2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1502

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1502
1/22/2019
31245

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Direct sale of liquor by a domestic distillery to licensed retailers.

Minutes: Attachment 1

Chairman Keiser: Opens the hearing on HB 1502.

Rep Mock~District 18: Attachment 1. Introduces the bill.

6:00

Chairman Keiser: Questions for the committee? Anyone here support, opposition, neutral position on HB 1502. Closes the hearing. What are the wishes of the committee?

Rep D Ruby: Moves the amendment to move from 20 to 40 events per year & lowers the level.

Rep Bosch: Second.

Voice vote ~ motion carried.

Chairman Keiser: What are the wishes of the committee?

Rep Adams: Moves a Do Pass as Amended.

Rep Richter: Second.

Chairman Keiser: Further questions?

Roll call was taken for a Do Pass as Amended on HB 1502 with 12 yes, 0 no, 2 absent & Rep P Anderson is the carrier.

DP 1/22/19

19.0400.01001
Title.02000

Prepared by the Legislative Council staff for
Representative Mock
January 21, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1502

Page 2, line 7, overstrike "special events" and insert immediately thereafter "event"

Page 2, line 7, overstrike "twenty" and insert immediately thereafter "forty"

Page 2, line 11, overstrike "a special"

Page 2, line 12, overstrike "events" and insert immediately thereafter "an event"

Page 2, line 14, overstrike "twenty special" and insert immediately thereafter "forty"

Page 3, line 18, replace "twenty-five thousand proof gallons [94635.3 liters]" with "five hundred cases"

Page 3, line 19, after the underscored period insert "Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. A case may not exceed two and thirty-eight hundredths gallons [9 liters]."

Renumber accordingly

Date: Jan 22, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1502

House Industry, Business and Labor **Committee**

☐ **Subcommittee**

Amendment LC# or Description: 19.0400.01001 title. 02000

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 Rep Ruby **Seconded By** Rep Bosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor Assignment voice vote - motion carried

Date: Jan 22, 2019

Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1502

House 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 Rep Adams **Seconded By** Rep Richter

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Rep O'Brien	x	
Vice Chairman Lefor	x		Rep Richter	x	
Rep Bosch	x		Rep Ruby	x	
Rep C Johnson	x		Rep Schauer	x	
Rep Kasper	Ab		Rep Adams	x	
Rep Laning	Ab		Rep P Anderson	x	
Rep Louser	x		Rep M Nelson	x	

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep Anderson

REPORT OF STANDING COMMITTEE

HB 1502: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1502 was placed on the Sixth order on the calendar.

Page 2, line 7, overstrike "special events" and insert immediately thereafter "event"

Page 2, line 7, overstrike "twenty" and insert immediately thereafter "forty"

Page 2, line 11, overstrike "a special"

Page 2, line 12, overstrike "events" and insert immediately thereafter "an event"

Page 2, line 14, overstrike "twenty special" and insert immediately thereafter "forty"

Page 3, line 18, replace "twenty-five thousand proof gallons [94635.3 liters]" with "five hundred cases"

Page 3, line 19, after the underscored period insert "Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. A case may not exceed two and thirty-eight hundredths gallons [9 liters]."

Renumber accordingly

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1502

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1502
3/26/2019
Job #34225

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

relating to the direct sale of liquor by a domestic distillery to licensed retailers; relating to domestic distilleries.

Minutes: Att. #1

Chairman Klein: Opened the hearing on HB 1502. All members were present.

Representative Corey Mock, District 18: see attachment #1 for testimony in support of the bill. Introduced proposed amendments.

Senator Piepkorn: Are you saying that some people cannot get into a pride of Dakota event because they don't have room for you?

Representative Mock: That is my understanding. Some of the cities where events are held, the space is limited and if you do not register early enough you just may not be able to get in.

Senator Piepkorn: So other than your understanding, is that the way it is?

Representative Mock: I would refer to the ag commissioner's office to confirm with evidence, but I can just tell you that in Grand Forks we've experienced this.

Chairman Klein: There's only so many booth spaces available.

Senator Piepkorn: How did that reduction come about?

Representative Mock: We're limiting that size. Page 3 line 18 may not exceed 200 cases per year. The reason for these changes is it gives the micro distilleries a chance to establish price points, work on their formulas and brands, get it out to the retailers directly, see how it's moving. If they are going to self-distribute its likely it will be restricted to a small area. We thought 200 cases was still at about that hobbyist range. Anything more than that, you will need a wholesaler to help distribute to make any profit. We wanted to limit the size to keep that consistent with the amount they may self-distribute.

Senator Piepkorn: Are micro and domestic interchangeable?

