Bill as Introduced

SB 348 - AS INTRODUCED

2002 SESSION

02-3073
06/09

SENATE BILL ***348***

AN ACT clarifying the duties of the liquor commission.

SPONSORS: Sen. D'Allesandro, Dist 20

COMMITTEE: Ways and Means

ANALYSIS

This bill clarifies the duty of the liquor commission to maintain proper controls.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 348 - AS INTRODUCED

02-3073
06/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Two

AN ACT clarifying the duties of the liquor commission.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Duty to Maintain Proper Controls Clarified. Amend RSA 176:3, II to read as follows:

II. Maintain proper controls ***for the sale, distribution, advertising, and marketing of liquor and beverages and for the licensing of persons granted authority by the commission to engage in the sale of liquor and beverages.***

2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Date: January 23, 2002
Time: 10:15 AM
Room: SH 103

The Senate Committee on Ways and Means held a hearing on the following:

SB 348 clarifying the duties of the liquor commission.

Members of Committee present: Senator D'Allesandro
Senator Barnes
Senator Gatsas
Senator Eaton
Senator Hollingworth

The Vice-Chair, Senator John S. Barnes, Jr., opened the hearing.

Senator Lou D'Allesandro, D. 20: Handed in written testimony. ***See Attachment A and B.***

The Chairman of the Liquor Commission is here to speak to this issue and also to speak to another issue regarding the training program that we put in last session. So he will be here to address both of those items and will offer further amendment.

Thank you very much for your consideration. There are others who will be speaking about this piece of legislation after and I will try to answer any questions that you might have.

Senator John S. Barnes, Jr., D. 17: Thank you. Any questions from the Committee? Yes, I have one Senator.

Senator Lou D'Allesandro, D. 20: Yes?

Senator John S. Barnes, Jr., D. 17: What's going to happen to Senate Bill 388?

Senator Lou D'Allesandro, D. 20: 388?

Senator John S. Barnes, Jr., D. 17: Yes. Itself, if we adopt the amendment – it will replace 388.

Senator Lou D'Allesandro, D. 20: Senate Bill 348 is the bill and I have passed out an amendment to everyone and I have amendments for the Clerk and what happens is the amendment totally replaces the bill.

Senator John S. Barnes, Jr., D. 17: I'm sorry, I don't have 348 in front me. I was looking at another piece of legislation. Thank you.

Senator Lou D'Allesandro, D. 20: Thank you.

Senator John S. Barnes, Jr., D. 17: I will call on John Byrne, Commissioner of Liquor.

John Byrne, Chairman, Liquor Commission: Thank you very much Mr. Chairman, members of the Committee. For the record my name is John Byrne. I'm Chairman of the New Hampshire Liquor Commission.

There are two issues here and I'm going to reverse them from the testimony of the sponsor, Senator D'Allesandro, if I may. The Senator and I had a conversation back in November. You may remember you passed Senate Bill 76 last year which required mandatory training for new licensees in the state of New Hampshire. That bill was passed and the program is working very well. We have licensed over 120 new licensees since that became effective in September. They all have attended training programs. We have training programs that go on a bi-weekly basis so they are available. The way that the law was written was to allow them to attend training 45 days in advance and 45 days afterwards. It seems to be very accommodating to them.

We needed to write rules. We wrote rules. We went to the Rules Committee in the Fall. The Rules Committee – the lawyers – identified a problem with the law being in conflict with the Administrative Procedures Act, 541-A. The law allows – the current law allows the Liquor Commission to suspend a license on any new licensee who does not attend training at the end of the 45 days after the issuance of license. Administrative Procedures Act requires that before the Commission suspends a license it holds a public hearing. That is a conflict to what we believe was the intent of the legislation that the licensee has a chance in the 90 day period to go to the licensing – we work with them. We're talking to them almost every day – anybody who's getting toward the end.

So, the conversation between the Senator and I was how do we fix this conflict and the conversation was do we do it through rules? Really we believe it should been statutorily rather than permanent rules. We will have a hearing on February 7th for – we have an interim rule, they adopted it. The permanent rules are due on February 7th.

I'd like to offer an amendment to 178:2, which is the law establishing the licensing which merely would make this law – the amendment, section V, the last section there and what that would do is just memorialize in the RSA the intent of the Legislature and this piece of legislation that if a licensee does not attend that we can suspend their license without a hearing. ***See Attachment C.***

The process is as they come close to – if we suspend their license obviously within the next few days there's a training session, they go to the training session, they get their license back. I think the intent of the Legislature was that if you're going to get a license to sell alcoholic beverages you need to go to training before you start selling it. So, that's the amendment that we're offering.

