

**MINUTES OF THE SENATE BUSINESS, LABOR AND ECONOMIC DEVELOPMENT  
STANDING COMMITTEE  
Friday, January 23, 1998 at 8:00 a.m.  
ROOM 403, STATE CAPITOL BUILDING**

Members Present:     Sen. Steven Poulton  
                          Sen. Dave Buhler  
                          Sen. Al Mansell  
                          Sen. Eddie Mayne  
                          Sen. Howard Nielson  
                          Sen. Blaze Wharton

Staff Present:         Mary Catherine Perry, Research Analyst  
                          Susan Greer, Secretary

List of others present on file.

Committee Chair Poulton called the meeting to order at 8:20 a.m.

**MOTION:**         Sen. Mansell moved to approve the minutes of Wednesday, January 21, 1998. The motion passed unanimously.

Chairman Poulton relinquished the chair to Sen. Buhler.

1. **S.B. 76, Insurance Law Changes - Sen. Poulton**

Sen. Poulton introduced the bill. Neal T. Gooch, Deputy Insurance Commissioner, spoke in favor of the bill and responded to committee questions.

**MOTION:**         Sen. Mansell moved to adopt the 2<sup>nd</sup> substitute to S.B. 76.

The motion passed unanimously with Sen. Wharton absent for the vote.

**MOTION:**         Sen. Nielson moved to pass 2<sup>nd</sup> Substitute S.B. 76 out of committee with a favorable recommendation.

The motion passed unanimously with Sen. Wharton absent for the vote.

Sen. Poulton resumed the chair.

2. **S.B. 73, Beer Industry Distribution - Sen. Blackham**

Sen. Blackham presented the bill and distributed amendments.

**MOTION:** Sen. Mayne moved to adopt the following amendments to S.B. 73:

1. Page 1, Line 10: After "REMEDIES;" delete "ADDRESSING APPLICABILITY;"
2. Page 1, Line 24: Delete line 24
3. Page 2, Line 17: After "means any" insert "written"
4. Page 2, Line 21: After "(b)" insert:  
"A separate agreement between a supplier and a wholesaler that relates to the relationship between the supplier and the wholesaler or the duties of either of them under a distributorship agreement is considered to be part of the distributorship agreement for purposes of this chapter.  
(c)"
5. Page 4, Line 9: After "more than" delete "20%" and insert "10%"
6. Page 4, Line 15: Delete line 15 and after line 15 delete "order involving" and insert "engages in intentional"
7. Page 4, Line 25: After "owner;" delete "and"
8. Page 4, Line 26: After "(b)" insert:  
"the offending owner was not materially involved in the management of the affected party; and  
(c)"
9. Page 6, Line 11: After "the owner of" delete "a 10% or more" and insert "an"
10. Page 6, Line 23: After "supplier shall" delete "pay the wholesaler" and insert "be liable to the wholesaler for the laid-in cost of inventory of the affected brands plus any diminution in"
11. Page 6, Line 27: After "(2)(a)" delete "Either" and insert "A distributorship agreement may require that any or all disputes between a supplier and a wholesaler be submitted to binding arbitration. In the absence of an applicable arbitration provision in the distributorship agreement, either"
12. Page 7, Line 3: After "Subsection (2)(a)" insert "and the other party agrees to submit the matter to arbitration"

13. Page 7, Line 26: After "wholesalers to" insert "(i) execute a new distributorship agreement; and (ii)"
14. Page 7, Line 27: Delete "(i)" and insert "(A)"
15. Page 7, Line 28: Delete "(ii)" and insert "(B)"
16. Page 7, Line 30: Delete "(iii)" and insert "(C)" and after "one year to" insert "(I) execute a new distributorship agreement; and (II)"
17. Page 8, Line 21: After "(ii)" delete "neither party elects" and insert "the parties do not agree to submit the matter to"
18. Page 9, Line 12-16: Delete lines 12 through 16

**Renumber remaining sections accordingly.**

The motion passed unanimously with Sen. Wharton absent for the vote.

