

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 348

Call to Order: By **CHAIRMAN CAROL WILLIAMS**, on April 13, 2005 at 4:15 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Carol Williams, Chairman (D)
Rep. Dennis Himmelberger, Chairman (R)
Rep. Rosalie (Rosie) Buzzas (D)
Sen. Vicki Cocchiarella (D)
Sen. Duane Grimes (R)
Rep. Christine Kaufmann (D)
Rep. Joe McKenney (R)

Members Excused: None.

Members Absent: None.

Staff Present: Annie Glover, Committee Secretary
Pat Murdo, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 348, 4/12/2005
Executive Action: HB 348

SEN. WILLIAMS asked the committee if a regular conference committee was adequate to address the problems with HB 348. **Pat Murdo, Legislative Branch**, stated that the amendments that she had prepared only addressed the Senate amendments, so a free conference committee was unnecessary.

Ms. Murdo handed out two sets of amendments.

[EXHIBIT\(ccs79sb0000a01\)](#)

[EXHIBIT\(ccs79sb0000a02\)](#)

REP. BUZZAS explained the first set of amendments, HB034806.apm. She stated that in sponsoring **HB 348**, she never had an intention to target retailers. The intent of the bill is to focus the responsibility on the adult buyers of the kegs.

REP. BUZZAS explained that amending the bill to put the date of purchase back on the form is important. As it stands, the purchaser puts a date next to his or her signature. However, the date may be recorded incorrectly. If the retailers are writing the dates down themselves, then law enforcement can be sure of accuracy. If someone is prosecuted for buying alcohol for minors, this provision ensures that there is a court record. This request came directly from law enforcement.

REP. BUZZAS discussed the provision added in the Senate that states that when a keg is returned by a police officer, law enforcement gets half the deposit back and the licensee gets the other half back. She stated that the problem with this provision is that it may not be a policeman that returns the lost keg. An individual or forest service personnel may return it. **REP. BUZZAS** stated that she would rather that the retailer keep the full deposit when lost kegs are returned. She stated that this has never been an issue with law enforcement who have an interest in reducing the youth alcohol problem. She explained that she could let some of these issues go, however, as long as the records are kept. She stated that the date of purchase is critical to the success of the bill.

REP. MCKENNEY asked **REP. BUZZAS** why the bill mandates that the retailer keep a record of the sale for a certain number of days. He pointed out that retailers already have an incentive to get their kegs back, so this part of the bill would be unnecessary. **REP. BUZZAS** replied that not every retailer would keep the records, even if it is in their best interest. The bill is not meant to create a burden for retailers, but five days is too short of a requirement. It is not enough time for law enforcement to investigate, so changing the requirement to 45 days is a compromise.

REP. MCKENNEY stated that law enforcement wants the information on hand whether or not the keg was returned. **REP. BUZZAS** stated that this is true.

REP. HIMMELBERGER asked **REP. BUZZAS** if the department would issue the tags. She stated that they would. **REP. HIMMELBERGER** asked **REP. BUZZAS** if she knew how the tags would be attached to the kegs. She pointed out page 1, new section 1, subsection 2 where the bill defines the type of tag that must be used. The bill does not define where the tag must be attached. **REP. HIMMELBERGER** stated that a lot of small breweries are still using barrel kegs, and there is no place to attach tags on these types of kegs. **REP. BUZZAS** pointed out a Senate amendment that defined a keg. This definition does not include these barrel kegs. **REP. HIMMELBERGER** described, in detail, these smaller kegs that were less expensive for the smaller breweries. **SEN. GRIMES** recalled from the Senate hearing that there is always a way to mark a keg. The bill states that the keg must be marked by any means available, so the retailer would have to find a way.

SEN. COCCHIARELLA stated that this discussion is outside the scope of the amendments up for discussion in the conference committee.