Representative Mock: Yes, in this case.

Chairman Klein: Anymore changes?

Representative Mock: That's it. The 40 event days, removing the pride of Dakota exemption and changing the qualifying size from 25,000 proof gallons to 12,000 or from 500 cases down to 200.

Chairman Klein: On the days, are we going to be getting any pushback from individuals who see a problem from having alcohol at these event days?

Representative Mock: A very valid concern. And another reason we removed that from pride of Dakota. If a community wants to remove tastings from events, they have the right to do that.

Chairman Klein: So the local community could not allow it either. And this is garnered through the tax department? Is that how they get the special event thing?

Representative Mock: Correct. In my other life we put on a lot of events for the community. This is a slightly different event. But we noticed in comingled events with drinkers and minors, you see fewer incidences of excessive drinking and hours are shorter. We felt that making the 40 events days was just a proper amendment.

Senator Kreun: On line 10-14, to participate in the department of agriculture's Pride of Dakota, you don't want to participate or you don't want to have the limitation on the number events?

Representative Mock: We fully support any distilleries attending Pride of Dakota, but if they do, that event would count against their 40 event days. So you have 40 event days, so if you want to participate in Pride of Dakota on a Saturday-Sunday, that would be two events days against your forty. Currently, that would not count against your 20 event days' limit.

Senator Kreun: So how many events are you anticipating in participating in?

Representative Mock: If you want to do all ten 2-day events, that would be 20 event days. You would still have 20 additional days.

Senator Kreun: So you're looking at 40 plus event days a year

Representative Mock: Some individuals that participate in a lot of holiday Pride of Dakota events, and they're using their special events for non-Pride of Dakota activities. This may be a decrease in the number of event days they can participate in.

Chairman Klein: So you think it's really a wash?

Representative Mock: Yep, it's a wash as to what an event really means. Right now it could be either one day or a full week.

Senator Piepkorn: Just a little background on the industry. If somebody starts a distillery, do they just go into the business thinking they will just change the law after they've already started?

Representative Mock: There is an individual here who can tell you more about it. In the case in Grand Forks, the man is a hobbyist and he was using a wholesaler to distribute. ran into some challenges. So he's decided to self-distribute. This limitation allows a new distiller to build their brand, test out their product, get it on the shelves of a couple retailers, and as they scale up, they are fully reliant on the wholesaler. This is a good of getting them a start and trying things out and realizing that they are gonna need to come to a wholesaler to get on the market.

Senator Piepkorn: I think there are just four or five holiday Pride of Dakota events.

Chairman Klein: Yeah but there are other smaller community events.

Representative Mock: Page 1 line 22, we may need to address that. This is related to domestic distilleries. That this may reduce the size for direct shipments to individuals from 25,000 gallons to twelve.

Chairman Klein: The line with the change on page 3?

Representative Mock: Yep. That is a different section of law. That is not related to a size limitation. That is simply that they may products produced by that distillery, on sale or off sale. They can directly sell not in excess of 25,000 gallons. That doesn't specify proof gallons or gallons. That's something else we may need to look into.

Jeff Peterson, Own and Operate Jeff Taylor Distillery: I am in support of the bill as it was introduced today.

Senator Piepkorn: Tell us about your operation, what do you distill, and use and distribute?

Jeff: We already had a winery for a few years. And I decided to add on a distillery to the winery itself as a tourist destination. We allocated a small portion of our winery for the distillery purposes. It was never my intent to get extremely large. As far as production, I don't do a lot of production, I have some product available on the shelf but it's only available on the premises. I will occasionally go off site but usually not.

Chairman Klein: and you make your product out of what?

Jeff: We use grain; like an apple brandy we'll make it out of apple wine. Whiskey out of oats and grain.

Senator Kreun: Do you participate in pride of Dakota events?

Jeff: Yes, we will do two of those five.

Pat Ward, North Dakota Wholesale Distributors: we didn't oppose this bill originally. We were going to oppose it as of yesterday, we thought we had finalized these amendments. We are trying to find a solution to two years. The brew pub bill is where the idea of event days is. Taking out pride of Dakota is from what was in the winery bill. That's how those ideas got synthesized. We did have a concern when this event said 40 events. Pride of Dakota is often multiple days but in the old bill there was an exemption for that. the limitations on the size of the distilleries, the reason for those is because our concern is not with domestic are doing but what out of state businesses can take advantage of too. We did have a concern about large distilleries shipping direct to retail. After our discussions we felt we could limit these numbers to give domestic flexibility but also, protect our wholesalers. I think it's a good agreement.

Chairman Klein: We need to see the amendments in front of us so we totally understand and we make sure everybody is okay with this.

