

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1325

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1325

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1325

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Monday, January 19, 2005

Tape Number	Side A	Side B	Meter #
1	X		0-end
1		X	0-end

Committee Clerk Signature



Minutes:

Chairman Keiser: Opened the hearing on HB 1325. All committee members were present.

Representative Ruby: Appeared in support of HB 1325 and also was a sponsor. I would like to inform you that the changes that we made last session did exactly what the people who brought the information to me and asked me to sponsor that, everything they said would happen as far as the growth of the industry, the ability to make the changes to the laws have come true. As small as it may be in wine production, we will never be able to compete with California, but it is a success for our state, and the intent of legislation to day is to further that, In my area we have one winery, they are a domestic winery, as they said in last session, they're growing grapes in their own location at this time, but as you know in North Dakota, we have a short growing season. They use such things as honey, rhubarb, berries, its been a great addition to our area, not only for tourism, but the value added. At this time winerys from other states can get a permit here in North Dakota and they can ship the product to North Dakota residents. The way the tax

department was interpreting that, North Dakota companies could not direct ship out however under the domestic winery law it clearly states that. We want to make sure we can ship it out, the problem is a winery here in this state would have to get a permit with each state and that is direct shipment law that is a requirement. What this intends to do is have a reciprocity agreement with states who have the same requirements and are consistent with our regulations I believe there are 13 states that have reciprocity agreement and we would be included with them. In 2003 North Dakota had 62 permits, total tax collection from those was \$832.44. In 2004 the number went to 121 permits we do not have the numbers yet but you can see even if you double the amount, your still not talking a significant amount of tax revenue. Under the reciprocity they won't have to notify the tax department on what is sold, however any thing our wineries sell out they have to pay a wholesale tax.

Representative Froseth: How will you control the 21 age limit, will it be up to the UPS man?

Representative Ruby: Right now as it stands, when they are shipping alcohol, they have a requirement to be signed for and they ask for identification, so it won't be put in the hands of someone who is under 21.

Greg Kempel, Owner, Maple River Winery, Casselton, ND: Appeared in support of bill and provided written testimony (SEE ATTACHED TESTIMONY).

Jeff Peterson, CO-Owner w/Ken Eggleston, Pointe of View Winery: Appeared in support of HB 1325 and provided written testimony (SEE ATTACHED TESTIMONY).

Pat Ward, Zuger, Kirmis, and Smith Law Firm: Appeared in opposition of HB 1325 and provided written testimony (SEE ATTACHED TESTIMONY).

Robert Hanse, General Manager, Johnson Brothers Northwest Beverages, Inc.: Appeared in opposition on HB 1325 and provided written testimony (SEE ATTACHED TESTIMONY).

Bill Shalhoob, ND Hospitality Association: Appeared in opposition of bill and provided written testimony (SEE ATTACHED TESTIMONY).

Senator O'Connell: Unable to attend provided written statement, in favor of the HB 1325.

Gary Anderson, Director of Income Sales and Special Taxes: Appeared in neutral position of HB 1325. I just want to make a few comments, I believe to follow up Representative Ruby's comments. the issues that we specifically address had to do with the tax application that was referred to in testimony, one of the taxes that was anticipated under this process is a sales tax that the wineries would apply North Dakota sales tax on transactions that they ship outside the state.

Sale Taxes generally would apply on this sale whoever on a situation such as this, the actual definition of a sale is actually where the product is delivered to. A sale cannot be subject to a sales tax. The second issue that we will point out is the alcohol tax, again there is a question whether the tax would apply because the transaction is going out side the state.

Hearing closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1325

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-24-05

Tape Number
4

Side A
X

Side B

Meter #
5-14.5

Committee Clerk Signature



Minutes:

Chairman Keiser: Reconvened on HB 1325. All committee members were present.

Representative Dosch: I move to **ADOPT** amendments presented by REPRESENTATIVE RUBY.

Representative Thorpe: **SECOND** the adoption of amendments.

Motion carried.

Representative Nottestad: I move a **DO PASS AS AMENDED** on HB 1325.

Representative Ekstrom: **SECOND** the **DO PASS** as **AMENDED** on HB 1325

Motion carried **VOTE: 13-YES 0-NO 1-Absent (BOE)**

Representative Nottestad will carry the bill on the floor.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1325

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-26-05

Tape Number	Side A	Side B	Meter #
4	xx		18.9

Committee Clerk Signature *Pam Nevers*

Minutes: **Chair Keiser:** Look at HB 1325.

Rep. Ruby: I make a motion to reconsider our amendments we passed on HB 1325.

Rep. N. Johnson: I second.

Rep. Ruby: When I looked at how it was written and put in there, I thought I made the point that the limit for sales was 7 1/3 gallon and 1.3 liter wine per customer per month. The wineries had some problem with interpretation of the law by the tax department. We need to move that into a different line and explain further.

Chair Keiser: We may have a complication here. We have passed it out and signed it and it's on the 6th order on the floor. We'd have to bring it back. We could catch it on the senate side.