SEN. COCCHIARELLA said that she had spent a lot of time with a retailer in Missoula on this issue. She stated that they keep track of who bought the keg. **SEN. COCCHIARELLA** had thought that keeping the date in the record requirement was still in the bill, and if it is not, it should be added back in. The retailer that she spoke with stated that the five-day requirement to keep the records was sufficient. The purchaser knew that if the keg was not returned within that time period, the retailer would keep the deposit as a term of the contract, and the transaction is ended. In the cases where the police needed to go back and review the records, they knew within a day that they needed that review, and five days was sufficient for the police to get the records. Keeping records beyond that five days was an additional burden on the retailer.

SEN. GRIMES stated that his perceptions in the committee hearing were that the retailer would likely keep the records anyway. Retailers don't generally expunge their records every five days. Because of the other issues in a case like this and the workload of law enforcement, police would need more time than five days to get those records.

REP. BUZZAS stated that she also knew the retailer with whom **SEN. COCCHIARELLA** had spoken. This is the opinion of one isolated businessperson. There were a lot of lobbyists working on this

bill and there was no opposition from retailers. In the 2003 Session, the retailers opposed the bill because they said that the labels in that bill would gum up the washers. Those labels were removed for **HB 348**. **REP. BUZZAS** expressed concern that one retailer is making the decision that five days is enough time.

SEN. COCCHIARELLA stated that the retailer is not making that decision, she was.

SEN. BUZZAS stated that she has been working with retailers and law enforcement, and keeping those records for 45 days should not be an extra burden.

Motion: **REP. BUZZAS** moved that **HB 348 BE AMENDED WITH HB034806.APM 1 AND 3.**

Discussion: **REP. MCKENNEY** stated that five days may be too short. He preferred 30 days, and 90 was too long.

SEN. GRIMES stated that retailers would probably expunge their records at the end of the month. Practically, 30 days would be cleaner for the retailer.

REP. KAUFMANN stated that technically, the retailer does not have to throw away the records at all. They could keep them for 60 days and purge them at the end of two months if that was more in line with their business practices.

Vote: Motion carried 6-1 by roll call vote with **SEN. COCCHIARELLA** voting no.

Motion: **REP. BUZZAS** moved that **HB 348 BE AMENDED WITH HB034806.APM 2.**

Discussion: **SEN. COCCHIARELLA** stated that this was taken out in committee because it did not seem necessary because of what was on line b. She stated that it did not matter if it was put back in.

Vote: Motion carried unanimously by roll call vote.

Motion: **REP. BUZZAS** moved that **HB 348 BE AMENDED WITH HB034806.APM 4.**

Discussion: **REP. BUZZAS** stated that this amendment strikes line 21. She felt that language was not necessary. **REP. KAUFMANN** explained that the words "not less than" need to be added because

the retailer can keep the records for more than 45 days, but they can not purge the records before then.

Motion/Vote: SEN. WILLIAMS moved to RECONSIDER THE MOTION TO AMEND HB 348 WITH HB034806.APM 1 AND 3. Motion carried unanimously by voice vote.

Motion: REP. BUZZAS moved that HB 348 BE AMENDED WITH HB034806.APM 1, 3, AND 4, WITH THE LANGUAGE CHANGE THAT ADDS "NOT LESS THAN". Motion carried 6-1 by roll call vote with SEN. COCCHIARELLA voting no.

Motion: REP. BUZZAS moved that HB 348 BE AMENDED WITH HB034806.APM 5.

Discussion: REP. BUZZAS stated that law enforcement did not know how they would handle the money they received from the retailer if they returned a keg.

SEN. COCCHIARELLA stated that the reason this provision was added was that there was a huge concern over the loss of kegs. Even if law enforcement does find the keg, they may not have an incentive to return it to the retailer.

REP. BUZZAS asked SEN. COCCHIARELLA if the police were keeping these kegs. SEN. COCCHIARELLA stated that was the perception. REP. BUZZAS replied that she understood the incentive, but she hoped that it wouldn't anger some retailers.

REP. KAUFMANN pointed out that section 1 stated that the officers were required to return the keg. The law should be enough of an incentive for the officers to return the keg to the retailers. The deposit belongs to the licensee.

SEN. GRIMES asked if the purpose for law enforcement keeping the keg would be for evidence.

Jim Smith, Sheriffs Association, stated that law enforcement would want a keg that was seized for evidentiary purposes, and they would return it at the conclusion of the trial. The keg would be important evidence because this would be an adult prosecuted in court, not a juvenile.

