

MINUTES

COMMITTEE: COMMERCE

DATE: Friday, April 13, 1973

MEMBERS PRESENT: Messrs Wittenberg, Demers, Hafen, Torvinen, Capurro, Bickerstaff, Dini and Robinson

MEMBERS ABSENT: Chairman Prince

GUESTS: See attached list

In the absence of Chairman Prince, Vice-Chairman Wittenberg called the meeting to order at 4:00 p.m. Testifying on SB 259, Mr. Mike Marfisi representing McCullough Development Company suggested changing the word "developer" on page 1, line 19, to "dealer"; Mr. Hafen suggested adding to line 15, page 1, after "compensation": "offering subdivided land for sale to a purchaser"; on page 2, line 34, Mr. Marfisi reminded the Committee to avoid conflicts with NRS 119 regarding exemptions. He also suggested a "grandfather" clause exempting companies already licensed from filing. Mr. Hansen clarified this section by stating that anything that "comes in" after the effective date of this bill must comply with the act and that fees must be paid for new sales. Mr. Melner stated to Mr. Marfisi that the Spring Creek Development land already filed on is paid up to date, but that new fees would be due if they file for any more land. The Committee agreed to amend Section 38 pursuant to Mr. Hafen's suggestions. Mr. Hansen agreed that the intent of this section is to give everyone a year to bring their filings up to date.

Mr. Hansen stated that there are two segments for approval - the financial filing and advertising; that they can both be approved if presented at the same time. Mr. Marfisi suggested requiring both to be filed at the same time but Mr. Hansen reminded the Committee of the tremendous volume of material some advertising programs involve and that more staff would be needed to approve the advertising in 30 days. Mr. Marfisi stated that approval of the application is nothing without the approval of the advertising.

Mr. Charlie Bell representing Horizon, Inc. stated that his company does not oppose the bill entirely; and that "our land company is just as interested in getting rid of the bad land company in Nevada as you are." He stated he paid \$31,000 in fees in December of 1973.

Mr. David Causey, an engineer, stated that for the small developer, there are presently too many restrictions and too many requirements for approval; that the public is already very well protected; that 8 governmental signatures are required on final plans for a development; that "what is required in Las Vegas or Reno doesn't apply to the small counties". He feels that the financial and bonding requirements before the first sale is made are unreasonable and that instead of this requirement, funds derived from sales should be allowed to be placed in an impound account. Mr. Capurro stated that the bond required under this bill is very difficult to obtain; that it is a bond for the full amount of the development.

Mr. Abe Fox representing himself, stated that he objects to the 5 acre parcel provisions being increased to 80. Mr. Melner informed him that if he sold 5 acre parcels, he would have to file on each sale; that it's only on sales of 80 acres or more that would not require a filing.

Mr. Dug Deaner, representing the Nevada Land Builders, stated his opposition to the felony provisions in the bill and the inclusion of more people; that a man like Mr. Fox should not be included in this bill. He approves of the present 5 acres exemption. He doesn't approve of the fees derived under this bill just going to the Commerce Department. He feels they should go to the general fund because an autonomous agency is created with no checks or balances and how does this regulate fraud? He also stated his opposition to the provisions permitting the hiring of special counsel and the ecology provisions do not belong in the Real Estate Division. (Chairman Prince returned at this time.) He feels that the first step in regulating the land sale companies should be to require them to file legal descriptions and title insurance policies; that the bill provides felony charges if a person even "attempts" to sell which is illegal.

Mr. Russell Avery representing himself feels the bill is too restricting to the small developer. Mr. Hansen stated that the success of the bill will depend on the industry itself. Mr. Avery suggested allowing up to 17 parcels under the exemption for filing but Mr. Hansen stated that they had had problems with this number; that it is the smaller parcels that must be protected for people investing retirement funds and that the local of water and power are big problems. Mr. Avery also wondered if the broker was the employee of the developer under page 9, line 32, would the developer have to comply with IRS requirements re withholding, etc.

Mr. Dave Coster of AID corporation, stated that he has been in business for 30 years, never had a complaint filed against him, and his only reaction to the bill is to the 5 acre parcels being increased to 80 for exemption. He also recommended a "grandfather"

provision in the bill. He stated that he will be out of business if this 80 acres is left in the bill and that 22 employees of his will be out in the street. "This is changing the rules in mid-game," he stated.

Judy Ness, a land owner and realtor, stated that her points had all been covered by previous witnesses.

Mr. Elliott Saddler, a Deputy Attorney General representing the Consumer Affairs Office, stated that he agreed with Mr. Coster; that 50% of the complaints received in his office were in this field of fraudulent sales to consumers; that it is obvious the present rules are not working; that expanding the administrative powers of the Commerce Department must be done according to the Rules of Civil Procedure; that in his experience, this type of legislation will not hurt the legitimate operator, large or small, and he will only benefit from it.