Pat: The one thing we wanted to distinguish between liquor or beer, obviously if you're giving away hard liquor it might be a lot easier for somebody to become inebriated.

Senator Piepkorn: Curious about how this works in other states, what do other states do along these lines?

Pat: I've tried to look in the past and its sort of a moving target, as a rule most states have limitations. This is fairly standard. The federal courts have looked at these volume caps. Some have said they're not appropriate and some have said they are. So long as we extend or expand, we are opening it up.

Senator Piepkorn: Representative Mock saw this as a win-win-win situation, do you agree?

Pat: Yes, we're also watching the US supreme court. It's a compromise. Everybody walks away a little unhappy.

Chairman Klein: The camel's nose issue. Everyone wants fewer regulation. They've established their business with the idea that everything is clearly defined. There could be pause for some concern.

Pat: I don't disagree. I feel like every session we've given and they've taken. It is reality and we think that this can be a good thing for everybody. They worked with the wholesalers. Being sold. Where there is a limit on how much of that is going on.

Myles Vosberg, Tax Commissioner's Office: neutral testimony. That 25-gallon limit is establishing what a domestic distillery is. They can produce and sell up to that limit. Where on page 3, the reduce that amount from 25,000 to 12,000, that is really discussing the domestic distillery's ability to directly sale to retailers. They are two different things; they don't have to be both changed.

Chairman Klein: I will let the people involved figure that out. Representative Mock said they will not change page 1 line 22. Any other points?

Myles: Changing the events to event days. I personally like the event days. It is easier to administer and it is a lot clearer.

Chairman Klein: You as a department give a special permit?

Myles: We basically just track the days is all we have to do. There is no specific type of even in this particular law.

Chairman Klein: Has there been a lot of issues with that? People up against the number?

Myles: We've not had a lot up against the number. We've got beer, wine, now liquor, in most cases the seller tries to decide which event is most beneficial to them so they save them up and then at the end of the year have some days left over.

Chairman Klein: How do we tax the gallons or liters? How do we follow that? Are we on an honor system?

Myles: The wholesalers report the tabs to us. There are reports from the manufacturers to the wholesalers, the reports of wholesalers to the retailers, and then the wholesalers are remitting the tax to us. So we do have a cross check between one entity versus the other. They are subject to audit like other businesses too.

Chairman Klein: So when the manufacturer moves it to the distributor, there is a trail there?

Myles: There is a report, there is not tax.

Chairman Klein: And in this case, if they are self-distributing, how does that work?

Myles: If they are self-distributing they are responsible for reporting that, and then remitting the tax because there would be no wholesaler involved.

Senator Kreun: How does the department of commerce fit into this? This almost looks like a boot legging process. You show a license you got for $100 and you can haul anything you like around without any restrictions. You can't do that in other industries as far as I know.

Myles: So you're looking at page 3, the ability to transfer?

Senator Kreun: Under direct sales.

Myles: The copy of the license there would be the retailer presenting to the distributor to show that they are licensed and able to sell.

Senator Kreun: The license is $100. So for $100 you get to eliminate that whole process?

Myles: The license is $100 for the domestic distillery. So you have to have the license to produce the product in the first place. So then they are able to, under these restrictions, directly distribute their product to the retailers.

Senator Kreun: So in the beer industry you have to have each case serial numbered, you have to be able to track it if there is a defect or something. Does that take place here as well? Because now for $100 he gets to ship it in his own truck, just like before it was legal.

Myles: We have the same ability for direct sale for the wine and the beer industry, for the smaller brewers and wineries. So this would be bringing the distilleries up to par with them. So we do have the distinct three tier system. The manufacturers, the wholesalers, and the retailers. The larger brewers, wineries, they need to go through a wholesaler. But under North Dakota law right now, we do have smaller breweries that are able to direct distribute to the retailers themselves.

Senator Kreun: Is this equivalent to the same reduced amount as the other areas? We were at 25,000 gallons and 500 cases, that is almost as big as the largest retailers in the wine industry. Are we reducing it down so it is a small area?

Myles: I think the idea was for the direct distribution portion of this to limit it to the 12,000 gallons to make it smaller.

Senator Kreun: But in comparison, I think 12,000 gallons and 200 cases is still quite a bit. And in my opinion we're losing the startup program that we put together in the Pride of Dakota. This is getting into more commercial retail by delivering these large quantities. We're taking the advantages that pride of Dakota has and putting it in with the big guys.

Chairman Klein: I think Myles is just trying to collect the tax.

Senator Kreun: Part of it is the retail and the wholesale tax though. When does that become involved with?

