

FISCAL NOTE
Requested by Legislative Council
01/05/2017

Bill/Resolution No.: SB 2137

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2137 makes changes in the requirements for microbrew pubs and brewer taprooms.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

SB 2137 loosens certain requirements for microbrew pubs and taprooms including allowing each license holder to have multiple licenses and transfer products from one license to another, removing the container size restrictions, and allowing off-premise sampling with an approved special event permit.

The provisions of SB 2137, if enacted, may result in additional alcohol wholesale and gross receipt tax revenue, as well as additional license fees, the amount of which cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

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Date Prepared: 01/29/2017

2017 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2137

2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2137
1/30/2017
Job Number 27577

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to the sale and transfer of alcoholic beverages by microbrew pubs & brewer taprooms

Minutes:

Attachments 1-8

Chairman Klein: Opened the hearing on SB 2137.

Jack McDonald, ND Brewers Guild: Testified to explain the bill. See Attachment #1 for amendment proposed.

Chairman Klein: It's not like it is new information, we've spent a lot of time in this committee over the years working on this issue. You are new to this particular sort of industry. What our concentration is on today is the bill and what we are trying to do that is necessary to make the microbrew business better. (2:30-3:00)

Jack McDonald: This will help the good old entrepreneurs make it.

Todd Sattler, ND Brewers Guild: See Attachment #2 for testimony in support of the bill. (3:05-17:04))

Chairman Klein: We will hold off with the questions till after testimony due to questions possibly being answered during additional testimony.

Jared Hardy, Founder, Fargo Brewing Company, and Secretary, ND Brewers Guild: See Attachment #3 for testimony in support of the bill. (17:37-20:40)

Chad Gunderson, Head Brewer, Rhombus Guys Brewing Company: See Attachment #4 for testimony in support of the bill. (20:45-27:34)

Chairman Klein: We have a couple of minutes for questions. Todd I heard someone talk about 6500 barrels at this time are you bumping up against the 25,000 anywhere in the state?

Todd Sattler: No, Fargo is the largest brewer that we have at 6,500 barrels.

Senator Casper: This question is for Todd Sattler. Under this you would have unlimited locations the way the bill is drafted. Where you can be brewing and transferring the beer and selling around the state. You don't want to be limited by the amount you can brew?

Todd Sattler: That is correct, but that is a significant limitation 10,000 barrels is not very large at all. That is the protection there, if we need a protection. You can only do it as a brew pub and brew pubs can only annually produce 10,000 barrels.

Senator Casper: Do you have a summary or something that you can provide us. I am interested in what is happening in the surrounding states.

Todd Sattler: It is a little difficult because each state is allowed to do as they see fit. There is so much variance with what states do. I can tell you that the states that have allowed the kinds of things we are asking for today a lot of them do have thriving craft beer businesses. I think it's important again because we are going to bring new businesses in that support our craft industry that will happen.

Senator Casper: So your argument that you are not going around the 3 tier system is the amount that you are limited and producing? I mean by selling from the brewery directly to the retail location the pub or whatever, you are going around the 3 tier system, correct?

Todd Sattler: At a very small scale and I think it is important just to compare the amount that is going between locations with the use of a wholesaler to take it out, otherwise it's an extremely small ratio there. The 10,000-barrel limit is going to restrict a lot of what we can do.

Senator Casper: Could the reverse happen, if I have 20 restaurants or 20 bars across the state that I would then go to a brewery that is doing 5,000 that could be doing 10,000 and ask them to sell me beer that I could then sell it at all my restaurants and the exact same thing would happen but the opposite, does that make sense? I can sell my own beer at my restaurant and push that and I could have a pretty good influence over someone that has room to brew 5,000 more units because I have a bunch of restaurants and bars.

Todd Sattler: It can't become an ownership, so if you don't own the brew pub you cannot distribute to it, you would have to go through a wholesaler.

Chairman Klein: One of the other issues is it's just this little bit but you crack it somewhere and what's to say Anheuser Busch doesn't say, well you let these guys do it. Constitutionally how can you do it for one and not the other and I think that is where we are going to get caught up in the debate here in discussions.

Todd Sattler: I wanted to address that and I think you've heard or we have heard in past sessions that there's a threat of a lawsuit against the state if we have volume limits. Volume limits are prevalent in almost every state and you don't have states being sued, so that really isn't a concern.

Chairman Klein: Asked for opposition.

Janet Seaworth, Executive Secretary, Legal Counsel, ND Beer Distributors Association: See Attachment #5 for testimony in opposition to the bill. (32:20-38:57)

Rudy Martinson, ND Hospitality Association: Testified in opposition to the bill. I want to echo the concern on transferring product between multiple locations particularly with this bill and the brewery tap rooms. I don't see anything in this bill that would prevent me from starting a production brewing facility or opening ten smaller tap room locations where I am brewing a verily small amount of beer and just essentially treating those as bars and trucking most of my product out from my central production brewing facility but operating functionally as bars under brewer tap room permits. As we discussed both the allowance for those brewer tap rooms two sessions ago and then the allowance for multiple locations last session. I believe the intent at the time was to have multiple brewers but they have to be breweries if they are going to be licensed as breweries versus having a central brewing facility and then trucking product out to what is essentially a small bar. (39:30-40:54)

Senator Casper: What are the requirements for the tap room locally, are they the same as a bar or different?

Rudy Martinson: Under current law tap rooms can only sell beer brewed at that particular location.

Senator Casper: I am sure the licensing is different in every city.