CLOSED

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1325

Page 3, line 3, after "winery" insert ". wholesaler, or retailer"

Page 3, line 11, remove "and intrastate"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1325

Page 3, line 14, after the underscored period insert "Sales under this subsection are limited to 7.13 gallons [27 liters] of wine per ~~shipment.~~ month."

Renumber accordingly

Roll Call Vote #: Date: 1-24-05
1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1325

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Adopt Both Amendments by Rep. Ruby*

Motion Made By *Rep. Dosch* Seconded By *Rep. Thorpe*

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	A	A
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes) *13* No *0*

Absent *1 (Rep. Boe)*

Floor Assignment *Rep. Nottestad*

If the vote is on an amendment, briefly indicate intent:

January 24, 2005

V/K
1/25/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1325 IBL 1-26-05

Page 3, line 3, after "winery" insert ", wholesaler, or retailer"

Page 3, line 11, remove "and intrastate"

Page 3, line 14, after the underscored period insert "Sales under this subsection are limited to
7.13 gallons [27 liters] of wine per month."

Renumber accordingly

Roll Call Vote #: 2 Date: 1-24-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1325

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50233.0203

Action Taken Do Pass As Amended

Motion Made By Rep. Nottestad Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	A	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes) 13 No 0

Absent (1) Rep. Boe

Floor Assignment Rep. Nottestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1325: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1325 was placed
on the Sixth order on the calendar.

Page 3, line 3, after "winery" insert ", wholesaler, or retailer"

Page 3, line 11, remove "and intrastate"

Page 3, line 14, after the underscored period insert "Sales under this subsection are limited to
7.13 gallons [27 liters] of wine per month."

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1325

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1325

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-08-05

Tape Number

1

Side A

xxxx

Side B

Meter #

0-2727

Committee Clerk Signature



Minutes: **Chairman Mutch** opened the hearing on HB 1325. **Senator Fairfield** was absent.

HB relates to interstate sales of wine.

Rep. Ruby introduced the bill.

Rep. Ruby: I have introduced this bill on behalf of the wine industry. The industry is growing in the state. There has been great success stories of how this is starting to grow. One thing that they have run into is at this time, if someone stops by one of the wineries and likes the product, they can buy it. But later if they want to buy more, and are not in the state, they cannot order it and have it shipped to them in another state. At this time also, there are companies that ship their wine into the state using a permit process and then they are responsible for all taxes based off of sales and they submit them to the tax department. What this does is enters North Dakota into reciprocity agreement with about thirteen other states that allow shipment between the states. Each state has their own limits on what they allow to be sold in their individual state. Language was put into our direct shipment law, pertaining specifically to wineries that allowed them to ship

to other customers. One issue was lost tax revenue. The way the industry views this is the number of wine drinkers in North Dakota is small. Then the number of those who purchase wine from another state. Compare that with the state's that will population that will now be a market to our product. I checked with the tax department and I will pass this out for you to see, that will show the impact.

Senator Klein: Wouldn't it be better for economic development to make them come back to Burlington to buy the wine?

Rep. Ruby: I'm sure when they do come back, they would buy more. Hopefully there will be more wineries for them to go to.

Pat Ward, ND Wholesale Liquor, spoke in support of the bill. See written testimony.

Senator Heitkamp: Why is wine more special than any other product?

Pat: I rather pass that question on to these other guys.

Rob Hanson, Ed Phillips and Sons of Fargo, spoke in support of the bill.

Hanson: The reason that you have legislation that deals with beverage alcohol as an industry separately is because it is taxed in addition to sales tax, income tax and everything else. It is highly regulated at the federal and state level. When this bill was originally put in two years ago, it required everyone from out of state to buy a fifty-dollar fee or license in order to do business in this state. This bill would take that out of here. Other states will not allow us to ship into their border if they can't ship into our border under the same rules. Which is no tax. That is why the tax is taken out of this.

Senator Heitkamp: What if I buy a bottle of Crown Royal? And then I ship it over the Internet.

Hanson: It's just wine, actually it says liquor in the law. Liquor is defined as any alcoholic beverage other than beer. So you could buy a bottle of Crown Royal through the Internet, just as easily as you could buy a bottle of wine, and not pay tax.

Jeff Peterson, part owner of Pointe of View Winery, spoke in support of the bill. See written testimony.

Senator Klein: We make wine in North Dakota and if we had a Crown Royal factory, we would be trying to make rules and laws too, but isn't a lot of this legislation we have been creating, go to the fact that it is added value agriculture?

Jeff: Yes.

Senator Heitkamp: Is it fair to say that the other parts of the country, there is way more opportunity to ship in, than what we are making in this state, and now with this bill, I can ship it in, tax free.

Jeff: First of all, they are here today in support of it, and I don't think they would if it was going to hurt their business.

Bill Shalhoob, ND Hospitality Association, stated support for the bill with the amendments.

Jerod Anderson, Congress, Inc, stated support for the bill.

Senator Heitkamp: Are you fearful of tax tracking?

Jerod: If you look at the dollars collected, you would know that their is a lot more coming in than what is going outside of the system, there has to be.

Sen. O'Connell, stated support for the bill.

There was no opposition. The hearing was closed.

Senator Heitkamp moved to adopt amendment 50233.0311. Senator Klein seconded.