SEN. GRIMES suggested that a provision be added that law enforcement must return the keg within a time limit.

SEN. WILLIAMS asked if this is even necessary to the bill.

REP. BUZZAS stated that it would probably be better to delete subsection 2. Having the kegs with the tags that identify the retailer is an incentive in itself for law enforcement to return the kegs.

Substitute Motion: **REP. BUZZAS** made a substitute motion that **HB 348 BE AMENDED WITH HB034806.APM 5 REMOVING SUBSECTION 2.**

Discussion: **REP. HIMMELBERGER** stated that the first part should be left in because the kegs need to be returned.

SEN. COCCHIARELLA said that the language in subsection 2 may be needed because the licensee should keep the deposit.

SEN. GRIMES proposed ending the sentence after "purchaser" on line 29. This would ensure that the licensee keeps the deposit if the purchaser forfeits it.

REP. BUZZAS withdrew her substitute motion.

Substitute Motion: **REP. BUZZAS** made a substitute motion that **HB 348 BE AMENDED WITH SUBSECTION 2, SECTION 3, AND TO ADD A PERIOD AFTER "PURCHASER".** Motion carried unanimously by roll call vote. **REP. HIMMELBERGER** voted aye by proxy.

SEN. GRIMES stated that in line 47, the officer would already have the information on record. **SEN. COCCHIARELLA** replied that the officer cannot take the tag off the keg. She stated that it is clear as it stands. **REP. BUZZAS** said that part had not been amended out of the bill.

REP. BUZZAS asked if that line negated the language in section 3 in any way. **SEN. GRIMES** said that he thought there was a little ambiguity. **SEN. GRIMES** asked what the purpose of that section was.

SEN. COCCHIARELLA replied that the purpose of that whole section was the harassment of retailers. This section identifies the reason for the return of the keg. This limits law enforcement from going through the records of retailers without cause. They will be searching the files to find a reason to prosecute.

REP. BUZZAS said that she understood that concern, but it was dangerous to only allow them to look through that information when they return a keg. The main people who are purchasing the alcohol for underage kids are parents and college students who are trying to make money. The parents will return the keg. The police need some record so they can prosecute them. **REP. BUZZAS**

emphasized that purchasing alcohol for minors is illegal. If the police are limited to searching records only when a keg is returned, then law enforcement is too limited.

SEN. COCCHIARELLA explained that the amendment does not do that.

REP. BUZZAS stated that it does, even if it is an unintended consequence.

SEN. GRIMES proposed adding after section 3, law enforcement may not request information on file about a purchase unless it is in connection with a legal violation.

REP. MCKENNEY said that the whole first paragraph is about kegs, and now the references to kegs should be changed to "recovered kegs".

Motion: **SEN. GRIMES** moved that HB 348 BE AMENDED CONCEPTUALLY AFTER SECTION THREE, BY CHANGING "KEGS" TO "RECOVERED KEGS" AND TO CHANGE "TO REQUEST" TO "AND VERIFY". Motion passed unanimously by roll call vote. **REP. HIMMELBERGER** voted aye by proxy.

SEN. GRIMES stated that this amendment will prevent law enforcement from a witch hunt. However, this may have also prevented law enforcement from using keg registration in a murder investigation or another crime. In the future, the Legislature may have to go back and add another section of code that law enforcement may cite in an investigation where they must look at these records.

SEN. COCCHIARELLA asked **Kristi Blazer, Montana Beer and Wine Wholesalers Association**, if, as an attorney, she thought that law enforcement would have a method to search the records regardless of this restriction. She thought that they could with a court order or a subpoena.

Motion/Vote: **REP. BUZZAS** moved that HB 348 DO PASS AS AMENDED. Motion carried 6-1 by roll call vote with **SEN. COCCHIARELLA** voting no. **REP. HIMMELBERGER** voted aye by proxy.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. CAROL WILLIAMS, Chairman

ANNIE GLOVER, Secretary

CW/DH/ag

Additional Exhibits:

EXHIBIT ([ccs79sb0000aad0.PDF](#))