Myles: the tax is still collected regardless of who it's directly distributed or it goes through a wholesaler. If it goes through a wholesaler, they are responsible to collect and remit that tax to us. If it's a direct distribution, then the distillery in this case is responsible to report to that. The tax remains the same.

Senator Kreun: But we are removing one portion of the delivery.

Myles: That is correct.

Pat: Just wanted to clarify one thing, the number is less for liquor now than it is for wine in 1190. Our feeling for that was we're trying to make it proportional in the sense that whiskey gives you more bang for your buck. There's a lot more lifetime in a bottle of whiskey than there is for beer.

Chairman Klein: adjourned the hearing.

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1502
3/27/2019
Job #34267

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

relating to the direct sale of liquor by a domestic distillery to licensed retailers; relating to domestic distilleries.

Minutes: Att. 1-2

Chairman Klein: Opened the committee work session on HB 1502.

Chairman Klein: I have an amendment from Representative Mock. See attachments #1-2 for proposed amendments to the bill.

Senator Kreun: Just a question on page 1 line 22, should that be changed to 12,000.

Chairman Klein: That's what the tax department was whispering about but then came up to me after and said that section is fine. And Representative Mock said he wanted that to stay. It will not change.

Senator Roers: Moved to Adopt Amendment.

Senator Kreun: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Roers: Do Pass As Amended.

Senator Kreun: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried. **Vice Chairman Vedaa will carry the bill.**

SK
3/27
10D

19.0400.02001
Title.03000

Prepared by the Legislative Council staff for
Representative Mock
March 26, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1502

Page 2, line 8, overstrike "events" and insert immediately thereafter "event days"

Page 2, line 12, overstrike "Participation by a"

Page 2, overstrike line 13

Page 2, line 14, overstrike "agriculture does not count against the"

Page 2 line 14, remove "forty"

Page 2, line 14, overstrike "events limitation."

Page 3, line 7, replace "twenty-five" with "twelve"

Page 3, line 8, replace "94635.3" with "42000"

Page 3, line 18, replace "five" with "two"

Renumber accordingly

Date: 3/27
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1502

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: 19.0400.02001

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 Meyer Seconded By Kreun

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3/27
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1502

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 Roers Seconded By Kreun

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Vedaa

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

REPORT OF STANDING COMMITTEE

HB 1502, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1502 was placed on the Sixth order on the calendar.

Page 2, line 8, overstrike "events" and insert immediately thereafter "event days"

Page 2, line 12, overstrike "Participation by a"

Page 2, overstrike line 13

Page 2, line 14, overstrike "agriculture does not count against the"

Page 2 line 14, remove "forty"

Page 2, line 14, overstrike "events limitation."

Page 3, line 7, replace "twenty-five" with "twelve"

Page 3, line 8, replace "94635.3" with "42000"

Page 3, line 18, replace "five" with "two"

Renumber accordingly

2019 CONFERENCE COMMITTEE

HB 1502

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1502
4/8/2019
34598

☐ Subcommittee
☒ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Direct sale of liquor by a domestic distillery to licensed retailers.

Minutes:

Chairman D Ruby: Opens the conference committee hearing on HB 1502.

Chairman D Ruby: The senate did have an agreement with the bill sponsor & the distributors so this amendment that you put on was a work of negotiation. We definitely want to honor that agreement. One thing that was pointed out to me by the bill sponsor, in one of the bill dealing with the wineries, we both removed the mention of the Pride of Dakota events to be exempt from the limits.

In the domestic winery one, we also removed the language above it. So if you go to page 2, line 10, we removed that language because it's not needed because above that the language that the tax commissioner may issue event permits not more than 40 event days per calendar year. Basically is says that they do need to have that permit anyway. We don't need to specify the permit requirement on the Pride of Dakota when it's no longing being exempt for the initial count. In discussion with Pat Ward & he said that was a pretty solid negotiated point so they don't want to mess with that.

I would ask that the House would ask the Senate to also remove that language & then the bill sponsor, asked that if it would be possible to do an emergency clause on it because it was passed so strongly in both houses. Those are the 2 things that I would suggest if it's favorable to you. I don't want to interfere with anything you did with the amendments.

Sen Vedaa: So the industry agrees on this?

Chairman D Ruby: It doesn't do anything substantively.

Rep P Anderson: I visited with the winery, wondered the same thing & I agree with the emergency, it's a great idea.

Sen Burckhard: When you talked about the event days, clarify what you said.

Chairman D Ruby: When I asked Mr Ward if the event days was an issue because in the domestic brew pubs & tap rooms are 30 events, the wineries are 40 events & the distilleries, it's 40 event days.

