

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1381

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1381

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7378 and first part of 7379

Committee Clerk Signature *Ellen LeTang*

**Chairman Keiser: Opened the hearing on HB 1381 relating licensing requirements for professional employer organizations & declare an emergency.**

Jim Kasper:~Representative for District 46 in Fargo. This has do with the manufacturing of alcohol beverages. Explains the bill's changes.

Alan Fuller~Wine Operator. See testimony attachment.

Representative N Johnson: What is it that you want to allow to happen?

Fuller: Our business comes from a grape but it's not a grape already made in a juice. You can only produce 49% from that juice and 51% from a North Dakota product. Our growth is very limited. We would like to market with the wholesalers.

Chairman Keiser: If you use 51% or more North Dakota product, you can sell it to wholesalers and you can sell it on your premises.

Fuller: Yes.

Chairman Keiser: What you bill is attempting to do is if I import say a 100% of what I make the wine from, it's not North Dakota grown, then I want to be able to sell it on my premises as well.

Fuller: Yes, we need the ability to market our selves and the wholesalers also.

Representative Ruby: There are three different models vineyard, domestic & manufacturing.

Your amendment are hoping to do is to have the same advantages as the domestic have.

Fuller: It's the same language with the exception of the \$500 for that licensing. Loosen up the restraints.

Representative Ruby: What the domestic wineries have is "what would be advantage of having a domestic license then?"

Fuller: We would like to make different wine from fruit not grown here. We think in time we can get a hybrid grape here in North Dakota.

Representative Nottestad: By going to wine production in North Dakota permitting the producers to do this, it was a way of expanding value to agriculture. I see it changing to the detriment of what the value added portion. Right now there is research being done on grapes to produce what you need.

Representative Nottestad: I see your problem my only concern if we provide this help, we will be (inaudible).

Fuller: North Dakota grapes are going to happen, I don't know when, but it will happen.

**Anyone in opposition of HB 1381**

Pat Ward~Representing North Dakota Wholesale Liquor Dealers. See testimony attachment.

Urge a Do Not Pass on this bill.

Representative Ruby: The main difference is that manufacturer will still not be able sell direct to retail, it would be just from the premises, correct?

Ward: Yes, what is to prevent the manufacturer from putting up premises in North Dakota?

Janet Seaworth~North Dakota Beer Wholesalers Association. We have 17 local and we are here in opposition. See testimony attachment.

Representative Ruby: Do you know if your manufacture allows tastings?

Seaworth: No.

Representative Ruby: So other states at least let them taste the product that they make. Your issue is with selling, would you have much objection if a manufacturing law allowed a tasting of the product?

Seaworth: It wouldn't be of much concern to me, however, I don't know the answer to Federal Law.

Chairman Keiser: You can taste but not buy it.

Anyone in neutral position in HB 1381?

Dan Rouse~North Dakota State Tax Commissioner. Goes over proposed amendments. See testimony attachment. We are neutral.

Closes the hearing on the hearing on HB 1381.

What are the wishes of the committee?

Vice Chairman Kasper: This is a big issue and there will be ramifications if passed.

Representative N Johnson: Now we have a requirement for domestic wine to have a 51% North Dakota product, what is the possibility of changing that to a 35%?

Chairman Keiser: Anything is possible. It's what your wishes are.

Representative Ruby: The amendment for the gradual and the main reason was to clear out some stock.

Chairman Keiser: Can we regulate tasting and give it away.

Chairman Keiser: If we pass this, the research would diminish for grape research. How much a tasting option helps you?

Alan: No, it would not help.

Representative Boe: I think we need to give the industry time to work.

Representative Boe: Move a do not pass.

Representative Amerman: Second

Chairman Keiser: I think we have an opportunity to grow a real industry and we have to be patient. We have to make sure we keep those incentives and the pressure to do it. This is turf protection.

Representative Ruby: I'm going to resist the motion. I would like some movement and our laws should have some consistency with other states with tasting.

Chairman Keiser: I think it's a whole new fiscal note if we want to make that extension.

Voting roll call was taken on HB 1381 with 12 yea's, 1 nay's, 0 absent and Representative Sukut is the carrier.

