

MINUTES
HOUSE STATE AFFAIRS COMMITTEE

DATE: Thursday, January 28, 2016

TIME: 8:30 A.M.

PLACE: Room EW40

MEMBERS: Chairman Loertscher, Vice Chairman Batt, Representatives Andrus, Luker, Crane, Palmer, Sims, Barbieri, Holtzclaw, McMillan, Bateman, Cheatham, Nielsen, Smith, Jordan, McCrostie, Wintrow

**ABSENT/
EXCUSED:** None

GUESTS: Jeff Anderson, Idaho State Liquor Division; Russ Wheatley, Idaho State Police; Tony Faraca, Idaho State Liquor Division; Ken Robins, Idaho State Police/Attorney General; Kay Bennett, Idaho State Liquor Division; Elisha Figueroa, Idaho Office of Drug Policy; Marianne King, Idaho Office of Drug Policy; Gayle Hines, Idaho Office of Drug Policy; Stephanie Pustejousky, Idaho Office of Drug Policy; Wayne Hoffman, Idaho Freedom Foundation; Tyler Mallard, Idaho Beer and Wine Distributors Association.

Chairman Loertscher called the meeting to order at 8:31 a.m.

H 331: **Jeff Anderson**, Director, Idaho State Liquor Division (ISLD), presented **H 331**, a bill that prohibits the possession, use, sale and purchase of powdered alcohol. He stated there are concerns of unapproved uses such as snorting the powder, use by irresponsible adults of legal drinking age and underage persons, improper mixing with less than the prescribed amount of water that dilutes the alcohol content, mixing with other spirituous liquors that could create lethal drinks, mixing with foods, and the issue of inherent concealability that will lead to illicit use at venues where alcohol is prohibited.

In response to committee questions, **Mr. Anderson** stated if the legislation was not passed, the ISLD would have the authority to regulate the substance if it came to Idaho. He stated he spoke with the Board of Pharmacy and they stated ethanol alcohol cannot be used as a pharmaceutical drug. He stated the creator of Palcohol, powdered alcohol has a patent/trademark on the product and his understanding is that it is not being sold in the U.S. yet. He stated the law enforcement community has many concerns with the use of the product.

Tony Eldeen, Intern, spoke regarding **H 331** and stated the Alcohol, and Tobacco Tax Bureau approved four labels of Palcohol, powdered alcohol which is absorbed in a carbohydrate such as dextrin. He stated Palcohol's website originally acknowledged that snorting the substance could lead to rapid intoxication, yet later the information was retracted from the website, after attracting negative publicity. He stated the substance is easy to conceal because it is a powder which causes concern for schools officials and retailer's who sell alcohol at special events, etc. The substance could have serious repercussions on "Dram" laws because of the accessibility of patrons to add powdered alcohol into other drinks without retailers/bartenders knowing and thus creating a civil liability without realizing it.

Captain Russ Wheatley, Idaho State Police, spoke **in support** of **H 331** and stated he oversees the Alcohol and Beverage Control for the State of Idaho and has many concerns with the misuse of powdered alcohol. **Tyler Mallard**, Idaho Beer and Wine Distributors Association, spoke **in support** of **H 331** and stated the difference with liquid alcohol and powdered alcohol is you know the percentage of alcohol in liquid alcohol, powdered alcohol can be mixed and possibly create lethal drinks. He stated it is also easier to conceal and there is great concern with underage kids getting the substance and misusing it.

Wayne Hoffman, President, Idaho Freedom Foundation, spoke **in opposition** to **H 331** and stated the legislation is unnecessary and is produced out of fear. He stated Idaho Code already allows for regulation of this type of product and that it is not marketable. He stated in 2007, scientists tried to market the product outside of the U.S. and it disappeared from the market soon after. He stated there have not been any reports of misuse of the product.

In response to committee questions, **Mr. Anderson** stated that according to the maker of powdered alcohol, liquid is needed to release the alcohol. He stated prevention of misuse, mostly by underage drinkers, was the main focus of the bill and has many supporters in the law enforcement and education communities. He stated the legislation is needed because it defines powdered alcohol and the penalties of possession, use, and sale thereof. He stated substances such as baking powders that contain small amounts of alcohol, for uses other than beverages, are regulated under Section 23-504 of the Idaho Code.