Basically an event could go 3 to 4 days, so that limits them quite a bit compared to the other license holder. I asked if it was a real stickler & extremely important to them because there is an opportunity to take out days & just have it apply to event. If I had my preference, I would have it all evenly as far as events for the tax department.

Sen Burckhard: The clarification that we heard was that an event, how long is an event, the days gets down to the specific. The committee's feeling is to change to the term days, was very important to Mr Ward & the wholesale liquor folks. Also it was very important to the tax commissioner's office. The event days is more clear & the tax department likes that amendment. That is why we kept the event days.

Chairman D Ruby: Before they were at 20 events, they could have easily gotten 40 or 50 days out those events. Now you go 40 days, they are limited to the days. That is more restrictive than the winery & brew pubs. That is why I was saying "well that is why the chairman put this in conference committee". He didn't give me any direction.

Myles Volberg~ND Tax Department: We weren't part of those discussion of the days versus the events. The micro brew pubs & tap rooms are days, not events so they are 20 days. The winery ones that are different, they are events where under the current provisions, the distillery, brew pubs & tap rooms would all be a number of days.

Sen Piepkorn: I see no reason to change it now. We are good with it the way it came out.

Chairman D Ruby: That is an area that I though was negotiated & find some uniformity. If senate is agreeable removing the unnecessary language & adding the emergency clause to it.

Sen Vedaa: Are you saying that we are to remove the "to participate" that starts on line 10 & end on line 12, "with the tax commissioner" & add the emergency clause. We are good with that.

Rep P Anderson: Moves that the House accede to Senate Amendments & further amend.

Rep Richter: Second.

Chairman D Ruby: Further discussion.

Roll call was taken on HB 1502 for the House accede to Senate Amendments & further amend with 6 yes, 0 no, 0 absent & Chairman D Ruby & Sen Vedaa are the carriers.

DG 4/8/19

19.0400.02002
Title.04000

Adopted by the Conference Committee

April 8, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1502

That the House accede to the Senate amendments as printed on page 1396 of the House Journal and page 1117 of the Senate Journal and that Engrossed House Bill No. 1502 be further amended as follows:

Page 1, line 2, remove "and"

Page 1, line 4, after "distilleries" insert "; and to declare and emergency"

Page 2, line 10, overstrike "To participate in a pride of"

Page 2, overstrike line 11

Page 2, line 12, overstrike "obtain"

Page 2, line 12, remove "an event"

Page 2, line 12, overstrike "permit from the tax commissioner."

Page 3, after line 23, insert:

"**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 4/8/2019

Roll Call Vote: 1

2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1502 as (re) engrossed

House Industry, Business & Labor Committee

Action Taken

- ☐ **HOUSE accede to Senate Amendments**
- ☒ **HOUSE accede to Senate Amendments and further amend**
- ☐ **SENATE recede from Senate amendments**
- ☐ **SENATE recede from Senate amendments and amend as follows**

- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep P Anderson Seconded by: Rep Richter

Representatives	4/8			Yes	No	Senators	4/8			Yes	No
Chairman D Ruby	X			X		Sen Vedaa	X			X	
Rep Richter	X			X		Sen Burckhard	X			X	
Rep P Anderson	X			X		Sen Piepkorn	X			X	
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Chairman D Ruby Senate Carrier Sen Vedaa

LC Number 19.0400 . 02002 of amendment

Title . 04000 of engrossment

Emergency clause added or deleted: **An emergency clause was added.**

Statement of purpose of amendment:

Remove starting on line 10 "to participate" & ending on line 12, "with the tax commissioner" & add the emergency clause.

Insert LC: 19.0400.02002
House Carrier: D. Ruby
Senate Carrier: Vedaa

REPORT OF CONFERENCE COMMITTEE

HB 1502, as engrossed: Your conference committee (Sens. Vedaa, Burckhard, Piepkorn and Reps. D. Ruby, Richter, P. Anderson) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1396, adopt further amendments as follows, and place HB 1502 on the Seventh order:

That the House accede to the Senate amendments as printed on page 1396 of the House Journal and page 1117 of the Senate Journal and that Engrossed House Bill No. 1502 be further amended as follows:

Page 1, line 2, remove "and"

Page 1, line 4, after "distilleries" insert "; and to declare and emergency"

Page 2, line 10, overstrike "To participate in a pride of"

Page 2, overstrike line 11

Page 2, line 12, overstrike "obtain"

Page 2, line 12, remove "an event"

Page 2, line 12, overstrike "permit from the tax commissioner."