Date: Jan 21-2009  
Roll Call Vote # \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1381

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman <u>Kasper</u>	7		Representative Boe	7	
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby		7			
Representative Sukut	7				
Representative Vigasaa	7				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Sukut

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

**REPORT OF STANDING COMMITTEE (410)**  
January 21, 2009 1:37 p.m.

**Module No: HR-12-0668**  
**Carrier: Sukut**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1381: Industry, Business and Labor Committee (Rep. Kelser, Chairman)**  
recommends **DO NOT PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).  
HB 1381 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1381



1. The state tax commissioner may issue a manufacture license to the owner or operator of a winery located within this state to produce wine. A manufacturer may purchase at wholesale or retail, brandy for use of on premises fortification. A manufacturer license may be issued and renewed for an annual fee of five hundred dollars, which is in lieu of all other license fees required by this title.

2. A manufacturer may sell wine produced by that winery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its wine to persons inside or outside of the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94625 liters] in a calendar year; glassware; wine literature and accessories; and cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between twelve noon and twelve midnight. The state tax commissioner may issue special events permits for not more than twenty events per calendar year to a manufacture allowing the winery, subject to local ordinance, to give free samples of its wine and to sell its wine by the glass or in closed containers, at a designated trade show, convention, festival, or a similar event approved by the state tax commissioner. A manufacturer may not engage in any wholesaling activities. All sales and deliveries of wines to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. For any month in which a manufacturer has made sales to a North Dakota wholesaler, that manufacturer shall file a report with the state tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter.

3. A manufacturer may obtain a manufacturer license and a retailer license allowing the onpremises sales of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.

4. A manufacturer is subject to section 5-03-06 and shall report and pay annually to the state tax commissioner the wholesaler taxes due on all wines sold by the licensee at retail, including all wines shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. When the fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in a format as prescribed by the state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner.

TESTIMONY OF PATRICK WARD IN OPPOSITION TO HB 1381


House Industry, Business, and Labor Committee  
January 21, 2009

Chairman Keiser and Members of the Committee

My name is Pat Ward and I represent the North Dakota Wholesale Liquor Dealers in opposition to this bill.


North Dakota has a long established three tier system for the manufacture and distribution of alcohol products which is designed to ensure that all liquor sold in the state is accounted for and taxes are collected. It prohibits unfair competition in § 5-01-11 by preventing one tier (a manufacturer) from owning a business in another tier (retail or wholesale). This system involves the manufacturer, wholesaler, and retailer. There is an exception for microbrew pubs and one for a domestic winery. The domestic winery law is § 5-01-17 of the code which was created as a form of value added agriculture. I am attaching a copy of § 5-01-17 to my testimony for your ease of reference.

The North Dakota Wholesale Liquor Dealers are opposed to HB 1381. We believe domestic wineries have done a great job building an industry in the state using North Dakota grown products as required by existing law. They also have the right to have a restaurant and retail outlet for their products and to provide samples at a limited number of events during the year.



HB 1381 would appear to allow people an end around the winery and other liquor laws and enable someone to manufacture wine and direct market that wine. It does not abide by the domestic winery law requirements and require use of North Dakota products or apply limits on sales.

This bill seems to be designed to allow a manufacturer or liquor store to trunk in a tanker loaded with cheap grapes or juice from out of state at a much lower cost than that available to the North Dakota farmer trying to raise his own vines and process, package, and sell that product. It would give the "manufacturer" a leg up on local wineries and circumvent the three tiered system and requirement of selling through a wholesaler.



We urge a do not pass on this bill.

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**TITLE 5  
ALCOHOLIC BEVERAGES**

**CHAPTER 5-01  
GENERAL PROVISIONS**

**5-01-01. Definitions.** In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume.
4. "Bottle or can" means any container, regardless of the material from which made, having a capacity less than a bulk container for use for the sale of malt beverages at retail.
5. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
6. "In bulk" means in containers having a capacity not less than one-sixth barrel for use for the sale of malt beverages at retail.
7. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
8. "Liquor" means any alcoholic beverage except beer.
9. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
10. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
11. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises or serves beer produced or manufactured on the premises for purposes of sampling the beer.
12. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
13. "Sparkling wine" means wine made effervescent with carbon dioxide.
14. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or wholesaler selling alcoholic beverages to a wholesaler licensed in this state for purposes of resale.
15. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.

