

MINUTES OF THE MEETING  
BUSINESS AND INDUSTRY COMMITTEE  
MONTANA STATE SENATE

January 29, 1987

The eleventh meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad at 10:00 a.m. on Thursday, January 29, 1987, in Room 410 of the Capitol.

ROLL CALL: All committee members were present except Sen. Delwyn Gage, Sen. Ted Neuman, and Sen. Mike Walker who were excused.

CONSIDERATION OF HOUSE BILL NO. 30: Representative Les Kitselman, House District 95, Billings, is the chief sponsor of this bill. Because Rep. Kitselman was delayed due to executive action in another committee hearing, he requested that Mr. Roger Tippy, Executive Secretary of the Montana Beer & Wine Wholesalers' Association introduce HB 30. Mr. Tippy stated that there were several persons in attendance who would like to testify in favor of HB 30; therefore, they would testify first and then he would present his testimony and be available for questions.

PROPOSERS:

Mr. Bill Watkins representing the Montana Beer & Wine Wholesalers Association, Missoula, testified in support of HB 30. (EXHIBIT 1)

Mr. Don Brocopp, Intermountain Distributing Co., Billings, urged the Committee's support of HB 30. (EXHIBIT 2)

Ms. Ardelle Watkins, spoke in favor of HB 30. She stated that the beer distributors in Montana are concerned that if the interpretation (by the Revenue Department) allowing trans-shipping continued, many distributors would be forced out of business. She noted that trans-shipping has been happening in Indiana for the last several years and out of 140 wholesalers, there are presently 115. They anticipate that there will eventually be only 50 remaining. She explained that distributors employ over 600 persons in the State. In Montana, 85% of the jobs are lost, historically, if a business merges with another. Mergers often take place when a business is about to go out of business. She urged the Committee's support of HB 30.

Mr. Pete Decker, Fred Briggs Distributing, Billings, spoke in favor of HB 30 and urged the Committee's support. (EXHIBIT 3)

Mr. Robert Zucconi, Zeke's Distributing Co., Helena, stated that he was in favor of HB 30 because they are responsible for picking up and destroying of off-flavored beer. He explained that their companies are small in Montana and they carry a variety of products. He also feels that if HB 30 is not passed, Montana will see the elimination of many small companies. He urged the support of the Committee for HB 30. (EXHIBIT 4)

Mr. Robert Tippy, Attorney and Executive Secretary for the Montana Beer & Wine Wholesalers' Association testified in favor of HB 30 and urged the Committee's support. (EXHIBIT 5)

Mr. Dan Holt, Attorney, Helena, Representing Anheuser-Busch stated that Montana has always had a three-tier system and they believe that HB 30 with the restrictions on transfer from premise to premise and the restrictions on dock sales, strengthens and clarifies the three-tier system which the Montana Legislature has already approved, therefore they would support HB 30.

OPPONENTS: There were no opponents to HB 30.

DISCUSSION OF HOUSE BILL 30: Chairman Kolstad opened the discussion of HB 30 by asking Mr. Tippy to explain the provision making it unlawful for a licensed retailer to transport from one premise to another. Mr. Tippy stated that the present law states that a tavern or independent little grocer may not buy beer from another retailer which is already in the law. There might be occasions where that goes on; for instance, a small grocer may be out of a certain brand late on a weekend night and rather than wait for a truck to come 75 miles, that grocer may borrow the small amount he needs until the distributor is able to come. The department, however, has interpreted the situation whereby one corporation which owns a number of outlets, can transport beer back and forth between their stores legally because there is no transfer of ownership, even though it transfers from one license to another. The Association feels that the Department of Revenue should treat each license independently. Therefore, they should all be subject to the same requirement whether they are part of a chain or whether they are an independent such as a tavern or a mom and pop shop. The amendments just extend the present law into the chain outlet situation.

Sen. Weeding wanted to know how the identity of beer would be maintained if Super America, in Sidney for some reason

or another wanted to transport part of their stock to a branch in Eureka. How is that wholesaler who is supposed to check and verify that stock every seventy-five days going to know where that stock went to or is some other wholesaler going to check that stock. Mr. Tippy answered that the Kalispell wholesalers would be responsible for that territory, and if SA had trucked a number of cases of beer from Missoula up to Flathead County, the wholesaler in Kalispell has the obligation and the wholesaler in Missoula who sold it has no obligation to pick it up if it is stale and needs to be removed and destroyed or whatever. The Kalispell wholesaler may have a suspicion when he finds he hasn't been selling as much as usual to a particular account, but there is no coding on the beer cans so that just anyone could identify them.

Sen. Thayer asked if there would be a loss of revenue if the bill were not passed and the practices continued. Mr. Tippy answered that such situations could arise. The Department of Revenue does enforce one aspect of the wholesalers responsibility with the "come to rest" requirement that beer shipped in from out of state must come to rest in some wholesaler's warehouse, however briefly, and have the taxes paid upon it. When the arrangements such as happen in Indiana where it comes to rest very briefly and then speeds on its way to a super market distribution center, it begins to take more and more effect, and there are opportunities to lose that excise tax. The difference of wages, \$19,000 being what Professor Polzin figured as the average wage of the wholesaler in this industry, compared to about \$9,000 in retail and the difference in property taxes and others paid by wholesalers would be losses to the State as fewer and fewer firms survive because of the present situation.

The hearing was closed on HB 30.

EXECUTIVE ACTION ON HOUSE BILL 30: Sen. Williams made a MOTION that HB 30 BE CONCURRED IN. The motion was seconded by Sen. Thayer. The MOTION PASSED UNANIMOUSLY.

