

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

- DATE:** Friday, March 01, 2013
- TIME:** 8:00 A.M.
- PLACE:** Room WW55
- MEMBERS PRESENT:** Chairman McKenzie, Senators Davis, Fulcher, Hill, Winder, Lodge, Siddoway, Stennett and Werk
- ABSENT/ EXCUSED:**
- NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENED:** **Chairman McKenzie** called the Senate State Affairs Committee (Committee) meeting to order at 8:01 a.m. with a quorum present.
- MOTION:** **Senator Siddoway** moved to approve the minutes of February 1, 2013. **Senator Werk** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Winder** moved to approve the minutes of February 6, 2013. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Lodge** moved to approve the minutes of February 11, 2013. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.
- GUBERNATORIAL APPOINTMENT:** **Chairman McKenzie** introduced Roger L. Jones who has been reappointed to the Idaho Lottery Commission (Commission) and asked him to discuss what has occurred since his last appointment, the workings of the Commission and how he sees it operating in the future.
- Mr. Jones** stated that he has seen the Commission grow from sales of less than \$100 million when he was appointed 17 years ago to this years sales of \$185 million. The Commission employees 47 people and approximately 1500 vendors sell products throughout the state; those vendors make five percent on their sales plus bonuses. The profits generated by the Commission go back to the state. Last year they contributed \$41.5 million which was divided up between education and the permanent building fund.
- Senator Lodge** questioned Mr. Jones about the amount the Commission spends on advertising. **Mr. Jones** stated that the law stipulates that three and one-half percent of gross sales can be spent on advertising and they are always below that percentage.
- S 1118** Relating to a financial interest to codify the marketing of beer products. **Jeremy Pisca** explained that this bill closes a loophole that allows breweries to own distribution branches in Idaho except for microbreweries brewing 30,000 barrels or less; they are already exempt from the three-tier system. Microbreweries, under present legislation, can be their own retailer and distributor. This bill is about protecting Idaho jobs, businesses and clearly delineates the lines between the three-tier system. It is important to note that there is not a single brewery-owned branch in Idaho. This legislation codifies the current status.
- Mr. Pisca** presented a power point presentation which gave a picture of what the three-tier system looks like. The three-tier system promotes responsible consumption, community safety, and balances competition and regulation while maintaining an orderly marketplace. The distribution wholesaler tier is the tax

collection arm for Idaho. The idea of the three-tier system is to keep each tier independent from one another along with the goal of facilitating state and local decision making about alcohol. It created a framework for taxation and prohibited the tied house relationships between manufacturers and retailers by creating a distribution tier. **Mr. Pisca** provided a brief history about prohibition that led to the establishment of this system.

The Alcohol Beverage Commission (ABC) relies heavily on the beer distributors to be the de-facto law enforcement agency. They are the middleman between suppliers and retailers to ensure an orderly marketplace. Finally, the three-tier system helps ensure that no one tier grows so large that it can out-muscle regulators or any other portion of the tiers.

**Senator Davis** asked if there was a brewery owned branch in Idaho? **Mr. Pisca** explained there has been one within the last 15 years. Coors was a brewery owned branch wholly owned by the Coors Distributing Company. Coors was an American brewing company 15 years ago; now it has merged with Miller becoming Miller-Coors Brewing based out of Canada. Anheuser-Busch was America's largest brewing company up until 2008; it is now a foreign company, Anheuser-Busch InBev (ABI), the largest beer brewer worldwide.

**Senator Davis** asked if a distributor wanted to terminate a relationship with the wholesaler with cause, could they do so? **Mr. Pisca** responded that anytime a beer distributor wanted to sell any assets, there have always been willing buyers other than brewers. Strict adherence to the three tier system is necessary so that it does not collapse.

**Mr. Pisca** stated that the bill has been brought before the Committee at this time to avoid a problem later. ABI maintains nearly 50 percent market share in the United States and nearly 26 percent market share worldwide. Part of ABI's strategy has been to acquire as many distributorships as it deems reasonable (Attachment I - Financial Analysis of ABI). The ABI financial analysis explains why the Idaho distributors are worried as shown on page 1, paragraph 3. **Mr. Pisca** outlined the contents of the financial analysis.

