

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1077

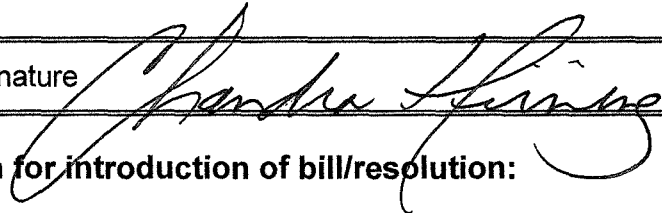
2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1077
January 14, 2013
Job 17133

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to direct sales by licensed wineries

Minutes:

Attached testimony 1-4

Hearing opened

Representative Ruby: Provided summary of bill's background. This bill allows wineries to distribute directly to retail outlets, but there are some limiters related to size. It is not treating in-state and out-of-state wineries differently. This bill limits very large manufacturers of wine from being able to do it. Big box stores can also work in partnerships and be retailers that could maybe have taken advantage of this had it been wide open.

(3:50) Lines 7-9 specify limitation on production quantity. Lines 12-15 spell out the three ways they can deliver. Many contract with a licensed distribute to ship and deliver the wine to the distributors. This is mainly to help the wineries market their wines by sending smaller quantities to the retail outlets to develop their market. In line 14, c, the can use a common carrier. The common carriers have strict guidelines as to how they are to handle alcohol and who receives that. Subsection 2 deals with the shipment of product by the employees and equipment of the winery. Subsection 3 deals with limitations for when using a common carrier.

6:18 **Representative Gruchalla:** There is a bill in the Senate dealing with shipping wine.

Representative Ruby: I heard about it just recently and have not read it. I cannot comment on it at this time.

Representative Gruchalla: I know it has to do with using a secondary carrier to ship the wine. Apparently we are changing that law because it does not allow it right now.

Chairman Keiser: In HB 1077, page 1, lines 14-15, provide for secondary carriers.

7:30 **Representative Kasper:** On the limit of 50,000 gallons per year production, how many wineries in North Dakota will be able to ship with this definition, and how many will not?

Representative Ruby: At this point, all will be able. They felt this would be more than sufficient for existent wineries, with their growth and potential new wineries. They do have the amount they can send directly to consumer as well, and this is direct to retail. They have the unlimited amount they can sell through the wholesalers to retail outlets.

8:45 **Representative Kasper:** If the winery ships with its own trucks, that could be one area of overhead. The distributor distributes, and that would be a different area of overhead. A common carrier is a third. Is there going to be a uniform pricing system throughout, or will wine potentially be priced differently depending on how it is distributed?

9:35 **Representative Ruby:** I cannot answer that definitively. I am assuming that there will be variation depending on the retailers and the costs it took to get the bottles of wine to them. Someone here from one of the wineries may be able to give you an answer.

Chairman Keiser: There can certainly be a variation in pricing of the product, but shipping will be excluded from the pricing of the product because freight is an additional charge, which is non-taxable. Companies tend to have price for the item plus a separate cost for freight because otherwise you would be paying taxes on the freight.

10:38 **Representative N. Johnson:** I did some cursory math. The 4500 cases which can be shipped by a winery's equipment, trucks or employees is roughly under 10% of what a winery could do. My question relates to Subsections 2 and 3. A company could use its own equipment to deliver up to 4500 cases. In Subsection 3, they could also deliver up to 4500 cases through a common carrier. Could they use multiple common carriers, for example using four different common carriers and their own equipment and in this manner send out about half of their product?

Representative Ruby: There is still the limit of three cases per day. I will have to rely on someone in the business to see how they would envision their shipments.

12:00 **Representative Becker:** It seems fairly restrictive with the three cases per day. If you were doing close to the maximum production, you could only send perhaps only 45% of your total inventory by these methods, and the rest would have to go through wholesalers. Is that all the give and take that you ___ (audio unclear) with wholesalers; is that why it is so restrictive?

12:24 **Representative Ruby:** Yes, they definitely wanted it to be limited. That was some of the problem with the bill last session in that it allowed for unlimited amounts from wineries from other states but also was pretty open. It basically is because of the limiting with the wholesalers. The wineries involved with the negotiation said that this is workable even though somewhat limiting. It is enough of an amount to allow them to market their products. Gave example.

14:12 Chairman Keiser: Provided background, going back to Prohibition and bootlegging. The federal government created a three tier system: manufacturers, wholesalers, and retailers. You cannot be within multiple tiers. This is creating a business climate to help our state's wineries to be successful. This is a compromise in the three tier system.