CONSIDERATION OF HOUSE BILL NO. 31: Representative Les. Kitselman, House District 95, Billings, is the chief sponsor of this bill. Rep. Kitselman requested that Mr. Robert B. Evans, Timberline Investigations, Kalispell, present HB 31 in his absence. Mr. Evans stated that when the Legislature completely revised the law and created the Board of Private Security Investigators during the forty-eighth legislature in 1983, it caused confusion

about the authority of the Board. They were designated a quasi-legislative board and had been given a great deal of responsibility. The board was not designated a quasi-judicial authority to carry out that responsibility. They have had, since that time, a number of challenges. HB 31 was coordinated to give the Board authority clearly by statute to carry out the functions that have been enumerated in the issues that will be addressed in HB 68. He urged the Committee to support HB 31. (EXHIBIT 6)

Mr. Clayton Bain, Chairman, Board of Private Security Patrolmen and Investigators, testified that HB 31 was originally drafted by the MPI&S Association last October and brought to the Board for approval. The Board heartily endorsed it. It gives them more authority to enforce the laws as are presently written.

OPPONENTS: There were no opponents to HB 31.

DISCUSSION OF HOUSE BILL NO. 31: Chairman Kolstad called for questions from the Committee and asked Mr. Bain how HB 31 expands the Board's flexibility. Mr. Bain explained that it gives them the authority to act as a quasi-judicial board instead of a quasi-legislative board. He noted that in the past, they would have to get the cooperation of the county attorneys and the district courts to enforce the present law. This has proven to be very impractical. They have been frustrated by this and feel that the quasi-judicial boards are more successful in that area.

Sen. Weeding asked if the Board would then be relinquishing their quasi-legislative authority, and Mr. Bain answered that they would not really be giving up any authority, but gaining more.

Sen. Thayer wanted to know if this was the same bill that was introduced last session and Mr. Bain answered that it is not. The bill last session was an amendment to 37-60 of the MCA. HB 68 deals with the same section as the bill worked on in the last session.

Sen. Williams wondered if Mr. Bain was in the House when they heard it there and whether there were any question asked there that this Committee should know about. Mr. Bain stated that he was there and he knew of no questions that were much different from those asked by this Committee.

Sen. Weeding asked Mr. Bain what additional authority the Board would have under the quasi-judicial authority and Mr. Bain answered that they would have authority to levy fines.

Sen. Thayer asked Mr. Bain why on page 1, lines 20 and 21, that language was in there in the first place. Mr. Bain stated that was what the Association came up with originally and they have compromised on the bill to change it back to the original representation that is on the bill, and they have acquiesced.

Mr. Bain closed the hearing on HB 31 for Rep. Kitselman by stating that HB 31 is a bill which the Board feels will give them the proper amount of authority to do their job better. He stated that it was endorsed by the industry and also by the law enforcement people who did appear in support of it when it was heard in the House but could not be at this hearing. He urged the Committee's support of the bill.

CONSIDERATION OF HOUSE BILL NO. 68: Mr. Clayton Bain, Chairman, Board of PSP&I, presented HB 68 on behalf of Rep. Les. Kitselman, House District 95, Billings who is the chief sponsor for the bill. Mr. Bain noted that HB 68 was also prepared by the industry and brought to the Board last October. The Board has endorsed the bill with a few changes that were made in the House. He pointed out that on page 16, line 7 there is a printing error. The word registration should have been stricken. The bill gets rid of much of the redundant language that existed in the 1983 law, clarifies, and closes some of the loopholes the industry has had problems with. On page 20, line 23, where it states, "peace officers casual employment", it was amended in the House at the acquiescence of the industry and law enforcement to include language which exempts a law enforcement officer from licensing provisions only if the casual employment is authorized in writing by the sheriff or chief of police. Mr. Bain explained that there has been much controversy in trying to determine who is responsible for a police officer or deputy sheriff when they are working as a private security guard on their off time. In some areas they are working on the authorization of the sheriff or chief and in other places they are not. This amendment clarifies that so when the chief or sheriff authorizes it in writing, then it is known definitely that the agency is responsible for that person when he is working in the private security area. This has been conceded by law enforcement and the

private industry and the Board heartily endorses it.  
(EXHIBIT 7)

PROPOSERS: Mr. Robert B. Evans, Timberline Investigations, Inc., Kalispell, and President of Montana Association of Private Investigators and Security Operators presented testimony in favor of HB 68. (EXHIBIT 6)

Rep. Kitselman stated that HB 68 has been worked on very heavily; however, there is still one area of concern, which is: should there be a differential between the person working as an instore plain clothes employee protecting a store against shoplifting and the uniformed security guard hired to provide security for the entire mall? That is, then, defining what constitutes casual employment. HB 68 clearly specifies who is licensed and who is not. Rep. Kitselman cited a case in Billings in which a woman was arrested for prostitution by an off-duty sheriff's deputy who had the power to make arrests. She was in a motel room with her raincoat on after making one of those little presentations whereby the delivery person does a modified strip-tease, presents you with black balloons, and a little kiss on the forehead. That arrest has put the County of Yellowstone at liable in a false arrest case. If that had been the private contract people who have the power to observe and report, versus the power to apprehend and arrest. There is a very significant difference in what they are doing as an off-duty security person and a law enforcement officer. Rep. Kitselman stated that he feels that is why HB 68 is very important and the roles must be defined. He also explained that private security agencies pay high premiums for liability insurance, and find it difficult to compete when sheriff's auxiliary people come in and do it using a lot of public funds. Furthermore, they expose the entire county to all that liability. He urged the Committee's support of HB 68.

Mr. George Allen, Helena, representing the Montana Retail Association stated that in the opinion of the Association's attorneys, it could be interpreted that any store who apprehended a shoplifter could be construed as being a security officer. Some stores do not want to go through the red tape and everything of having in-store employees licensed. Mr. Allen explained that the two proposed amendments exclude store employees who work for just one employer, doesn't wear a uniform, carry a gun, etc., but they can serve as a security person. They feel

that it clarifies that those employees would not have to be licensed. Mr. Allen asked that it be noted that Mr. Len Eckle, Montana Chamber, had to leave early, but wanted it to be recorded that they endorse the amendments presented by Mr. Allen. (EXHIBIT 8)

DISCUSSION OF HOUSE BILL NO. 68: Chairman Kolstad called for questions from the Committee.

