



North Dakota Senate Committee on Industry, Business and Labor
Senator Jerry Klein, Chair
Senator Doug Larsen, Vice Chair
Monday, February 8th, 2021

STRONG SUPPORT SB 2321 - A BILL for an Act to amend and reenact sections 5-01-14 and 5-01-21 of the North Dakota Century Code, relating to microbrew pubs and brewer taprooms

Written Testimony of Mark Bjornstad
Drekker Brewing Company, Co-Founder & President
North Dakota Brewers Guild, Member

Chairman Klein, Vice Chairman Larsen and members of the Senate Industry, Business and Labor Committee,

My name is Mark Bjornstad and I am the Co-Founder and President of Drekker Brewing Company in Fargo, North Dakota and I am a member of the North Dakota Brewers Guild. I am here to share my strong support for Senate Bill 2321.

Drekker Brewing is licensed as a Taproom Brewer and is currently the largest brewery in the state of North Dakota, brewing over 8,000 barrels per year. We specialize in creative and experimental beers with many being listed amongst the highest rated beers in the world and winning numerous awards annually. In 2020 we brewed 125 different beers and 80 of them were brand new. Our brewery is a major attraction in Fargo where we draw hundreds of people from all over the region and surrounding states every week to line up for our beer releases and events. To us, the Taproom Brewer license was the best way to focus on our brand, make our brewery a destination and get our beers out into the world through multiple different distribution opportunities. We currently distribute our beers to twelve states and several countries across Europe.

Since our brewery was opened in 2014, the craft beer industry has grown and changed continuously. This requires we advance our products and the business models we utilize to sell them. Senate Bill 2321 is needed to address multiple areas where consistency is lacking and where changes are needed to allow North Dakota breweries to adequately adapt to the changing business and brewing industry climate. I am asking you to support this bill and it's efforts to:

- Resolve package size inconsistencies across different laws.

- Allow contract brewing and alternating proprietorship relationships as they are defined and regulated by the Federal Government.
- Allow North Dakota breweries to ship directly to consumers within North Dakota as is already allowed for out-of-state breweries.
- Increase the allowed Festival Event permits from 20 to 40 per year.

Different package size allowances and restrictions have developed over the years through multiple different laws and amendments. It is our intention, and at the request of the North Dakota Tax Department, to address these inconsistencies and provide a more clear set of regulations. This is also incredibly confusing and frustrating to our customers across North Dakota. These differences between brewpubs and taproom breweries provide no consumer protection and only limit commerce and inhibit growth.

Contract brewing is an issue that is particularly important to myself and Drekker Brewing. Contract brewing is an arrangement between two fully licensed breweries where the contractor brewery utilizes excess capacity to brew beer for the contractee brewery, who has a demand or need beyond their own capacity. Simply expanding a brewery's capacity is not always possible or reasonable. During our last expansion it took seven months from the time we ordered and paid for tanks for them to arrive. In addition, it took another 2 months for beer to be produced out of those tanks totalling nine months to respond to increased demand. This is even more painful considering this was during a pandemic when our brewery was experiencing intermittent shutdowns and precaution restrictions. Had we been able to contract brew, we could have had that beer on our dock in two months, and every month after that. This is an arrangement that is licensed and regulated by the Federal Government and currently allowed in every single state except North Dakota. North Dakota law does not explicitly prohibit contract brewing but rather through a disputed interpretation by the North Dakota Tax Department.

In 2017 Drekker Brewing began plans to build our new brewery but we needed to meet demand much faster than we could build a whole new facility. We approached the Tax Department with our intentions and need to begin contract brewing. They felt there may be an issue with entering into this arrangement with another North Dakota brewery because providing our recipe was giving them a "thing of value". We did not agree with this interpretation but followed their recommendation to look for an out-of-state contract brewery to fulfill this need. We selected a contract brewer in Florida and began brewing beer under contract and upon making our announcement we were informed by the Tax Office that if any of this beer entered the State of North Dakota they would file criminal charges against us and take any actions against our licenses they felt was necessary. To this day I do not understand the degree to which the tax department opposed this arrangement and after several years of discussion we were asked to clarify this with legislation. I am here today to do just that and ask that you support this bill and clearly define contract brewing arrangements within the State Law so we may grow and meet our demand under all of the avenues allowed to us and every other brewery across the country. This not only helps growing breweries in North Dakota but also helps breweries with excess capacity, fulfills orders from our wholesale partners furthering their business, meets our customers demands and provides increased tax revenue for the State of North Dakota. There is no loser in allowing North Dakota breweries to contract brew.

Another item this bill seeks to clarify is direct shipment of beer to consumers within the State of North Dakota. Currently out-of-state breweries are allowed to direct ship to residents of North Dakota but an in-state brewery isn't afforded this same opportunity. This is a perplexing situation where the US Constitution Commerce clause is being violated in reverse. The commerce clause of the US Constitution is intended to encourage interstate commerce and prevent a State from enacting laws that would favor their in-state companies and inhibit out-of-state companies. In this instance, North Dakota has chosen to favor out-of-state companies and prohibit their in-state companies from engaging in the same commerce model. That is an unfathomable situation the founding fathers would never have even imagined. A State willfully allowing out-of-state companies to sell products in a manner they won't allow to an in-state company. I can only hope this was an oversight in previous law and something we can resolve here. This issue has become all the more important during the current pandemic when companies across the country are shifting business models and engaging in e-commerce to sell their products and reach customers that are no longer allowed or able to come to them directly. This bill will allow North Dakota breweries to function in the same manner out-of-state breweries are currently allowed to sell beer in North Dakota and allow us another avenue to sell our products as we fight to survive as businesses and as an industry during this global pandemic.

The last issue I wish to speak on regarding this bill is Festival Event permits. These licenses are utilized by breweries so we can take our products across the state to industry expositions, festivals and gatherings. These events provide the opportunity to share our products, educate customers on North Dakota breweries and the brewing process, explain our usage of North Dakota agriculture products and eventually sell those products to new customers. Currently North Dakota breweries are allowed 20 Festival permits annually, half of what is provided to wineries and distillers. This was an arbitrary number arrived at by some prediction of how permits would be used and the possible demand for these types of events and has created an inconsistency between different alcohol producers in the state. Since this law was originally written the North Dakota brewing scene has grown along with consumer interest in learning more about North Dakota made products and seeking a connection with the state's agriculture and food and beverage production industries. These licenses are absolutely essential for us to market our products and participate in these festivals and gatherings, however we are severely limited by the current restriction. We have to constantly turn down opportunities and ration these licenses throughout the year. This bill increases the number of licenses we are allowed from 20 to 40 annually and I strongly ask for your support on this measure.

I sincerely hope you will consider these items and the needs they address for the North Dakota brewing industry. It is a pleasure to speak before you and I thank you for this opportunity.

Respectfully,

Mark Bjornstad
Drekker Brewing Company, Co-Founder & President
North Dakota Brewers Guild, Member