SENATOR DUFF (25TH):

Thank you, Madam President. If the clerk can now call Calendar page 4, Calendar 180, Senate Bill 223, and --

THE CHAIR:

Mr. Clerk. Oops, sorry. Sorry, sir.

THE CLERK:

SENATOR DUFF (25TH):

Thank you, Madam President. Madam President, will the clerk please call the items on our Consent Calendar for a vote, immediately following?

THE CHAIR:

Mr. Clerk. We'll give you a moment. Get the bills in order.

THE CLERK:

On page 1, Calendar 459, House Joint Resolution Number 173, page 2, Calendar 460, House Joint Resolution Number 174. Also on page 2, Calendar 461, House Joint Resolution Number 175; and House Joint Resolution 176. Page 4, Calendar 201, Senate Bill 120. Page 6, Calendar 266, Senate Bill 343. On page 9, Calendar 329, Senate Bill 417. Page 10, Calendar 347, Senate Bill 342. Page 11, Calendar 354, Senate Bill 214 and Senate Bill 255. Page 22, Calendar 446, House Bill 5428. On page 33, Calendar 90, Senate Bill 101, Page 33, Calendar 116, Senate Bill 26. Page 33, Calendar 88, Senate Bill 115 and also on page 33, Calendar 115, Senate Bill 25. Page 39, Calendar 282, Senate Bill 305. Page 40, Calendar 291, Senate Bill 348, and on page 41, Calendar 348, Senate Bill 295.

THE CHAIR:

This time, Mr. Clerk, will you call for a roll call vote on the Consent Calendar. The machine is open.

THE CLERK:

cf
SENATE

276
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Immediate Roll Call has been ordered in the Senate
on today's Consent Calendar. Immediate Roll Call
has been ordered in the Senate.

THE CHAIR:

Senator Kennedy.

All members have voted, all members have voted. The machine will be closed. Mr. Clerk, will you please call the tally.

THE CLERK:

On today's Consent Calendar.

Total number voting	36
Necessary for Adoption	19
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The Consent Calendar passes. Senator Gerratana for any personal announcements or privileges.

SENATOR GERRATANA (6TH):

For purposes of an announcement, Madam President.

THE CHAIR:

Please proceed.

SENATOR GERRATANA (6TH):

**JOINT
STANDING
COMMITTEE
HEARINGS**

**GENERAL
LAW
PART 2
413 – 724**

2016

officials today to talk about these current bills. Not to say that they still can't add their comments, so we move straight to the member of the public. First up is Larry Cafero, then followed by Thomas Felix.

HB 5430
LARRY CAFERO: Good morning, Senator Leone, Representative Baram, Representative Carter, members of the General Law Committee, my name is Larry Cafero, I'm the executive director and general counsel of the Wine and Spirits Wholesalers of -- of Connecticut. I'm here to speak on two bills. The first being, House Bill 5428, an ACT CONCERNING CASE BOTTLE QUANTITIES FOR CERTAIN ALCOHOLIC LIQUOR.

On -- on -- what I've learned since becoming involved in this industry is that on occasion various manufacturers will make specialty bottles of alcoholic beverages. These bottles might come in an odd shaped or different shape size that when configured into a case, do not conform with the statutory amounts that are allowed in a particular case for that particular sized bottle. So instead of say 48 bottles fitting in a case it might be 44, 45. Instead of 12 bottles fitting in a case because of the size and shape of the bottle it might be 10 or 11. It doesn't happen often but when it does happen we wanted to make sure there was a mechanism by which the manufacturer could get that product out and not be in violation of our statutes. And to that end, the bill that's before you, allows for a process where the cons--, department and the commissioner of Consumer Protection could allow for that specialty case, if you will, that special size bottle to go out.

And appropriately, in the proposed bill that's before you, it limits that to happen maybe four

times per year per manufacturer per individual.

The second bill I'd like to comment on, I -- I do not have part of my written testimony, but that's the first bill on your agenda which is H.B. 44--, 5430, an ACT PERMITTING THE SALE OF PRIVATELY HELD ALCOHOL LIQUOR FOR AUCTION.