Sen. Boylan wanted to know if the security people could make arrests and, Rep. Kitselman answered that they do not make arrests in most cases, but usually get all the information they can and keep a log to help a law enforcement officer make the arrest instead. Rep. Kitselman explained that in actuality any citizen can arrest a suspicious person, but security persons usually just report and observe.

Sen. Weeding wanted to know about the training requirements and training programs. Mr. Bain explained that the Board has a training program in force presently that requires that all armed private investigators and security guards take firearms training. There are certified instructors throughout the State. He stated that he feels that eventually they will set up additional programs for both private investigators and private security in the areas of their particular fields, and HB 68 authorizes them to do that. He explained further that the persons doing the instruction are either NRA instructors, or law enforcement firearms instructors who are contracting on their own to provide this type of service.

Sen. Thayer asked Rep. Kitselman if he had any problem with the companion bills in the House, and Rep. Kitselman answered that after everyone understood how the bills worked and dovetailed with each other, there was no problem.

The hearing on House Bill 68 was closed.

EXECUTIVE ACTION ON HOUSE BILL NO. 31: Sen. Boylan made a MOTION THAT HOUSE BILL 31 BE CONCURRED IN. The motion was seconded by Sen. Thayer. THE MOTION PASSED UNANIMOUSLY.

DISCUSSION OF THE AMENDMENTS AND EXECUTIVE ACTION ON HOUSE BILL 68: Chairman Kolstad asked Mr. Allen to answer a question concerning the amendments which was brought to his attention by the Committee Researcher, Ms. Mary McCue.

The question was in regard to the insertion of language that is there earlier in Section 2 in the exemptions. Mr. Allen stated that their attorneys felt that it was a way to exclude them. Ms. McCue felt that it would work just as well to refer back to that section. Mr. Allen stated that he had no objection to that and Chairman Kolstad stated that Ms. McCue would rewrite the amendment to reflect that change. (EXHIBIT 9)

Sen. Thayer moved that the Committee ADOPT THE PROPOSED AMENDMENTS to HB 68. The MOTION was seconded by Sen. Meyer. THE MOTION PASSED UNANIMOUSLY. (SEE ATTACHMENT)

Sen. Meyer made a MOTION THAT HOUSE BILL 68 BE CONCURRED IN AS AMENDED. The Motion was seconded by Sen. Boylan. The MOTION PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL NO. 140: Sen. Thayer made a MOTION THAT SB 140 DO PASS. The Motion was seconded by Sen. Meyer and PASSED UNANIMOUSLY.

The next meeting will be on Friday, January 30, 1987.

The meeting was adjourned by Chairman Kolstad at 11:20 a.m.

  
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SENATOR ALLEN C. KOLSTAD, CHAIRMAN



JANUARY 29, 1987

THERE IS NO COMMITTEE REPORT FOR HOUSE BILL NO. 68 INCLUDED WITH THIS SET OF MINUTES EVEN THOUGH EXECUTIVE ACTION WAS TAKEN ON THIS BILL. IMMEDIATELY FOLLOWING THE CLOSE OF THE MEETING I WAS DIRECTED BY THE COMMITTEE CHAIRMAN TO HOLD THE BILL AND THE COMMITTEE REPORT BECAUSE THE BILL WOULD BE BROUGHT BACK INTO THE COMMITTEE FOR RECONSIDERATION. THERE WAS A GREAT DEAL OF CONCERN REGARDING THE AMENDMENTS BY SOME OF THE GROUPS SUPPORTING THE LEGISLATION, AND SEVERAL OF THE COMMITTEE MEMBERS AGREED THAT EVEN THOUGH THEY HAD VOTED TO CONCUR IN HOUSE BILL 68, THEY WOULD LIKE THE BILL PULLED BACK INTO COMMITTEE FOR FURTHER STUDY.

  
CAROLYN A. LINDEN, SECRETARY

BUSINESS & INDUSTRY COMMITTEE

ROLL CALL

BUSINESS & INDUSTRY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 1/29/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN			✓
PAUL BOYLAN	✓		
DELWYN GAGE			✓
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER			✓
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.



EXHIBIT NO. \_\_\_\_\_

DATE

1/29/87

BILL NO.

HB 30

## WITNESS STATEMENT

NAME Bill WatkinsBILL NO. 30ADDRESS 1200 Shakespeare, Missoula, Montana 59801DATE 1-07-87WHOM DO YOU REPRESENT? Montana Beer & Wine Wholesalers Assn.

SUPPORT

X

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

1. A state law enacted in 1974 (code sections 16-3-221 and 16-3-222, see Exhibit A on the back of this statement) requires each brewery licensed to operate in Montana to appoint its wholesalers with the sole rights to distribute some or all of its brands of beer in a designated territory.

2. My company, Zip Beverage, holds such appointments from several breweries or importers for all or parts of six counties in the Missoula area. Our Anheuser-Busch, Inc. equity agreement (see Exhibit B attached to this statement) makes us responsible for distributing the Budweiser and Michelob beer brands in all of Missoula, Ravalli, Mineral, Sanders, and parts of Lake and Powell counties. By virtue of the law mentioned, all beer wholesalers in Montana hold similar territorial appointments for their beer brands. There is no such law for the wines we carry.

3. Beer is a perishable product. The breweries code the date a can of beer is filled on the bottom in order that its shelf life can be determined. The wholesaler, in turn, is required to look at the code and see that that can is off each retailer's shelf within 90 to 110 days after the fill date. If we don't pull the old beer the consumer and the brand's reputation is harmed. Without the territorial franchise, quality control is impossible. The territorial responsibility system serves the public, but we need House Bill 30 to continue to provide quality beer to satisfied consumers.