16. "Twenty-one years of age" means it is after eight a.m. on the date twenty-one years after a person's date of birth.
17. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

**5-01-02. Exceptions.** Nothing contained in this title may be construed to apply to the following articles, when they are unfit for beverage purposes:

1. Denatured alcohol produced and used pursuant to Acts of Congress, and the regulations thereunder;
2. Patent, proprietary, medical, pharmaceutical, antiseptic, and toilet preparations;
3. Flavoring extracts, syrups, and food products; or
4. Scientific, chemical, and industrial products;

nor to the manufacture or sale of said articles containing alcohol. This title does not apply to wines delivered to priests, rabbis, and ministers for sacramental use.

**5-01-03. Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**5-01-04. Manufacture of alcoholic beverages prohibited - Exceptions.** A person may manufacture alcoholic beverages for personal or family use, and not for sale, without securing a license if the amount manufactured is within quantities allowed by the bureau of alcohol, tobacco, firearms and explosives of the United States treasury department. Any person manufacturing alcoholic beverages within this state in quantities greater than those permitted by the United States treasury department is guilty of a class A misdemeanor and property used for same is subject to disposition by the court except any person may establish a brewery for the manufacture of malt beverages, a winery, or a distillery or other plant for the distilling, manufacturing, or processing of alcohol within this state if the person has secured a license from the state tax commissioner. This license must be issued on a calendar-year basis with a fee of five hundred dollars. A first-time license fee may be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state tax commissioner. A license may not be issued for any period for a fee less than one-half of the annual license fee. This license shall allow sale to only licensed wholesalers.

**5-01-05. Public intoxication - Penalty.** Repealed by S.L. 1969, ch. 91, § 5.

**5-01-05.1. Public intoxication - Assistance - Medical care.** A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to that person or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital or a licensed addiction counselor of a detoxification center has authority to hold that person for treatment up to seventy-two hours. That intoxicated person may not be held in jail because of intoxication more than twenty-four hours. An intoxicated person may not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing that person in a hospital, detoxification center, or jail, the peace officer shall make a reasonable effort to notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city or county on account of an intoxicated person shall be recoverable from that person.

**5-01-05.2. No prosecution for intoxication.** No person may be prosecuted in any court solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication.

**5-01-05.3. Disturbing the peace - Disorderly conduct - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**5-01-05.4. Informational, counseling, and referral centers for alcoholism.** Any county or city within the state at the discretion of their governing bodies, either individually or jointly, may establish or provide office space, including personnel, for informational, counseling, and referral services for alcoholics and their families.

**5-01-06. Recovery of damages resulting from intoxication.** Repealed by S.L. 1987, ch. 95, § 5; S.L. 1987, ch. 99, § 2.

**5-01-06.1. Claim for relief for fault resulting from intoxication.** Every spouse, child, parent, guardian, employer, or other person who is injured by any obviously intoxicated person has a claim for relief for fault under section 32-03.2-02 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. No claim for relief pursuant to this section may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives, nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

**5-01-07. Township beer or liquor licenses.** No retail beer or liquor license may be issued in any organized township without the written consent of the board of township supervisors.

**5-01-08. Individuals under twenty-one years of age prohibited from using alcoholic beverages or entering licensed premises - Penalty.**

1. Except as permitted in this section and section 5-02-06, an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.
2. An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
  - a. A restaurant if accompanied by a parent or legal guardian;
  - b. In accordance with section 5-02-06;
  - c. If the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
  - d. If the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or
  - e. If the individual enters the premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
3. A violation of this section is a class B misdemeanor. For a violation of subsection 2, the court also shall sentence a violator to alcohol and drug education.
4. The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of human services for evaluation and appropriate counseling or treatment.

5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five individuals.

**5-01-08.1. Misrepresentation of age - Penalty - Licensee may keep book.** Any person who misrepresents or misstates that person's age or the age of any other person or who misrepresents that person's age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of a class B misdemeanor. Any licensee may keep a book and may require anyone who has shown documentary proof of that person's age, which substantiates that person's age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature.

