

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING HELD

322

29th DAY OF MARCH, 1973

The meeting was called to order at 9:00 a.m. Senator Close in the Chair.

PRESENT: Senator Foley  
Senator Bryan  
Senator Dodge  
Senator Hecht  
Senator Swobe  
Senator Wilson

Bart Jack, Las Vegas Sheriff's Department  
Jim Costello, Costello Beverage Company  
Bill Luce, Luce and Sons  
Louie Peraldo, Beverage Distributor  
Pat Clark, DeLuce Distributors  
Art Sinini  
Chick Handwright  
Milt Gumbert, Sierra Wine and Liquor  
Julian Marquerquianga  
Frank Fahrenkopf, Attorney at Law

S.B. 393 - Provides for escheat of corporate property to State of Nevada after forfeiture or default for certain period of time.

Senator Bryan has introduced a bill which would cover this subject.

Senator Hecht moved to indefinitely postpone action on this bill.  
Senator Swobe seconded the motion.

Yeas - 6  
Nays - None  
Absent - Bryan (1)

Motion carried.

S.B. 508 - Provides schedule of permissible commissions for executors and attorneys in regard to probate of estates.

The committee felt that this bill was inappropriate at this time.

Senator Hecht moved to indefinitely postpone action on this bill.  
Motion seconded by Senator Swobe.

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Yeas - 6  
Nays - None  
Absent - Bryan (1)

Motion carried.

A.B. 151 -Increases maximum value of  
estates which may be set  
aside without administration  
or administered summarily.

The original bill increased the value from \$3,000 to \$5,000 for estates to be set aside without administration except where minor children were involved. The first reprint adopted by the Assembly included estates where minor children were involved.

Because of the family allowance provided during the probate of estates where minor children are involved, the committee agreed to amend the bill back to its original version.

Senator Wilson moved to amend and "DO PASS." Senator Bryan seconded the motion. Motion carried.

S.B. 262 - Provides for electronic inter-  
ception of communications.

The committee reviewed the amendments on this bill. Additional amendment is needed to Section 23 which would provide that if an intercept is made with prior consent of one of the parties involved, within 72 hours thereafter a court order must be obtained.

Senator Dodge moved to amend and "DO PASS". Senator Swobe seconded the motion.

Yeas - 6  
Nays - Hecht (1)

Motion carried.

S.B. 458 -Requires good-faith performance  
of franchises between liquor  
suppliers and wholesalers and  
provides sanctions for any breach.

Mr. Jim Costello made a presentation to the committee. That presentation is attached as Exhibit A.

Mr. Costello further testified that the bill is copied almost word for word from the proposed model franchise agreement designed by the Wine and Spirit Wholesalers of America.

Senator Wilson asked Mr. Costello if present franchise agreements are cancellable at will. Mr. Costello read a paragraph from his present contract which stated that the franchise relationship is one of buyer and seller and can be terminated without cause or notice.

Senator Swobe remarked that this bill should be seriously considered in light of consumer protection for small businesses who are at the mercy of manufacturers. There is an obligation to protect those businessmen. Senators Bryan and Wilson asked Mr. Costello to furnish the committee with a list of the 15 states which have adopted this type of legislation.

Mr. Bill Luce of Luce and Sons in Reno made a statement regarding the investment he has made during his 30 years in the business. He is afraid of losing that business at the whim of the franchisor. When questioned by Senator Wilson, he stated that his franchise agreement is cancellable at will.

Mr. Louie Peraldo, a distributor in Northern Nevada, expressed the same concern about his business which has taken 39 years to build, and considerable investment. He also stated his agreement could be revoked at any time.

Mr. Pat Clark of DeLuce Distributors stated that he invested money in his building and took the chance that Nevada would grow. Mr. Clark has had an automobile dealer franchise and reminded the committee that Congress passed a "good faith bill" which protects automobile dealers with franchises against manufacturers putting them out of business. He stated that presently beverage franchisees are at the mercy of the suppliers. All this bill (S.B. 458) does is give the distributor his day in court and a chance to defend himself.

Mr. Milt Gumbert of Sierra Wine and Liquor testified that he was approached by a supplier who asked him to promote a certain line of wine in Northern Nevada. Mr. Gumbert's firm took the line and built it up to the #2 brand, and complied with all the requests made by the supplier. When the supplier underwent a change in personnel there were rumors that they would also change distributors. When Mr. Gumbert confronted the supplier with those rumors, the supplier denied them. Yet, two weeks after he denied the rumors, the supplier contacted Mr. Gumbert and informed him that as of the next day he would no longer be a distributor for that line. He informed the committee that he represented four communities in the state and was a large taxpayer contributing to the welfare of the state, yet a supplier from out of state took away a large portion of his profit.

Mr. Frank Fahrenkopf testified against the bill. He stated that he represented the California Wine Institute, a trade organization consisting of wine growers in the State of California. He objected

to the language used in the bill and remarked that the bill goes beyond the term of the franchise agreement in Section 8 where it refers to the renewal. He felt that the franchisee presently has access to the courts since these franchise agreements would be considered adhesion contracts, which is one of the most active areas of consumer protection in the law. He cited NRS 104.1203 as another protection since this statute provides in effect that all contracts covered by the Uniform Commercial Code must be fulfilled by both parties in good faith.

Mr. Fahrenkopf indicated the particular problems the wine industry has. They can not afford to enter into a long standing contract since their industry is dependant on unpredictable factors; weather and the very sensitive grape crop.

He also stated that the area of franchise agreements comes within the pervue of the SEC and they are stepping in to federally control that area. He suggested that the committee should legislate in the area of franchise as a whole rather than singling out one isolated industry.

Senator Bryan asked Mr. Fahrenkopf if his clients were having any particular problems in any of the 15 states where this same type of legislation has been passed. Since Mr. Fahrenkopf did not have an answer to that question, the committee asked him to report back with the answer next week.

S.B. 345 - Regulates sale and distribution  
of alcoholic beverages.

Mr. Pat Clark testified that before he left Las Vegas, the retail dealers called and asked him to testify in behalf of this bill. They are asking that no distiller or manufacturer of beverages could come into the state, counties or cities and have privileges of selling retail. There is no way a retailer in this state could compete against them. This is the protection they are asking for in the bill.

Senator Wilson remarked that the bill would not apply to wholesalers in the retail business. Mr. Costello replied that they thought the bill would apply to that situation.

Senator Dodge moved to indefinitely postpone action on this bill. Senator Swobe seconded the motion. Motion carried.

S.B. 404 - Requires brewers to designate  
exclusive wholesale dealers  
for defined territories.

Senator Dodge moved to indefinitely postpone action on this bill.

Motion seconded by Senator Hecht. Motion carried.

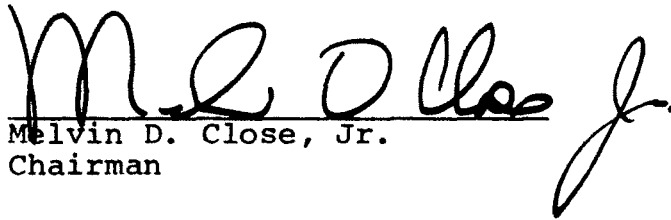
The meeting was adjourned at 10:45 a.m.

Respectfully submitted,



Eileen Wynkoop  
Secretary

APPROVED:

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Melvin D. Close, Jr.  
Chairman

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 black ink, appearing to read 'Jim Costello'. The signature is written in a cursive, flowing style.

James W. Costello