15:45 Representative Ruby: States all over the country have done the same thing as far as a one tier system. The winery, which is the manufacturer, has sold directly to the public. They bypass the wholesaler and become the retailer. The three tier system has been in place since Prohibition. The Supreme Court has said it is allowed and accepted, but it is not a Constitutional requirement. States have kept with it as a good way to regulate and follow the tracking. It is an allowed bill, and it is Constitutional to do it through the states, but the states do have the ability to do what we have done and alter it as long as in-state and out-of-state are treated equally.

Support:

17:25 Jeff Peterson, owner/operator of Point of View Winery and Souris Valley Vineyard in Burlington, North Dakota: Thankful to the North Dakota Beer Wholesalers for working with us to come to agreement that satisfies both parties. I myself and other wineries are very satisfied with the bill the way it is written.

Chairman Keiser: Share with us your brief history.

18:07 Jeff Peterson: Told his history as wine maker. I think that currently we have ten or so licensed wineries in the state, and two or three more are working on paperwork and land acquisition. This year, the capacity for production this year was about 12,000 bottles, which is pretty small from a winery standpoint. I harvest between 3 and 5 thousand pounds of grapes on the vineyard that we have on the premises.

19:20 Representative Kasper: How is the development of hardy grapes at NDSU coming in terms of producing a grape that will last or will give you the variety you need?

Jeff Peterson: I cannot say enough about what NDSU has done. Right now, we have over 6000 cross varieties to go into the ground this spring for potential for wine evaluation in the coming years. NDSU took the path of using the indigenous hardy wild ___ (audio unclear at 19:57) that grows in the state with grape varieties that are less hardy to get the program growing.

20:12 Representative Sukut: At the 12,000 bottles you produced, how does that compare to the limitations in the bill?

Jeff Peterson: The proposal leaves me lots of room. I would appreciate your support for the bill as it is written.

19:55 Paul Anderson, president of North Dakota Grape and Wine Association: Distributed attachments 1-4. I won't read through all of the handouts. One is the strategic vision and direction of the grape and wine industry in North Dakota. I am favor of this bill. It fits right into the strategic vision of the grape and wine industry. One of the handouts

(attachment 2) is my letter as president of the Grape and Wine Association in support of the bill. It is our feeling that it grows both the grape grower industry and the wine industry, as well as tourism. There is also a letter (attachment 3) from Cindy Steffes from Prairiewood Winery in Elliot, ND, outside of Lisbon. As a winery, they are in favor of this bill. There is also a letter (attachment 4) from Rod Ballinger, Chairman of the Grape and Wine Program Committee. From the standpoint of the grape and wine industry, this bill could really help our vision going forward.

22:50 Representative M. Nelson: How are the haskaps doing?

Paul Anderson: The business is doing well, and haskaps make good wine. Wineries are not just grapes; they are growing a number of other fruits. A haskap is a cherry.

23:53 Representative Ruby: A lot of people were surprised by the development of grapes which can be grown here, particularly on a commercial level. How many acres of grapes in North Dakota? How many pounds of grapes does it take to make a gallon of wine?

Paul Anderson: A plant that gets 15 pounds of grapes will make about five bottles of wine. It takes about 3 to 4 pounds of grapes to make a gallon, but that depends on the variety of grape. We have 40 wineries on our chart for spraying. These are substantial enough wineries that they could probably be selling wine. Some people raise 1 to 2 acres, some as large as 10. We calculated that we are probably around 40 to 50 acres today.

25:43 Representative Kasper: If I would grow grapes and sell them to you, do you pay by the pound? How do you pay, and what would be a production number to a grape grower for an acre of good quality grapes? What would that grower receive?

Paul Anderson: You can get 400 to 500 plants per acre, and that gets about 4000 to 6000 pounds of grapes, depending on the varieties and how you plant them. You can get between 50 cents to 75 cents to dollar per pound of grapes. At those numbers, you can have a gross of \$4000 and \$6000 per acre for the grower. It costs about \$1500 an acre per year. There is a good margin for a grower, but it is a lot of work.

27:11 Chairman Keiser: How long from planting to yield?

Paul Anderson: They start yielding in 3 years, but about 4 to 5 years before production yield. So you have about a \$7000 investment to put in an acre of grapes. That information is in the strategic vision.

27:50 Pat Ward, Wholesale Liquor Dealers: We spent time in the interim working to resolve differences between the wholesalers and the domestic wineries and grape growers. We got the agriculture department, the tax department, Senator Klein, and others involved, and we worked out this bill as a compromise. We think that the numbers are high enough to allow them time to grow their industry and use this method to deliver directly to customers. We believe that as this industry grows and flourishes, they will come back to using the services of wholesale liquor dealers because it is more practical for a wholesaler to deliver a couple of cases across a distance. The bottom line is that I want to give my

thanks to Representative Ruby for getting behind this. If the bill is passed the way it is written, we will all be fine with it.

