MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2397

2001 SENATE POLITICAL SUBDIVISIONS

SB 2397

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2397

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 9, 2001

Tape Number	Side A	Side B	Meter #
2	x		15.3- 53.7
		x	0.4-16.4

Committee Clerk Signature Mary Jo Wocken

Minutes:

The hearing was opened on SB2397, relating to direct sales of alcoholic beverages.

SENATOR KRINGSTAD, introduced SB2397 and gave a short explanation of this bill. This is a bill that will protect some of our wholesalers and retailers and its a bill that provides a penalty and fines or fees that have to be paid by the people out of state. That would be direct sellers or direct, the manufactures direct sellers, retailers and wholesalers. DAN KUNTZ: See written testimony. SENATOR COOK: One question I have on page 2, where you mention a fee of $1000, and then you go on to explain the fees now for a wholesaler, manufacturer etc., I am assuming that for one thousand dollars an out of state shipper could do all of the things that these individuals will have to pay a license fee can do? DAN KUNTZ: Basically, what a direct shipper does, they avoid having to go through a wholesaler, so in essence there the manufacturer, the wholesaler, retailer, all at once. So that there, if a bottle of wine comes into the state through the normal channels that bottle will, the wholesalers pay the license fee, will pay a wholesale tax on

it, its then distributed and sold to a retailer, who likewise is pay the state retail fee plus those local retail fee, and then will pay the state sales tax as well as any local sales tax that might apply to that. So they all do that for the one fee, plus the payment of the taxes that would be applicable to it. SENATOR WATNE: I didn't catch one figure that you gave, and that was for the civil penalty of how many thousand dollars? DAN CHINTZ: It would be $25,000 for the civil penalty that they would pay. As a comparison I believe that the statute provide that if a local retailer is subject to like a Class A misdeamnor, that's up to a $ 15,000 penalty for corporations for local retailers would be subject to plus they of course lose their license, or subject to license revocation under that situation. Course these out of state shippers if there not registering they are not to concerned about losing a license. SENATOR LEE: When I want to order a case of wine from a small winery in the Sonoma Valley that I may have visited and enjoyed. It would be absolutely ridiculous to expect they are going to be paying a $1000 and all these other fees to do that. If I ordered this jacket on the Internet, I'm not subject to the kinds of taxes there might be here which is a topic of discussion everywhere. And so its hard for me to understand why one would suggest that the same kinds or different kinds of restrictions should be placed on the actual sale of this. Never mind the coal three tiered bill. Why would we even be looking at making this so difficult for those of us who might enjoy actually buying small quantities on the Internet. I thought we had resolved this issue. DAN KUNTZ: Some of the industry people I think will address some of your concerns, but I think the overriding concern is that liquor industry is regulated in this country different than virtually every other industry that there is. And I think some of the other people will testify to the economics of selling wine. If that were the only bottle of wine that, that company was going to sell that year in North Dakota I would agree with you that they probably would not be willing to sell it and pay $1000 fee. But at the same token, I, most of these

wineries, that are direct shipping are probably going to be selling a lot more quantity or they wouldn't even be in the direct shipment area. SENATOR COOK: Dan, is it safe to say and correct me if I am wrong, that since prohibition, the liquor industry is probably the most one industry in which the rights of a state have been acknowledged by the federal government. DAN KUNTZ: There is some litigation going on right on around the country to try to determine exactly the degree of regulatory authority that the states have under the 21st amendment, which is, your right, it has been acknowledged that the states have probably more authority in the regulation of that industry vs. any others. I mean you won't find another amendment in the constitution that gives the states specific authority to regulate an industry like the 21st amendment does with respect to liquor. There is some litigation on going in the country, where that issue is being addressed in terms of how far does it go versus the commerce clause. Most of that litigation however, has been related to situations where states have tried to prohibit direct shipments or have put restrictions on direct shipments that are much more onerous than what they require of their own industry in their own state. This bill here is simply trying to put the direct shippers more on the same regulatory requirement that our own businesses are subject to. There is a recent case out of the 7th Circuit which I think is probably most authoritative case at this point on that issue. Basically, it upheld that 21st amendments priority over the commerce clause. I believe that issue is going to the Supreme court as well. SENATOR LEE: I would like to know, how many actual owners there of, with the wholesalers in North Dakota. I don't mean the different companies, but how many actual individuals or similar groups fall in the wholesale company. DAN KUNTZ: I would prefer you direct that question to one of the individual company representatives who are prepared to testify. ROBB HANSON, Ed Phillips and Sons out of Fargo. See written testimony. The one point that I would like to make over and above my