Page 4

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1325

Hearing Date 3-08-05

Roll Call Vote: 6 yes. 0 no. 1 absent.

Senator Krebsbach moved a DO PASS AS AMENDED. Senator Klein seconded.

Roll Call Vote: 6 yes. 0 no. 1 absent.

Carrier: Senator Krebsbach

50233.03011
Title

Senate Industry, Business, and Labor Committee

March 8, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1325

Page 3, line 1, replace "pursuant to" with "under"

Page 3 line 11, after the underscored period insert "A person in another state may not sell wine for shipment to a person in this state under this subsection in an amount in excess of 7.13 gallons [27 liters] of wine per month." and after "and" insert "interstate"

Page 3, line 14, remove "Sales under this subsection are"

Page 3, remove line 15

Renumber accordingly

Date: 3-8-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1325

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Adopt Amendments 50233.03011 ↑

Motion Made By

Heitkamp

Seconded By

Klein

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	A	
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes)

6

No

0

Absent

1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

February 24, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1325

Page 3, line 1, replace "pursuant to" with "under"

Page 3, line 11, after the underscored period insert "A person in another state may not sell wine for shipment to a person in this state under this subsection in an amount in excess of 7.13 gallons [27 liters] of wine per month." and after "and" insert "interstate"

Page 3, line 14, remove "Sales under this subsection are"

Page 3, remove line 15

Renumber accordingly

Date: 3-8-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1325

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

DPAM

Motion Made By

Krebsbach

Seconded By

Klein

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	A	
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total

(Yes)

6

No

0

Absent

1

Floor Assignment

Krebsbach

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1325, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1325 was placed on the Sixth order on the calendar.

Page 3, line 1, replace "pursuant to" with "under"

Page 3, line 11, after the underscored period insert "A person in another state may not sell wine for shipment to a person in this state under this subsection in an amount in excess of 7.13 gallons [27 liters] of wine per month." and after "and" insert "interstate"

Page 3, line 14, remove "Sales under this subsection are"

Page 3, remove line 15

Renumber accordingly

2005 TESTIMONY

HB 1325

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1325

Page 3, line 3, after "winery" insert "or licensed liquor retailer"

Prepared for House Industry, Business and Labor Committee for HB1325

Direct Shipping Laws - Survey of 13 "Reciprocity" States

All questions and answers are limited to wine shipped directly to consumers by wineries

If HB 1325
Passed as is

Question	CA	CO	HI	ID	IL	IA	MN	MO	NM	OR	WA	WI	WV	ND
1.														
Out-of-state winery permitted to ship directly to consumer in your state?	Yes - if equal reciprocity	Yes * - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes** - if equal reciprocity	Yes** - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if state has agreement w/WI	Yes - if equal reciprocity	Yes
Volume limits?	2 cases - 18 liters per mo.	2 cases - 18 liters per mo.	3 cases - 27 liters per yr.	2 cases - 18 liters per mo.	2 cases - 18 liters per yr.	2 cases - 18 liters per mo.	2 cases - 18 liters per yr.	2 cases - 18 liters per yr.	2 cases - 18 liters per mo.	2 cases - 18 liters per mo.	2 cases - 18 liters per yr.	9 liters per year	2 cases - 18 liters per mo.	9 liters per mo.
Your alcohol tax imposed?	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Your sales tax imposed?	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No
Out-of-state winery needs license? If yes, fees?	Recipient must obtain license	Yes \$25 annually	Yes	Yes	Yes	Yes \$25.00	No	No	No	No	Yes	Yes \$10 per year	No	No
2.														
In-state winery permitted to ship directly to consumer in another state?	Yes - if equal reciprocity	Yes * - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if equal reciprocity	Yes - if state has agreement w/WI	Yes - if equal reciprocity	Yes
Your alcohol tax imposed?	No	No	No	No	No	No	No	No	No	No	No	Indirectly	No	Yes
Your sales tax imposed?	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes
Licensed required? If yes, fees?	Yes	Yes	Yes	Yes	Mfg lic.	Yes	Farm Wine Lic.	No	Yes	No	No	Yes	No	Yes
3.														
In-state winery permitted to ship directly to in-state consumers?	Yes	Yes*	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes
4.														
Internet sales permitted:			Yes	Yes										
To in-state consumers?	Yes	No			Yes	Yes	No	Yes	No Regs.	No	No	No	Yes	Yes
To out-of-state consumers?	Yes	No			Yes	Yes	No	No	Yes-if reciprocity	No	Yes	Yes	Yes	Yes
5. In states with no reciprocity:														
Out-of-state winery permitted to ship directly to consumer in your state?	Yes	No			No	Yes	No	No	No	No	No	Yes	No	Yes

* Consumer must have visited winery before being able to receive direct shipments.

** Limited to domestic wineries only.

NOTE: The reciprocity state laws apply if the other state's reciprocity laws are equal to theirs. Must have the same shipping privileges.

Language used by each of the 13 states is almost identical.

The reciprocity laws all apply to tax free sales - in and out shipments - all have limits. Incoming limits are based on incoming state laws.

Reciprocity laws for the 13 states indicate that the shipments to out-of-state consumers is not considered a sale in their state.