**5-01-08.2. Presumption of licensee's innocence when certain facts established.** The establishment of the following facts by a person making a sale of alcoholic beverages to a person not of legal age constitutes prima facie evidence of innocence and a defense to any prosecution therefor:

1. That the purchaser falsely represented and supported with other documentary proof that the purchaser was of legal age to purchase alcoholic beverages.
2. That the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages.
3. That the sale was made in good faith and in reliance upon the representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase alcoholic beverages.

**5-01-09. Delivery to certain persons unlawful.**

1. Any individual knowingly delivering alcoholic beverages to an individual under twenty-one years of age, except as allowed under section 5-02-06, or to a habitual drunkard, an incompetent, or an obviously intoxicated individual is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene and cooperated with medical assistance and law enforcement personnel on the scene, or was the individual in need of medical assistance. The maximum number of individuals that may be immune for any one occurrence is five individuals.
3. If an individual is convicted of this section for delivering alcoholic beverages to an individual under twenty-one years of age, the court shall consider the following in mitigation:
  - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and

- b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

**5-01-10. Bottle clubs prohibited - Penalty.** Any person operating an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises is guilty of a class B misdemeanor.

**5-01-11. Unfair competition - Penalty.** A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any such retailer with anything of value. A retailer may not have any financial interest in any manufacturer, supplier, or wholesaler. A wholesaler may:

1. Extend normal commercial credits to retailers for industry products sold to them. The state tax commissioner may determine by rule the definition of "normal commercial credits" for each segment of the industry.
2. Furnish retailers with beer containers and equipment for dispensing of tap beer if the expense to the wholesaler associated with the furnishing of containers, equipment, and tap or coil cleaning service does not exceed one hundred fifty dollars per tap per calendar year.
3. Furnish outside signs to retailers if the sign cost does not exceed four hundred dollars exclusive of costs of erection and repair.
4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per year. "Miscellaneous materials" not subject to this limitation include any indoor point-of-sale items for retail placement. Point-of-sale items include back bar signs, pool table lights, neon window signs, and items of a similar nature. The point-of-sale items must be limited to five hundred dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers.

Any wholesaler, retailer, or manufacturer violating this section, or any rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty of a class A misdemeanor. A microbrew pub is exempt from the provisions of this section to the extent that this section restricts the coownership of a manufacturer's license and a retail license for the purpose of a microbrew pub.

**5-01-12. Duty to enforce.** Repealed by S.L. 1975, ch. 106, § 673.

**5-01-13. State's attorney's inquiry.** The state's attorney may subpoena persons and take sworn testimony concerning any alleged violation of the alcoholic beverage laws and may apply to the district court for an order compelling persons subpoenaed to appear and testify. Such witnesses shall receive the same fees and mileage as in a civil case in district court.

**5-01-14. Microbrew pubs - Licensing - Taxes.** A microbrew pub shall obtain a brewer license and a retailer license as required under this title. A microbrew pub may manufacture on the licensed premises, store, transport, sell to wholesale malt beverage licensees, and export no more than ten thousand barrels of malt beverages annually; sell malt beverages manufactured on the licensed premises; and sell alcoholic beverages regardless of source to consumers for consumption on the microbrew pub's licensed premises. A microbrew pub may not engage in any wholesaling activities. All sales and delivery of malt beverages to any other retail licensed premises may be made only through a wholesale malt beverage licensee. Beer manufactured on the licensed premises and sold by a microbrew pub directly to the consumer for consumption on or off the premises is subject to the taxes imposed pursuant to section 5-03-07, in addition to any other taxes imposed on brewers and retailers. A microbrew pub is not precluded from



retailing beer it purchases from a wholesaler. Complimentary samples of beer may not be in an amount exceeding sixteen ounces [.47 liter] per patron. Licenses under this section entitle the microbrew pub to sell beer manufactured on the premises for offpremises consumption, in brewery-sealed containers of not less than one-half gallon [1.89 liters] and not more than three gallons [11.36 liters]. This section may not be superseded under chapters 11-09.1 and 40-05.1.