- (4) cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 shall be a part of any franchise contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or beer importer doing business with



# Anheuser-Busch, Inc. Wholesaler Equity Agreement

Commencing on the date on the signature page on which Anheuser-Busch executes this Agreement, Anheuser-Busch, Inc. ("Anheuser-Busch") agrees to sell and the undersigned Wholesaler ("Wholesaler") agrees to buy such malt beverage products as are listed on the Wholesaler Information Sheet, Exhibit 1 hereto (such malt beverage products being herein referred to as "Products"), pursuant to the following terms and conditions:

## 1. TERRITORY

(a) Anheuser-Busch and Wholesaler recognize and agree that it is essential to their mutual objectives under this Agreement that Wholesaler at all times maintain the financial and competitive capabilities necessary to achieve efficient and effective distribution of Anheuser-Busch Products in Wholesaler's sales area and to assure continued protection of the high quality and integrity of Anheuser-Busch Products. In order to:

- (i) enable Anheuser-Busch and Wholesaler to more effectively compete with the products of other brewers in Wholesaler's sales area;
- (ii) assure that the quality and integrity of Anheuser-Busch Products are constantly maintained recognizing that such Products are perishable, that it is vitally important that over-age Products not be permitted to reach consumers and that such Products must at all times be handled properly;
- (iii) induce and enable Wholesaler to make such investments in its operation and facilities as may be necessary or appropriate to maintain and enhance efficiency and effectiveness in Wholesaler's overall marketing efforts;
- (iv) induce and enable Wholesaler to engage in marketing, advertising and promotional efforts in Wholesaler's sales area, provide full customer services, achieve maximum representation of all Anheuser-Busch Products in all licensed accounts in Wholesaler's sales area and actively promote and aggressively market the full range of Anheuser-Busch Products which are the subject of this Agreement;
- (v) assure that Wholesaler develops and maintains adequate and effective local community relations and exercises full responsibility to the community in its operations;
- (vi) foster, promote and maintain an efficient, viable and financially sound system of distribution of Anheuser-Busch Products to the benefit of Anheuser-Busch, its wholesalers and all purchasers of the Products; and
- (vii) facilitate and enable compliance by Wholesaler with the Operating, Sales and Merchandising Standards set forth in Exhibit 9,

Anheuser-Busch and Wholesaler agree as follows:

Anheuser-Busch hereby appoints Wholesaler as the wholesale distributor of, and grants to Wholesaler the right to sell, the Products in the territory described in Exhibit 2 ("Territory") and agrees that it will not appoint another wholesaler for the Products sold by Wholesaler in the Territory. As used herein, the term "Wholesaler" shall not include any person or entity who is engaged exclusively in the sale of the Products for consumption outside the United States. Wholesaler hereby accepts said appointment and agrees to exercise its best efforts to promote, sell and service the Products in the Territory. Wholesaler agrees that it will not sell Products directly or indirectly to customers located outside the Territory; provided, however, that Wholesaler may, subject to the approval of Anheuser-Busch, sell Products to customers located in another wholesaler's territory if that wholesaler is unable for any reason to service its territory. Any breach of the provisions of the immediately preceding sentence shall give Anheuser-Busch the right to terminate this Agreement immediately in accordance with the provisions of paragraph 6 hereunder. Nothing contained herein shall prevent Wholesaler from selling Products to another duly authorized Anheuser-Busch wholesaler for the purpose of eliminating product shortages or inventory imbalances.

(b) If any of the provisions of subparagraph (a) above are or shall be prohibited under any lawful statute or regulation of any state, such provisions of subparagraph (a) shall not apply in such state and, in lieu thereof,

the provisions of this subparagraph (b) shall apply. In such event, Anheuser-Busch hereby appoints Wholesaler as the wholesale distributor of, and grants to Wholesaler the right to sell the Products in the Territory as Wholesaler's primary market area. Wholesaler hereby accepts said appointment and agrees to exercise its best efforts to promote, sell and service the Products in the Territory and further agrees that it shall be primarily responsible for servicing retail accounts in its primary market area with the Products and that it shall concentrate its efforts in that primary market area.

## **2. MANAGER OF WHOLESALER'S BUSINESS**

Malt beverages are unique products sold at retail establishments for consumption off-premise and on-premise. Wholesaler relies upon Anheuser-Busch for the production of quality Products, for support in consumer advertising of such Products, and for the counsel and advice of Anheuser-Busch's field personnel in support of Wholesaler's efforts to achieve maximum market representation of Anheuser-Busch Products in Wholesaler's Territory. The sale of malt beverages requires highly personalized promotion and sales service efforts. Anheuser-Busch relies upon the personal efforts and capabilities of the manager of Wholesaler's operation to aggressively promote, sell and service Anheuser-Busch's Products. (The business of selling malt beverages at wholesale has generally proved to be more successful when the manager of such business has at least some ownership interest.) The parties therefore agree that this is a personal service contract and is entered into by Anheuser-Busch with Wholesaler in reliance upon and in consideration of the personal qualifications of the person identified on the Wholesaler Information Sheet, Exhibit 1 hereto, as Manager of Wholesaler's business.

Nothing contained in this Agreement shall be interpreted as giving to Manager any right to be retained in Wholesaler's employ or as interfering with or limiting the right of Wholesaler at any time in its sole discretion (without obtaining the approval of Anheuser-Busch) to terminate the employment of Manager or to change Manager's duties so that he is no longer managing the business. However, any such action by Wholesaler shall constitute "cessation of employment" of Manager as that term is used in paragraph 3(f) of this Agreement and shall impose on Wholesaler the obligation to follow the procedures set forth in paragraph 3 with respect to the designation of a Successor-Manager.