Rudy Martinson: My understanding is most cities that have established a retail license after the legislature passed the law that allowed for brewery tap rooms, cities that had them had to establish a local retail license. Generally, it is a separate category it is not the same category as a tradition retail liquor license or even as a microbrew pub license in the cities that have microbrew pubs. Generally, it is significantly cheaper than a standard retail alcohol license that just allows for selling of malted, distilled and other products.

Chairman Klein: You have numerous members and they are able to go through the wholesaler buy some of the brewer's product and sell at the retail establishment?

Rudy Martinson: Yes.

Chairman Klein: Last session you spent a lot of time getting together with the beer wholesalers and the folks from the industry trying to provide additional interest which it has. Have you seen anything in particular that we should have addressed or at this point does it seem to be working in the industry you represent?

Rudy Martinson: It seems to be working very well. We have more brewery's then we have ever had and the products are available in more places than they have ever been. A retailer for the most part but not universally but I would wager if I owned Rudy's Bar and I wanted to buy beer from any of the brewery's in this room, my wholesaler could get it for me.

Chairman Klein: Any of the beer wholesalers want to speak? Phillip do you want to come up and speak? I've been to your facility and we have heard about new buildings and

employees and working with the community. I know you live in Devils Lake do you want to talk briefly about what you do in your community?

Phillip Durham, President of Durham Wholesale: I am from a fourth generation beer distributor and we carry Fargo brewing and we have a great relationship with our small local beers. As far as locally we are very involved in our community as far as with responsible drinking campaigns and charitable work. We have ten employees right now that have very good jobs, that are well paying jobs that aren't just a minimum wage job that you might come in at a brew pub where they would start at twelve bucks an hour and get tips. We have a really good system in place and I feel we are respected. (44:45-

Chairman Klein: How long have you been in your building?

Phillip Durham: We have been in our building for ten years and the original one since 1927.

Senator Burckhard: If this passes, does it create a slippery slope that we don't want to go to?

Phillip Durham: I think it's not only the big brewers that would come in, any of the big craft brewers could use this little loophole and potentially jump over what the middle tier is also trying to do.

Chairman Klein: Asked Janet to come back up. I am trying to understand what opportunities we provided last time. I am hearing that they can't do things with the nonpublic or folks that they are trying to provide their product to for more than twenty events. Are there restrictions or have we provided for them to serve multiple events.

Janet Seaworth: Small brewers have the opportunity now to participate in up to twenty special events per year. The amendment has to do with allowing brew pubs to do special events but as I said, they are retailers and should be able to get permits as a retailer. I do know there has been some concern about the allowance of special events permits. I understand that there were problems in Fargo, some concerns about getting special event permits for every weekend of the summer and using that to be a pop up bar as opposed to an actual event, like a Pride of Dakota event. I think there is concern about how those special event permits are used.

Senator Casper: My question is to the slippery slope rational that the big brewers are going to come here and open fifty bars. What is your response to that not happening because the local brewers are limited on the scale of brewing they can do. In your testimony it states a significant risk to the distributors.

Janet Seaworth: It is real and it is happening. Anheuser Busch is buying brewers that have retail license all over the country because there have been inroads like this. We have had litigation across the country in two districts and most of those circuit courts passed on the question of whether volume caps will save you from a commerce clause challenge and essentially the general rule you can take away from that litigation is that if every brewer in your state that has special privileges is under the cap and everybody that can't do it is outside of the state, then you have a problem.

Senator Casper: It seems like there have been a lot of changes, it has been an evolving market and industry. Is the idea that brewing and then bringing it to a location or selling it, is the same group doing that, is that the line in the sand we will never cross?

Janet Seaworth: Yes, we are getting there. We have allowed so many retail privileges for brewers that they are starting to look like retailers.

Senator Casper: Is there a justification for this beyond the fact that the three tier system was put in and that's the way we've always done it and that is the way the law is and that is the way we should keep doing?

Janet Seaworth: There is more to it. We have a supreme court decision and that deals with commerce clause issues. (53:28-54:07)

Senator Campbell: If we took out all caps and let true capitalism take effect, why would we limit this industry and not let capitalism proceed?

Janet Seaworth: Ultimately your local retailer is going to look like a soft drink isle at Walmart. We have a vast selection and variety because we have a strong 3 tier system and everyone gets to play, even small brewers get to play. (55:04-56:00)

Chairman Klein: Comments on experience

Miles Vosberg, Director of the Tax Administration Division of the Office of the State Tax Commissioner: Testified in neutral capacity. (56:45-57:02)

Chairman Klein: Are you concerned about taxation?

Miles Vosberg: We don't feel it's going to change any taxation.

Senator Casper: Does this effect in any way wine being shipped into the state?

Miles Vosberg: This bill addresses only the brewers.

Mike Froehlich, Laughing Sun brewery: We are licensed as a tap room brewery. We can self-distribute already up to that 10,000 barrels. We just want to know why we have to do something special and different from what a regular brewery is doing. (58:15-60:27)

Chairman Klein: Closed the hearing.

Testimony Handed out:

Aaron Pelton, Owner/Operator of Six Shooter LLC, see attachment # 6

Matt Winjum, Co-Owner of Rhombus Guys Brewing Company, see attachment #7

Aaron Hendricks, Co-Owner of Rhombus Guys Brewing Company, see attachment #8

2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2137
1/31/2017
Job Number 27623

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Era Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to the sale and transfer of alcoholic beverages by microbrew pubs & brewer taprooms

Minutes:

Attachment-0

Chairman Klein: Opened the meeting. We had an interesting discussion yesterday.