**Mr. Pisca** said that Idaho is not alone in trying to close down this loophole; Wyoming, Illinois, Nebraska, Wisconsin and Louisiana (Attachment II) have closed the branch loophole. Except for Missouri, home of a major Budweiser Brewing Facility, those states had a combined favorable vote of about 88 percent to close this loophole.

The language in **S 1118** tracks directly with language that you will find in 23-1033 (Attachment III). The proposed bill is one paragraph stating that the exception provided for in section 23-1003 (f) allows the small brewer to self-distribute. Idaho law clearly says they are able to get a wholesale license in support of the three-tier system. Attachment III shows the code section that Idaho has had in place for years which bans the financial interest between brewers, distributors and retailers using a replication of that language.

**Mr. Pisca** distributed two bills from other states that have killed this loophole. (Attachment IV and V). Act No. 155 from the State of Louisiana stated that the "Commission shall not issue a wholesale dealer's permit to a person or his spouse possessing a manufacturer's permit." ABI has no branches in Louisiana and continues to thrive under the three-tier system.

**Mr. Pisca** stated that since ABI took over the Anheuser-Busch, company-wide, headcount has been reduced by more than 40 percent. Missouri lost 1500 jobs. In acquiring the branch in Oklahoma City, 30 people lost their jobs. This legislation will protect Idaho's jobs, businesses and codifies the status quo in Idaho today.

**Senator Winder** asked Mr. Pisca to clarify how this bill would protect Idaho businesses rather than restricting the ability to have a broader market for selling their businesses; does it restrict the ability of an owner to sell a business? **Mr. Pisca** explained that these are family legacy businesses and are generational. When ABI has gone into an area and purchased a distributorship, there is a wholesale firing of staff then those same people must reapply for their jobs. Owners are slightly restricted but only to one small segment of possible buyers. He has never seen a situation that there was not some beer distributor that was not willing to purchase another beer distributor, if it came up on the market. ABI is the only one we are removing from the buying equation. If 95 percent of your product comes from ABI, the bargaining position becomes nonexistent.

**TESTIMONY:**

**Shiela Francis**, representing the Idaho Craft Brewers, spoke in support of the legislation. Large brewing conglomerates have made it clear that they intend to consolidate their businesses across the country when allowed by law. This will allow the bigger breweries to control a brand or leverage the current distributors to carry their brands exclusively. This would leave craft brewers out of the equation. When one brewing conglomerate controls almost 50 percent of the market, that is significant leverage and power. Craft brewers are about 6 percent of the market by volume, so they are already at a significant disadvantage for market access.

**Ken McClure**, representing (ABI), spoke against this legislation. ABI believes in the three-tier system and finds great value in it. **Mr. McClure** believes that the proposed legislation will weaken the three-tier system rather than strengthen it. This isn't a bill that would prohibit a brewer from influencing or coercing a distributor to sell to the brewer. This is a bill that says a willing seller is denied access to a willing buyer in the free market. There nothing that indicates that a problem exists when a brewer owns a distributorship. Once the stock is owned in the distributorship the requirements for distribution are the same. The wholesaler who is not owned by a brewer has to meet the same requirements as a brewer that owns the wholesaler branch. This bill has nothing to do with Idaho jobs. It has more to do with the desire to continue consolidating ownership of wholesalers in Idaho.

The state has had three wholesalers in Idaho who have transferred ownership in the last ten years. All three were purchased by other wholesalers. ABI does not sell beer in Idaho and only two people own the entire rights to distribute ABI products in the state. This bill is to try to protect wholesalers from competition.

**Mr. McClure** gave an example of a wholesalership changing ownership: When a wholesaler puts a business up for sale, the buyer must possess the money to purchase a very expensive company. ABI's principle interest is in making sure that whoever buys that wholesalership is competent to sell beer to ensure their distributors achieve the maximum financial potential. ABI will match the offer that the selling wholesaler has from anyone who does not know how to sell beer and will sell the product themselves as a distributorship or they will find someone who can buy the company and run the business well. ABI would be denied that right by this legislation.