## **3. DESIGNATION OF SUCCESSOR-MANAGER**

It is important to both Wholesaler and Anheuser-Busch that at such time as Manager becomes unable to or ceases to manage Wholesaler's business, there be a person available to assume the management of Wholesaler's business. In order to plan for such a contingency and to provide for continuity in the on-going management of Wholesaler's business involving the sale of Anheuser-Busch's Products, the parties agree to be governed by the following procedures:

(a) On the Wholesaler Information Sheet, which is attached hereto as Exhibit 1, Wholesaler has designated a Successor-Manager who, in Wholesaler's judgment, would be capable of managing Wholesaler's business at such time as Manager becomes unable or ceases to do so. Wholesaler may request a waiver of this requirement by submitting a statement to Anheuser-Busch which sets forth the specific reasons why such waiver is requested. Any such request for a waiver shall be submitted by Wholesaler at the time it returns this Agreement, signed by Wholesaler, to Anheuser-Busch. By signing this Agreement, Anheuser-Busch has approved such designation or, if no such designation is made, waived this requirement for what, in Anheuser-Busch's sole judgment, is good cause.

(b) In the event Manager becomes unable or ceases to manage Wholesaler's business, Wholesaler shall immediately notify Anheuser-Busch of said fact and the Successor-Manager shall immediately become Manager. If at any time Wholesaler does not have a Successor-Manager who has been approved by Anheuser-Busch, Wholesaler shall immediately notify Anheuser-Busch and, unless waived in writing by Anheuser-Busch for what, in Anheuser-Busch's sole judgment, is good cause, shall appoint a Successor-Manager in accordance with the procedures set forth in Exhibit 3.

## WITNESS STATEMENT

NAME Don Brocopp BILL NO. HB-30  
ADDRESS 1841 Forest Park Drive DATE 1/29/87  
WHOM DO YOU REPRESENT? Intermountain Distributing Co.  
SUPPORT ☒ OPPOSE ☐ AMEND ☐  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

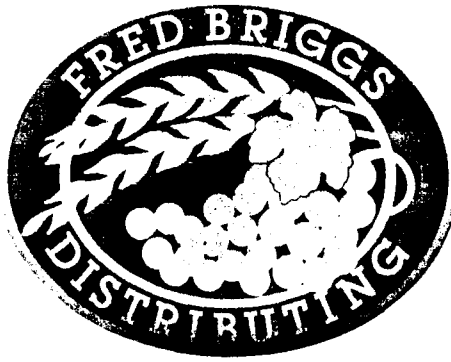
## Comments:

The 3-tier marketing system for beer, set up by the legislature in 1933 and bolstered in 1974, was threatened just two years ago when the Department of Revenue was prepared to issue an interpretation of these laws to the Buttreys supermarkets. Mr. La Faver was on the verge of approving a Buttreys plan to store large quantities of a particular brand of beer on the floor of Buttreys' food warehouse in Great Falls and distribute this beer to the chain's 25 stores statewide through its fleet of grocery trucks.

We beer wholesalers protested long and loud against this interpretation. We put 10,000 petition signatures against this plan on Mr. La Faver's desk. Eventually, a temporary compromise was reached. A beer wholesaler in Butte agreed to warehouse this particular brand, Alpha Beta, for Buttreys, and to ship it to each of the chain's outlets by common carrier or in his own beer trucks. The Department of Revenue agreed to withhold its proposed interpretation until this session of the legislature had a chance to clarify the law. That chance is before you in House Bill 30. Please give this bill your "do pass" recommendation.



Pete Decker  
Billings, MT



SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 1/29/87

BILL NO. 717930

January 28, 1987

1. Our company has 23 employees. Payroll 1986 - 649,021.
2. We represent Miller Brewing Co., Olympia and Hamm's brands of beer. There are 56 packages in our beer inventory.
3. Also, we represent 54 wineries with 866 packages in our wine inventory.
4. We distribute beer and wine to 418 licensed accounts (city 260 - country 158) in 8 counties (see map). Of the 418 accounts 263 are on premise and 155 are off premise.
5. All city accounts are delivered at least once per week - major accounts twice and sometimes more per week.
6. We have 8 country routes - three (Laurel, Red Lodge, Hardin) are delivered weekly. Five routes (Bridger, Columbus, Absarokee, Harlowton, Roundup, Hysham) are delivered every other week.
7. We pre-sell 95% of our accounts.

Domestic and Imported Beers. Fine Wines.

3915 1st Avenue South P.O. Box 1514 Billings, Montana 59103 406 252-2878



lite



Hamm's

**ZEKE'S DISTRIBUTING CO. HELENA, MONTANA 59624**  
**BOX 145      1201 N. Ewing      442-7249**

**SENATE BUSINESS & INDUSTRY**

SOLD  
TO \_\_\_\_\_

DATE \_\_\_\_\_

EXHIBIT NO. 2

DATE 11-9-12

ADDRESS \_\_\_\_\_

REC'D  
BY \_\_\_\_\_

BILL NO. 7830

#	PACKAGE	QTY.	PRICE	AMOUNT
P	½ BBL. DEP.			
A	¼ BBL. DEP.			
B				
S	4/6 N.R.			
T	4/6 CAN			
	12/12 CAN			
	LIGHT ½ BBL. DEP.			
	4/6 CAN			
	½ BBL. DEP.			
O	½ BBL. D. DEP.			
L	¼ BBL. DEP.			
Y	QUARTS			
M	EXPORT			
P	4/6 N.R.			
I	12/12 CAN			
A	4/6 CAN			
	16 OZ. CAN			
	LIGHT 4/6 CAN			
	12/12 CAN			
	GOLD 4/6 CAN			
H	QUARTS			
A	4/6 CAN			
M	12/12 CAN			
M	16 OZ. CAN			
S				
	LIGHT 4/6 CAN			
	BUCKHORN 4/6 CAN			
	LIGHT 4/6 CAN			
	MAXX 4/6 CAN			
I	GUINNESS ST.			
M	½ BBL. GUINNESS ST.			
P	BASS ALE			
O	½ BBL. BASS ALE			
R	HARP LAGER			
T	ST. PAULI LT			
S	ST. PAULI DK			
	MOLSON GOLD			
	MOLSON ALE			
	DOS EQUIS			
	SOL			
	MOOSEHEAD			
	PILS. URQUELL			
	FOSTER LAGER			
	GROLSCH			
	1 LITER DINKEL ACKER			
	DINK. LT			
	DINK. DK			
	KILLIANS			