written testimony, is that we are not looking at this as a protectionist thing, we are not looking at this as a isolationist thing, we are not trying to build a fence around the state of North Dakota, but what we're trying to do is have the out of state interests who have no investment in the state of North Dakota; they pay no taxes, they pay no license fees, they don't employ anybody and yet they can do business in the state of North Dakota. All we're trying to do is level the playing field. Everyone here that is in this industry has a lot of money invested in this industry. Not only originally, but on a ongoing basis. I think that this bill is fair, requires them to be licensed, requires them to report as everyone else does and pays state taxes, and pay the local taxes. I think they pay 7% state tax, which is 1% more than there is on any other product. They also pay a 1% sales tax for Fargo then they have .5% sales tax on top of that, but that's for West Fargo. There is a lot of taxes and a lot of reporting, when they say reporting load for this small winery or out of state businesses would be prohibitive I don't know I do it every month. Its not that prohibitive, I've got a lot of customers. SENATOR COOK: Does this bill require them to pay the local taxes too? The city taxes? ROBB HANSEN: It does not. That has not been determined. That is not written in the bill yet. JARED ANDERSON, Congress Incorporated. See written testimony. The issue was brought up earlier on the 21st amendment and how that's alcohol expressly has the right to be controlled by the states. North Dakota has a place in history in defense of that. North Dakota took it to the Supreme Court against the Department of Defense for military shipments in the state of North Dakota, and we won. A lot of the national information that comes out, that case is cited in the Supreme Court defending the 21st. Amendment. I would just like to address the same point that alcohol is different, its not treated the same, its highly taxed, highly regulated on the federal and the state level. That is a issue that changes the whole playing field. The bill that we are proposing has been agreed to by the wine institute in other states, in Louisiana in

particular they have agreed to this law. Something that has had a total industry agreement in other states. I did, on the second page, I put some economic information, this is strictly for wholesaling and it talks about the jobs direct and indirect using a statistical model for the trickle down affect that you can see there is over 140 people directly employed in the wine and spirits wholesaling group. SENATOR COOK: How many wholesalers are in the state? Do you know? JARED ANDERSON: Currently there are 2 more shippers in the state right now. SENATOR MATHERN: When I got involved in this I was told that occasionally you brought samples to the committee, I was wondering if you have any. JARED ANDERSON: Not today, it was so cold. BILL SHALHOOB: Spoke in support of SB2397. North Dakota Hospitality Association. See written testimony. TODD JACOBSON: General Manager of the Happy Harry's in Grand Forks and Fargo. I would like to address Senator Lee's question about the small wineries in ordering one case at a time and how that's going to affect this bill. My answer to that is right now, I can go to California, on wine buying trips and a lot of places won't even talk to us anymore because they realize the profit levels they are able to do by direct shipping in the state is so much greater than if they do for me. So in that question, I am already at a disadvantage just from that. They do not have to pay the license fees, they don't have to pay the sales tax, they are realizing much higher profits than what we are able to do. We work on a really thin margins an for my end of it, and looking at the protections kind of thing, maybe that is so. But I would hope that you guys would support, the bill and try and keep this thing on a level playing field. TOM MILLER: Owner of Captain Jacks' Liquor, in the Bismarck, Mandan area. There's been a lot of things that have been passed around and I did bring some samples, but I drank them. Two years ago during the 1999 legislative session, North Dakotan's were concerned about the legal aspect of bringing alcohol over state lines. At that particular time, SB2216 was amended to allow individuals to

order up to 5 bottles of wine or a case of beer a month by way of Internet. This basically was designed for the hard to get product. Our company although realized that it would probably cut into us a little bit as far as what we did in retail, we supported it because we just can't get everything. It will get harder and harder for us as the Internet keeps shipping. Each year, our company which we have four stores in the Bismarck and Mandan area, we have an average of $2800 a year license fee just to be able to open our doors. On top of that we collect, all of the state sales tax, city sales tax, property taxes, we employ up to 35 employees, we donate dozens of items, money to nonprofit organizations, college, charities etc. We take pride in our community, and I want people to understand that we also follow the law. We also take a very proud and happy position to card minors. So far the Internet shippers do none of this. I would say at this particular point that our corporation, bill number 2397 is a very, very fair bill compared to what its happened in other states. I been in the business, 18 years, I've been in retail clothing business for 10 years before that, I have never seen an industry so controlled by a law. And I think we went way out our way two years ago to say, yes, we do allow Internet shipping to North Dakota, for the hard to get stuff. I would love to be able to take the stuff the other states can't get and ship it to them. We play by the rules. JANET SEAWORTH: Executive Director of the North Dakota Beer Wholesalers Association. See written testimony. Supports SB2397. SENATOR MATHERN: More on the technical level. If Senator Lee did order a case of wine from a small winery, how does anybody know? She might be able to make a phone call, I mean is there any way they can tract that. JANET SEAWORTH: That is the question. I have spoken with the regulatory authorities in Louisiana who really are the ones that have experience now because their statutes are very similar to what is being proposed here. They acknowledge that there is some difficulty in determining who is actually registering and whether there are many parties