I just want to say there are circumstances by which such an idea is appropriate. If you were a family member of say someone who is deceased and had left a -- a -- a large wine collection that was worth money and that individual didn't care to keep the wine and wanted to dispose of the wine, but it was worth some value, a bill such as this would allow them to give to a -- a retailer for auction, which is a good thing. But the way the bill is written gives us some pause. It gives us pause because it has the potential of creating a gray market.

Basically the bill says is that any individual can unload a -- a -- an alcoholic product, a wine or beer product to a retailer for "auction", whatever that means, so God forbid there could be stolen goods that could now be unloaded to a retailer for "auction", you could almost have a -- a sort of separate and parallel tier of distribution that would compete with the three tier system that we so honor and frankly I think all 50 states honor and the United States of America. So unless this bill were to be tightened up to be very, very specific as to whom and in what specific circumstances someone could sell their -- their stash, if you will for auction, I think there's a lot of unintended consequences that could happen with this bill. So we voice concern in the way it's written and would oppose it in the way it's written.

That is my testimony for this morning. Be glad to entertain any questions and if not, I thank you for your time.

CHAIRPERSON LEONE (27TH): Thank you, Larry. It's good to see you back as usual. I hope you're enjoying your commutes these days.

So you have comments on two bills. Let's take the first one, 5428 and you mentioned this is due to the few amounts of times in the year when you may have to change the size of the bottle, right, for say a holiday special.

LARRY CAFERO: That's correct. I guess one of the brands occasionally might have an anniversary special, they have a unique sized bottle for marketing purposes that doesn't fit neatly, even though the quantity that's being held in that bottle, whether it's 750 milliliters or a liter bottle or whatever, the quantity, the amount of liquid in the container is the same but the shape of the bottle is such that it wouldn't conform with what statute says must be in a case.

CHAIRPERSON LEONE (27TH): Right and I think that's what I was going to go after, that the volume stays the same. So you could have say a normal case of five bottles with 50 liters but you could change it down to four bottles say for the case -- for the size of the bottle but still have the same amount of liters in those four bottles, correct?

LARRY CAFERO: Yes, that's correct.

CHAIRPERSON LEONE (27TH): Therefore this is not a manipulation of quantity discounts or vol--, volume discounts and so forth?

LARRY CAFERO: No. Obviously we don't see it that way at all. The association is against those other things you just mentioned but there is a -- a -- a good reason and on rare occasion, as this bill permits, on rare occasions with special permission that we think it's appropriate for those specialty cases, if you will, to be sold.

CHAIRPERSON LEONE (27TH): And even though this would be only say four times a year, would -- it -- I -- I don't think I saw a specific time when those four instances could occur, but would that be mostly around holidays or special events or could it be just a total of four times any time throughout the year?

LARRY CAFERO: You know the -- I -- I think it's a total of four times any time throughout the year. The bill doesn't specify that. Obviously it's up to the discretion of the commissioner which I believe is appropriate he or she would be able to determine how many requests they received and be able to weigh it on an individual case by case -- no pun intended -- basis as to whether or not it was appropriate.

17:25:03

CHAIRPERSON LEONE (27TH): Okay. Thank you.

And then the second question on 5430 in terms of the -- the privately held alcohol liquor for the auction -- so the -- the -- the real concern is not so much the ability to -- for someone who may have, you know, specialty products that they don't want to sell, but can through normal procedures. Your concern is that that could open up for nefarious purposes the ability to say, not quite flood the market, but have another avenue to dispose of their

is the end product allows for the hypothetical to take place that I put forth, which should be in a very rare and -- and narrow instance, then I don't think the industry would have problems with it. But if the language is written in such a way that it would allow unintended consequences, that would be something I think that -- you know, the old opening up a Pandora's Box, et cetera that -- that we'd have great concerns with.

CHAIRPERSON LEONE (27TH): Okay. Thank you. Let me open it up to the floor. Representative Altabello.

REP. ALTOBELLO (82ND): Thank you, Mr. Chairman. Good afternoon.

LARRY CAFERO: Good afternoon, Representative.