Senator Casper: I think that we will be here every session because that market is rapidly changing and that business model is rapidly changing and it is almost reverting back to how it was a hundred plus years ago. I think we will continually be in a point to find middle ground. I understand the distributors side of the argument but I think some of the requirements are somewhat unreasonable. I am still learning how to quantify 10,000 barrels. Is that how much a distributor distributes in a year, I don't know. The idea that on one block you could have a brew pub and two restaurants next to it that I couldn't take my beer that I brewed down to my other restaurant just seems not to make a lot of sense to me. I am still educating myself on the nuances of alcohol regulation compared to other industries I am more familiar with.

Senator Campbell: If Laughing Sun Microbrew wanted to sell to Blarney Stone do they have to go through a wholesaler.

Chairman Klein: I believe they can self-distribute that.

Senator Casper: If you are a brewer and you can self-distribute you can distribute to a bar or restaurant that is licensed as a bar or restaurant but not licensed as a tap room. On both sides of this it's who is producing the beer and are they a brewery or are they a tap room or are they a micro-brewery and on the other side of it is, who are they distributing it to, are they a full liquor license or are they a tap room. It seems to me if you are self-distributing like Laughing Sun Microbrew distributes to restaurants and bars in Fargo and others have stopped that because the distribution is too difficult for them. My question is if you owned a brewery in Grand Forks and a restaurant in Fargo and you are self-distributing can you self-distribute to yourself. I think the answer is depending on what your designation is on the other side, the purchaser.

Chairman Klein: Senator Poolman can you shed any light on Senator Campbell's question.

Senator Poolman: I wasn't aware that they can self-distribute. I thought they had to go through the wholesaler. I know they do go through McQuades if we are talking locally I know how it works here. I know they do go through McQuades, Laughing Sun.

Chairman Klein: The big issue came from, is there is a point where you just can't do it on your own. I can also see the conflict that could be arising when you have the craft guys who are depending on the wholesalers because does Laughing Sun want to drive to Belcourt or wherever. It is easy to drive around town but your business model isn't to spend all your money hauling it around, it's to make the beer. I think we will have to dig into this a little more.

Senator Burckhard: One of the people who testified said it could create a commerce clause concern.

Senator Poolman: It does eventually because as we have seen the brewers keep coming back every session. They keep chipping away at it every session and I would predict if we give them this then they would come back the next session and say this 10,000 limit is too low. If you allow them to brew beer and self-distribute, then why wouldn't you allow someone from out of state like Anheuser Busch come in and self-distribute their own beer. That is what ends up causing the commerce clause.

Senator Casper: There are a couple of justifications here and for the way the system is now. One, it's been that way and it creates more distance between the brewers and the retailers, that system was put in eighty years ago and the other justification is the commerce clause stuff. I think we probably are going to go down the road of the commerce clause stuff regardless. I was thinking what if you limited it to a certain number of barrels because 10,000 seems like a large amount. What if it was 500 or 1000 and 2 tap rooms you could distribute to and limiting what they would do. From the commerce clause prospective, I think there is an argument that you are treating someone outside the state different from inside. What is to stop Anheuser Busch from coming here if they want to start a little brewery that brews 500 barrels a year and that they sell it to two restaurants that they own, let them do it. I don't see them doing it because it isn't worth their time, effort and money but maybe it is and we would love to have Anheuser Busch here opening two restaurants and brewing 500 barrels a year and creating jobs.

Chairman Klein: The craft brewery business is going well, they are popping up all over with the rules we put in place and there is no one up to 10,000 or 25,000 barrels either.

Senator Casper: Have we studied this, in the next decade this thing is going to rapidly change all over the country, one way or the other. One issue I have with the legislation is we're setting up two different sets of rules for two different people that are doing the same thing. The people that say free market are asking for separate rules. When have you looked at a global overview and said how can we make everyone function under the same set of rules so it is fair.

Chairman Klein: We will just leave that for now and close the discussion.

2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2137
2/1/2017
Job Number 27722

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to the sale and transfer of alcoholic beverages by microbrew pubs & brewer taprooms

Minutes:

Attachments - 0

Chairman Klein: Committee there was a lot of discussion from both sides and it was a great opportunity to learn more about the brew pubs and what they do and the fact that they are growing in our state and the fact that they are regulated. We know what other states are doing and we are in the ball park. It's not like we are hindering them anymore than other states.

Senator Poolman: With the information we were given we have learned, as we suspected, over the years we have loosened and loosened with every legislative session and we are less restrictive then the surrounding states. I would move a do not pass.

Chairman Klein: I would agree.

Senator Poolman moved a do not pass

Senator Casper seconded the motion

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

Senator Poolman will carry the bill.

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2137**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Poolman Seconded By Senator Casper

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Poolman

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

REPORT OF STANDING COMMITTEE

SB 2137: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends
DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2137 was
placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2137

SB 2137

1-30-17

#1

January 30, 2017

Jack McDonald

ND Brewers Guild

Senate Industry, Business & Labor Committee

PROPOSTED AMENDMENTS TO SB 2137

On page 3, line 17, replace "days" with "events"

On page 3, line 20, overstrike everything after "container" and insert immediately thereafter "off-premises events."

Renumber accordingly



SB 2137 – Supported
Monday, January 30, 2017
Senate Industry, Business and Labor Committee
Todd Sattler, President, North Dakota Brewers Guild

Introduction

Mr. Chairman and members of the committee, my name is Todd Sattler. I am here on behalf of the North Dakota Brewers Guild and am currently its president. I am also co-owner of Laughing Sun Brewing Company, here in Bismarck.