out there that are not bothering to contact the state. They acknowledge that is a problem and it may be an ongoing problem. However, they have told me that for the most part there legislation is a step in the right direction. There ability to actually regulate have been to with the fact that they do not have adequate staffing to do so. It is not a defect in the law, as much as simply they do not have the staff. SENATOR COOK: Senator Materna, I do believe that the legislation we passed two years had in it a rather large club, for out of state wineries etc. that would really make them think twice about jeopardizing, and I forget exactly what that club was, but I am sure we could do some research and find out. BRIAN HILL: Owner and operator of Polar Package Place in Bismarck. I retail wine and spirits store here in North Dakota. See written testimony. I do oppose this bill. SENATOR FLAKOLL: Would you think it would be appropriate if we changed it from a $1000 fee up front to a larger tax or fee, when it is sold? BRIAN HILL: When we introduced this bill two years ago and the fighting in-between and back and forth, we offered the ability for this at that time. That they could collect sales tax. In fact we're a laughing stock in the Internet industry cause were the only state that does not collect sales tax. Sales tax is a simple thing for these people to sell the wine into the state of North Dakota. To collect and to send that money into the state. But as far as the fee goes, $1000 is absolutely ridiculous. I think we tried to negotiate with the other side, to make a fee that would be fair, you know for somebody, $ 50 or something. We're talking small quantities of items here that are coming into the state. $1000 is absolutely totally our of line. And $25,000 fine is ridiculous too. STACY STAIGER: Spoke on behalf of her mother Bonnie Staiger. See written testimony. She is opposed to SB2397. BOB HANSEN: Spoke on behalf of former Senator Vern Thompson. See written testimony. Opposed to SB2397.

SENATOR COOK: Bob, just one clarification. Your number 5 there where you say no other seller of product who does not records in our state must pay our state sales taxes. I believe what you meant to say is that collect and remit our state sales taxes. They do not pay it? BOB HANSON: Yes, I am sorry Mr. Chairman. They don't have to collect and remit those sales taxes on purchases that are made in another state and possession has taken as it. SENATOR COOK: Further off, as far as where possession is taken, I believe that then that then they are FOB to the destination, possession and handled at the destination. Possession does not occur in any other state. The freight is charged, possession is at the residence where it is received. BOB HANSON: Your correct on that. What I am getting at here is though is lets say that any of us would go out to California, we want to pick up. We go to a winery, we happen to visit, we like a wine there we buy it just one bottle, take it back with us. Then the possession has taken place there. We have in this bill, that winery is responsible for the state tax, our state liquor tax and is subject to a $25000 if they don't report it in the current bill. That is the change we'll look at.

Hearing closed on SB2397.

February 15, 2001 Tape 2, Side A , Meter # 30.9- 54.6, Side B 0.1-6.8)

The Senate Political Subdivisions Committee met to discuss SB2397. After lengthy discussion with legal consultation with our intern Mark Monasky it was decided by the Committee to vote on the proposed amendments.

Senator Lee made a motion to move amendments as corrected, amendments number 18337.0104..

Senator Polovitz- 2nd

Roll call vote: 6 Yeas, 2 No 0 Absent

Senator Lee made a motion as Do Pass as Amended on SB2397.

Senator Flakoll 2nd

Roll call vote: 8 Yeas, 0 No 0 Absent Carrier: Senator Cook

February 16, 2001 (Tape 1, Side A, Meter #0.0-16.5)

The Senate Political Subdivisions Committee was called to order. All present in attendance.

Senator Cook asked the committee to review the amendments.

Committee discussion followed.

Senator Lee moved the amendments; file reports with the State Tax Commissioner

Senator Polovitz 2nd

Roll Call Vote: 6 yes 2 no 0ab

SenatorLee move a do pass as amended

2nd Sen Polovitz

7 yes 1 no 0 ab

Carrier: Senator Cook

FISCAL NOTE

Requested by Legislative Council

02/20/2001

Bill/Resolution No.:

Amendment to: SB 2397

1A. **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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			$10,000		$10,000	
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

With the amendments in the engrossed bill, we can only estimate that perhaps 100 dealers per fiscal year would find it profitable to pay a $50 fee to ship directly to consumers in North Dakota.