The other amendment that has been proposed on beer, this is an issue that the Commission has dealt with the industry on for two summers. It first reared itself two years ago on Memorial Day weekend and then again on July 4th weekend and the beer comes in New Hampshire and some large retailers were selling beer below cost. We had several independent licensees call us up and for various reasons in the State – it was all over the State – wondering how people could sell below cost. There was no prohibition to sell the product below cost. We looked into it. We were satisfied in auditing a few of the retailers that the product was purchased legally through distributorships in the State. It was a loss in deed for them.

Again this summer the situation happened and we had a couple of independents come to the commission. They asked us to adopt rules to prohibit this practice. We told them at that time the Commission did not feel that we could adopt rules and that this would need a legislative policy intent of the law and we directed them – the discussion was *"other commissions write rules, why don't you write rules?"* We said *"we don't write rules unless the RSA say we can write a rule in relationship to this."* So, we got ourselves to come here and put the issue in front of the policy makers of the State, the Legislature, and let you make the decision.

That's the long and short of that issue and I'd be glad to answer any questions the Committee may have.

Senator Lou D'Allesandro, D. 20: Senator Barnes?

Senator John S. Barnes, Jr., D. 17: Commissioner, having been a licensee at McDonalds, I was painted sometimes out of the big branch of the big company, however, I was a small, independent businessman and what I sold

my product for varied from other McDonalds in the system but as a small, independent businessman trying to make a living, they couldn't tell me what to sell my product for. Along those lines, isn't it true that some of these – let's use the store in Raymond, a Texaco gas station, that Texaco gas station has a Texaco in out there and this fellow sells a lot of beer. I don't know whether he's selling at cost or below cost but he isn't Texaco. He's an individual busting his fanny working 14 hours a day to make a living and I don't think we should come in and tell him what he should sell his product for. Would you believe I have that kind of a problem telling people what they should be able to sell for their product and I think a lot of these small places out there – what's going to be next? The fellow down here, the Irving Station – I believe it's Irving and the gas is probably the best price in the area and I stop to fill up because I'm kind of cheap and I like the inexpensive gas. I go in there and I see Coke and Pepsi selling for prices that I cannot believe. Now, are we going to come in with a bill next week to tell him he can't sell his Coke and his Pepsi at those low prices? Gee, would you believe I have a problem with fixing prices on stuff? I think America is America and you have an opportunity as a businessman to run your business without the State telling you what you can charge for something. I have a real problem with that.

Chairman Byrne: Knowing you for a few years I can believe that to be true and to be your philosophy.

Senator Lou D'Allesandro, D. 20: Further question?

Senator John S. Barnes, Jr., D. 17: No.

Senator Lou D'Allesandro, D. 20: Senator Gatsas?

Senator Theodore L. Gatsas, D. 16: Thank you. The provision of 541-A, wasn't that – didn't we discuss that in the last legislative session? That was in that bill originally about the suspension of a license. Wasn't that in the original bill and we took it out?

Chairman Byrne: I don't recall that.

Senator Theodore L. Gatsas, D. 16: I don't think you testified. I believe it was your enforcement....

Chairman Byrne: Aidan. No I don't recall that Senator.

Senator Theodore L. Gatsas, D. 16: I think that – we had a problem that you were going to suspend somebody's license because on the 45th day – the

next course wasn't for 45 days and we were concerned that because of a filing period he may have his license suspended because the class isn't within the timeframe. I know we had that general conversation in here and my belief is that provision was in the original legislation and we pulled it out.

Chairman Byrne: I'm at a – I don't recall that. I wasn't as intimately involved with the passage of this bill as you were and Aidan Moore, Chief of Enforcement. It – even if it was in there and the intent is to pull that out, it will – we are now giving respective licensees 90 days rather than 45 days. The Commission has decided even though the law is written that the licensee will attend a training program within 45 calendar days of the issuance of the license, we have ruled that if they attend a hearing 45 days prior to the issuance it will suffice. We are giving them 90 days.