The Brewers Guild is a North Dakota non-profit corporation. Our purpose is to promote craft brewing and protect the interests of the craft brewing community in North Dakota. Our membership has grown from just two brewery members when we formed four years ago, to ten brewery members today: Fargo Brewing Company, Drekkar Brewing Company, Kilstone Brewing Company and Flatland Brewing Company all in Fargo, Rhombus Guys Brewing Company in Grand Forks, Souris River Brewing in Minot, Stonehome Brewing in Watford City, Buffalo Commons Brewing Company and Bird Dog Brewing Company in Mandan, and Laughing Sun Brewing Company here in Bismarck. In a moment, you will hear testimony from some of our other member breweries and so I won't get into their backgrounds or why SB 2137 is so important to their business. Each of these North Dakota craft breweries is a small business, created and operated by local individuals with a passion for brewing handcrafted beer on a small scale and offering their creations for sale to the public.

North Dakota breweries contribute significantly to the economic development of their respective communities and to the State of North Dakota. Each craft brewer in North Dakota pays a separate federal and separate state excise tax on each gallon of beer they produce. In addition to the excise tax, North Dakota breweries pay the state alcohol sales tax on sales in their brewpubs or taprooms. They pay infrastructure, flood control, hospitality, restaurant, lodging, and related taxes to their municipalities and counties.

Local breweries create a need for raw materials supplied by North Dakota farmers. The barley our breweries use to make their beer is grown here in North Dakota, by North Dakota farmers. We are just now starting with hop production in the state and, very soon, many of the beers brewed here in North Dakota will have North Dakota hops. Just a few miles from here, in Lincoln, North Dakota, Two Track Malting began operations last year to supply malted grain to breweries throughout the State. In short, craft breweries are an important catalyst for new industry-related agricultural and manufacturing business in North Dakota.

Our breweries have quickly become integral parts of their communities, often in downtown areas in need of revitalization. They employ individuals from their neighborhoods as brewers,

managers, chefs, and wait staff. They donate and pour beer at charity events, hang work by local artists on their walls, hire local musicians to provide entertainment at their breweries, keep board games on their shelves and host trivia nights, open outdoor patios and beer gardens during the warm weather months, show movies and partner with local restaurants to host beer dinners in the winter. North Dakota breweries enhance the quality of life in their neighborhoods and help make their communities a desirable place to live and work.

I'd like to respectfully invite the members of this committee, and their colleagues in the legislature, to talk with civic leaders in your districts about breweries. Often, if they don't yet have a brewery, they want one in their community. And if they have one brewery, they'd like to have more.

SB 2137

The legislation before you today, SB 2137, does three things for craft beer in North Dakota. The changes are not earth-moving. They will not upset the structure of how beer is manufactured, distributed, and sold to consumers in North Dakota. Rather, these small changes in the law remove restrictions that unnecessarily result in disruption of day-to-day operations and economic hardship for the breweries in the State.¹

Transfer rights: As the craft beer industry in North Dakota grows, breweries are opening multiple locations for their operations. There is no specific language in the statutes prohibiting breweries from transferring beer between their locations. And it seems intuitive that transfer would be allowed. Nevertheless, the law has been interpreted to require breweries with more than one location to sell their own beer to a wholesaler -- and then purchase it back from the wholesaler -- at the wholesaler's marked-up price. No discernable public policy rationale exists for this restriction. SB 2137 makes it clear that breweries can move their beer between locations.

Special event permits: North Dakota breweries often are asked to take their beer to a variety of events: store grand openings, music festivals, fundraisers for non-profits, wedding receptions, and reunions, to name a few. Wineries can pour wine at these types of events, without restriction. For breweries, however, the law is narrowly interpreted. Brewpubs cannot obtain an event permit for any purpose; tap rooms are restricted to a very few types of events that qualify. Breweries, like wineries, should be free to take their beer to events. The restrictions on event permits for breweries are unsupported by any discernable public policy rationale. Event sales result in an increase in state tax revenues and respond to consumer demand for craft beer at these events. SB 2137 removes these unnecessary restrictions on event permits.

¹ A short explanation of the two types of licenses available to breweries will help to understand the issues here. Breweries in North Dakota must be licensed either as a brewpub or a tap room and there are different restrictions placed on each license. **Brewpubs** are limited to production of 10,000 barrels (310,000 gallons) of beer annually and are required to distribute their beer through a wholesaler. Off-sale containers must be between 64 ounces and three gallons. They are not allowed to sell their beer at events unless they sell it to a wholesaler first. **Tap rooms** are limited to production of 25,000 barrels (775,000 gallons) of beer annually and are restricted from selling anything other than their own beer in the tap room. When they sell beer off-sale, the container must be between 12 ounces and 5.16 gallons. Tap rooms may pour their beer at 20 events each year, but tap rooms can't pour beer for a non-profit organization or at a private business location.

Container size restrictions: Brewpubs and tap rooms in North Dakota sell their beer to consumers for on and off-premises consumption. Sales for off-premises consumption, however, are restricted by size: tap room containers must be not less than 12 ounces and not more than 5.16 gallons; brewpub containers must not be less than 64 ounces and not more than three gallons. There is no discernable public policy rationale for these size limitation. The restrictions prevent brewpubs from packaging their beer in traditional container sizes (12-ounce and 16-ounce cans and bottles) and sizes most convenient to craft beer consumers. Beer retailers in North Dakota -- except brewpubs and tap rooms -- may sell beer for off-premises consumption in any size container, without restriction. Brewpubs and tap rooms should have the same right to package and sell their beer. SB 2137 removes the unnecessary restrictions on off-sale container size.

The Three-Tier System

The rationale offered in opposition to SB 2137 is the concern over collapse of the three-tier system, whereby breweries sell beer to wholesalers who, in turn, sell to retailers. The concern is unfounded. Passage of SB 2137 will not change the three-tier system in North Dakota.