Page 3, after line 23, insert:

"**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Engrossed HB 1502 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1502

NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Corey Mock
District 18
P.O. Box 12542
Grand Forks, ND 58208-2542
C: 701-732-0085
crmock@nd.gov

COMMITTEES:
Appropriations

Attachment 1
Page 1

To: Chairman George Keiser and Members of the House Industry, Business and Labor Committee

Date: January 22, 2019

Support Testimony for HB 1502

Good afternoon, Mr. Chairman and members of the committee. My name is Corey Mock, representative from District 18 in Grand Forks, and one of the sponsors of House Bill 1502.

It is with great pleasure that I bring this legislation before your committee today at the request of a handful of small business owners in our state who currently operate a licensed micro-distillery. Specifically, this bill was drafted upon being contacted by a Grand Forks resident and constituent, Tyler Seim.

Tyler operates a unique distillery on the north end of Grand Forks -- his primary ingredient for vodka and rum comes from sugar beets grown throughout the Red River Valley.

North Dakota has been working with entrepreneurs, like Tyler, since the early 1990s to create microbreweries (1991), wineries (2001), and distilleries (2009.) While lagging behind slightly from their brewery and winery counterparts, distilleries have popped Fargo, Casselton, Burlington (Minot area), Park River, and Grand Forks. Today, there are 5 licensed distilleries contributing to local economies.

HB 1502 -- with the proposed amendments -- seeks to extend the same privileges to micro-distilleries that were afforded to wineries in 2013. Under current law, wineries that produce less than 50,000 gallons of wine per year may sell and deliver, onsite and offsite, the wine they produce to licensed retailers within North Dakota. Wineries are permitted to deliver no more than 4,500 cases (10,710 gallons) to retailers per year using their own employees, trucks and equipment. Additionally, wineries may ship no more than 4,500 cases (10,710 gallons) to retailers per year via common carrier, with no more than three cases being shipped to an individual retailer per day.

HB 1502

Attachment 1
Jan 22, 2019

Section 2 of HB 1502 seeks to extend the same privileges -- with reduced limitations -- to distilleries.

A qualifying distillery must produce no more than 25,000 proof gallons of liquor each year. The legal definition of proof gallon is listed in subsection 3 located on page 3, line 22 of the 19.0400.01001 document distributed with my testimony.

To give committee members a better understanding of proof gallons, let's create a hypothetical (and licensed) distillery called IBL Distillery that only makes 80 proof (40% alcohol) whiskey:

25,000 proof gallons = 31,250 gallons of whiskey (25,000 / 0.8 proof)
25,000 proof gallons = 13,130 cases of bottled whiskey (31,250 / 2.38 gallons per case)
25,000 proof gallons = 157,560 750mL bottles of whiskey (13,130 cases / 12 bottles per case)

The higher the proof, the fewer gallons of finished product you can produce to remain eligible for this section of law.

After consulting with distillers and researching law in other states, we have proposed allowing distilleries to sell product directly to licensed retailers using the same means allowed to wineries and limiting the amount a distillery can sell directly (without the use of a wholesaler) to 500 cases per year, with no more than 3 cases per day shipped to an individual retailer using a common carrier.

Language in the original bill specified the annual direct sale limit as 25,000 proof gallons, which was an incorrect specification not caught during review before the bill was filed. Portions of the amendment distributed correct that error.

Section 1 of the bill also includes an amendment to make special event allowances for licensed distilleries consistent with language in HB 1190, which was approved by this committee unanimously and passed the House 89-3.

Thank you again for your time and favorable consideration of HB 1502. This legislation is an example of how micro-distilleries continue to work with retailers and wholesalers to support small businesses while respecting the three-tier system.

HB 1502

Attachment 1
Jan 22, 2019

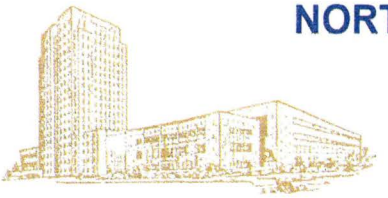
Chairman Keiser and members of the Industry, Business and Labor Committee,

My name is Tyler Seim, I am the owner and distiller at Red Pine Distillery, a small craft distillery located in Grand Forks. As a craft distillery I take in local agricultural products, such as sugar beets, wheat, corn, and barley, and turn them into distilled spirits like vodka, rum, gin, and whiskey. This process allows me to create products that are high in quality and represent our region and state proudly. North Dakota boasts a great business environment and I want to thank all of you and the previous legislatures for creating an environment that is supportive of small distillers such as myself.