Mr. Leslie B. Gray, representing the Virginia City Historic District and the Comstock Historical Foundation stated that he supports passage of this type of legislation. Discussion was held as to whether the bill covered Nevada land being sold from another state. Mr. Hansen stated that if Nevada land is sold, the offering must be approved and that he would work this out.

To Mr. Demer's question, Mr. Hansen explained how the investigative fund would operate. He stated that the Division would anticipate expenses to a developer, bill the developer in advance and then either refund or bill for whatever the actual costs turn out to be.

Re SB 163, Mr. Robert F. Guinn, representing NMTA and NFADA, stated that there should be a time limit in the bill for bills to be paid by insurance companies to auto repairmen. He suggested thirty days; that this bill would benefit the public and the repairman.

Regarding SB 197, Mr. Guinn stated that even though a warranty has expired, manufacturer should still pay for the cost of repairing defects to vehicles which include motorcycles and trailers. He stated that there are re-calls for possible defects and re-calls for defects where payment is not guaranteed by the manufacturer. This bill would hold the manufacturer responsible. He suggested amending the bill to make violation of it a misdemeanor; that there is no Federal law holding the dealer liable; that this bill would only apply after the warranty expires; that repairs for defects have been made where the manufacturer rejects the claim.

Regarding SB 281, Mr. Pete Holden discussed the provisions of the bill regulating door-to-door salesmen and contracts; that the bill has the full endorsement of the Better Business Bureau of Northern Nevada, the Nevada Retailers, and that it unanimously passed the Senate; that it doesn't duplicate anything presently passed or under consideration and would cover such items as hearing aids, paintings, encyclopedias, and vacuum cleaners. This would resolve 90% of the cases brought into his office as it rates 4th among complaints received; that the law not exists in 42 states and the FTC has pending regulations covering this matter.

Mike Melner stated that the Consumer Affairs Division of the Department of Commerce supports the bill.

Mr. Milos Tervich representing the American Insurance Company stated his opposition to SB 103 which provides that an insurer must give an applicant timely written notice of reasons for rejection of a policy. He stated that 3% of the applications for life insurance had been rejected in 1969; that it is impossible to comply with the 30 day requirement because sometimes a second physical examination is necessary; that there is presently Federal legislation in this area and the penalty provision is also unreasonable. He suggested allowing time for the results of the Federal law before "cluttering up" our State laws and recommends a "do kill" on the bill.

Regarding SB 541, Mr. Bob Groves of the Attorney General's Office stated that the Private Investigators Board had proposed the bill; that it is primarily housekeeping; that he is not aware of anything controversial in the bill. Mr. Capurro asked for a letter from him to the Committee so that they could discuss it on the floor of the Assembly. Mr. Groves highly recommended the passage of the bill.

Mr. Jim Costello, a liquor wholesaler from Las Vegas, discussed SB 458. See Exhibit "A" for Mr. Costello's comments. He further stated that this is the first time his industry has come to the Legislature; that this is the most important thing they need in their business and they cannot do it themselves; that he can lose everything he has in 24 hours if he doesn't sign a contract with his supplier. Mr. Capurro asked if Mr. Costello couldn't drop his supplier as well. Mr. Costello said "yes". He stated that the Senate was in favor of this bill.

Mr. Frank Fahrenkopf representing the California Wine Institute and Distilled Spirits Institute stated that this bill regulates the contractual relationships between supplier and wholesaler and does not provide bi-lateral relationships and that the bill states a supplier cannot fail to re-new a contract without just cause; that because of the ambiguity of the defini-

tion of "franchise" one single sale could "lock" a supplier in forever; that all this bill does is manufacture law suits. Chairman Prince asked the length of the contracts. Mr. Fahrenkopf stated that not all contracts were for a specific term; that some are cancellable by either party and some are for a specific term; that the bill is unfair as it is written to the suppliers. Under the provisions of the bill, it will be impossible to predict crop conditions and will inevitably increase costs to the consumer and suppliers are going to have to start charging for franchises leading to monopolies. The bill also denies an individual the right to deal "at arms' length".

Mr. David Hagen representing the U.S. Brewers Association, joined Mr. Fahrenkopf in his remarks. He added that under this bill, one contract would become a model for other contracts, (under Section 6). If a supplier does not file a suit to terminate a contract, all the distributor must do is go to court and say how much damage he has suffered. The burden of proof shifts to the supplier unfairly. He urged that the bill be killed.

The hearing was adjourned.