A brief understanding of the history is helpful here. Before Prohibition, retailers were controlled (i.e., "tied") by large brewers. Brewers forced these "tied houses" to adopt programs that promoted consumption to a level that was perceived as excessive and detrimental to society. (The "drunkards in the streets" problem.)

The 21st Amendment, which repealed Prohibition, gave to the states the responsibility to regulate alcohol and prevent the overconsumption problems caused by "tied houses." In 1933, John D. Rockefeller, a teetotaler, commissioned publication of a pamphlet called Towards Liquor Control, that was passed around to each state legislature and led the states to adopt the three-tier system.

It is important to understand that states are not required to use the three-tier system and can choose any method of alcohol regulation. Indeed, in 2011, Washington eliminated the three-tier system completely without consequence. And most states today have moved away from any strict application of the three-tier system. Here in North Dakota, as in most states, the volume limits already in place (breweries that produces more than 25,000 barrels annually cannot be licensed in North Dakota) prevent any large brewer from coming into the state to establish "tied houses" and cause pre-Prohibition problems.

But we are not here today to advocate for removal of the three-tier system in North Dakota. While wholesalers do not perform a regulatory function and do not collect taxes for breweries, nearly every brewery here still depends on wholesalers to ship and sell their beer to liquor stores, bars and restaurants. They value their close relationships with their wholesalers and have no interest in creating their own trucking company and sales force to perform these significant tasks.

Most importantly, for purposes of the hearing today, the three small changes in SB 2137 do not impact the integrity of the three-tier system in North Dakota:

Transfer rights: The volume of beer North Dakota breweries will transfer to the few retail locations they own is extremely small when compared to the great number of retail locations serviced for the breweries by their wholesalers. The three-tier system will remain alive and well

in North Dakota because breweries will continue to participate fully in that system. Transferring their beer between locations will not change their participation.

Special event permits: Wineries are allowed to pour their products at events without restriction and there has been no impact on the three-tier system. A brewery's participation in an event -- regardless of type of event, or whether the brewery is licensed as a brewpub or tap room -- similarly would not impact the three-tier system.

Container size restrictions: North Dakota breweries, under existing law, already sell their beer off-sale to customers who visit their brewpubs and tap rooms. The size of the containers in which their customers carry the beer home is wholly unrelated to the integrity of the three-tier system.

Conclusion

On behalf of the North Dakota Brewers Guild, I respectfully seek your support for SB 2137. These changes promote small business development and entrepreneurship in North Dakota without upsetting any established system for alcohol regulation in the state.

Jared Hardy from Fargo Brewing Company and Chad Gunderson from Rhombus Guys Brewing Company in Grand forks will next discuss the importance of SB 2137 for their breweries. Before I have Jared and Chad come up, I'll be happy to do my best to answer any questions you may have.

Testimony for Public Hearing
Industry, Business and Labor Committee
January 30, 2017

Jared Hardy
Fargo Brewing Company
610 University Dr N
Fargo, ND 58102

Good morning Industry, Business and Labor Committee Members. My name is Jared Hardy and I am a founder of the Fargo Brewing Company and Secretary of the North Dakota Brewers Guild. Fargo Brewing Company was founded in 2011 and produces a variety of beer styles in Fargo that are sold across North Dakota, Minnesota, South Dakota and Wisconsin with a total production over 6,500 barrels. Since 2011, the company has grown from 3 to 28 employees.

I am here today to express my support of bill 2137 and each of its three key changes. My testimony will focus on the impact of between breweries under the same ownership.

In the previous legislative session, a bill passed that allows a brewer taproom license holder to hold multiple brewer taproom licenses. This initial step provided an avenue for Fargo Brewing to add a second location, however interpretation of the century code limits the use of multiple licenses.

In 2016, Fargo Brewing opened a second location in South Fargo with the intent to brew beer onsite and fully operate two breweries. Plans included serving beer brewed at the new location alongside our most popular beers brewed at the original brewery. Brewing these popular beers at the new location wouldn't represent the same flavor our customers expect. Our interpretation was that brewer taprooms could sell beer manufactured at any of the brewer taproom premises.

We were informed that transfers were not allowed between licensed brewery premises. To comply with this regulatory decision, we switched our license to a microbrew pub and operate the new location as a retailer. The new location is required to purchase Fargo Brewing beer back from a wholesaler. In the past three months, this has represented 48 of the 1,450 barrels, less than 4%, of the beer produced by Fargo Brewing.

I, along with the other Fargo Brewing founders, support the integrity of the three-tier system. We participate fully in that system with 18 distributors in three states for over 90% of our sales. We feel the capital cost, regulations and maximum production volumes already in place will make the volume of beer transferred as a small percentage of the state's beer sales and not a threat to the three-tier system.

Pending the passing of 2137, both Fargo Brewing locations would license as a brewer taproom and no longer as an alcohol retailer. Both locations would operate within the volume and beer brands restrictions set forth in the proposed changes.

Finally, I'd like to extend an invitation to committee members to visit the Fargo Brewing Company to see a production brewery first hand and learn how we make a local beer.

Thank you for your time and consideration.