If we go by strict construction of this and my experience on the Commission of what licensees will do, this will be a very small – like I said, we have very few people not attending these but there are always one and two who will push the envelop. They'll come to 45 days and they will have every excuse in the book not to attend a training session, meaning they really don't have respect for the law and learn the law and how they should be distributing and selling alcoholic products. Then they'll find some very nice, sharp lawyer and by the time we hold the hearing we'll be two to three months out. I don't think that was the intent either in passing this bill. I think the intent was to give licensees a legitimate period of time. We have set-up a whole training program that we have on a regular basis all over the State. There really isn't any reason why licensees shouldn't be able to attend within that 90 day period. They know they're going into business to sell alcoholic products, the learn time ....

Senator Theodore L. Gatsas, D. 16: ...I agree with the concept but I believe there was an awful long discussion about revoking licenses in the last session.

Senator Beverly A. Hollingworth, D. 23: Question?

Senator Lou D'Allesandro, D. 20: Just a minute, are you finished?

Senator Theodore L. Gatsas, D. 16: I am.

Senator Lou D'Allesandro, D. 20: Okay, Senator Hollingworth?

Senator Beverly A. Hollingworth, D. 23: Senator – excuse me, Commissioner, you say that right now what you're practicing is 45 days before or 45 days after. Would it be appropriate then, since we are making

an amendment anyway to this section, to say on line A, ***within 45 days of the issuance of a retail license or 45 days prior to licensing...*** so that it does in statute cover the 90 days?

Chairman Byrne: That's fine.

Senator Beverly A. Hollingworth, D. 23: Because – I mean then it's clear that you are giving them a pretty good sized window to go through.

Senator Theodore L. Gatsas, D. 16: I just remember it as being an awful long discussion about this same – I don't know – I believe it was in the original legislation and I think this Committee pulled it out.

Senator Beverly A. Hollingworth, D. 23: I can see where somebody's busy after they get their license. They're trying to run the place. If you give them the 90 days before that might be more convenient for them to do. Are you finding that at all?

Chairman Byrne: I think the 90 day window is sufficient. The 90 day window is – when I asked Aidan to go over it, we've only had one case of 110 and it was 1 day license and the Commission actually came in that day for a wine tasting that evening for a license and by law they have to go through a training and that day the Commissioner sat down with them for 2½ hours in our offices and we went over a special training program and issued them their license.

I think the Commission and the State is doing everything within the 90 days. I think the question that the lawyers are raising is the conflict: is it the intent of the Legislature in passing this law that at the end of 45 days after issuance that if they have not attended for us to be able to suspend their license until they do? That's the clarification.

Senator Beverly A. Hollingworth, D. 23: It's not that they – they don't lose their license totally, they just are suspended until they do?

Senator Theodore L. Gatsas, D. 16: They can't sell beer or wine.

Senator Beverly A. Hollingworth, D. 23: But 90 days?

Senator Theodore L. Gatsas, D. 16: I remember talking about this.

Senator Lou D'Allesandro, D. 20: I think what the discussion was and I want to stay focused, there are a lot of people who want to testify, is that we were concerned as a committee about the individual who missed the training

day and if that individual's license would be suspended because of that. I think you're talking about the 45 days and the 45 days covers that to some extent and that was really our concern. The concern was the person who missed the training session for one reason or another would automatically get their license suspended. We had ample discussion about that....

Chairman Byrne: ...our office discussed when we had these training programs where would they be located?

Senator Lou D'Allesandro, D. 20: ...how often, where would they be?

Chairman Byrne: ...licensing in Berlin, come to Concord. We have developed a whole new training manual, a whole new training program is happening. We're accommodating everybody that's coming in. I think we're talking about the rare exception here of someone who – when they went for a license they knew the policy was there because we notify them four to five times about the fact that they have to go to training. If they get to that 45 day window they made a conscious decision not to do it.

Senator Lou D'Allesandro, D. 20: Senator Eaton?

Senator Thomas R. Eaton, D. 10: My memory serves me that you were very generous in the timing and the number of training sessions offered around the State. What I would like to ask is should this amendment pass, how does the Commission establish a price for selling beer?

Chairman Byrne: Right now, as I listened to the testimony I made some notes, right now all pricing on beverage products are posted with the Commission. That is a posted price for 30 days. That is the price by which distributors sell the price to retailers and a price by which it can be discounted by volume. So in other words, it can be based on the number of cases purchased but that price is available to every single licensee. That is posted with us.

If this policy was go into effect, it would be the posted price and all you would have to do is – if someone's selling less than posted price, then you are in violation of this law.