ND Hospitality Assn. Testimony
House IBLCommittee
HB 1325

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I represent the ND Hospitality Assn. We are opposed to some of the changes proposed in HB 1325.

Alcohol taxes play a significant role in the revenues generated for North Dakota. These tax battles have been fought in past sessions and the State has gone to great lengths to insure its revenue stream. We oppose any change that disturbs the present balance and insures our retailers a competitive, even playing field throughout the state. We believe direct sales to consumers without quantity limitations and without taxes will affect our retailers in a negative way.

In the 1999 and 2001 sessions we put in place laws and rules dealing with the interstate and intrastate sales of wine and beer. While we do not have a problem with the interstate exemption granted in section 6, we do object to the intrastate exemption and the increasing of any quantity limitations that are increased from law as it exists today.

Thank you for your consideration and I would be happy to answer any questions.



JOHNSON BROTHERS NORTHWEST BEVERAGES, INC.

1358 North 39th Street • Fargo, ND 58102 • (701) 282-4660 • Fax (701) 282-8869

January 18, 2005

Chairman George Keiser,
Members of the North Dakota House of Representatives
Industry, Business and Labor Committee

My name is Rob Hansen, and I would like to address HB 1325. I am the General Manager of Johnson Brothers Liquor Company (Northwest Beverages, Ed Phillips & Sons), a North Dakota wine, spirits and beer wholesaler.

The proposed amendment to HB 1325 eliminates, for all practical purposes, any reporting or financial responsibility for out of state entities shipping alcoholic beverages to consumers in North Dakota. Apparently, this is necessary to achieve reciprocal status with other states, but it costs the state money.

The amendment also removes the monthly volume limitation on the amount that can be shipped to any individual. I think this should be left in the law.

The amendment also provides for intrastate shipment from winery to consumers. There is already a system in place which allows domestic wineries to sell direct to consumers on their premises or at outside events. The three-tier system is designed to keep manufacturers from being wholesalers or retailers and wholesalers from being retailers in order to maintain a clean and fair business climate, and it works. I strongly oppose intrastate shipping.

I request a do not pass from this committee for HB 1325 as it is proposed.

Thank you.


Robert L. Hansen
General Manager

Testimony of Patrick Ward in Opposition to HB 1325

Chairman Keiser and members of the House IBL Committee. My name is Patrick Ward. I am a partner with Zuger Kirmis & Smith law firm here in Bismarck. I represent the North Dakota Wholesale Liquor Dealers in opposition to HB 1325.

The System Enables Efficient Tax Collection

Beverage alcohol is the most highly taxed consumer product in America. Billions of dollars of revenue flow into state tax coffers from sales of beer, wine and distilled spirits. The single most efficient way devised by states to insure 100 percent collection of this massive amount of revenue is to require that all beverage alcohol enter its borders through a licensed wholesaler, who is responsible for paying all alcohol excise taxes. By requiring the thousands of out-of-state suppliers of beer, wine and liquor to sell only to an in-state, licensed wholesaler, the state assures that excise and sales taxes are collected on all beverage alcohol crossing its borders. Collection of sales taxes also is assured since the retailer can only buy from a licensed wholesaler, who must record all sales to retailers.

This statute was enacted a few years ago to allow individuals to purchase wine directly in small quantities (one case per month) for their personal use. The law requires the direct shipper to get a direct shipping permit from the State Tax Commissioner and pay an annual fee. It also requires the direct shipper to pay the wholesale and retail taxes to the tax commissioner.

We are concerned about the language at the beginning of new paragraph 6, at line 26 on page 2 of the bill, which says, "in the alternative to subsection 5." Some people may use this to disregard the limitation on the volume of liquor they may purchase which is currently set out in subsection 5.

We also object to the intrastate shipping provision at line 11 on page 3 of the bill.

In addition, this issue is presently the subject of a pending U.S. Supreme Court case which had already been argued December 7 and will be decided before June. It would be better to await the Supreme Court's resolution of this question to see whether they rule in favor of state's rights on this issue.

We urge a Do Not Pass on HB 1325.

Supporting a State's Constitutional Right to Regulate the Sale and Distribution of Alcohol

Michigan and New York are asking the U.S. Supreme Court (oral arguments Dec. 7, 2004) to uphold a state's ability to regulate the sale and distribution of alcohol. Backed by more than 30 other states, they argue that state governments are entitled to prohibit unaccountable alcohol sales (such as those over the Internet and through catalogs) and require out-of-state producers to sell alcohol through the state-licensed system. The states rely on the Twenty-First Amendment to the U.S. Constitution, which reads:

"The transportation or importation into any state...for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

The 21st Amendment is Clear - States Can Regulate Alcohol

"The States' Twenty-First Amendment power is such that 'the States have virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.'"

- Brief filed by more than 30 State Attorneys General, March 2004

"The plain language of both the Twenty-First Amendment and the Webb-Kenyon Act grant states virtually unfettered authority to regulate the importation of alcoholic beverages for delivery or use within their borders."