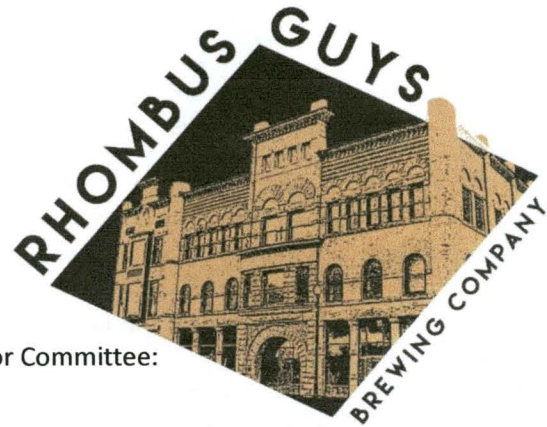
Jared Hardy
Fargo Brewing Company

Rhombus Guys Brewing Company
116 South Third Street
Grand Forks, ND 58201

30 January 2017

Dear Members of the Senate Industry, Business and Labor Committee:

SB 2137 – SUPPORTED



My name is Chad Gunderson, Head Brewer for Rhombus Guys Brewing Company in Grand Forks, North Dakota. My career in brewing craft beer starting in 2010 when I volunteered my time at a local start-up craft brewery in Walker, Minnesota. I eventually volunteered myself into a full-time job and the brewery's first official employee. This position sprung me into a world of possibilities including finding myself in Helena Montana brewing beer for a large craft brewery. We were brewing 10,000 bbls per year and growing. This included working with 3 wholesalers distributing our product in our local market and beyond. I also found myself in Great Falls Montana. Where I helped a startup craft brewery get their project off the ground and rolling.

Committee members, as you just read, I have not worked for only one brewery in one state, I have had the privilege to work for four breweries across three states. Therefore, I feel so strongly towards our small changes and the unnecessary restrictions towards our craft breweries in this state. I have seen firsthand how breweries and wholesalers work tirelessly together to build brands and the importance of a great wholesaler is to a brewery.

But what I don't see, is the unnecessary restrictions on our container sizes, transfers to other locations and event permits.

Container Sizes:

Currently, at Rhombus Guys Brewing Company, we have the ability or means to produce several different size containers via our specialized machines for the sole purpose of distribution. We currently package:

- 12 oz. Cans (one container unit) placed together in a standard off-sale package of six (6) 12 oz. cans, wrapped in cardboard or snapped together with a plastic holder. Perfect for a few pints at home, with friends, at the lake, in the mountains, etc. This is the most common package size consumers want.
- 64 oz. Growler / Jug (one container unit) Glass container. Total of (4) 16 oz. beers in one growler. Perfect for a few pints with friends at home.
- 5.17-gallon keg /or/ (1/6) barrel keg. Commonly used for restaurants with small cold rooms, or the occasional seasonal beer offering. This is also perfect for the craft beer enthusiast that has a beer fridge at home.
- 13.2 – gallon keg /or/ 50L keg. Commonly used for bars and restaurants with a high volume of craft beer sold. This is also great for the high-volume craft beer enthusiast that has a beer fridge at home.

Of these mentioned "sized containers", we as a Brewpub, defined by the state of North Dakota, can only sell one of these containers legally through our brewpub, the 64-oz. growler. Through history and

research, both the wholesaler and the manufacturer have concluded that the 6-pack is the most widely used off-sale container size. I personally find it ridiculous that even though we can manufacture multiple container sizes at our location, the state restricts us to selling just one of the container sizes for off-sale consumption. Unfortunately, the 64 oz. Growler it is not the most common container size.

Having a restriction to the size of container a brewery can legally sell is not only ridiculous, it prohibits the growth of a community trying to involve themselves in their local craft brewery. Craft beer enthusiasts are finding our brewery, taking tours, and hoping to leave the brewery with our craft, beer in appropriate sized containers for consumption.

Transfers:

Rhombus Guys have been in the pizza business for over 16 years. During those years, they have created a brand that has stretched from Mentor Minnesota to Grand Forks and even Fargo. Three businesses under the same ownership with three separate locations. When they had the vision to build a brewery in the Metropolitan Opera House downtown Grand Forks, a block from the Grand Forks Rhombus Guys Pizza, they had hoped to supply all the pizza restaurants with locally produced craft beer.

What they soon figured out is that per state law they were not able to self-distribute their product to the Pizza locations, because under the three-tier system, a business cannot hold a manufacturing license, distribution license and a retailer license. Without conceding the dream to build a brewery, they understood they would have to license the brewery as a brewpub and forego distribution rights.

Since day one of brewery operations, we have had agreements with three distributors in the area to supply all three pizza locations and beyond. The distributors purchase the kegs and cans from us, bring them to the warehouse and a day later deliver them to the pizza locations where we purchase the kegs and cans back at a substantial markup.

This is appalling not only to myself and the Owners of Rhombus Guys, but our customers as well. During weekly tours at our brewpub, I find myself and my assistants staring into our patrons puzzled faces as we tell them the process in which it takes for our product to move from the brewpub to the pizza location down the street.

Event Permits:

Rhombus Guys Pizza shop is very involved in the local Grand Forks community and often provides the alcohol license for multiple events in the area. With the current law, the pizza shop, who is a licensed retailer, can apply for a special event permit with the city of Grand Forks to extend their retail license to the event at hand. These are granted and we are able to provide the event with on-sale alcoholic beverages. This is where it gets confusing, as a brewpub, also a retailer licensed with the city of Grand Forks, we cannot apply for special event permits due to the language in our current century code as a brewpub. I find this to be unfair and unnecessary restriction. As a retailer, the brewpub should have the same rights as fellow retailers in the city and state.

As a professional brewer, husband, father and craft beer enthusiast, I urge you to support SB 2137. These small changes will in no way harm the three-tier system. In fact, it will strengthen the relationship between wholesalers and manufacturers in which I have personally seen throughout my brewing career and travel. When the brewery is successful so is the wholesaler. We have had multiple people come through our brewpub that would have never known we package our product in cans if they didn't take a tour by myself or assistants and see the canning equipment. This sparks their interest in purchasing the package and would ultimately spring them to try and find our craft beer the next time they are browsing their local retail location.