Senator Lou D'Allesandro, D. 20: Further question? Senator Gatsas?

Senator Theodore L. Gatsas, D. 16: The grocery stores, on wine, do they have the ability to sell it for less than the State.

Chairman Byrne: Yes they do.

Senator Theodore L. Gatsas, D. 16: I guess you know my next question. (laughter)

Chairman Byrne: Sure.

Senator Theodore L. Gatsas, D. 16: The question is is why do they have the ability to sell it for less than the State?

Chairman Byrne: Because there is no prohibition for an off premise licensee in the state of New Hampshire to sell a product at any price in the state of New Hampshire. The prohibition is where they purchase it. If it's beverage, they have to purchase the product through a licensed, wholesale distributors or if it's wine, through the Liquor Commission.

Senator Lou D'Allesandro, D. 20: Sort of a follow-up on your question, the key question is, is the State always getting it's price?

Chairman Byrne: With beer, no, with wine – with wine, on premise we sell at wholesale price. The way that is established is we actually establish a retail price and then we give a discount of 20% to an off-trade licensee. So they get a 20% discount off the retail price. There is really no wholesale price other than a discount. If they go into a liquor store and buy any wine, we only give them 15%. They get an extra 5% if they buy from the warehouse.

That's their margin to work on. If they wish to sell it, you could probably walk into any DeMoulas that's right next door to our liquor store at anytime and you might see some wine product that is sold less than our wine products. Absolutely! It is a whole different market. They know their customers, their price and their (cough) but their margin is 20%.

Senator John S. Barnes, Jr., D. 17: That's called competition.

Chairman Byrne: We've had the situation where there has been products sold less than cost. Very rarely. It's only happened twice in the six years that I've been here and we also did an audit of that one too.

Senator Theodore L. Gatsas, D. 16: So they can sell it for less than 20%?

Chairman Byrne: Yes they can, the wine product.

Senator Lou D'Allesandro, D. 20: Further questions of Chairman Byrne? If not, thank you very much for your testimony. David McLaughlin, from Concord?

David McLaughlin: Mr. Chairman, could Floyd Hayes from Aranco join us so we could expedite this along?

Senator Lou D'Allesandro, D. 20: Sure.

Mr. McLaughlin: Thank you. Just briefly...

Senator Lou D'Allesandro, D. 20: For the record, please state your name.

Mr. McLaughlin: Sorry. David McLaughlin, Quick Stop/Aranco Oil.

Floyd Hayes, Aranco Oil: Floyd Hayes, Aranco Oil.

Mr. McLaughlin: Just briefly our concern is when the *big* retailers do sell well below cost it affects our ability to compete. We have 10 stores in the local marketplace, because of their advertising dollars and like I said well below cost we can't compete on the selling level. It greatly affects our profitability to keep those sites open and to grow as a company. That is becoming more of a concern with us. I saw it a lot during the holidays a lot of beer packaging was sold below what I could buy it for. It definitely affected our business at store level which obviously hurts us.

Mr. Hayes: Senator Barnes' point about the Texaco guy working 14 hours a day, you're right. He should be able to sell whatever he wants to sell but the problem is unlike Coke and Pepsi, which you used as the Irving example, you negotiate with those two on your price. The Liquor Commission sets the price. So that guy at the Texaco Station is buying his Budweiser at the same price that Wal-Mart is. That guy is not going to sell below cost but Wal-Mart does. The reason why Wal-Mart does is because they have an inventory there where once they get you into the store to buy that cheap beer, they're hoping you're going to buy something else where they make a big markup. You're guy over – the Texaco guy has a little inventory besides it there, which isn't a big percentage of his sales. He loses in the long run. Short term it's ok. It's the long term why we're here today.

They're not giving the beer away at Wal-Mart because they like the consumer. There's a marketing reason as the Commissioner said why they do that; to get you into that store for thirty cans of beer for $9.99 then at a location where we're selling them for $14.99 to $17.99, we cannot compete. The short term we can. In the long term that customer is eventually going to say *I'm going to Wal-Mart for all my beer needs.* That's a big percentage of sales in our stores and all stores your sales are. Once we lose that main

category, now we're looking at options such as laying folks off, less hours, closing stores. That's the long term not the short term.

Senator Lou D'Allesandro, D. 20: Senator Barnes?