**5-01-15. Penalty.** Any person who violates any provision of this title, or any rule adopted to implement this title, is guilty of a class B misdemeanor, unless the penalty is provided for elsewhere.

**5-01-16. Direct sale from out-of-state seller to consumer - Penalty.**

1. A person in the business of selling alcoholic beverages may not knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. A person in the business of transporting goods may not knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.
5. This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 7.13 gallons [27 liters] or less of wine, two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other alcoholic beverage per month for personal use and not for resale from a person holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state. A manufacturer or retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipping permit from the state tax commissioner and pay an annual fee of fifty dollars within thirty days of making the first shipment. A direct shipper shall report and pay the wholesaler and retailer taxes to the state tax commissioner on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and 57-39.6-02. The reports are due January fifteenth of the year following the year sales and shipments were made. When the fifteenth day of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in format as prescribed by the state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner. The state tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this subsection and may request award of all costs and attorney's fees incurred by the state incidental to that action. Upon determination by the state tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by either a manufacturer or retailer of alcoholic beverages, the state tax commissioner may notify both the bureau of alcohol, tobacco, firearms and explosives of the United States department of the treasury and the licensing authority for the state in which

the manufacturer or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

**5-01-17. Domestic winery license.**

1. The state tax commissioner may issue a domestic winery license to the owner or operator of a winery located within this state to produce wine. The percentage of ingredients by volume, excluding water, of wine produced by a domestic winery which must be grown and produced in this state must be at least ten percent in the second year of licensure, twenty percent in the third year of licensure, thirty percent in the fourth year of licensure, forty percent in the fifth year of licensure, and fifty-one percent in the sixth and subsequent years of licensure. Domestic wineries may be granted an exemption from the ingredient utilization requirement whenever the state tax commissioner determines, upon the commissioner's own motion or at the request of a domestic winery, that weather conditions, pest infestations, plant disease epidemics, or other natural causes have reduced the quantity or quality of produce grown in this state to an extent that renders compliance with the ingredient utilization requirement infeasible. The exemption is effective for one year unless the state tax commissioner issues a new exemption. A domestic winery may purchase, at wholesale or retail, brandy for use of onpremises fortification. A domestic winery license may be issued and renewed for an annual fee of one hundred dollars, which is in lieu of all other license fees required by this title.
2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its wine to persons inside or outside of the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94625 liters] in a calendar year; glassware; wine literature and accessories; and cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between twelve noon and twelve midnight. The state tax commissioner may issue special events permits for not more than twenty days per calendar year to a domestic winery allowing the winery, subject to local ordinance, to give free samples of its wine and to sell its wine by the glass or in closed containers, at a designated trade show, convention, festival, or a similar event approved by the state tax commissioner. A domestic winery may not engage in any wholesaling activities. All sales and deliveries of wines to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. For any month in which a domestic winery has made sales to a North Dakota wholesaler, that domestic winery shall file a report with the state tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter.
3. A domestic winery may obtain a domestic winery license and a retailer license allowing the onpremises sales of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.
4. A domestic winery is subject to section 5-03-06 and shall report and pay annually to the state tax commissioner the wholesaler taxes due on all wines sold by the licensee at retail, including all wines shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. When the fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in a format as prescribed by the state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner.

**5-01-18. Alcohol without liquid devices prohibited - Definition - Penalty.**

1. A person may not sell, offer to sell, purchase, possess, use, or if that person is a retail alcoholic beverage licensee, have on the premises an alcohol without liquid device. In this section, an "alcohol without liquid device" means an apparatus that is advertised, designed, or used to vaporize an alcoholic beverage to produce a vapor that may be inhaled by an individual. The term does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended specifically for medical purposes to dispense prescribed or over-the-counter medications or water.
2. This section does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.
3. A violation of this section is a class B misdemeanor.

Testimony of Janet Demarais Seaworth  
HB 1381  
House Industry Business and Labor Committee  
January 21, 2009

Mr. Chairman, members of the Committee, my name is Janet Seaworth. I am the Executive Director and Legal Counsel for the North Dakota Beer Wholesalers Association. We have seventeen family owned and operated distributorships in North Dakota. We oppose HB 1381.