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.*

100 direct shippers licenses @ $50/year = $5,000/year or $10,000 per biennium. We estimate that the alcohol tax would not be significant.

   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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Robert J. Olheiser	Agency:	Treasurer's Office

Phone Number:	8-4694	Date Prepared: 02/23/2001

FISCAL NOTE

Requested by Legislative Council

01/30/2001

Bill/Resolution No.: SB 2397

Amendment to:

1A. **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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			$51,000		$51,000	
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The estimate of $51,000 in revenue is based on an estimate of 25 companies per year that would find it economically profitable to pay a fee of $1,000 to make direct shipments into North Dakota, plus taxes of $1,000 on the products shipped.

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.*

$25,000 per FY ($50,000 per biennium) = 25 Direct Shipper's Licenses @ $1,000. The amount of tax that would be paid on those shipments is estimated at $500 per year ($1,000 per biennium).

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Joan Becker	**Agency:**	Treasurer's Office
Phone Number:	8-2646	**Date Prepared:**	02/07/2001

18337.0102
Title.

Prepared by the Legislative Council staff for
Senator Lee
February 15, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2397

Page 1, line 1, replace "sections" with "section" and remove "and 5-03-05"

Page 1, line 2, remove "; and to provide a penalty"

Page 2, line 1, remove the overstrike over "~~person as described~~"

Page 2, line 2, remove the overstrike over "~~under subsection 1 or 2~~" and remove "manufacturer or retailer holding a valid manufacturer's or"

Page 2, line 3, remove "retailer's license issued by the state of its domicile"

Page 2, line 8, replace "manufacturer or retailer selling or shipping alcoholic" with "person in the business of selling alcoholic beverages is in violation of subsection 1 unless that person collects and remits any local or state sales tax due to the tax commissioner. For purposes of this section, sales tax is due as if the sale occurred at the address of delivery. In addition, that person shall file an annual report with the tax commissioner including invoices for each shipment sold during the year showing the price of the product, the quantity sold and shipped, the customer's name and address, and the amount of tax due."

Page 2, remove lines 9 through 31

Page 3, line 22, remove the overstrike over "~~person as described~~"

Page 3, line 23, remove the overstrike over "~~under subsection 1 or 2~~" and remove "manufacturer or retailer holding a valid manufacturer's or"

Page 3, line 24, remove "retailer's license issued by the state of its domicile"

Page 3, line 29, replace "manufacturer or retailer selling or shipping alcoholic" with "person in the business of selling alcoholic beverages is in violation of subsection 1 unless that person collects and remits any local or state sales tax due to the tax commissioner. For purposes of this section, sales tax is due as if the sale occurred at the address of delivery. In addition, that person shall file an annual report with the tax commissioner including invoices for each shipment sold during the year showing the price of the product, the quantity sold and shipped, the customer's name and address, and the amount of tax due."

Page 3, remove lines 30 and 31

Page 4, remove lines 1 through 30

Page 5, remove lines 1 through 8

Renumber accordingly

18337.0103
Title.

Prepared by the Legislative Council staff for
Senator Cook
February 15, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2397

Page 2, line 10, replace "thousand" with "hundred"

Page 2, line 18, replace "twenty-five" with "one"

Page 3, line 31, replace "thousand" with "hundred"

Page 4, line 8, replace "twenty-five" with "one"

Renumber accordingly

Date: Feb. 15, 2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2397

Senate Political Subdivisions Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Move amendments

Motion Made By Sen. Lee Seconded By Senator Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne	✓				

Total (Yes) 8 No 0

Absent 0

Floor Assignment _____

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

Adopted by the
Political Subdivisions Committee

18337.0104
Title.0200

February 15, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2397

Page 2, line 1, remove the overstrike over "~~person as described~~"

Page 2, line 2, remove the overstrike over "~~under subsection 1 or 2~~" and remove "manufacturer or retailer holding a valid manufacturer's or"

Page 2, line 3, remove "retailer's license issued by the state of its domicile"

Page 2, line 9, replace "shipper license" with "shipping permit"

Page 2, line 10, replace "one thousand" with "fifty", and replace "before making the sale of" with "within thirty days of making the first", and replace "sale of" with "first"

Page 2, line 14, remove "quarterly"