- Brief filed by New York Attorney General Elliot Spitzer, September 2004

"[The Supreme Court] has uniformly held that the 21st Amendment gives States 'virtually complete control' over the importation and sale of liquor and the structure of the liquor distribution system."

- Brief filed by Michigan Attorney General Michael Cox, July 2004

The 21st Amendment Trumps the Dormant Commerce Clause

"[The Supreme Court's] decisions shortly after adoption of the 21st Amendment broadly recognized that State beverage alcohol importation and distribution laws were 'unfettered by the Commerce Clause.'"

- Brief filed by Michigan Attorney General Michael Cox, July 2004

"The legislative history and historical context of [the Twenty-First Amendment and the Webb-Kenyon Act] makes clear that they were intended to shield state regulation from the impediments otherwise posed by the dormant Commerce Clause."

- Brief filed by New York Attorney General Elliot Spitzer, September 2004

"As [the Supreme] Court explained in [1984], the purpose of...the Twenty-First Amendment was to create an exception to the 'dormant Commerce Clause' for one product only, so that States could control the flow of alcohol across their borders for use by their residents....[B]oth the Constitution and a federal statute (the Webb-Kenyon Act) now prohibit importation of alcoholic beverages in violation of state law."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

States Have Legitimate Reasons to Regulate Alcohol - Such as Preventing Sales to Minors and Collecting Revenue

"The States have a significant interest in exercising their police powers to protect the health, safety and welfare of their citizens in the area of alcohol shipping."

- Brief filed by more than 30 State Attorneys General, March 2004

"The [lower court's] erroneous decision presents an immediate threat to the core concerns protected by the Twenty-First Amendment - consumption by minors, maintaining an orderly market, and collection of taxes."

- Brief filed by more than 30 State Attorneys General, March 2004

"Michigan's regulatory framework clearly serves valid regulatory purposes of 'promoting temperance,' 'controlling the distribution of liquor,' and 'raising revenue.'"

- Brief filed by Michigan Attorney General Michael Cox, July 2004

"This Court has repeatedly affirmed that while the Twenty-First Amendment does not permit states to ignore other provisions of the Constitution, it does exempt rational state regulation of alcohol importation from the operation of the dormant Commerce Clause."

- Brief filed by New York Attorney General Elliot Spitzer, September 2004

"No [Supreme Court] case—indeed, no opinion of any Justice—has suggested any dormant Commerce Clause limitation on a state's power over physical importation of alcohol for use by its residents. The Court has recognized that legitimate state objectives including tax enforcement and temperance-related objectives such as preventing sales to minors, depend on state control over the physical flow of alcohol..."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

States Should Be Entitled to Control Sales by Out-Of-State Alcohol Sellers

Changes in marketing techniques or national consumer demand for a product do not alter the meaning of a constitutional amendment....In 2000, there were over 2,100 wineries in the country...[and] requiring New York officials to traverse the country to ensure that direct sales to consumers (no matter how small) comply with New York law would render the regulatory scheme useless."

- Decision of the 2nd Circuit Court of Appeals, February 2004

"There is ample rational basis for the Michigan system. Out-of-state sellers ordinarily have no Michigan license and no physical presence in the state. In contrast, licensed...firms are entities whose backgrounds Michigan can investigate, whose premises Michigan can inspect and, if necessary, seize, and whose violations can be punished by enforceable fines or by license revocation."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

"[The other side] ignore[s] the critical differences between in-state and out-of-state wineries. The state imposes a heavy burden of licensing, regulation, and enforcement on in-state wineries, and can impose serious penalties for non-compliance, including license revocation. The same level of regulation and enforcement cannot realistically be imposed on out-of-state wineries."

- Brief filed by health, safety, education and religious groups, July 2004

"The Seventh Circuit noted that the Twenty-First Amendment applies specifically to 'importation' and that, 'Every use of § 2 [of the Amendment] could be called 'discriminatory' in the sense that plaintiffs use that term....If that [application of § 2 to imports] were the sort of discrimination that lies outside state power, then § 2 would be a dead letter.'"

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

The Wine Industry Is Interested in Profits, not Equality

"[T]he claim of disparate treatment of in-state and out-of-state wineries is a ruse. [The other side did] not ask for the in-state 'preference' to be struck down; their sole purpose is to eliminate state regulation of shipments of alcohol from out-of-state."

- Brief filed by health, safety, education and religious groups, July 2004

"The [lower court] invalidated Michigan's ban on wine imports by unlicensed Michigan residents because Michigan allows licensed in-state wineries to ship limited quantities of wine directly to retail customers in the state. It ignored the fact that out-of-state wineries may equally locate in Michigan and be licensed to sell directly, and, that requiring a local presence has been upheld in the tobacco sales context based on police power authority alone."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

The [lower court] ruling not only destroys the keystone of Michigan's alcoholic beverage control system, ...but also has the perverse effect of discriminating in reverse. In-state sellers of wine remain subject to licensing and extensive regulation, and to monetary penalties and loss of their licenses for improper sales (such as to minors), while out-of-state sellers are now free to respond to any order they receive on the telephone or Internet seeking importation, without the substantial burden of...paying for or complying with licenses."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

32 state attorneys general and the following groups support a state's right to regulate alcohol:

American Trauma Society
American Values
Committee for a Constructive Tomorrow
Concerned Women for America
Eagle Forum
Kids First Coalition
Michigan Association of Secondary School Principals
National Association of Evangelists
Neighborhood Activists Inter-Linked Empowerment Movement
Sixty Plus
Traffic Safety Association of Macomb County
Traffic Safety Association of Michigan, Inc.