REP. ALTOBELLO (82ND): On the case bill, the -- that four times a year, what do you think that means? Does that mean that up to four times a year the comm--, commissioner may authorize a different case configuration for a person or business entity? Is that a registration for the whole year, is that for a month, or is that for a holiday season? What -- what do you think that means or what -- what would you like to see it mean?

HB5428

LARRY CAFERO: I think that the -- it would give discretion to the commissioner to put a time limit on it. I think it would mean for any one given entity that the commissioner could make these exceptions and if you -- to me the way I read the bill and the way we had discussed the bill when -- when industry folks, stakeholders were discussing it it was only if the amount of -- in the case there's a lesser than the amount stated in statute.

Another words, if statute calls for a 12 bottled case of a certain size of alcohol or wine or whatever, you couldn't make it a 15 bottled case. But if you had to make it a ten bottled case because of the shape of the wine, you may do that.

I'm thinking, as I said before, there was a couple of instances where during the course of the year a particular manufacturer and a particular brand was celebrating an anniversary, they had an anniversary special made bottle --

REP. ALTOBELLO (82ND): Crystal bottle.

LARRY CAFERO: -- that kind of thing and so I don't foresee it happening on a -- on a regular basis, but there has been occasions and I believe this -- this bill gives a -- a process by which that can happen.

REP. ALTOBELLO (82ND): Sure. A special Waterford crystal decanter type of thing, right? If you needed that, 12 of those would be extremely expensive and also the packaging be a lot different --

LARRY CAFERO: Right.

REP. ALTOBELLO (82ND): -- just to protect it. Do you think this -- the language that we had before us means that this entity or person would have to ask permission each year? Would it expire?

LARRY CAFERO: I think -- the -- the plan is that it would expire. I -- I -- and I think they would -- I mean it's vague here but I --

REP. ALTOBELLO (82ND): Very vague.

LARRY CAFERO: -- I think the -- the idea was that if you got permission for that special bottle it was sort of a limited permission that would expire at some time and that if that they continued to sell the bottle in that configuration or that size, I would interpret this to mean they'd have to go back and -- you know, when -- when that time limit expired, go back and request it again.

But in talking with some of the people in the supplier and manufacturer world who would have requested this, I don't think that's intention to just have an ongoing brand that has that.

They're going to speak I'm sure later on today and they could be better -- better answer that. From the wholesaler's perspective that was not our understanding. This was sort of a -- a rare and unique case that might happen a few times a year which we understood the reasons for allowing it to happen.

REP. ALTOBELLO (82ND): And regarding 5430, I agree with you it's very bare bones. That's the -- we -- occasionally we do have auctions in Connecticut of alcohol and liquor, they're -- they're done by the state of Connecticut when they end up seizing something and they end up with the cash, but at that auction they don't auction it to the general public. You have to have a valid -- they have to be a permittee. You'd have to have a permit.

I agree with you that it's very scary to just have anybody walk up and buy whatever it is that they want at an auction or to -- or to go through a retailer -- I think you -- you mentioned retailer, but it could be a restaurant, it could be a club, it could be a coliseum permit holder. I mean it could

there's going to be concerns from all the vested parties, so the fact that we actually can study this and get some real detail, and then sort of based our decisions based on fact with real data, will be -- will go a long way towards trying to help you and your entity to be profitable as well as achieve the goals of the state. So from that perspective we're hoping to do just that.

WAYNE PESCE: Well I appreciate Representative Rutigliano trying to help me out, so thank you. I just wish I could have answered it correctly.

CHAIRPERSON LEONE (27TH): I think you're both on the same page. Are there any questions? Okay, you're all set. Thank you.

WAYNE PESCE: Thank you so much for your time today.

CHAIRPERSON LEONE (27TH): Okay, next on the list, Dwayne Kraft then followed by Allison Gamber.

DWAYNE KRAFT: Good afternoon, Chairman Leone, Chairman Baram, members of the Committee, my name is Dwayne Kraft, I work for Diageo, Diageo's North American headquarters is in Norwalk, have 600 employees and effective tomorrow I will be an eight year resident of Milford. My start date eight years ago was March 9th.