Just last year, this country celebrated 75 years of effective alcohol regulation and the passage of the 21st Amendment. The 21st Amendment repealed Prohibition and gave states the authority and responsibility to regulate alcohol. North Dakota, along with every other state, enacted a three-tier system of alcohol regulation. This system includes the manufacturer, the wholesaler and the retailer. The intent of the three-tier system is to forever separate the tiers in order to avoid the problems that lead to Prohibition.

I'm sure you've heard the term "lock, stock and barrel." That term refers to the tied-house that existed before Prohibition when a manufacturer owned the retailer. The manufacturer could then exert pressure on the retailer to sell its products; that lead to illegal sales and over consumption and the social problems that lead to Prohibition. After Prohibition, the three-tier system was created to place a wholesaler between the manufacturer and the retailer. That was done to separate the tiers, so that the manufacturer could no longer control the retailer and the problems that lead to Prohibition could be avoided.

For 75 years, we have enjoyed the effective regulation of alcohol that the three-tier system provides. But every session we see attempts to weaken the three-tier system and deregulate alcohol.

HB 1381 seeks to allow anyone to get a license to manufacture wine and sell that wine on its premises. In other words, the manufacturer and the retailer are one. The manufacturer will own the retailer "lock, stock and barrel." That is exactly the kind of tied house situation that created the problems that lead to Prohibition. There are no limitations, such as those imposed upon microbrew pubs and domestic wineries. We understand that someone may want to start a new kind of business and make and sell wine without having to become a domestic winery. But not at the expense of effective alcohol regulation.

We urge you to give the bill a Do Not Pass recommendation.

## PROPOSED AMENDMENTS TO HOUSE BILL 1381

*Prepared and proposed by the North Dakota Office of State Tax Commissioner  
January 21, 2009*

Page 1, line 1, replace "section" with "sections" and after "5-01-04" insert ", 5-03-06, and 5-03-07"

Page 1, line 22, after "premises." insert "A manufacturer of wine produced in this state is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all wines sold by the licensee at retail, including all wines shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. When the fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner."

Page 1, after line 22, insert:

"**SECTION 2.** Section 5-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-06. Examination by tax commissioner - Penalty for improper returns.**

The state tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, domestic winery, microbrew pub, or other person to determine if such person has fully complied with all statutes and rules pertaining to the person's business. If any manufacturer, wholesaler, domestic winery, or microbrew pub liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax a penalty of five percent of the total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay, except the first month after the return or tax became due. Any manufacturer, wholesaler, domestic winery, or microbrew pub failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state tax commissioner may forgive all or part of any penalty for good cause shown. The tax commissioner shall give notice of the determination to the person liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever is later. If it is determined upon audit by the tax commissioner that the tax due was twenty-five percent or more above the amount reported on the return, notice of determination of tax due must be given not later than six years after the

last day on which the return was due or six years after the return was filed, whichever was later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return, but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation provided in this section for giving notice of the determination of tax due does not apply. If any manufacturer, wholesaler, domestic winery, or microbrew pub files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such manufacturer, wholesaler, domestic winery, or microbrew pub is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the ~~state~~ tax commissioner that such manufacturer has failed to file required reports with the tax commissioner's office. Any manufacturer, wholesaler, domestic winery, or microbrew pub may have its license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

**SECTION 3.** Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-07. Imposition of tax - Rate.** A tax is hereby imposed upon all alcoholic beverage manufacturers of wine produced in this state, wholesalers, domestic wineries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The amount of this tax shall be determined by the gallonage according to the following schedule:

Beer in bulk containers - per wine gallon \$.08 (.021 per liter)  
Beer in bottles and cans - per wine gallon .16 (.042 per liter)  
Wine containing less than 17% alcohol by volume - per wine gallon .50 (.132 per liter)  
Wine containing 17%-24% alcohol by volume - per wine gallon .60 (.159 per liter)  
Sparkling wine - per wine gallon 1.00 (.264 per liter)  
Distilled spirits - per wine gallon 2.50 (.66 per liter)  
Alcohol - per wine gallon 4.05 (1.07 per liter)''

Renumber accordingly