Re SB 163: Mr. Hafen moved "do pass" as amended. Mr. Dini seconded the motion. The bill was passed with Mr. Wittenberg voting no.

Re SB 197, Mr. Robinson moved to indefinitely postpone the bill. Mr. Demers seconded the motion. Voting "aye" were Messrs Wittenberg, Robinson and Demers. Voting "no" were Messrs Dini, Torvinen and Hafen. Lacking a majority, the motion failed.

Mr. Torvinen moved to pass the bill, (SB 197) as is. Mr. Capurro seconded the motion. Voting "aye" were Messrs Torvinen, Prince, Hafen, Dini and Capurro. The motion was carried.

Re SB 281, Mr. Robinson moved to pass the bill. Mr. Demers seconded the motion. The motion was unanimously passed.

Re SB 103, Mr. Hafen moved to hold the bill for further consideration. Mr. Demers seconded the motion. The motion was unanimously passed.

Re SB 458, Mr. Demers moved to pass the bill. Mr. Wittenberg seconded the motion. Mr. Torvinen suggested adding a period of notice for cancellation. Voting "aye" were Messrs Demers, Prince, Robinson, Torvinen, Dini and Wittenberg. Voting "no" were Messrs Capurro and Bickerstaff. Mr. Hafen abstained. The motion was passed.

Re SB 541, Mr. Wittenberg moved to pass the bill. Mr. Dini seconded the motion. The motion was unanimously passed.

The meeting adjourned at 7:30 p.m. Respectfully submitted,

Phyllis Berkson, Attache

AGENDA FOR COMMITTEE ON COMMERCE

Date Fri., April 13 Time 4:00 p.m. Room 222

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
<u>SB 259</u>	Regulates land sales developers and reorganizes the real estate education, research and recovery fund;	
<u>SB 163</u>	Requires prompt payment by insurer of motor vehicle physical damage claims;	
<u>SB 281</u>	Permits consumers to avoid purchases from door-to-door salesmen;	
<u>SB 103</u>	Provides that insurer declining to issue policy must give applicant timely written notice of reasons for rejection;	
<u>SB 197</u>	Requires manufacturers of motor vehicles to provide the cost of correcting factory defects;	
<u>SB 458</u>	Requires good-faith performance of franchises between liquor suppliers and wholesalers and provides sanctions for any breach;	
<u>SB 541</u>	Makes certain changes in regulation of private investigators and related occupations.	

*Please do not ask for counsel unless necessary.

COMMERCE
HEALTH & WELFARE COMMITTEE

GUEST REGISTER

DATE Fri, Ap 13, 1973

WISH TO SPEAK
(Specify Bill)

NAME	REPRESENTING	WISH TO SPEAK (Specify Bill)	
		YES	NO
1) Abe Fox	land owner		
2) Doug Deener	atty	SB 259	
3) David F Cussey	Engineering Service		
Miles Terrill	Amer. Ins. Co.	SB 103	
4) Charles Bell	Horizon Inc	SB 103	SB 259
5) J. Howard	Wash County Dist.	SB 281	SB
6) A. Kelley	Mer. Retail Assn	" "	SB
7) John Gopfer	Financial Mktg. & Shareholder	SB 259	
8) Fred F Quinn	NMTA - NFAA	SB 163	
W. H.	SB 197	
Robert Edmondson	Atty General		X
Underwood	Dept. of Commerce		
D.S. Hansen	Real Estate Dev		
John B. With	V.C. Historic Dist Comm		X
Angus M Good	Division of Real Estate		
Judy Reed	landowner & Realtor	SB 259	X
9) David Coster	Pres. A.I.A. CORP	SB 259	
10) Russell Avey	avey Realty Co.	SB 259	
11) Mike Murphy	McAllock	SB 259	
Charles ...	SACF	SB 259	
12) Elliott Sattler	Atty Gen	SB 259	X
Noel Manoukion	Gov's Office		
Bob Jones	Atty Gen Office	SB 541	

formerly ROACH DISTRIBUTING COMPANY



STATEMENT IN BEHALF OF S.B. 458 BY SEN. HERR IN THE COMMITTEE ON JUDICIARY
OF NEVADA SENATE

During hearings and discussion of S.B. 458 before your committee, certain issues have been raised on the merits of franchise arrangements between Alcoholic Beverage Wholesalers and their suppliers. In this connection, I wish to make comments.

It has been my observation over a period of the past thirty years, that of the fifteen or so States that have enacted similar statutes for the protection of their licensed Beer, Wine and Spirits Wholesalers, none has ever been repealed, thus attesting to the wisdom involved in their enactment. The measure before you therefore is not an experiment or a departure from similar approaches to Franchise Legislation affecting the Alcoholic Beverage Industry.