I'm testifying in favor of House Bill 5428. My industry colleague, Larry Cafero did a fantastic job earlier and I very much appreciate his support and the wholesaler's support.

Why are we here? Connecticut is one of a small handful of states that have a pre--, prescriptive law in terms of how many bottles need to be in a

case. So in the case of your 750, it's 12 bottles.

The other two or three states that have the similar law have -- have an out, have a mechanism and quite frankly that's what this bill does. It does gives - - gives us a mechanism when something out of the norm comes up with -- with regard to the case configuration and that mechanism is to seek an exception -- exemption from a DCP chair.

Two years ago we had a commemor-- , commemorative Seagram's bottle, it was a really cool bottle. It only -- the box only held nine bottles. DCP wanted to be helpful but, you know, they said we just don't have authority to grant you an exception, so that's what this bill would do. Give us an opportunity.

This bill does not do anything with pricing, this bill does not do anything on quantity discounts. Money discounts still are not allowed in this state and -- and, in fact because the -- the language, the law is the way it is, it's kind of a -- and -- and it's probably the reason why it's still on the books, it's kind of a secondary way of preventing quantity discounts.

The way the law's written again for 750, 12 bottle that's the definition of a case. Someone would not be able to do a hey we're going to offer a 300 bottle case. That would clearly be against the law. So this keeps the -- the -- the probable intent for the law to still exist intake the language allowing four times provides some flexibility to suppliers while also not creating a, you know, every day you're going to have craziness going on.

So with that, I'm happy to take any questions and I appreciate your support and -- and talking to many

of you prior to this.

CHAIRPERSON LEONE (27TH): Yes. Let me open it up for questions and then I'll follow-up. Rep--, Representative Altobello.

REP. ALTOBELLO (82ND): Thank you, Mr. Chairman. Good afternoon. This four times, do you consider that -- what do you think that means? Four times the lifetime, four times a year? Four times a quarter? Four times a month?

DWAYNE KRAFT: Well it -- it -- it -- it's a great question. I mean, we'll -- we'll probably work it out with DCP. I can tell you and you'd ask earlier with regard to a special holiday. That package, I mean, October, November, December is our key selling. That's -- that might be when something happens. So in that case the request -- the request would be -- we have this package that's coming in, it's going to be on the market in October, it'll be out on the market, you know, December 31st, please approve it.

In the other case -- and it is in my testimony, when we went to PET for our 200 mL Crown Royal bottle, the 200 mL have to be, by law, 5048. Our -- our box only fits 44, so in that case we're going to ask -- we're going to ask for an exception. Now if DCP tells us, okay, you're good, fine. If DCP tells us you're good but you got to come back next year and ask for it again, that's fine too.

REP. ALTOBELLO (82ND): Yeah, and that's kind of a pain, so.

DWAYNE KRAFT: It's -- it's a nice letter and I live 50 minutes away from -- from Hartford, so I can hand

deliver it and -- and ask them.

The -- the key -- the -- the -- the -- it's--

REP. ALTOBELLO (82ND): What I'm looking for here is do you have any suggestions as how we can make this bill --

DWAYNE KRAFT: I -- I -- I think it works. I -- I -- I think it works. I mean it's -- it's flexible and yet it also is (indiscernible) because wholesalers -- wholesalers already are dealing with thousands of SKU's. What do they want to have is -- is the floodgates open and -- and someone say, well, all of a sudden we're going to offer this in a six bottle case and then a 12 bottle case, a six bottle cases and then you have duals and triples. That'll -- that'll -- that -- limiting it this way I think -- I think is fine.

REP. ALTOBELLO (82ND): Tell you what. You're happy, I'm happy, how's that?

DWAYNE KRAFT: I -- I -- I can work with this. I will tell you the other interesting thing about the language it -- it also updates a Connecticut law to the actual container sizes. We all still -- many of us still talk about pints and gallons but I -- I guess that was the only thing that President Carter was successful in converting to metrics and that's a -- for distilled spirits and wine bottles.