#	PACKAGE	QTY.	PRICE	AMOUNT
	½ BBL. DEP.			
S	¼ BBL. DEP.			
T	QUARTS			
R	EXPORT			
O	4/6 N.R.			
H				
	12/12 CAN			
S	4/6 CAN			
	16 OZ. CAN			
	7 OZ. N.R.			
	LIGHT ½ BBL. DEP.			
	4/6 N.R.			
	4/6 CAN			
	SCHLITZ 4/6 CAN			
	MALT 4/6			
OLD	QTS.			
M	4/6 CAN			
I	12/12 CAN			
	LIGHT 4/6 CAN			
	LIGHT 12/12 CAN			
	SCHAEFFER 4/6 CAN			
	12/12 CAN			
	LIGHT 4/6 CAN			
	½ BBL. DEP.			
C	¼ BBL. DEP.			
O	QUARTS			
O	EXPORT			
R	4/6 N.R.			
S	12/12 CAN			
	4/6 CAN			
	16 OZ. CAN			
	½ BBL. DEP.			
	LIGHT 4/6 N.R.			
	4/6 CAN			
L	4/6 N.R.			
U	4/6 CAN			
C	12/12 CAN			
K	NEAR BEER			
Y				
C R E D I T	PINTS	@		TOTAL CHGS. TODAY
	N.R.	@		
	¼ BBL.	@		
	½ BBL.	@		
TOTAL CREDITS				
AMOUNT DUE 7 DAYS				

I HEREBY ACKNOWLEDGE RECEIPT OF THE ABOVE LISTED BEER AND I AGREE TO PAY CASH FOR SUCH BEER WITHIN 7 DAYS FROM THE DATE HEREOF, IN CONFORMITY TO MONTANA LAWS.

REC'D ON ACCOUNT  
\$ \_\_\_\_\_

SOLD  
BY \_\_\_\_\_

CHECK NO. \_\_\_\_\_

(AGENT)

## BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

## MONTANA SENATE

HOUSE BILL 30	)	Statement in Support by
Clarifying Wholesalers'	)	Roger Tippy, Exec. Secretary,
Responsibilities in the	)	Montana Beer & Wine Wholesalers'
Distribution of Beer	)	Association.

The testimony of these beer wholesalers is an expression of grave concern for the future of their businesses. They are not here today to ask you, the lawmakers, to give them anything beyond the status quo. Pass this bill and they can continue to operate as they have for many years. Should the bill fail and the present Department of Revenue interpretations prevail, there is nothing to stop an Indiana-type situation from developing here. The loss of jobs in wholesale delivery would not be replaced by jobs as good in the retail sector, and the economy would be the poorer.

Let's talk about section 4 -- the part of the bill setting forth a wholesaler's service obligations to the retailers within his territory. This language restates present practice in almost all situations. A wholesaler's sales people call on virtually 100% of the retailers in his territory every week. They sell and deliver to every retailer who is not delinquent.

We are worried about private label beers or imported beers for which a wholesaler is offered the exclusive distribution rights in a particular territory coupled with the brewer's condition that only certain selected retailers can buy this beer. Section 4 would prevent such unfair, exclusive dealing arrangements by requiring a non-discriminatory sales and delivery policy throughout the exclusive territory which present law requires.

The following set of questions and answers should cover most other aspects of the bill.

1. Q. What's the difference between a beer delivering job for a supermarket chain and the same job with a wholesaler?

A. The differences are pay and sometimes location. UM Professor Paul Polzin found the average wage in beer wholesaling in 1983 to be \$19,000, compared with an average of \$9,1000 in retail trade. And the management jobs in food retailing megafirms are likely to be out of state. After American Food Stores, Inc. purchased Buttreys, they moved 110 executive jobs out of Great Falls this year, down to Salt Lake City.

2. Q. What does the first change in the law do?

A. It extends the current law, which prohibits a bar or independent mom and pop grocery from buying beer from another retailer, to retail chains. Without this change, the Department of Revenue would interpret the present law as allowing a chain to order truckloads of beer for one of its stores, then loading beer on its grocery trucks for distribution throughout its network in the state. That isn't being done now, but it could be done under the Department's interpretations.

3. Q. What do the amendments on dock sales or point of delivery mean?

A. They mean a retailer cannot pick up beer a truckload or more at a time at a wholesaler's warehouse. Retail chains began doing this in Indiana, and soon half the wholesalers in Indiana had gone out of business. Retailers would be able to pick up 3 barrels (about 41 cases) of any particular brand of beer at the wholesaler's warehouse if they needed to.

4. Q. What is the purpose of the section defining service obligations?

A. In 1974 the legislature required breweries to grant territorial franchises to their wholesalers. Since then, the Department of Revenue has issued inconsistent interpretations of what this means in terms of a wholesaler's obligation to the beer retailers in his territory. This section would set out some principles wholesalers believe to be fair. If a wholesaler has the exclusive right to distribute a brand in any part of the state, he should have to sell it to any properly licensed retailer whose credit is good. Some existing brewery appointments may contemplate less than full service in the territory; these would be "grandfathered."

5. Q. How would chain retailer assumption of large parts of the wholesaler's functions hurt taverns?

A. A wholesaler's labor costs per delivered case (or draft equivalent) are greater in taverns than in supermarkets. Wholesalers usually compute a standard markup based on the average labor cost to all retailers. Loss of supermarket accounts will raise the average labor cost per case and the markup to the remaining retail accounts. This will further increase the retail price difference between supermarkets and tavern beer.

Thank you for your consideration of this important bill.