Senator John S. Barnes, Jr., D. 17: I guess my concern is for Wal-Mart too but my main concern for that guy that is working 12, 14 hours a day in his Texaco Station. That's the guy I don't want to put the hooks to and I think by passing this we're putting the hooks to him and I do think America is based on competition and I certainly worked in a very competitive business and I managed to turn a bottom line and I didn't have the State coming in and telling me .... and it bothers the heck out of me. Wal-Mart, I understand but that Texaco guy would have the same problem. I'm sure Wal-Mart sells it cheaper than the Texaco man does. I don't know what percentage of his business is beer but I'll tell you in the summertime I think he sells a heck a lot more gallons of beer than regular gas for the campers up there. I think he's a pretty quick mover of beer. I don't see dust on the cans. When I go in there I put my fingers and there's never been dust on them. I think they're moving pretty quickly.

Mr. Hayes: Senator, we feel that by passing a bill like this we will be ensuring his liability in the future because he'll be there in the long term.

Senator John S. Barnes, Jr., D. 17: He's been there for 10 years now...

Mr. Hayes: Well, this practice that the hyper-markets are .... are just as of recent. We have drugstores doing this now. You've got Osco Drug. You have Rite-Aids. You have Wal-Mart. Soon someday it could be Home Depot if they – I saw the other day that the carpenter come get his wood and his 30 pack at the same time. That's going to cut out the small guy. Eventually the guy that's going to your guy is going to see the dollars.

Senator Lou D'Allesandro, D. 20: We don't have a dialog here. We're having testimony. Further questions, Senator Barnes?

Senator John S. Barnes, Jr., D. 17: No. I'll let it go. I'll say it on the Floor of the Senate when the time comes.

Senator Lou D'Allesandro, D. 20: Further questions for either of – Senator Gatsas?

Senator Theodore L. Gatsas, D. 16: The comparison that used, the $9.99 to $17.99, what's the actual cost for the 30 pack? What is your price?

Mr. McLaughlin: Actually beginning February 2nd the cheapest for Budweiser 30 pack is $15.50.

Senator Theodore L. Gatsas, D. 16: That doesn't matter whether it's ...

Mr. McLaughlin: ....that's 30 cases or more. That's the lowest you can buy, cost wise - $15.50.

Senator Theodore L. Gatsas, D. 16: Is there any number with 200 cases?

Mr. McLaughlin: No. Not on 30 pack.

Senator Lou D'Allesandro, D. 20: Further question? That's the posted price?

Mr. McLaughlin: That's correct.

Senator Lou D'Allesandro, D. 20: That price is posted every 30 days?

Mr. McLaughlin: Yes.

Senator Lou D'Allesandro, D. 20: Further question, that's what you must pay for that item?

Mr. McLaughlin: If I choose to buy – if I buy 30 or more I can pay that. If I'm less than 30, I pay a higher price. I pay $17.00. So I have to have the ability to buy a lot to get that cheapest price, yes. But that is the lowest I can buy it at.

Senator Lou D'Allesandro, D. 20: Further questions? Senator Gatsas?

Senator Theodore L. Gatsas, D. 16: What is the current cost of a 30 pack at Wal-Mart?

Mr. McLaughlin: I can't speak to Wal-Mart. I just recently shopped supermarkets and it depends on the brand.

Senator Theodore L. Gatsas, D. 16: Budweiser?

Mr. McLaughlin: Yesterday it was $16.99.

Senator John S. Barnes, Jr., D. 17: What about Schlitz?

Mr. McLaughlin: I didn't check that. (laughter)

Senator Lou D'Allesandro, D. 20: It's history. Further questions?

Senator Theodore L. Gatsas, D. 16: So that's not less than what you're paying for it?

Mr. McLaughlin: Right now no. Again, it's on promotion when this happens. When you go February 2nd with the Super Bowl Weekend, that's when you'll see the supermarkets and the larger retailers moving into a below cost selling. So they don't – it's not every week. It's on specials and it could run for a month or two months at a time.

Senator Lou D'Allesandro, D. 20: Further questions? Senator Gatsas?

Senator Theodore L. Gatsas, D. 16: Can you tell me what the price of gasoline is at your nearest store to an Irving Store?

Mr. Hayes: Using the Irving Store on North State Street in Concord, $1.17. I believe we're $1.16 to $1.18. Different brand, being Mobil.

Senator Theodore L. Gatsas, D. 16: So they're not the same? You could be selling it for less than what they are?

Mr. Hayes: Yes. Yes.