Opposition:

Neutral:

29:46 Daniel Rouse, legal counsel to the North Dakota Office of State Tax Commissioner and North Dakota State Board of Equalization: It is the Tax Department's responsibility to insure the proper reporting and remitting requirements for the alcohol tax that domestic wineries are responsible to collect and remit on their sales. I want to express my thanks to those who contacted us during the interim to give us an opportunity to weigh in, which we did. Our comments were added to the bill. My main purpose here today is to communicate to you from Tax Commissioner Fong that we can administer this. If you enact it into law, we can administer it.

Chairman Keiser: How do we collect taxes when individuals order wine from out of state?

31:28 Daniel Rouse: If you order wine from out of state, they are supposed to have a direct shipping license with us. There are a number of wineries around that country that have done that. That is a little different from the fulfillment house bill which Senator Less is proposing this session, SB 2147. That out-of-state winery is supposed to have a license with us, and then they have their own reporting and remitting requirements to us.

31:58 Hearing closed

Representative Kreun: Motion to do pass

Representative Beadle: Second the do pass motion

32:14 Representative Kreun: Read comment from a wholesaler in his district. Statement states, "House bill 1077 embodies the agreement that the liquor wholesalers, beer wholesalers, and wineries reached during interim to allow wineries special privilege to sell direct to retail. Bill is a reasonable compromise that preserves the state's ability to regular alcohol and avoid the Constitutional problems that implicate the beer wholesalers. I am asking for your support for HB 1077."

Roll call vote on a "do pass" on HB 1077: Yes 15, no 0.

Carrier: Representative Beadle

34:00 Chairman Keiser: Preview of this week, next week. If anyone would like to work on an amendment on the preferred provider bill we discussed last week, we will be revisiting it later this week.

Date: 1-14

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 1077

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Kreun Seconded By Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 15 No 0

Absent -

Floor Assignment Beadle

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

REPORT OF STANDING COMMITTEE

HB 1077: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1077 was placed on the Eleventh order on the calendar.

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1077

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1077
March 18, 2013
Job Number 20031

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to direct sales by licensed wineries

Minutes:

Chairman Klein: Opened the hearing.

Representative Ruby: Introduced the bill and stated that the bill is similar to a model from Montana. The wineries will be able to ship to a retail outlet. There are some limitations. (:46-4:52)

Pat Ward, North Dakota Wholesaler Liquid Dealers: In support of the bill. (5:30-9:25)

Janet Seaworth, North Dakota Beer Distributors Association: In support of the bill. (9:30-10:45)

Blane Braunberger, Supervisor of Alcoholic Beverages for the Tax Commissioners Office: Currently for the liquor wholesale side of it, the tax is collected at the wholesale level when the product is sold to a retailer. With the beer wholesaler, they pay the tax at the time of purchase from the manufacturer or supplier. That is also paid on the gallons that they purchase. The wholesaler is paying tax when they are involved at the top. When the domestic winery gets involved and they are skipping over the wholesaler, then they are required to pay that wholesale tax in the same manner as a liquor wholesaler would. When their product is sold to a retailer then they are required to collect the wholesale liquor tax and the gallons.

Chairman Klein: Closed the hearing.

Senator Murphy: Moved a do pass.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Murphy

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1077**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Murphy Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

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

REPORT OF STANDING COMMITTEE

HB 1077: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1077 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1077

① 1077 1-14-2013



North Dakota's Grape and Wine Industry

VISION FOR THE FUTURE

Information in this document was created at the August 25, 2011 Strategic Planning meeting in Bismarck. Meeting participants included:

Rod Ballinger, North Dakota Grape and Wine Program Committee chairman; Doug Goehring, North Dakota agriculture commissioner; Dean Ihla, North Dakota Department of Commerce tourism development manager; Duane Hauck, NDSU Extension Service director; Paul Anderson, North Dakota Grape Growers Association president; Tim Faller, North Dakota Agricultural Experiment Station assistant director; Rodney Howe, SBARE president, North Dakota Grape and Wine Program Committee member; Greg Krieger, North Dakota Grape and Wine Program Committee member; North Dakota Grape Growers Association secretary; Ron Smith, NDSU Extension Service professor/horticulturist; John Schneider, North Dakota Department of Commerce APUC executive director; Jeff Peterson, North Dakota Grape and Wine Program Committee member, Pointe of View Winery owner; Harlene Hatterman-Valenti, NDSU Plant Sciences Department associate professor/high-value crops researcher; Jacob Belanger, North Dakota Grape and Wine Program Committee member; Mike Beltz, SBARE member; Tom Kalb, NDSU Extension Service horticulture specialist; Rodney Hogen, Red Trail Vineyard owner; Susan Hogen, Red Trail Vineyard owner; Paul Langseth, SBARE member; Dane Braun, North Dakota Agriculture Department policy adviser; Erik Sand, Fox Lake Vineyard owner; Alan Verbitsky, North Dakota Grape Growers Association member, North Dakota Grape and Wine Program Committee member; Steve Sagaser, NDSU Extension Service Grand Forks County agent/agriculture and natural resources and horticulture; Allan Fuller, Intners Cellar owner; Glenn Muske, NDSU Extension Service rural and agribusiness enterprise development specialist; Marie Hvidsten, NDSU Extension Service rural leadership specialist, meeting facilitator

EXECUTIVE SUMMARY Strategic Vision and Direction Plan

CURRENT STATUS

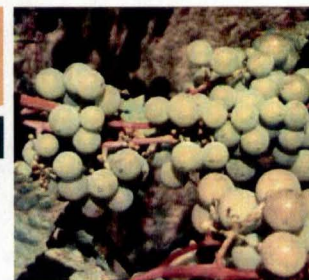
Grape growing has occurred in North Dakota for years, but only in the last 20 years has it started to become a commercial industry. In 2006, the number of growers was increasing, and they saw a need for sharing information. The North Dakota Grape Growers Association (NDGGA) was established with the mission "to carry out the education, promotion and extension of the art and science of viticulture in North Dakota and surrounding areas, including all agricultural, horticultural and related purposes."

North Dakota has 40 vineyards and nine licensed wineries. Since its beginning, the NDGGA has maintained 80 to 100 members annually.

In 2009, the North Dakota Legislature established the North Dakota Grape and Wine Program Committee (NDGWPC) to oversee the disposition of \$250,000 in funding for grape and wine research, promotion, education and marketing. Funds are being dispersed to North Dakota State University for cultivar research and to NDGGA for educational programs. Discussions are ongoing with the North Dakota Department of Agriculture and North Dakota Department of Commerce about the promotion and marketing for the industry.

North Dakota's Grape and Wine Industry

VISION FOR THE FUTURE



GOALS

Education

- Create a high public awareness of the industry.
- Conduct training on grape growing to ensure growers receive accurate and consistent information on growing cultivars in North Dakota conditions.
- Develop an educational program through the NDSU Extension Service to assist growers throughout the state in establishing vineyards.
- By 2012, have a grape-growing educational program established and available through the NDSU Extension Service.

Research

- Develop a true cold-hardy grape and wine initiative.
- Adapt the best current grape-growing and winemaking methods consistent with our local conditions.
- Conduct more research on the evaluation of germplasm that is cold-hardy in all areas of North Dakota.
- Establish an enology (the science of wine) program at NDSU to ensure high-quality wine is produced.
- Have NDSU Research Extension Centers continue to test grape germplasm and production methods.
- By 2017, have two distinct, improved cultivars that have excellent cold-hardy traits.
- Implement a long-term program once sustainable funding is available.

Marketing

- Increase the number of wineries to 25 by 2026.
- By 2017, increase the number of commercial vineyards of one acre or more to 50.
- Locate wineries throughout the state within an hour drive of a city.
- Promote local wineries providing a revitalizing impact for small communities.
- Establish a quality-based standards program for North Dakota grapes and wines.
- Target 20 percent of wine sold in North Dakota to be grown and produced locally.
- Develop a strong brand and signature product or grapes for North Dakota.
- By 2017, increase membership in the NDGGA to 200 members.
- Promote the awareness of NDSU's and private growers' success in grape and wine production.
- Develop three wine trails that will promote awareness of the industry and create value through agritourism in collaboration with the North Dakota Department of Commerce and the North Dakota Department of Agriculture.
- Explore having a paid position within the NDSU Extension Service to serve as executive director for the NDGGA and North Dakota wine industry.

Public Policy

- Streamline North Dakota laws, including direct-to-retail, that allow North Dakota wineries to thrive.
- Have a North Dakota viticulture industry that is recognized for high-quality grapes being grown by experienced, knowledgeable growers.

Funding

- As the industry develops, a funding mechanism based on grape production or processed products may be implemented to augment the state funding.
- A relationship with the State Board of Agricultural Research and Education (SBARE) should be developed in hope SBARE will place a request on its priority list for state funding to allow the North Dakota Agricultural Experiment Station to expand its grape research.
- Work closely with the North Dakota Department of Agriculture and North Dakota Department of Commerce to secure funding for the promotion and marketing of the wine industry.
- A sustainable funding source needs to be established by the end of the 2013 legislative session.
- The legislatively designated North Dakota Grape and Wine Program Committee should continue to provide advisory support for research, promotion, education and marketing activities for the grape and wine industry.