ROGER TIPPY (Tel: 442-4451)

P.O. Box 543, Helena, MT 59624

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 6

DATE 1/29/87

BILL NO. 51468

SENATE BUSINESS AND INDUSTRY COMMITTEE

HEARING ON HB 31 and HB 68

THURSDAY, JANUARY 29, 1987

APPEARANCE AND INFORMATION BY:

ROBERT B. EVANS  
TIMBERLINE INVESTIGATIONS, INC.  
P.O. BOX 1301  
KALISPELL, MT 59903-1301  
(406) 257-1636

President of Montana Association of Private Investigators and  
Security Officers

Member of: National Council of Investigators and Security Services

Member of: California Association of Licensed Investigators

IN SUPPORT OF THE SUBMITTED BILLS

## TESTIMONY IN SUPPORT OF HB-31 AND HB-68

Mr. Chairman and Committee Members:

We wish to express our appreciation for this opportunity to acquaint you with the situation. We hope it will provide an understanding of our concern as small business operators.

### I- BACKGROUND

Private security, including investigators, has become an explosive growth industry in the past seven to ten years. There are now more than 1.2 million persons in the private sector as opposed to about 600,000 persons in the public sector. Montana has come late on the scene. There are only about 400-500 security persons of all types in the state. On an average, these small firms gross between \$35,000 to \$50,000 annually with net income, after expenses and mandatory contributions, of \$14,000-\$15,000.

Prior to 1983 these businesses were licensed and controlled by a Director of Professional and Occupational Licensing under the Department of Commerce. He was responsible for developing and enforcing "reasonable" rules.

Information was quickly and easily obtained, complaints were promptly handled, fees were moderate (application \$25, test \$10, renewals \$10), persons carrying firearms needed only to "comply with all applicable state laws and county and city ordinances." Individual employees did not have to be licensed.

There were 169 license holders of all types. There were 105 investigator licenses and 64 security licenses issued with 31 of the licensees being "dual" operators, making a total of 138 persons or firms. There were only five categories requiring licensure including "alarm installers and monitors." A licenseholder could have employees under his license and supervision without additional fees.

During the 48th Legislature HB523 was passed. This bill completely rewrote Title 37, Chapter 60. It created a seven man Board, attached to the Department of Commerce for "administrative purposes only." The Board is to be fully self-funded from license fees. All costs to the Board, including administrative support, legal advice and support, and advice and support of the Attorney General, are to come from license fees.

On first glance the bill appeared to regulate the private sector in the best interests of the public safety and welfare. In fact it did not! It was filled with exceptions, ambiguities, and omissions. The Board votes to take some action but it is the "responsibility" of the Department of Commerce to carry it out. The Department of Commerce states that actions and decisions are the "responsibility of the Board."

HB 523 became effective law with the Governor's signature April 18, 1983. As enacted, Title 37, Chapter 60 provided 13 specific categories of licensure (but dropped alarm installers) and for the first time required all employees to be individually licensed. Under the new law

hotels, motels, recreational complexes and retail stores having "security" personnel were included.

Peace officers, reserve officers, railroad agents, credit investigators, lawyers and law students were exempted.

During the 49th Legislative session HB 127 was introduced to correct previous problems. The bill eventually signed into law contained even more exemptions and ambiguities.

Exemptions now include "para-legals" and "internal auditors." Alarm installers were subjected to licensure again. HB 127 revising Title 37, Chapter 60 was signed into law in the closing days of the 1985 session, and had an effective date of October 1, 1985.

As of June 20, 1985 there were a total of 254 licenses of all types issued. However, no information was given as to how many were "dual" operators. This was only a gain of 85 licenses in two years. Testimony given to the 1983 legislative committees was that "this law will license 500 persons in the first years, with 1,000 by the second year."

License figures furnished February 28, 1986 were 93 employee licenses and 126 employer licenses for a total of 219 of all types-- a gain of only 50 licenses since 1982 even though many, many more persons were subject to license requirements.

License figures obtained January 5, 1987 are 138 employer licenses and 200 employee licenses of all types. A gain of only 169 over a four year period!

In June 1986 a \$35 assessment for each license was made. In August the Board voted to increase license fees to \$150 for each licensee and each armed employee. These increases amount to several hundred dollars for the small firms to several thousand dollars for intermediate and larger firms. Many will simply go out of business, as they cannot afford the costs.

The forecast budget for operation of the Board has increased from \$23,906 for FY1984 to over \$41,000 for FY1987 with no increase in benefits to the general public, nor to our profession. License application fees were \$25 and annual renewals were \$10 on January 1, 1983. This year applications will cost more than \$100 and annual renewals \$150 for each license. By definition of law most of us must carry both a Security and an Investigators license.

## II- THE PROBLEM:

A. Current law is too vague and ambiguous.

B. Current law does not provide sufficient enforcement authority to force license compliance.

C. Persons in compliance with the law must pay the full cost--in form of fees--of all investigative and enforcement efforts. The Board of Private Security Patrolmen and Investigators has no way to collect any costs from those in violation of the law.

D. Current law contains too many exemptions and "loop-holes" and permits evasion of license requirements. In some cases it has taken 2 to 3 years to force licensure compliance on violators. County Attorneys and other local officials have been extremely reluctant to take action against non-complying firms or persons.

### III- THE SOLUTION

The Montana Association of Private Investigators and Security Operators (MAPISO) has worked diligently for the past eleven months to prepare and coordinate legislative changes to correct inequities and problems inherent in the current law.

HB-68 and its companion HB-31 are the results of these efforts. The bills have been prepared in close cooperation with legislative members, individual members of the license board, and the whole of the Board meeting in formal hearing.

WE STRONGLY URGE THE BILLS BE APPROVED AS SUBMITTED, WITHOUT CHANGES OR AMMENDMENTS!!