I urge to you look to other states that have seen the craft beer business thrive, like Oregon or Colorado. These states recognized that investing in your small businesses/local craft breweries will help them succeed and create a brand that can one day supply the entire state of North Dakota or even better the Midwest or United States. States like Oregon invested in the legislation to promote small business growth so that one day people in North Dakota can be drinking beer made in Oregon. With the help of local community support and the distribution network of wholesalers, Deschutes Brewing Company is now a household name in the craft beer network here in North Dakota. Starting out as a small brewpub, just like Rhombus Guys, they rose to the brand they are today with the help of legislation, distribution and local support.

Thank you for your time. Support SB 2137



Chad Michael Gunderson
Head Brewer
Rhombus Guys Brewing Company

SB 2137

Testimony before the House Industry Business and Labor Committee
January 30, 2017

Mr. Chairman, members of the Senate Industry Business and Labor Committee,

My name is Janet Seaworth, I am Executive Secretary and Legal Counsel for the North Dakota Beer Distributors Association. We are a 72 year old trade organization comprised of family owned and operated distributorships in North Dakota.

North Dakota's beer distributors have supported the growth of small brewers, from 1991 legislation to allow special retailers called "micro brew pubs" to brew their own beer, to the establishment of brewer taprooms with multiple locations. Here's some history:

1991 - NDBDA worked with proponents to allow "micro brew pubs," special alcohol retailers that have the privilege of brewing and selling their own beer. Brewpubs were exempted from certain unfair trade practice regulations to allow them to operate as a retailer and also brew beer. This was a significant departure from well-established and effective regulation.

1995 - NDBDA supported a major expansion of brewpub privileges, including the privilege to give free samples, and sell product for off-premise consumption in containers commonly known as "growlers."

2013 – NDBDA helped draft SB 2284 to allow brewers to have taprooms, where the public could sample beer manufactured on-site and take some home to enjoy. Current law allows small brewers to manufacture, distribute, and sell at retail. No other industry member enjoys such privileges.

2015 – Legislation passed to allow brewers to have multiple taprooms.

SB 2137 seeks to allow more retail privileges for brew pubs and small brewers.

We oppose amendments to allow the transfer of product between commonly owned brew pubs and the transfer of product between commonly owned brewers. That is contrary to the clear intent of the law that brew pubs and brewer taprooms may sell beer that they have manufactured on the brewery premises. If a brewer with a taproom is allowed to transfer product, they may seek to brew only a nominal amount at a second or third location in order to obtain a taproom license and then sell alcohol not brewed on premise. Taprooms are not simply bars selling product produced somewhere else.

We oppose amendments to allow brew pubs to sell any package for off premise consumption. Currently, brew pubs may only dispense beer in growlers for off premise consumption. Brew pubs are not production brewers. If brew pubs were allowed to operate as production brewers, bottling and selling all packages while holding a retail license, that would create a

commerce clause issue because large out-of-state breweries are prohibited from holding a retail license.

The bill would allow special event permits for brew pubs. It is not clear why this is needed, since brew pubs are retailers and should be able to obtain special event permits from their local municipality pursuant to their retail license.

Finally, the bill would allow a brewer with a taproom to sell any package, including kegs. That is contrary to the nature of a brewery taproom – an opportunity for consumers to enjoy a taste of the product on tap that brewer is brewing at that location, and perhaps take a bit of product home for personal enjoyment. Allowing the sale of kegs just turns the brewer into a retailer.

In sum, this bill would allow expanded distribution and retail privileges that are beyond what is intended for brew pubs and brewers. It's important to remember that three-tier-exemptions, like retail privileges, are intended to help start-up businesses, not disrupt on-premise bars, restaurants and taverns. It's also important to remember that these expanded retail privileges are not without risk for distributors. Whenever three-tier exemptions are allowed for small brewers, there is always the chance that global brewers will also want to sell outside the system.

It does not appear that these expanded retail privileges are warranted. North Dakota's small brewers are prospering. Instead of further deregulation of alcohol, we should strengthen the laws that ensure fair competition on a level playing field. We would urge you to vote No on SB 2137.

Thank you.

Janet Demarais Seaworth
Executive Secretary and Legal Counsel
North Dakota Beer Distributors Association

Senate Bill NO.2137

By Aaron Pelton

Owner/Operator of Six Shooter LLC

Stonehome Brewing Company

Watford City, ND

1/30/2017

My name is Aaron Pelton. I am part Owner of Stonehome Brewing Company of Watford City along with 5 other restaurants in the region. We currently employ over 200 people.

In 2016 we became the 9th microbrewery in the state with our small 15bbl system and the first one located west of Minot at the current time. The craft beer industry is booming nationwide and our neighboring state of Montana currently has 71 microbreweries, and Minnesota has well over 100.

We are excited to be able to offer the citizens of North Dakota freshly made craft beer made right here in our great state along with ND grown barley, hops, sugar, honey, and other ingredients. It is critical that we are able to keep our cost low for our North Dakota consumers. In order to do this, we are asking that like in other neighboring states, that we are able to sell our beer to our other locations without having to use a distributor.