14 January, 2013

To: Industry, Business, and Labor Committee

Subject: HB1077, relating to direct sales by licensed wineries

From: Paul Anderson, Pres. ND Grape and Wine Association (NDGWA)

The ND Grape and Wine Association (previously the ND Grape Growers Association) is in favor of passage of HB1077.

Passage of HB1077 will promote the growth of the grape and wine industry in ND. The ability for the small wineries to sell direct to on/off sale establishments and restaurants will enhance their ability to market their product and expand their customer base. Growing of the wineries business will require increased production of grapes to meet the demand.

This bill is a win for growers, wineries, and customers. The growers will have a larger market for their grapes and other fruits, the wineries will have control of their marketing efforts and expansion of their marketing outlets and the customers will have the ability to more easily get familiar with and acquire ND wine.

In other states like Montana and Iowa where direct to retail sales have been implemented for the small wineries it is found that over 50% of the wineries sales is through the retail outlets as compare to the sales from the onsite winery outlet.

The direct to retail sales ability should have a short term effect of increasing sales for nine wineries currently operating in the State of ND. Longer term the passage of this bill will make it more attractive for other wineries to open in the state. More wineries will require more grapes and other fruit so will help those areas grow. This bill is a driver for business growth within the State of ND. More wineries offer business opportunities beyond wine sales, those being: agritourism, event staging like weddings, family gatherings, and business meetings, and job creation.

Currently in order for a winery to sell to a retail outlet they must sell first to a distributor. This bill does not do away with that option for the winery. It may be the goal of the winery to get to a sales volume that would require the services of the distributor, a win for both parties. If a winery is currently selling through a distributor this bill does not require ending that relationship.

The NDGWA fully endorses this bill and asks the Industry, Business and Labor Committee to send the bill to the House Floor with a do pass recommendation.

Paul Anderson, Pres. NDGWA

② HB1077
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HB 1077
1-14-2013

14 January, 2013

To: Industry, Business, and Labor Committee

Hello, my name is Cindy Steffes, my husband, John, and I operate Prairiewood Winery, located in rural Lisbon, ND. We believe that Prairiewood Winery, and other wineries in the state, would benefit greatly from the Direct to Retail bill which is currently under consideration.

As a small rural winery, being able to sell our wine to retail establishments would make our products more accessible for the final consumer. The only place our products are currently available is at our rural location and a few special events in other towns throughout the year. Our local customer base is small, but we have found that people from across the state are interested in our products and ask if they are available at any of their local retailers.

This bill will make our products more readily available to customers in other towns across the state. If we were able to sell directly to stores, this would not only help our business, and other wineries in North Dakota, but also benefit consumers because they wouldn't have to drive as far to purchase our products.

Being able to market wine directly to retail establishments would benefit the wine industry in the state as a whole. It would increase our market exposure and sales significantly, and make it possible for us to expand our business.

Thank You for your consideration.

Cindy Steffes

(4)

HB
1077

1-14-2013

Chairman Keiser and members of the Industry, Business and Labor Committee,

My name is Rod Ballinger and I am Chairman of the Grape and Wine Program Committee, a mandated committee by the 61st Legislative assembly to promote the grape and wine industry in the state with regard to research, marketing, and education. Two main components of our committee's agenda was to further the grape and wine research with plant sciences at NDSU which will be addressed in upcoming SB 2146 and to create a stronger marketing environment for the wineries. HB1077 addresses this need with the direct to retail option for the wineries. After last session, it was decided to create a ND grape and wine industry strategic vision and direction plan. This project was led by a professional facilitator, Dr. Marie Hvidsten, program director of Rural Leadership North Dakota. I have included the results in an executive summary for your convenience.

Due to the complexities and divisiveness of the direct to retail bill last session, we reached out to the wholesalers to find common ground for a compromised bill that addressed all concerns. As I said to the wholesalers during these discussions, no one will get everything they want yet we should leave no one behind. This bill does just that. HB 1077 is good for the growers, it is good for the wineries, it is good for the consumers, it is good for the retailers, and it is good for the distributors that will gain by the growth of the wineries and the future needs for wholesaling activities. It is good for the citizens of this state as the grape and wine industries expand its agritourism base as it so well exemplifies. Thanks you for your time and I will answer any questions you may have.

Rod Ballinger Chairman G&WPC