NAME: Clayton R. ... DATE: 1-19-87  
ADDRESS: 3955 Canal Drive SENATE BUSINESS & INDUSTRY  
PHONE: 448-9648 EXHIBIT NO. 7  
DATE 1/29/87  
BILL NO. HB 31 & HB 68

REPRESENTING WHOM? Board of Private Security & Investigations

APPEARING ON WHICH PROPOSAL: HB 31 & HB 68

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: The board supports this bill as written.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

8.50.423 DEFINITIONS (1) "Casual employment" means employment which comes about fortuitously and is for no fixed duration of time. An engagement or employment is not "casual" where a person is employed to do a particular service or class of service recurring somewhat regularly, or with a fair expectation of continuance for a more or less extended sequence or period of time, such as every Saturday night, a week, or a month.

This definition does not apply to peace officers or reserve officers performing security guard functions for another governmental agency, or to security of in-custody inmates held elsewhere than at a custodial institution or jail or when private security companies are unwilling or unavailable to provide the service.

All other exceptions under this "casual employment" rule shall be determined by the board based upon the facts presented.

(2) "Dishonorable discharge" means any military discharge which specifically states dishonorable discharge.

(3) "Experience"; the term "year" shall mean 12 average work months (including leaves for vacation with pay) during which the individual was engaged in full time employment. Full time employment is considered to be employment for compensation when the work schedule constitutes at least 1800 hours annually or more. Self employment must be verified by someone that knows of your experience and self employment condition.

(4) For purposes of 37-60-321 (4), MCA, any crime involving moral turpitude means generally anything done contrary to justice, honesty, modesty, or good morals, including acts of baseness, vileness or depravity in the private or social duties which a man owes to his fellow man and to society in general. Such acts include, but are not limited to: assault or evidence of assaultive behavior; assault and battery, larceny or embezzlement, shoplifting, crimes involving fraud or misrepresentation; obscenity; public indecency; any firearm violation; sexual offenses; resisting an officer or legal process; vandalism; aiding in an escape; chronic alcoholism, alcohol addiction, a third conviction of driving under the influence over any five-year period and drug addiction.

(5) For purposes of exemption from licensure under Title 37, Chapter 60, MCA, "insurance adjuster" refers to any person, employed by an insurance company, who is licensed by the state of Montana as an insurance adjuster, who shall be exclusively under the control and supervision of his employer..subject to a master-servant relationship and not as an independent contractor and performs no surveillance activities.

(6) "Unprofessional conduct" means the failure to conform to and abide by all the standards, rules and regulations set forth in Title 37, Chapter 60, Montana Codes Annotated and Title 8, Chapter 50, Administrative Rules of Montana, which regulates the security patrolmen and private investigator professions in

8-1376

6/30/84

ADMINISTRATIVE RULES OF MONTANA

SENATE BUSINESS &amp; INDUSTRY

EXHIBIT NO. 7DATE 1/2 9/87BILL NO. HB 312 TAB 68

NAME: George Allen DATE: 1-29-87

ADDRESS: \_\_\_\_\_

PHONE: 447-3388

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 8

DATE 1/29/87

BILL NO. HB 68

REPRESENTING WHOM? MT Retail Assn

APPEARING ON WHICH PROPOSAL: HB 68

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENTS: Amendments have been turned in

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



Executive Office  
P.O. Box 440  
34 West Sixth  
Helena, MT 59624  
Phone (406) 442-3388

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. \_\_\_\_\_

DATE \_\_\_\_\_

BILL NO. \_\_\_\_\_

First Amendment  
HB 68

Page 6, line 25, after unarmed, ADD and

Page 7, line 1, after uniform, CROSS OFF, and is  
guarding inside a structure which at the

Page 7, line 2, CROSS OFF, time is not open to the  
public;



Executive Office  
318 N. Last Chance Gulch  
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Helena, MT 59624  
Phone (406) 442-3388

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. \_\_\_\_\_

DATE \_\_\_\_\_

BILL NO. \_\_\_\_\_

Second Amendment  
HB 68

Page 10, line 17, after guard, ADD: other than one employed singly and exclusively by any one employer in connection with the affairs of such employer only

Page 10, line 21, after any, CROSS OFF: unlicensed;

Page 10, line 21, after person ADD, required to be licensed

Page 10, line 25, after guard, ADD unless he is licensed.

Amendments to HB 68      Third reading (blue) copy

1. Page 6, line 22.  
Following: "(1)"  
Insert: "(a)"
  
2. Page 7, following line 2.  
Insert: "(b) a person:  
(i) employed singly and exclusively by a retail merchant;  
(ii) performing at least some of his work for the retail merchant as a private security guard; and  
(iii) who has received training as a private security guard from the employer or at the employer's direction;"

# STANDING COMMITTEE REPORT

JANUARY 29, 1987

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 30

THIRD reading copy ( BLUE )  
color

KITSELMAN ( TRAYER )

RESPONSIBILITIES OF BEER WHOLESALER

Respectfully report as follows: That HOUSE BILL No. 30

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

SENATOR KOLSTAD, Chairman.

# STANDING COMMITTEE REPORT

JANUARY 29, 1937

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 31

THIRD reading copy ( BLUE )  
color

KITSELMAN ( MEYER )

CHANGING COMPOSITION OF PRIVATE SECURITY PATROLMEN AND INVESTIGATORS BOARD

Respectfully report as follows: That HOUSE BILL No. 31

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

SENATOR KOLSTAD,

Chairman.



# STANDING COMMITTEE REPORT

JANUARY 29,

87

19.....

MR. PRESIDENT

We, your committee on..... **BUSINESS AND INDUSTRY**

having had under consideration..... **SENATE BILL** No. **140**

**FIRST** reading copy ( **WHITE** )  
color

**INCREASING DEPOSIT IN LOAN LOSS RESERVE FUND BY ECONOMIC DEVELOPMENT BOARD**

Respectfully report as follows: That..... **SENATE BILL** No. **140**

DO PASS

~~XXXXXXXXXX~~

.....  
**SENATOR KOLSTAD,**

Chairman.