Senator Lou D'Allesandro, D. 20: Further questions? Thank you very much for your testimony. David Lucas from Strafford?

David Lucas, Mr. Mike's Mini Marts: Good morning. My name is David Lucas. I live in Strafford. I work for Mr. Mike's Mini Marts, Peterborough Oil and I'm here just to reiterate what Floyd and David have already said. We're in support of this.

We market throughout the state of New Hampshire from Northwood, Chichester, the Manchester area up through Loudon as well as Fitzwilliam and up into that area, and Jaffrey. Exactly what they've said has happened. It's difficult to compete on the same level as the big marketers. We all pay the same price but they have a lot of deeper pockets than we do. It definitely impacts not only our beer sales but all of our store sales and in turn, it makes it very difficult to compete with them and we don't see it improving in the future.

Senator Lou D'Allesandro, D. 20: Senator Barnes?

Senator John S. Barnes, Jr., D. 17: Thank you. I love Mr. Mike's because there's one in my district and I've seen them in my travels around.

Mr. Lucas: Thank you.

Senator John S. Barnes, Jr., D. 17: Have you done any work on being able to back up these kinds of – I'm sure your comments are honest. I'm not questioning your honesty of what you're saying but have you got something that can back it up before – and Wal-Mart is the name that I hear coming up – before Wal-Mart started selling the beer at the cheaper price – how did that affect your sales? Moving along you must have records of how much beer you sold and when your (cough) is that because Wal-Mart opened up in Manchester?

Mr. Lucas: I think it depends on the situation and the time of the year. I don't have anything specific with me today if that's your question.

Senator John S. Barnes, Jr., D. 17: Could you come up with something like that?

Mr. Lucas: It would probably be difficult to come up with it. The best example I have is in the Loudon/Chichester area with Wal-Mart in Concord. A couple of summers ago during NASCAR dropped the price to $9.99 and people were literally going with pickup trucks and putting 50, 60, 70 cases of Budweiser in the trucks and bringing them up to the races. Our locations who had all stocked up for the races pretty much sent back hundreds of cases later in the week to the beer companies.

Senator John S. Barnes, Jr., D. 17: Those are the kind of numbers to enter into the record – those are the kind of numbers that I think we need to see.....actual number of sales because of something happening on a certain date.

Mr. Lucas: That may be available but that's the best example I can recall.

Senator John S. Barnes, Jr., D. 17: Thank you.

Senator Lou D'Allesandro, D. 20: Further questions? Thank you very much for your testimony. Laurence Jarvis from Littleton?

Laurence Jarvis, Sandri Oil: Good morning. I'm Laurence Jarvis from Sandri Oil. We operate a single (turn over tape) ...live in New Hampshire but I work in New Hampshire and I see the "big block" retailers bringing numerous problems to numerous communities in building these facilities and

operating these facilities and as a single store operator at his point, I think this is just the beginning and that somewhere along the line there has to be some control over how these retailers who retail.

I experienced a minimum pricing of cigarettes in Massachusetts. I realize we're in a beer forum here, it has not been a detriment but what it does is it puts us all on a level playing field. I'm not sure what happens to these $9.00 30-packs of beer or $12.00 30-packs of beer. Where do they end up? Do they end up in New Hampshire? Are they consumed in New Hampshire? Do they end up in other areas?

My support for this would be that somewhere along the line there has to be some control over mass merchandising because it is making it extremely difficult for the one and two stores and for the future planning of stores. We're not satisfied with one store in Littleton, New Hampshire. We have a nice location in a nice community but we would like to build additional stores.

Senator Lou D'Allesandro, D. 20: Any questions? Thank you very much for your testimony. Ron Toomey from Nashua.

Ron Toomey, Mutual Oil Co.: Good morning. I'm Ron Toomey from Nashua representing Mutual Oil Company. We have a convenience store in Manchester, New Hampshire and we supply other convenient stores throughout the southern tier over to the seacoast and the problem that we're hearing form our dealers and from our own operation is the below cost sale of the – we would call it "regulated" item. I mean basically the State is telling – regulating cost of what this item is and we're just hoping that we could have a little bit of extra support in not allowing people such as the "big block" marketers or the supermarkets to sell it below that cost. It makes it very, very difficult for us to compete in our areas when this is happening.

Senator Lou D'Allesandro, D. 20: Senator Barnes?

Senator John S. Barnes, Jr., D. 17: Do your outlets sell gasoline?

Mr. Toomey: Yes we do.