**Senator Davis** asked if, when a sale is made by an ABI distributor, would ABI's agreement require the purchaser to assume that distribution line and are there provisions to terminate such an agreement? **Mr. McClure** said that there are provisions of the approval of a successor and ABI has the ability to terminate based on certain conditions that essentially deal with breaches of contract such as the loss of a license. **Senator Davis** asked if the agreement provided ABI

with the ability to terminate the contract with some reasonable notice in the event ABI lost confidence in the wholesaler, the market share dropped or if ABI felt another wholesaler would be a more valuable distributor for their products? **Mr. McClure** answered that the contract could not be terminated on those terms. ABI could terminate in the case of an inept wholesaler resulting in declining sales but they may not terminate the wholesaler because they have a declining market share or they are under-performing.

**Mr. McClure** explained that ABI has a program provides capital to a qualified, knowledgeable individual so they could acquire an operation. Under the ABI Investment Capital Corporation, ABI becomes a partner and then the buyer can buy them out over time. In order to secure their interest, ABI takes an equity position in the distributorship. It is a good way to facilitate a transfer of a wholesalership when you have someone who has great sales and business operation skills but does not have the capital. This legislation will prevent ABI from helping those distributors.

**Senator Davis** asked if this was an Article 9 type security interest, would this bill preclude your client from having an effective remedy if they were the financier.

**Mr. McClure** stated that Article 9 would be prohibitive under this statute. Line 14, states that ABI may not have any financial interests which, Mr. McClure believes, would include a loan secured by a security interest.

**Mr. McClure** concluded by stating that ABI has no intention of owning a distributorship in the state. This legislation is about economic disparity between big versus small companies. The legislature provides in statute in Idaho Code § 23-1033 (a) that distributors may not use leverage to do certain things. ABI would not oppose the language in a bill stating you may not use leverage to coerce or influence an owner of a wholesalership to sell that wholesalership to the brewer. ABI is not trying to influence people to sell to them. ABI is making sure that when they do have a transaction, it is processed in a way that is optimal to their business interests. This bill is about the use of the legislature to create an economic advantage by saying that the brewer cannot buy but the current distributors can buy.

**Dave Kangas** spoke in opposition to **S 1118**. This legislation is an attempt to control competition restricting distributorships for ABI in Idaho.

In conclusion, **Mr. Pisca** noted that there are now three distributorships for ABI products in Idaho; at one point it was many. ABI's business model has been to force consolidation and exclusivity. Beer distributors are incentivized to forgo all other beer brands and focus exclusively on ABI products. When that happens it forces consolidation. Title 23 governing franchise laws, set out when and to whom a beer distributor can sell. A beer distributor is not allowed to even transfer their distribution business unless they have given notice to the brewery and the brewery gives written approval to the transfer.

**Senator Davis** stated that the Committee cannot determine an industry fight between ABI as a distributor and the wholesaler. The Committee's job is to set a public policy that applies across the board from small industries to larger industries. In the event Mr. McClure's client decides to terminate a distributor relationship or they have an Article 9 interest, how does this statute impact the remedy until they find a successor if their business is closed and they have no vehicle to the retail market.

**Mr. Pisca** responded that, under any franchise agreement, there is always an ability to give notice of defect in performance and always an ability to effect a cure. ABI still has the ability to approve a distributor before they come on board has the ability to stop the transaction. There are remedies on both sides. The legislation is a further clarification of three-tier system.

**Senator Hill** asked what percent of the beer and wine distributors in Idaho do your associates represent and what percentage of your members express support for this legislation? **Mr. Pisca** answered that they represent all of the distributors in the state with the exception of the small brewers, who self-distribute. The membership voted unanimously for this legislation.

**S 1108**

**Russ Hendricks**, Idaho Farm Bureau, stated **S 1108** relates to a law that was passed in 1997 requiring signatures from six percent of registered voters in at least 22 Idaho Counties, provided that the total number of signatures is at least six percent of the registered voters statewide. The law was struck down by the courts because Idaho Counties varied greatly in population so it did not provide for equal treatment of voters. The Ninth Circuit Court's ruling suggested that Idaho could achieve the same end without violating equal protection by basing a geographic requirement on districts with equal population, such as legislative districts. **S 1108** would require the signatures of six per cent of the registered voters in each of 18 legislative districts provided that the total number of signatures is at least six per cent of the registered voters statewide.