REP. ALTOBELLO (82ND): The -- the industry during the whole conversion process and trying to educate our consumers it was a nightmare.

DWAYNE KRAFT: Yes, sir.

REP. ALTOBELLO (82ND): And the only thing that ended up being converted were several road signs around the country and which they later took down. But it's still a -- and --

DWAYNE KRAFT: And up in Vermont and Maine because you have Canadians there.

REP. ALTOBELLO (82ND): Give me a quart. We don't sell quarts anymore.

DWAYNE KRAFT: That's right.

REP. ALTOBELLO (82ND): What? Where are we, Canada? No, and it's not a Canadian (indiscernible). Thank you --

DWAYNE KRAFT: No, sir.

REP. ALTOBELLO (82ND): -- sir, thank you, Mr. Chairman.

CHAIRPERSON LEONE (27TH): Thank you. I -- I still think we're trying to learn the metric system today, so we still have a long way to go.

Any -- Mr. Chairman, yes?

CHAIRPERSON BARAM (15TH): Thank you and good to see you.

One quick question. It was eluded to earlier. If you're given the variance by the commissioner to alter the case for a particular event, is there any restriction on how many cases are produced or the length of time they can be sold? So, for instance, if you produce the million cases but were only able to get rid of, you know, 10,000 during that period

of time, is -- is there any realistic expectation that these things could be sold throughout the year?

DWAYNE KRAFT: Well, in the case of like the Seagram's container, that was going to be an in and out probably a three month. In the case of our 200 mL Crown, that is a permanent -- a permanent change.

When we went to the PET, the size of the bottle was slightly different, so we don't sell the 200 mL Crown Royal in the state of Connecticut so I would -- I will, you know, depending on what feedback we get from the commissioner if this bill were to pass, we would either request a one time and we're good or if he says, you know, this is one of your four and you've got to ask every year, I'll be fine with that too.

CHAIRPERSON BARAM (15TH): So in all likelihood the way the bill is -- is drafted, it would be within the discretion of the commissioner to decide the length of time and so on. Thank you.

CHAIRPERSON LEONE (27TH): Thank you. And -- and Dwayne, just to be clear, this would be say, with the current language, four times a year for the exception and that would be for all products that say your company would sell, not per brand four times, right?

DWAYNE KRAFT: It's a good question. Correct. That's a great question. So I mean that -- and -- and -- and we're fine with that. I mean again we're not talking about this happening a lot.

CHAIRPERSON LEONE (27TH): So it would be for holidays or an anniversary year of like the product and so forth?

DWAYNE KRAFT: Likely, likely, likely, yeah.

CHAIRPERSON LEONE (27TH): Okay. Representative Ruti--, Rut--, Rutigliano, sorry.

REP. RUTIGLIANO (123RD): That's okay. Thank you, Mr. Chairman. Hey Dwayne.

You're saying for all of Diageo, four times a year, not Seagram's, not --

DWAYNE KRAFT: Correct. Yeah.

REP. RUTIGLIANO (123RD): The whole company. And --

DWAYNE KRAFT: Well -- well let me -- actually let me -- let me back up. This law only impacts (indiscernible) so cordials, wine and beer are not part of this law. So only Diageo's spirits and we're fine with that. We're not going to have more than times.

REP. RUTIGLIANO (123RD): Okay. And is it applied to -- is the case of (cough) to both on and off premise, or is it -- can you exclude who purchases the case?

DWAYNE KRAFT: Boy, I don't think so. I mean because we're going to be selling that product to our wholesaler and then our wholesaler will be posting that product and -- and that wholesaler sells to both on and off, so in the case of the 200 mL, that is the case that we sell in this state and -- and, you know, if you're an on premise that wants to buy -- so.

REP. RUTIGLIANO (123RD): There are certain case

counts that are only available --

DWAYNE KRAFT: No, sir. Not that I know of.

REP. RUTIGLIANO (123RD): Oh it might be the beer guys but we'll get into that later. Thank you.

CHAIRPERSON LEONE (27TH): I'll be looking for that special (indiscernible) case when it comes out.

Representative Rovero.