**MOTION:** Sen. Mayne moved to adopt the following additional amendments to S.B. 73:

1. Page 1, Line 11: After "SEVERABILITY;" delete "AND" and after "DATE" insert "; AND PROVIDING A COORDINATION CLAUSE"
2. Page 1, Line 18: After line 18 insert "**32A-11a-105.5**, Utah Code Annotated 1953"
3. Page 2, Line 7: After "suppliers" delete "and" and insert " ,"
4. Page 2, Line 8: After "wholesalers" insert " , and retailers"
5. Page 2, Line 26: After line 26 insert:  
"(5) "Retailer" means a person subject to license under Chapter 10, Beer Retailer Licenses."
6. Page 2, Line 27: Delete "(5)" and insert "(6)"
7. Page 2, Line 29: Delete "(6)" and insert "(7)"
8. Page 2, Line 31: Delete "(7)" and insert "(8)"
9. Page 6, Line 5: After line 5 insert:

"Section 6. Section **32A-11a-105.5** is enacted to read:

**32A-11a-105.5. Prohibited conduct of wholesaler.**

(1) A wholesaler may not:

- (a) induce, coerce, or attempt to induce or coerce, any retailer to engage in any illegal act or course of conduct;
  - (b) impose a requirement that is discriminatory by its terms or in the methods of enforcement as compared to requirements imposed by the wholesaler on similarly situated retailers;
  - (c) prohibit a retailer from selling the product of any other wholesaler;
  - (d) fix or maintain the price at which a retailer may resell beer;
  - (e) require any retailer to accept delivery of any beer or any other item that is not voluntarily ordered by the retailer;
  - (f) restrict or inhibit, directly or indirectly, the right of a retailer to participate in an organization representing interests of retailers for any lawful purpose;
  - (g) require a retailer to participate in or contribute to any local, regional, or national advertising fund or other promotional activity;
  - (h) retaliate against a retailer that files a complaint with the department or the applicable federal agency regarding an alleged violation by the wholesaler of a state or federal law or administrative rule;
  - (i) refuse to deliver beer products carried by the wholesaler to a properly licensed retailer who resides within the wholesaler's sales territory:
    - (i) in reasonable quantities; and
    - (ii) within a reasonable time after receipt of the retailer's order.
- (2) Notwithstanding Subsection (1)(i), the wholesaler may refuse to deliver products if the refusal is due to:
- (a) the retailer's failure to pay the wholesaler pursuant to Subsection 32A-12-603(17);
  - (b) an unforeseeable event beyond the wholesaler's control;
  - (c) a work stoppage or delay due to a strike or labor problem;
  - (d) a bona fide shortage of materials; or
  - (e) a freight embargo."

10. Page 9, Line 22:

After line 22 insert:

**"Section 15. Coordinating clause.**

It is the intent of the Legislature that the Office of Legislative Research and General Counsel, as part of enrolling, shall:

- (1) renumber the sections as whole numbers; and
- (2) correspondingly change the cross references to the sections

renumbered by this coordinating clause."

**Renumber remaining sections accordingly.**

The motion passed unanimously with Sen. Wharton absent for the vote.

William Christofferson, President, UBWA, and Jim Olsen, Utah Food Industry Association, spoke in favor of the bill.

**MOTION:** Sen. Mansell moved to pass S.B. 73 out of committee as amended with a favorable recommendation.

The motion passed unanimously with Sen. Wharton absent for the vote.

3. **S.B. 108, Alcoholic Beverage Law Amendments - Sen. Buhler**

Sen. Buhler presented the bill.

**MOTION:** Sen. Mansell moved to pass S.B. 108 out of committee with a favorable recommendation.

The motion passed unanimously with Sen. Wharton absent for the vote.

**MOTION:** Sen. Nielson moved to adjourn.

The motion passed unanimously with Sen. Wharton absent for the vote.

The meeting was adjourned at 8:50 a.m.

The minutes were reported by Susan Greer.

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Sen. Steven Poulton  
Committee Chair