Senator John S. Barnes, Jr., D. 17: Do you think the State should come in and tell you what you can sell your gas for? Would you be happy with that?

Mr. Toomey: No, because the State doesn't control the price of the product such they control the price of the beer through the beer distributors. It's telling them what they can sell it to us for. No greater break.

Senator Lou D'Allesandro, D. 20: Thank you. Any further questions? Thank you very much for your testimony. Jim Bianco.

Jim Bianco, Bianco Professional Association: I'm Jim Bianco form Concord and I'm representing these fellows and all I want to say is that one of the gentlemen from Keene, Jim Robinson, was not able to come this morning. He couldn't come. He's experiences are similar to these in the Cheshire County area. I want to go on record of saying that they are in support of this bill. These gentlemen did all the testifying, so I will just stop here.

Senator Lou D'Allesandro, D. 20: Thank you very much for your testimony. Is there anyone else who wishes to speak for or against Senate Bill 348 as amended? Mr. Berke?

Mr. Berke: Mr. Chairman, Bruce Berke with the New England Convenience Stores Association and we'd just like to be on record in support of Senate Bill 348 and the proposed amendment too.

Senator Lou D'Allesandro, D. 20: Thank you. Any questions for Mr. Berke? Is there anyone else who wishes to speak for or against Senate Bill 348 as amended? If not we will close the hearing on Senate Bill 348.

Hearing closed at 10:55 AM.

Respectfully submitted,

Merideth Ann Chandler,
Senate Secretary

Attachment A

*a number of pts. in discussion —

Senate Bill 348, relative to the duties of the Liquor Commission
Senate Ways & Means
January 23, 2002

For the record, my name is Lou D'Allesandro, representing Senate District 20. I am here before you to introduce Senate Bill 348, a bill that adds a new duty to the Liquor Commission laws specific to the sale of beer. As the signing deadline was earlier this year, and we have had more time to discuss the legislation with the regulating body, I would like to introduce an amendment to SB 348, amendment # 2221s, which replaces the entire bill. My comments will be specific to the amendment.

It has come to my attention that the competition in the business of selling beer has become a major concern for a number of our small businesses in New Hampshire. The concern that I bring before the Committee today is about large conglomerates coming into New Hampshire and selling beer for a price which is less than it can be bought by small independent retailers. Simply said, large "box" stores are selling beer below cost and it is impossible for smaller New Hampshire businesses to compete. The long term policy implications are problematic, as New Hampshire's economy is dependant on the success of our small businesses.

Specifically, SB 348 would allow the Liquor Commission to set what I would call a "threshold" price for beer. No retailer would be able to sell beer for less than the price established by the Commission. I feel the Commission is well equipped to regulate the price and will be able to ensure that the business of selling beer will continue to be a strong competitive market which serves the consumer's interest. It is my understanding that the Liquor Commission supports this legislation and is willing to take on this additional authority, given they are given the tools to do the job. The amendment includes rulemaking authority for the Commission to address this issue. What is before this Committee today, is the question on whether it should be policy to prohibit the predatory and unfair pricing of beer in New Hampshire. I believe it should.

There are several individual marketers here today to speak to the need for this bill. I believe strongly that we, as the Legislature, need to support our small businesses. Ultimately, if this legislation is not passed, the price to be paid will be paid by consumers, who will have no choices left if smaller businesses are pushed out by larger corporations.

Thank you for your consideration.

Attachment B

Sen. D'Allesandro, Dist. 20
January 18, 2002
2002-2221s
06/09

Amendment to SB 348

Amend the title of the bill by replacing it with the following:

AN ACT relative to the retail pricing of beer.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Beer Price Restricted. Amend RSA 175 by inserting after section 7 the following new section:

175:8 Price Restricted. Retail prices of beer sold under the provisions of this chapter shall not be less than the selling price established by the commission.

2 Rulemaking. Amend RSA 176:14 to read as follows:

176:14 Rulemaking.

I. The commission shall adopt rules, under RSA 541-A, necessary to carry out its powers and duties under this title.

II. The commission shall adopt rules necessary to carry out the intent of RSA 175:8.

III. The commission shall not adopt any rule in conflict with any provision of RSA 541-A.

3 Effective Date. This act shall take effect 60 days after its passage.

2002-2221s

AMENDED ANALYSIS

This bill restricts the retail price of beer to a price not less than the selling price established by the liquor commission and requires the commission to adopt rules to carry out this intent.