Under current law, distillers must follow what we refer to as the 3-tier system selling our products to a wholesaler who in turn sells to retail outlets across the state. As written, this requirement makes it extremely difficult for small distillers like myself to get our products into the hands of consumers. Enabling us to market directly to retailers will help get my products and brand into the market and grow my business. This is not an attempt to bypass the 3-tier system and avoid the wholesaler, the manufacturer/wholesaler relationship is an important one. My hope with this bill is to allow myself the opportunity to break into and create a market for my products that would lead to an even stronger relationship with North Dakota wholesalers, because there would already be a foundation to build on.

HB1502 3/26/19 Att#1 p.1

NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL
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COMMITTEES:
Appropriations

To: Chairman Jerry Klein and Members of the Senate Industry, Business and Labor Committee
Date: March 26, 2019
Support Testimony for HB 1502

Good afternoon, Mr. Chairman and members of the committee. My name is Corey Mock, representative from District 18 in Grand Forks, and one of the sponsors of House Bill 1502.

It is with great pleasure that I bring this legislation before your committee today at the request of a handful of small business owners in our state who currently operate a licensed micro-distillery. Specifically, this bill was drafted upon being contacted by a Grand Forks resident and constituent, Tyler Seim.

Tyler operates a unique distillery on the north end of Grand Forks -- his primary ingredient for vodka and rum comes from sugar beets grown throughout the Red River Valley.

North Dakota has been working with entrepreneurs, like Tyler, since the early 1990s to create microbreweries (1991), wineries (2001), and distilleries (2009.) While lagging behind slightly from their brewery and winery counterparts, distilleries have popped up in Fargo, Casselton, Burlington (Minot area), Park River, and Grand Forks. Today, there are 5 licensed distilleries contributing to local economies.

Engrossed HB 1502 seeks to extend the same privileges to micro-distilleries that were afforded to wineries in 2013. Under current law, wineries that produce less than 50,000 gallons of wine per year may sell and deliver, onsite and offsite, the wine they produce to licensed retailers within North Dakota. Wineries are permitted to deliver no more than 4,500 cases (10,710 gallons) to retailers per year using their own employees, trucks and equipment. Additionally, wineries may ship no more than 4,500 cases

(10,710 gallons) to retailers per year via common carrier, with no more than three cases being shipped to an individual retailer per day.

Section 2 of HB 1502 seeks to extend the same privileges -- with reduced limitations -- to distilleries.

A qualifying distillery must produce no more than 25,000 proof gallons of liquor each year. The legal definition of proof gallon is listed in subsection 3 located on page 3, line 22 of the 19.0400.02000 document distributed with my testimony.

To give committee members a better understanding of proof gallons, let's create a hypothetical (and licensed) distillery called IBL Distillery that only makes 80 proof (40% alcohol) whiskey:

25,000 proof gallons = 31,250 gallons of whiskey (25,000 / 0.8 proof)
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The higher the proof, the fewer gallons of finished product you can produce to remain eligible for this section of law.

After consulting with distillers and researching law in other states, we have proposed allowing distilleries to sell product directly to licensed retailers using the same means allowed to wineries and limiting the amount a distillery can sell directly (without the use of a wholesaler) to 500 cases per year, with no more than 3 cases per day shipped to an individual retailer using a common carrier.

Section 1 of the bill also includes an amendment to make special event allowances for licensed distilleries consistent with language in HB 1190, which was approved by the House 89-3 and will be heard by this committee at the conclusion of this hearing.

Thank you again for your time and favorable consideration of HB 1502. This legislation is an example of how micro-distilleries continue to work with retailers and wholesalers to support small businesses while respecting the three-tier system. I hope we can work together to strike a balance that creates parity in our Century Code.

March 26, 2019

Senators,

My name is Tyler Seim, I am the owner and distiller at Red Pine Distillery, a small craft distillery located in Grand Forks. As a craft distillery I take in local agricultural products, such as sugar beets, wheat, corn, and barley, and turn them into distilled spirits such as vodka, rum, gin, and whiskey. This process allows me to create products that are high in quality and represent our region and state proudly. North Dakota boasts a great business environment and I want to thank all of you and the previous legislatures for creating an environment that is supportive of small distillers such as myself.

Under current law, distillers must follow what we refer to as the 3-tier system. We sell our products to a wholesaler who in turn sells to retail outlets across the state. As written, this requirement makes it extremely difficult for small distillers like myself to get our products into the hands of consumers. Enabling us to market directly to retailers will help get my products and brand into the market, grow my business, and invest back into my local community . This is not an attempt to bypass the 3-tier system and avoid the wholesaler, the manufacturer/wholesaler relationship is an important one. My hope with this bill is to allow myself the opportunity to break into and create a market for my products that would lead to an even stronger relationship with North Dakota wholesalers, because there would already be a foundation to build on.

As a small, North Dakota based distillery I hope you will give favorable recommendation to HB 1502.

Thank you.