It should be stressed at the outset in your consideration of this legislation that there is ample precedent for this type of solution to the subservient relationship that has existed in Nevada and other States, between Franchisor and Franchisee in Alcoholic Beverages. Of the three major regulated industries, namely, Automobiles, Tobacco Products and Alcoholic Beverages, all have in common that they are under strict Federal and State controls. Not only as to their manufacture and sale, but as to trade practices as well. It is well known that the Automobile Dealers Day in Court Act of 1956 paved the way to Congress for the precedent that regulation is justified in certain highly controlled industries by statute.

The Alcoholic Beverage trades have the distinction of operating under a Federal Constitutional Amendment, the Twenty First, vesting in the States the sole power TO REGULATE THE IMPORTATION AND SALE OF SUCH BEVERAGES-- a power that has repeatedly withstood the tests of time in the Supreme Court of the Nation.

The claim has been made by opponents of this measure that if this Industry is given statutory protection, the Legislature will be required to do the same for other supplicant Industries. Permit me to state that nothing could be farther from the facts: under the Twenty First Amendment, the States have not only the power but the legal and moral obligation to exercise their authority to regulate and control Alcoholic Beverages, in the interests of orderly laws as well as moral and sound business practices, to the end that the purposes behind the repeal of the Eighteenth (Prohibition) Amendment shall not have been frustrated.

formerly ROACH DISTRIBUTING COMPANY



To do less would be to betray the mandate of the people in enacting the Twenty First Amendment vesting control in the respective States.

This obligation also involves the trust that independent businessmen placed in their lawmakers when they made the substantial investments following repeal, that they incurred in plant, inventory and employment; to the extent that at this time, it is well known and substantiated in official records that this industry is the third largest revenue producer in the state of Nevada, a large employer of permanent labor and a constant contributor to the Community Welfare and Well Being.

Further, the independent operators of wholesalerships, generally have been in business from 25 to 30 years, continuing to operate despite virtually day-to-day threats of arbitrary terminations of oral or unilateral agreements, foisted on them by their giant out of state suppliers who have no direct responsibility or obligation to the state, whence their revenues come through their Nevada-based and licensed distributors. It is time that legislators realize this precarious situation affecting small businessmen who must appeal to their State for the protection they deserve, and without which the inherently subservient relationship of the past three decades will continue. As Senator Hart of Michigan has aptly states, "This relationship is not one of business partnership, as it should be, but of virtual economic serfdom."

This is the purpose behind S.B. 458. It merely asks that unilateral dictation to this important segment of Nevada small business be placed on a bilateral basis of mutual trust and co-operation, between supplier and dealer..... a basis that will give our Nevada small businessmen the equality of operations they deserve, unfettered by the domination of non-resident interests whose roots and interests lie elsewhere.

I thank you.

Sincerely,

A handwritten signature in cursive script that reads 'James W. Costello'.

James W. Costello

Arkansas - Distiller may not refuse any of his brands to his wholesalers. Director's approval to add or transfer brands. See pages 2 - 3.

Connecticut - Brand territories to be listed. Commissioner's approval to change brand distributors. See pages 3 - 4.

Delaware - Commission's approval of all franchise agreements or transfers or cancellations of same. See page 4.

Georgia - Commission's approval to change wholesalers or sales territory boundaries. Only one wholesaler for any brand in designated territory. See pages 4 - 5.

Hawaii - Wholesalers must be authorized in connection with price scheduling. No change without revocation of authority of previous agent. See page 6.

Illinois - Brand owner must register name of wholesalers of each brand, territory boundaries and length of franchise. See pages 6 - 8.

Indiana - Registration of authorized wholesalers discretionary with beverage owner. See page 8.

Kansas - No franchises permitted. See pages 9 - 10.

Kentucky - Wholesaler must secure franchise to distribute a brand. Brand owners must register wholesalers. See pages 10 - 11.

Maryland - Approval needed in change of distributorship in connection with bottle stamps control. See page 11.

Missouri - No change permitted where refusal to violate law involved. See pages 11 - 12.

New Jersey - Distiller may not discriminate in selection of wholesalers. See pages 12 - 1

New York - Distiller may limit distribution of brands to specific wholesalers in monthly price schedules. See pages 13 - 14.

Oklahoma - Franchising constitutionally prohibited. See pages 14 - 16.

Rhode Island - Non-franchised wholesalers prohibited from selling brands where copy of franchised distributors contract has been filed with Administrator. See pages 16-17.

Tennessee - Exclusive brand distributorships on county basis. Commission may withdraw approval on 30-days notice. No transfers unless Commission approves. See pages 17 - 18.

Wisconsin - Wholesaler must notify Department of Revenue of brand distributorship and sales territory. See pages 18 - 19.