Done

[Handwritten signatures and notes]

Jeff Peterson - owner
Ken Eggleston - owner
Pointe of View Winery
Burlington, ND 58722

Mr. Chairman, members of Industry, Business and Labor, my name is Jeff Peterson and I represent one - half ownership in Pointe of View Winery. Myself and Ken Eggleston on behalf of all North Dakota wineries appreciate the opportunity to discuss market access barriers of small wineries in North Dakota and ask for your support of House Bill 1325.

The majority (90%) of wineries in the United States are small family owned operations. Many of those wineries are realizing profits and growth for their winery **only** because of their direct shipment sales and larger customer base. This is possible through the less burdensome direct shipment laws that reciprocity allows.

North Dakota currently allows for direct shipment, but this is limited by the requirement for special permits in each state. What the North Dakota wine industry is asking for is an opportunity to fully realize direct shipment potential through reciprocity agreements with other reciprocity states. (Definition: "If I can ship to you, you can ship to me.") Direct shipment in North Dakota generated \$833.00 in tax revenue from 62 permits in 2003. In 2004 121 permits were issued and tax collected is estimated at \$1800.00. Currently 2004 tax figures won't be available for a few more days, so there may be a slight variance with this estimate. With reciprocity afforded North Dakota wineries through passage of HB1325 projected tax revenue for North Dakota in the first year is \$5760.00 with no fiscal impact.

Primary opposition to HB1325: Wholesalers and their clients (retailers)
Their arguments:

- 1) Loss of tax revenue (**already presented as a false**)
- 2) "Point Click Drink" An internet campaign showing easy online access to alcohol to minors (funded 100% by wholesale industry)
Fact: Our Federal Express wine shipping program requires package identification of alcohol and identification of age upon delivery including age verification e-mailed to the winery.
- 3) North Dakota consumers will purchase wine by phone and internet and not from local retailers.
Fact: Wine sales through retail outlets in North Dakota has increased the last few years and specialty wine sold through direct shipment is normally more expensive and includes the addition of shipping charges.

What HB1325 will do:

- 1) Expand markets for marketing North Dakota products
- 2) Provide for economic growth of the North Dakota Wine industry
- 3) Increase North Dakota value added agriculture
- 4) Increase tax revenue for North Dakota
- 5) Allow North Dakota consumers access to more specialty wines

House Bill 1325 is good legislation for North Dakota. Please vote yes on HB1325. May I answer any questions?

Jeff Peterson
Pointe of View Winery
Burlington, ND 58722

1/19/05

Senator O'Connell is in Washington, DC, attending Inaugural events and will not be able to attend the hearing today on HB 1325 . He is in support of the bill.

Chairman Keiser and Members of Industry, Business, and Labor

Greg Kempel
Owner
Maple River Winery
Casselton ND 58012
"Supporting ND Agriculture"

Mr. Chairman, members of the committee, my name is Greg Kempel. My wife and I own the Maple River Winery in Casselton. We have been registered to do business here in North Dakota since 2001. I am here today to ask for your support for House Bill 1325. This bill is very simple. By passing this legislation, it allows wineries in North Dakota to compete on a level playing field. This legislation is law in 13 states such as Iowa, Wisconsin, Minnesota. (attachment A) We and all of the other wineries would like to make North Dakota the 14th state.

Why should we do this?

- 1) **Increase North Dakota Value Added Agriculture** 2003 & 2004 over 100,000 pounds of fruit brought into our winery in Casselton.
- 2) **Economic Development**
- 3) **New Markets**
- 4) **Fairness Issue**

We receive requests on a weekly basis from people that have visited our winery, purchased our wine at 1 of 100 retailers across ND, visited our website or have received a bottle for a gift to purchase more wine. Unfortunately, we have to tell people that we cannot sell our wine to them. Each time we do this, it costs our winery and ND revenue, jobs, and growth. Remember, our wineries are primary sector businesses. Each of us here that own wineries have invested thousands upon thousands of dollars in our business as well as North Dakota. Is this fair to prevent us from selling?

Currently, wineries from 49 states can sell directly to residents of our state. We can sell to consumers in 13 states. If we pass this legislation, we will be able to sell in 26 states. The key states include Illinois, Wisconsin, and Minnesota.

I pose to you this question...Is it fair that Minnesota wineries can sell to a North Dakota resident but a North Dakota winery cannot sell directly to a Minnesota consumer?

You will hear some people speak negatively about this legislation. I would like to address some misconceptions.