REP. ROVERO (51ST): Thank you, Mr. Chairman. I heard my fellow representative say that if you're happy he's happy but I'm in the corrugated box business. I'm not very happy.

DWAYNE KRAFT: We're still selling the box, sir.

REP. ROVERO (51ST): Thank you, Mr. Chairman.

CHAIRPERSON LEONE (27TH): Thank you. Any other questions? Okay, we're all set. Thank you.

DWAYNE KRAFT: Thank you.

CHAIRPERSON LEONE (27TH): Okay, next up is Allison Gamber, followed by Ken Ferrucci.

ALLISON GAMBER: Good afternoon. Good afternoon Senator Leone, Representative Baram, Representative Carter, members of the General Law Committee, my name is Allison Gamber and I am the associate director of the Epilepsy Foundation of Connecticut. I am here today on behalf of the 60,000 people in Connecticut who have epilepsy to support Raised bill 5434. This bill would ensure timely access to epilepsy medications by exempting Schedule 5, non-

DIAGEO

**TESTIMONY IN SUPPORT OF HOUSE BILL 5428,
AN ACT CONCERNING CASE BOTTLE QUANTITIES FOR CERTAIN
ALCOHOLIC LIQUOR**

**DWAYNE A. KRATT
SR. DIRECTOR, DIAGEO – NORWALK, CT**

Good afternoon, Senator Leone, Representative Baram and members of the General Law Committee. My name is Dwayne Kratt and I am the senior director for state government affairs at Diageo. I work with more than 600 colleagues at our North American headquarters which is located in Norwalk, CT. Diageo is a leading player in the alcohol beverage industry with premium brands in beer and spirits alcohol beverage categories.

I am here today to testify in support of HB 5428, An Act Concerning Case Bottle Quantities for Certain Alcoholic Liquor. We very much appreciate the committee for raising this bill.

Why are we requesting this legislation?

In 2014, we introduced a special commemorative 750 ml Seagram's 7 bottle which was packed as a 9 bottle case instead of the customary 12 bottle case. Also in 2014, we began to pack our 200 ml Crown Royal bottles in 44 bottle cases rather than the customary 48 bottle cases. The reason why we converted to a 44 bottle case for this product was because when we changed from a glass bottle to a PET bottle on the 200 ml container, the PET bottle did not fit into the 48 bottle case box.

Under current law, both of these containers are prohibited from being sold in Connecticut because Connecticut law defines what constitutes a case of spirits and only spirits. A handful of other states also define a case but those states also allow the regulatory authority to grant a waiver for odd size cases.

Simply put, the substance of this legislation gives the Commissioner of DCP the discretion to grant a waiver upon request.

Why does the law exist in the first place?

Since this provision applies only to spirits, it is not readily apparent why this law exists. We presume that this law exists to prevent quantity discounts. Without this law, a supplier conceivably could offer for sale a 100 bottle case and suggest a lower per bottle charge to retailers for that case than a customary 12 bottle case. To that end, we recognize the rationale for the law.

What does the legislation do?

HB 5428 would amend Conn. Gen. Stat. §30-1(6)(B) by adding a phrase to the definition of a case giving the Commissioner of Consumer Protection authority to grant an exception:

or fewer, with the permission of the Commissioner of Consumer Protection,

Had this provision been in the law in 2014, we could have sought a waiver from the Commissioner and presumably would have been able to sell the commemorative Seagram's bottle in Connecticut just as we were able to sell it in the other 49 states. Hopefully with passage of this legislation, the Commissioner will grant us permission to sell the 200 ml Crown Royal product in a 44 bottle case.

Finally, the legislation also updates the standard spirit bottle volume sizes that are permitted for sale in the United States by the federal Tax and Trade Bureau. While many of us may still refer to a 750 ml container as a "fifth", federal law no longer recognizes that classification.

Thank you again for raising this legislation and giving it your consideration.

DIAGEO

TESTIMONY IN SUPPORT OF HOUSE BILL 5428, AN ACT CONCERNING CASE BOTTLE QUANTITIES FOR CERTAIN ALCOHOLIC LIQUOR

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