Attachment C

178:2 Licenses Authorized; Training Required.

I. The commission may issue licenses to individuals, partnerships, limited liability companies, or corporations but not to unincorporated associations, on application duly made therefor for the manufacture, sale, offer for sale, or solicitation of orders for sale of liquor or beverages within the state, subject to the limitations and restrictions imposed by this title. They shall keep a full record of all applications for licenses, of all recommendations for and remonstrances against the granting of licenses, and of the action taken on such applications. Nothing in this section shall be construed to limit the commission from implementing a filing system for licensees with multiple locations in New Hampshire.

II. Notwithstanding any other provision of law, the commission shall require all persons who hold a retail license under the provisions of this chapter to attend a training program within 45 calendar days of the issuance of the license. These provisions shall not apply to any person who holds a retail license on the effective date of this paragraph. The commission shall provide the training program without additional fees or cost to the licensee. The commission shall adopt rules, pursuant to RSA 541-A, relative to the administration of the training program.

III. The commission shall develop and provide a training program which shall include, but not be limited to, information on state law, alcohol sales practices, criminal and civil liability, and management practices which are intended to reduce access to alcohol by persons under the age of 21 and overservice of alcohol to patrons.

IV.(a) Within 45 days of the issuance of a retail license, the training program shall be attended by:
(1) The proprietor of a sole proprietorship or a manager designated by the proprietor to attend in lieu of the proprietor.
(2) All partners in a partnership or a manager designated by the partners to attend in lieu of the partners.
(3) An officer of a corporation or a management representative designated by the corporation to attend in lieu of an officer.
(4) A member of a limited liability company or a manager designated by the limited liability company to attend in lieu of a member.

V. **Notwithstanding the provisions of RSA 541-A: 30, II,** [t]he commission shall suspend the license of any person who holds a license under the provisions of this chapter for failure to comply with the requirements of paragraph IV. The license shall not be reissued until the required training is completed.

Language - conflict with 541-A | hence the need to enact this - Feb. 7 | rules

Speakers

SENATE WAYS AND MEANS COMMITTEE

Date JANUARY 23, 2002 Time 10:15 A.M. Public Hearing On SB 348 - CLARIFYING THE DUTIES OF THE LIQUOR COMMISSION

Appearing in FAVOR: (Please print) *Please check box at left to speak.*

Speaking?	Name	Address	Representing
☑	JOHN BYRNE	CONCORD	LIQUOR COMMISSION
☑	DAVID MCLAUGHLIN	CONCORD	FRANCO / KWIK STOP
☐	Floyd Hayes	Concord	Granco
☑	DAVID LUCAS	STRAFFORD	MR MIKE'S MINI MARTS
☑	LAURENCE JARVIS	LITTLETON, NH	SUNOCO OIL
☑	RON TOOMEY	NASHUA N.H.	MUTUAL OIL CO
☑	Jim Bianco	Concord	Independent Marketers Council Oil
☐			
☐			
☐			

Appearing in OPPOSITION: (Please Print) *Please check box at left to speak.*

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Committee Report

|SB348 Docket

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Bill Title: (New Title) relative to the retail pricing of beer.

Date	Body	Description
1/2/2002	**S**	Introduced and Ref. to Ways & Means; SJ 1, Pg.5
1/2/2002	**S**	Hearing; January 23, 2002, Room 103, SH, 10:15 a.m.; SC1
2/19/2002	**S**	Committee Report; Ought to Pass, [02/20/02]; SC12A
2/20/2002	**S**	Ought to Pass, MA, VV; SJ 6, Pg.157
2/20/2002	**S**	Sen. D'Allesandro Floor Amendment {2788},(New Title), AA, VV; OT3rdg, MA, VV; SJ 6, Pg.157-158
2/21/2002	**H**	Introduced and ref to Commerce; HJ25, p942
3/5/2002	**H**	Copy to Chairman on Mar 5
3/6/2002	**H**	Hearing Mar 26 10:00 RM302,LOB
4/2/2002	**H**	Subcom Work Session Apr 9 10:00 RM302,LOB
4/2/2002	**H**	(Subcom: Reps Hunt, L Fraser, Keye & Batchelder)
4/10/2002	**H**	Maj Report REF FOR INT STUDY for Apr 17 (vote 16-0;CC)
4/17/2002	**H**	Referred to Commerce for Interim Study; HJ34, p1305

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Docket Abbreviations