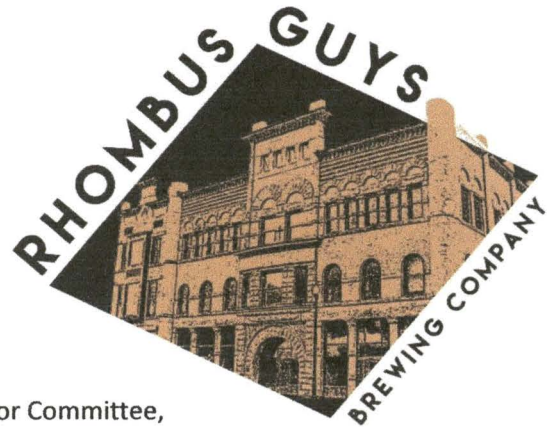
With the current system a large distributorship has to drive from another town to pick up our beer to deliver it down the road at a later date, which drives cost up to the consumers.

Self-distribution within your own company is logical and is a current system that is working in other states.

Thank you for your time and consideration

Aaron Pelton

Rhombus Guys Brewing Company
116 3rd St. S.
Grand Forks, ND, 58201



30 January 2017

Dear Members of the Senate Business, Industry and Labor Committee,

SB 2137—Supported

Rhombus Guys has owned and operated businesses for more than sixteen years. We started selling smoothies out of a mobile stand we constructed on a snowmobile trailer in 2000. Since then, we have grown to own multiple restaurants in Minnesota and North Dakota. We are most well-known for our pizza, but hopefully people will start to know us just as well for our craft beer. In 2013, we purchased the historic Metropolitan Opera House in downtown Grand Forks. The commercial space on the street level had sat vacant since the flood of 1997. It was our dream to renovate it and turn it into Grand Forks' only brewery. There were plenty of challenges and obstacles along the way, but in September of 2015 our dream became a reality.

Owning and operating any small business is difficult, but current legislative restrictions make operating a brewpub unnecessarily difficult. The proposed bill 2137 makes logical changes to help make the brewpub business model more feasible for success. The relationships that Rhombus has with wholesalers and retailers are extremely important and necessary. But current legislation gives unfair advantages in certain situations. For example, Rhombus has invested all of the time and resources to produce our own beer at the brewpub. In order to sell our beer at our pizza place, less than half a block away, we have to pay a wholesaler. Every single keg that we sell at our pizza place we lose more than fifty dollars to a wholesaler. There is not a single person I have had a conversation with, except a wholesaler, who thinks this makes any sense. This is a significant financial burden for a small, start-up business. Rhombus has no desire to run around the state to take orders and distribute beer, but product transfers between commonly owned establishments just makes sense.

Another legislative restriction that does not make any sense is the off-sale container size restriction. Every day we have guests at the brewpub that would like to take a six pack of Rhombus cans home; we cannot sell it to them. We have to send them out of our stores as confused and disappointed customers. Every so often we have a craft beer enthusiast stop by and ask to purchase a keg for their home system or family reunion; we cannot sell it to them. We have to send them out of our store as confused and disappointed customers. There is not a single person I have had a conversation with who

thinks this makes sense. If you read the current legislation, the size restriction is very oddly added to the code. It doesn't even fit. Allowing Rhombus to sell the products produced at the brewpub to end consumers is just logical.

Current legislation does not allow Rhombus brewpub to do off-site events with our beer. A brewpub is known as a retailer according to current legislation. All other retailers are allowed to do off-site events; our pizza places can do off-site events. Rhombus is very active in the communities we are a part of. We are regularly asked to bring our beer to an event and get involved. Currently, we have to go through the pizza place which means we have to go through a wholesaler and incur a financial burden. Not allowing brewpubs to get involved with their communities and do off-site events is ridiculous.

Rhombus supports SB 2137 and the proposed changes to legislation. We also support the important relationships between breweries, wholesalers, and retailers. These proposed changes all make sense and help make an up and coming business model viable. The brewpub industry is still relatively young and small to the state, but it should be fostered for growth. I have discussed these changes locally with the city of Grand Forks and they support it. We find ourselves in a situation where the city would allow us to do these things, but the state will not. We are asking for support from the state. Please support this bill.

Matt Winjum

Rhombus Guys

Co-owner



RHOMBUS GUYS BREWING COMPANY

Rhombus Guys Brewing Company
116 S 3rd St
Grand Forks, ND 58201
1/27/17

Dear members of the Senate Industry, Business and Labor Committee:

Subject: Direct distribution of beer between producer and retail with same owner

My name is Arron Hendricks, and I'm co-owner of Rhombus Guys and Rhombus Guys Brewing Company. The current law allows us to simultaneously own a retail alcohol license at Rhombus Guys and a brewpub license at Rhombus Guys Brewing Company. The law also dictates that we cannot bring our beer, which is legally made at the brewpub, to our retail establishment. We cannot distribute OUR beer to OUR store, and I don't understand the logic in this.

Distributors or wholesalers are extremely important partners for breweries, but I don't think anyone allowed to brew beer should be required to use one. I appreciate the work of distributors, and I believe that their efficiency in distributing is vital to delivering quality beer around the country. However, I don't believe that we should be forced to use a distributor to transport beer that we could transport to our retail stores ourselves. In fact, the closest of our stores is only 500 feet from the brewpub. So, why don't I believe that we should be required to use a distributor? One reason is that we are perfectly capable of transporting the beer ourselves. Also, other industries are not held to these same requirements, and our industry should not be treated any differently. In addition, transporting beer from our brewpub to our retail businesses does not give us an unfair advantage. If everyone has the ability to own a brewpub and a retail store, it cannot be considered an unfair advantage if one entrepreneur does and another doesn't.

In conclusion this law is unnecessary and illogical. If the proposed change in this law causes there to be other changes in the producer/distributor/retailer system, so be it. It's time for a change.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Arron' followed by a stylized surname.

Arron Hendricks
Co-Founder, President, Janitor, and CEO
Rhombus Guys