In response to committee questions, **Tim Davies**, Deputy Attorney General, Idaho State Liquor Division, stated the legislation was crafted using language from neighboring states.

In closing, **Mr. Anderson** stated the Idaho State Liquor Division is focused on responsible service to all citizens of Idaho. He stated the legislation is not an agency initiative but a plea from the community to protect the citizens, especially underage kids.

MOTION:

Rep. Luker made a motion to send **H 331** to General Orders with amendments to include: On line 16, page 1, add ""Powdered alcohol" does not include alcoholic nonbeverages listed in section 23-504, Idaho Code."; and delete line 34, and insert "prisonment in the county jail for more".

Rep. Andrus spoke **in support** of the motion.

SUBSTITUTE MOTION:

Rep. Batt made a substitute motion to **HOLD H 331** in committee. She spoke to the motion and stated the product is not even available in the U.S., the circumstances have changed since the bill was initially drafted and there are still a lot of unanswered questions regarding powdered alcohol.

Rep. Nielsen spoke **in support** of the substitute motion and stated a re-write of the legislation might be in order.

AMENDED SUBSTITUTE MOTION:

Rep. Wintrow made an amended substitute motion to send **H 331** to the floor with a **DO PASS** recommendation. She spoke to the motion and stated the concern of college kids misusing the substance is very high and our neighboring state of Oregon has already banned the substance.

VOTE ON AMENDED SUBSTITUTE MOTION:

Roll Call vote was requested on the amended substitute motion to send **H 331** to the floor with a **DO PASS** recommendation. **Amended Substitute Motion failed by a vote of 7 AYE, 10 NAY. Voting in favor** of the motion: **Chairman Loertscher, Reps. Crane, Holtzclaw, Bateman, Smith, McCrostie and Wintrow. Voting in opposition** to the motion: **Reps. Batt, Andrus, Luker, Palmer, Sims, Barbieri, McMillan, Cheatham, Nielsen and Jordan.**

**VOTE ON
SUBSTITUTE
MOTION:**

Roll Call vote was requested on the substitute motion to **HOLD H 331** in committee. **Substitute Motion failed by a vote of 7 AYE, 10 NAY. Voting in favor** of the motion: **Reps. Batt, Sims, Barbieri, McMillan, Cheatham, Nielsen and Jordan. Voting in opposition** to the motion: **Chairman Loertscher, Reps. Andrus, Luker, Crane, Palmer, Holtzclaw, Bateman, Smith, McCrostie and Wintrow.**

**VOTE ON
ORIGINAL
MOTION:**

Chairman Loertscher called for a vote on the original motion to send **H 331** to General Orders with amendments. **Motion carried by voice vote. Reps. Batt, Nielsen, Sims, Cheatham, Jordan, McMillan and Barbieri** requested that they be recorded as voting **NAY. Rep. Luker** will sponsor the bill on the floor.

H 362:

Russell Westerberg, Idaho Licensed Beverage Association, presented **H 362**, a bill that clarifies the existing definition of "person" in Section 23-902(12), Idaho Code and other sections in Title 23, Chapter 9, Idaho Code. He said the change is necessary to reflect the definition of "person" in the Uniform Commercial Code, which is accepted in all states and has been thoroughly vetted through legal casework.

Captain Russ Wheatley, Idaho State Police, Alcohol Beverage Control, spoke **in support** of **H 362** and stated the clarification of the definition of "person" is needed for different types of organizations that are not defined in the Idaho Code. He stated when the current statute is applied, the courts have problems enforcing it because of the language which does not list the unique types of organizations who might have a liquor license.

MOTION:

Rep. Wintrow made a motion to send **H 362** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Wintrow** will sponsor the bill on the floor.

Rep. Barbieri spoke **in support** of the motion and stated a person is not a natural human being anymore as defined in the law, and our state statutes should reflect that.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 9:52 a.m.

Representative Loertscher
Chair

Kasey Winder
Secretary