- 1) This legislation is not about wine stores. As you see in the wording of the legislation, it deals **ONLY WITH WINERIES**. It does not affect our retailers in ND or our wholesalers in ND. You may here claims, but the current system harms our wineries while helping other wineries across the US, you have the chance to assist us.
- 2) Can minors order wine? Federal Express has an industry wide standard in their shipping of wine. We have been using them for almost a full year. We are very, very

impressed with their service. We apply these stickers (Attachment B) to each of our packages. This label alerts the driver that the person signing for the package must be 21 or older. To date, there have been no reports of problems with delivery to minors, in fact, state legal leaders across the nation have been very impressed with this system. Delivery is not a concern.

3) Fiscal impact? While the state currently receives a \$50 license fee from a few wineries and a few dollars in collected tax revenues, if passed, our sales tax collections will outpace this easily. Jeff Peterson from Pointe of View Winery has the complete fiscal impact on this legislation.

The main reason I am here is that this legislation boils down to a fairness issue. We are all small family owned businesses. We do not have the resources to afford a lobbyist, so we are all here united to ask for your assistance. We are not asking for special tax breaks, assistance, or special treatment. We are simply asking to have the opportunity to compete on a level playing field with wineries in other states. Please support the growth of North Dakota agriculture, primary sector businesses, and tourism.

Vote yes on HB 1325. I would be glad to answer any questions that you may have.

Greg Kempel
Maple River Winery
Casselton ND 58012

Special Delivery Instructions

ADULT SIGNATURE REQUIRED

Recipient must be at least 21 years of age.

Do not deliver to an intoxicated person.

Indirect delivery is allowed in all states except for HI, IL, IA, MO, NE, NH, NJ.

No signature release or driver release allowed.

This Package Contains Alcohol.

SHIPPER CERTIFIES:

From an on-site purchase;

Complies with applicable regulations;

Is approved for delivery.

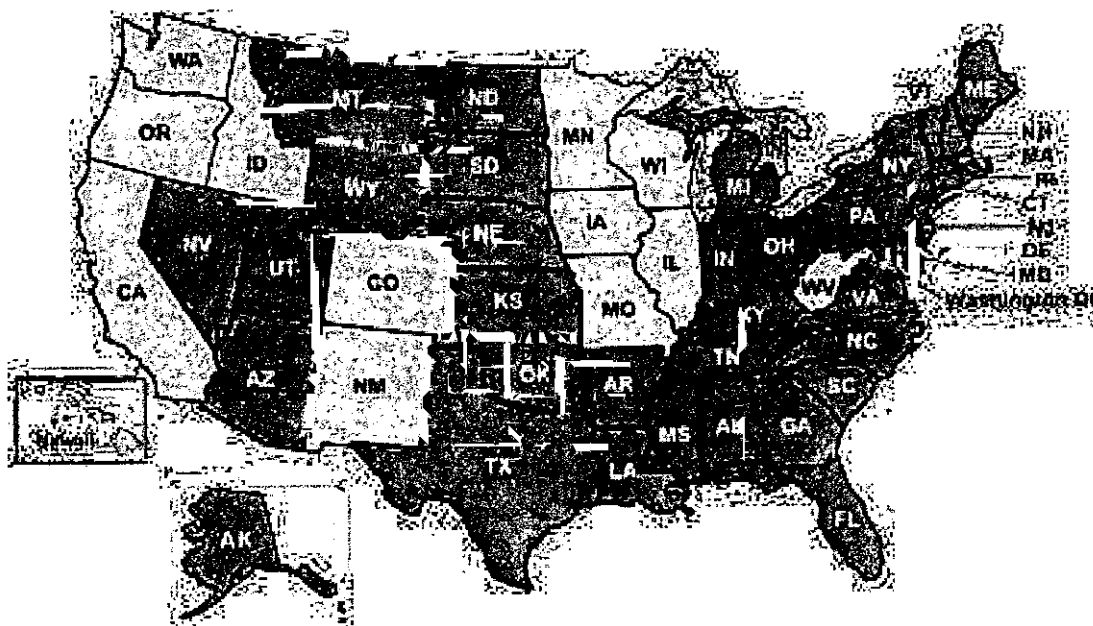
FedEx.

SEL154 04/03

Direct Shipment Laws by State for Wineries

(As of January 2005)

Contact: Wine Institute
www.wineinstitute.org
(415) 512-0151



Reciprocity states:

California
Colorado (initial on-site visit - permit required)
Hawaii (registration - report required)
Idaho
Illinois
Iowa
Minnesota (Internet sales prohibited)
Missouri
New Mexico
Oregon (registration required)
Washington (registration required)
Wisconsin (registration - report required)
West Virginia

Limited direct shipping & permit states: allowance of limited shipments:

Alaska (a reasonable amount)
Arizona (on-site sales only)
Georgia (permit required - taxes paid)
Louisiana (permit required - taxes paid)
Nebraska (permit required - taxes paid)
Nevada (permit required - taxes paid)
New Hampshire (permit required - taxes paid)
North Carolina (permit required - taxes paid)
North Dakota (permit required - taxes paid)
Rhode Island (on-site sales only)
South Carolina (permit and report required - taxes paid)
Virginia (permit and report required - taxes paid)
Washington D.C. (one quart per person)
Wyoming (permit required - taxes paid)

Direct Shipment Not Permissible:

Alabama
Arkansas
Connecticut (consumer permit - no carrier)
Delaware
Florida (felony for winery to direct ship)
Indiana
Kansas
Kentucky (felony for winery to direct ship)
Maine
Maryland (special interstate by 3-tier only)
Massachusetts
Michigan
Mississippi
Montana (consumer permit - no carrier)
New Jersey
New York
Ohio (consumer permit - no carrier)
Oklahoma
Pennsylvania (special interstate by 3-tier only)
South Dakota (special interstate by 3-tier only)
Tennessee (felony for winery to direct ship)
Texas (wet areas only - FedEx not carrying)
Utah (felony for winery to direct ship)
Vermont

Federal On-Site Shipment States:

Connecticut - up to 4 gallons
Delaware - up to 1 liter
Florida - up to 1 gallon
Maine - up to 1 gallon
Massachusetts - up to 3 gallons (no carrier)
Michigan - up to 312 ounces
Montana - up to 3 gallons
New Jersey - up to 1 gallon
Oklahoma - up to 1 liter
South Dakota - up to 1 gallon
Texas - up to 3 gallons
Vermont - up to 6 gallons

Jeff Peterson - owner
Ken Eggleston - owner
Pointe of View Winery
Burlington, ND 58722

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Jeff Peterson
Pointe of View Winery
Burlington, ND 58722

March 8, 2005
Senate IBL Committee

Testimony of Patrick Ward in Support of Engrossed HB 1325
and Proposed Amendment at Page 3, Lines 11 & 12

Chairman Mutch and members of the Senate IBL Committee. My name is Patrick Ward. I am a partner with Zuger Kirmis & Smith law firm here in Bismarck. I represent the North Dakota Wholesale Liquor Dealers in support of Engrossed HB 1325. My clients, Rob Hansen of Ed Phillips & Sons, and Jared Anderson of Congress, Inc., will also testify today.

The Current Three Tier System Enables Efficient Tax Collection

Beverage alcohol is the most highly taxed consumer product in America. Billions of dollars of revenue flow into state tax coffers from sales of beer, wine and distilled spirits. The single most efficient way devised by states to insure 100 percent collection of this massive amount of revenue is to require that all beverage alcohol enter its borders through a licensed wholesaler, who is responsible for paying all alcohol excise taxes. By requiring the thousands of out-of-state suppliers of beer, wine and liquor to sell only to an in-state, licensed wholesaler, the state assures that excise and sales taxes are collected on all beverage alcohol crossing its borders. Collection of sales taxes also is assured since the retailer can only buy from a licensed wholesaler, who must record all sales to retailers.

This statute was enacted a few years ago to allow individuals to purchase wine directly in small quantities (one case per month) for their personal use. The law requires the direct shipper to get a direct shipping permit from the State Tax Commissioner and pay an annual fee. It also requires the direct shipper to pay the wholesale and retail taxes to the tax commissioner.

We also have concerns that internet sales should be limited to interstate sales only and believe that the language at page 3, lines 11 and 12 of the bill needs ^{added after} tweaking. Page 3, lines 11 and 12, ~~removed~~ and sales through the internet".

\$1.19 / Case - state excise tax
We urge a Do Pass on Engrossed HB 1325.

Submitted by Rep. Kuby

HOUSE BILL NO. 1195

HYPOTHESIZE

NEGATIVE BALANCE EMPLOYER= EMPLOYER N, UI RATE 6.49%

NEW EMPLOYER = PEO, UI RATE 2.08%

EMPLOYEE X WAGES = average weekly wage of \$523.48 calculated to \$6,805.24 per quarter

MAXIMUM TAXABLE WAGES = \$19,400.00

SCENARIO #1

EMPLOYER N (6.49%) CONTRACTS WITH NEW EMPLOYER PEO (2.08%) AS OF October 1st

EMPLOYER N (6.49%)	PAID	PEO EMPLOYER (2.08%)	PAID	PAID
1ST YEAR	\$1,259.06	\$141.55	\$1,400.61	
2ND YEAR	\$0.00	\$403.52	\$403.52	
TOTAL			\$1,804.13	

SHOULD HAVE BEEN

EMPLOYER N (6.49%)	PAID	PEO EMPLOYER (2.08%)	PAID
1ST YEAR	\$1,259.06	0	
2ND YEAR	\$1,259.06	0	
TOTAL	\$2,518.12		

NET LOSS TO THE FUND

\$2,518.12

\$1,804.13

\$713.99

SCENARIO #2

EMPLOYER N (6.49%) CONTRACTS WITH NEW EMPLOYER PEO (2.08%) AS OF April 1st.

EMPLOYER N (6.49%)	PAID	PEO EMPLOYER (2.08%)	PAID	PAID
1ST YEAR	\$441.66	\$403.52	\$845.18	
2ND YEAR	\$0.00	\$403.52	\$403.52	
			\$1,248.70	

SHOULD HAVE BEEN

EMPLOYER N (6.49%)	PAID	PEO EMPLOYER (2.08%)	PAID
1ST YEAR	\$1,259.06	0	
2ND YEAR	\$1,259.06	0	
	\$2,518.12		

NET LOSS TO THE FUND

\$2,518.12

\$1,248.70

\$1,269.42