**Senator Stennett** stated that since the year 2000 there have been 54 initiatives circulated and only four qualified for the ballot. None of those initiatives had any impact on the Idaho Farm Bureau; why is the Farm Bureau bringing this bill forward? **Mr. Hendricks** replied that there are a number of organizations that are interested in correcting the law in a way the courts would find acceptable.

**Senator Werk** said that there have been attempts to clamp down on initiatives. Is there something wrong with the initiative process or voter's decision to place referendums on the ballot that requires this legislation? **Mr. Hendricks** explained that there has been increasing urbanization since 1997 and this legislation is to ensure that one populace area would not be able to drive an agenda across the state. **Senator Werk** referred to Line 24 which adds "and legislative districts." Each signature sheet shall contain signatures of qualified electors from only one county and one legislative district. If this is shifting from counties to legislative districts, why are you using counties if you are focusing on legislative districts? **Mr. Hendricks** explained that the county clerk will be verifying the signatures on a county by county basis.

**Senator Davis** asked if Mr. Hendricks could compare other states in the region or nationally that have adopted this type of legislation. **Mr. Hendricks** gave statistics for neighboring states: 1) Montana has a geographic requirement that requires five percent of the voters in each of 34 out of 100 legislative representative districts within the state; 2) Wyoming's state constitution requires 15 percent of those who voted in the proceeding general election from two thirds of their counties; 3) Utah requires 10 percent of voters in 26 out of 29 senate districts; and 4) Nevada is 10 percent of the voters in each of their four congressional districts.

**Chairman McKenzie** Referred to the National Conference of State Legislatures Signature for Initiative Proposals (Attachment A). Out of 24 states that have initiatives, 12 of those have some geographic requirement; some by county, legislative district or congressional district. The legislation before you is less restrictive than other states.

**TESTIMONY:** The following people spoke in opposition to **S 1108**:(Their written testimony is included in minutes)

**Ann Olden**

**Dave Kangas**

**Monica Hopkins**, American Civil Liberties Union (ACLU) of Idaho

**Lindsey Rinehart**, Compassionate Idaho (oral testimony only)

**Anne Nesse**, (written testimony only)

The reasons were: That only a very small number of the attempted initiatives have made it onto the ballot; There is not a problem; The legislation is designed to restrict individual freedoms, the voting process and the constitutional guarantee of checks and balances; Voting is a fundamental right under the Fourteenth Amendment; The proposed legislation creates a significant burden and may violate or dilute an individuals First Amendment right to vote; and, The restrictions could potentially wind up with six percent of the overall state but not six percent from each district.

**Senator Siddoway** stated his concern about rural citizens not having an equal opportunity regarding the ballot. The current method puts them at a disadvantage. There might be other ways to equalize urban and rural votes for an initiative other than this legislation.

**Senator Stennett** asked Ben Ysursa, Secretary of State, if he believed the current law is flawed.

**Mr. Ysursa** stated that the Secretary of State office has taken a neutral position on this legislation. In 1997, the geographic distribution requirement was put in for 22 out of the 44 counties. In its opinion, this is a policy decision by the legislative branch. Judge Windmill reversed the 1997 statute based on the "one man one vote" principle because of the uneven population within the counties. As a point of reference, there were 30 districts out of the 35 that were six percent or more on Proposition 1 in 2012. It is very tough to get initiatives right now and it is easy to understand the geographic distribution argument. It has a better chance of being upheld by going to legislative districts which are, by law, fairly even in population.

**Senator Stennett** asked if there is a real need to change the legislation. **Mr. Ysursa** stated that some of the changes in the 1997 legislation were very positive. This legislation has more legally defensible attributes by reducing that number of districts down to 18 and going with legislative districts equalize the population.

Further discussion of this bill was postponed until the next meeting on March 4, 2013.

**(S 1118) MOTION:** **Senator Davis** moved to refer **S 1118** to the 14th Order for possible amendment. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**RS 22107** Relating to Aeronautics of Unmanned Aircraft Systems.

**Senator Winder** stated that this is a bill concerning unmanned aircraft and asked for the Committee's support to print the bill.

**MOTION:** **Senator Hill** moved to print **RS 22107**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, the meeting adjourned at 10:20 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton, Secretary  
with the assistance of Carol Deis