Tyler Seim

Red Pine Distillery, Grand Forks

HB1502 3/27/19 AH #1

19.0400.02001
Title.

Prepared by the Legislative Council staff for
Representative Mock
March 26, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1502

Page 2, line 8, overstrike "events" and insert immediately thereafter "event days"

Page 2, line 12, overstrike "Participation by a"

Page 2, overstrike line 13

Page 2, line 14, overstrike "agriculture does not count against the"

Page 2 line 14, remove "forty"

Page 2, line 14, overstrike "events limitation."

Page 3, line 7, replace "twenty-five" with "twelve"

Page 3, line 8, replace "94635.3" with "45424.9"

Page 3, line 18, replace "five" with "two"

Renumber accordingly

HB1502 3/27/19 Att #2

19.0400.02001

FIRST ENGROSSMENT

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1502

Introduced by

Representatives Mock, Becker, Blum, J. Nelson, D. Ruby

Senators Klein, Poolman

A BILL for an Act to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to the direct sale of liquor by a domestic distillery to licensed retailers; and to amend and reenact section 5-01-19 of the North Dakota Century Code, relating to domestic distilleries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-19 of the North Dakota Century Code is amended and reenacted as follows:

5-01-19. Domestic distillery.

1. The tax commissioner may issue a domestic distillery license to the owner or operator of a distillery that is located within this state which uses a majority of North Dakota farm products to manufacture and sell spirits produced on the premises. A domestic distillery license may be issued and renewed for an annual fee of one hundred dollars. This fee is in lieu of all other license fees required by this title. The tax commissioner may not issue the domestic distillery license until the applicant has established that the applicant has applied for and obtained the necessary federal registrations and permits, as required under the Internal Revenue Code of 1986 [26 U.S.C. 5001 et seq.] and the federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits plant.
2. A domestic distillery may sell spirits produced by that distillery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or outside 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 [94635 liters] in a calendar year. Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month per person for personal use and not for

HB1502 3/27/19 Att #2

resale. The packaging must conform with the labeling requirements in section 5-01-16. A licensee may dispense free samples of the spirits 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. A domestic distillery may hold events inside and outside its premises, but only on contiguous property under common ownership, allowing free samples of its spirits and to sell its spirits by the glass or in closed containers. The tax commissioner may issue ~~special events~~event permits for not more than ~~twenty~~forty ~~events~~event days per calendar year to a domestic distillery allowing the domestic distillery, subject to local ordinance, to give free samples of its product and to sell its product by the glass or in closed containers, at off-premises events. To participate in a pride of Dakota event sponsored by the department of agriculture, a domestic distillery shall obtain ~~a special events~~an event permit from the tax commissioner. ~~Participation by a domestic distillery in a pride of Dakota event sponsored by the department of agriculture does not count against the twenty special forty events limitation.~~ A domestic distillery may not engage in any wholesaling activities. ~~All~~Except as provided by section 2 of this Act, all sales and deliveries of spirits to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. However, a domestic distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the domestic distillery by the domestic winery. No later than the last business day of a calendar month, a farm distillery that has made sales to a North Dakota wholesaler during the preceding calendar month shall file a report with the tax commissioner reporting those sales.

3. A domestic distillery may obtain a domestic distillery license and a retailer license allowing the onpremises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the domestic distillery. A domestic distillery also may own or operate a winery.

4. A domestic distillery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all spirits sold by the licensee at retail or to a retail licensee, including all spirits 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. The report must

provide the 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.

SECTION 2. A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

Direct sale by domestic distilleries.

1. A domestic distillery that produces no more than ~~twenty five~~twelve thousand proof gallons [~~94635.3~~45424.9 liters] of spirits per year may sell and deliver, onsite or offsite, the spirits produced by the distillery directly to licensed retailers. The distillery may sell and deliver spirits onsite to a licensed retailer that presents the retailer's license or a photocopy of the license. The distillery may deliver the spirits offsite if the distillery:
   a. Uses the distillery's equipment, trucks, and employees to deliver the spirits;
   b. Contracts with a licensed distributor to ship and deliver the spirits to the retailer; or
   c. Contracts with a common carrier to ship and deliver the spirits to the retailer directly from the distillery or the distillery's warehouse.
2. The total amount of spirits each domestic distillery may sell or deliver directly to all licensed retailers may not exceed ~~five~~two hundred cases per year. Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. A case may not exceed two and thirty-eight hundredths gallons [9 liters].
3. As used in this section, "proof gallon" means a gallon [3.78 liters] of liquid at sixty degrees Fahrenheit [15.5 degrees Celsius] which contains fifty percent ethyl alcohol by volume or its equivalent.