Page 2, line 18, replace "twenty-five" with "one", and replace "shipper" with "shipping"

Page 2, line 19, replace "license" with "permit"

Page 3, line 22, remove the overstrike over "~~person as described~~"

Page 3, line 23, remove the overstrike over "~~under subsection 1 or 2~~" and remove "manufacturer or retailer holding a valid manufacturer's or"

Page 3, line 24, remove "retailer's license issued by the state of its domicile"

Page 3, line 30, replace "shipper license" with "shipping permit"

Page 3, line 31, replace "one thousand" with "fifty"

Page 4, line 4, remove "quarterly"

Page 4, line 8, replace "twenty-five" with "one"

Page 4, line 9, replace "shipper license" with "shipping permit"

Renumber accordingly

Date: Feb 16, 2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. S.B. 2377

Senate Political Subdivisions Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 18377.0101

Action Taken Move amendments as corrected

Motion Made By Sen. Lee Seconded By Sen. Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson		✓
Senator Lyson		✓	Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne	✓				

Total (Yes) 6 No 2

Absent 0

Floor Assignment _____

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

Date: Feb. 16, 2001
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB. 2397

Senate Political Subdivisions Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended SB 2397

Motion Made By Sen. Lee Seconded By Sen. Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne		✓			

Total (Yes) 7 No 1

Absent 0

Floor Assignment Sen Cook

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

REPORT OF STANDING COMMITTEE

SB 2397: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2397 was placed on the Sixth order on the calendar.

Page 2, line 1, remove the overstrike over "~~person as described~~"

Page 2, line 2, remove the overstrike over "~~under subsection 1 or 2~~" and remove "manufacturer or retailer holding a valid manufacturer's or"

Page 2, line 3, remove "retailer's license issued by the state of its domicile"

Page 2, line 9, replace "shipper license" with "shipping permit"

Page 2, line 10, replace "one thousand" with "fifty", replace "before" with "within thirty days of", and replace "sale or" with "first"

Page 2, line 14, remove "quarterly"

Page 2, line 18, replace "twenty-five" with "one" and replace "shipper" with "shipping"

Page 2, line 19, replace "license" with "permit"

Page 3, line 22, remove the overstrike over "~~person as described~~"

Page 3, line 23, remove the overstrike over "~~under subsection 1 or 2~~" and remove "manufacturer or retailer holding a valid manufacturer's or"

Page 3, line 24, remove "retailer's license issued by the state of its domicile"

Page 3, line 30, replace "shipper license" with "shipping permit"

Page 3, line 31, replace "one thousand" with "fifty"

Page 4, line 4, remove "quarterly"

Page 4, line 8, replace "twenty-five" with "one"

Page 4, line 9, replace "shipper license" with "shipping permit"

Renumber accordingly

2001 HOUSE POLITICAL SUBDIVISIONS

SB 2397

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2397

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 3-16-01

Tape Number	Side A	Side B	Meter #
1		xx	1400--end
2	xx		1--1188

Committee Clerk Signature Pam Dever

Minutes: Chair Froseth opened the hearing on SB2397 relating to direct sales of alcoholic beverages; and to declare a penalty.

Dan Kuntz, Wholesale Liquor Dealers Assoc. : testified in support of SB2397. **(SEE ATTACHED TESTIMONY AND AMENDMENT)**

Rep. Delmore : Can we regulate them all under this bill and are we addressing the under age problem?

Dan : This doesn't change anything with under 21 sales. This bill may help that problem. If we can identify who the shippers are, and if it is to under 21, something can be done.

Rep. Delmore (2440) Do we have all the members on board - wholesaler, retailers, etc? We need to satisfy all the players. Last session we had a problem with that.

Dan : Wholesalers and retailers are on board. We worked with the wine institute, but I'm sure they don't want any bill at all. We are getting close to common ground with the amendments.

Rep. N. Johnson : Can you walk me through what it would cost for a California Wine Club to sell 2 bottles of wine per month to a ND customer.

Dan : They would have to pay the $50 license fee per year. Then they would have to pay the wholesale taxes that apply to that shipment and the 7% sales tax. The club would have to be licensed in California to be able to sell to ND customer. If someone was making wine in their basement and wanted to sell it to ND customer, they would have to be licensed to ship. They would not be subject to any type of safety or health regulations. If they had a retail license, they would have to pay the $1,000 fee.

Vice-Chair Severson :(2690) On line 26-29, why do you want the word "shall"changed to"may"?

Dan : In the event you discover someone who did not get their license in on time or didn't report their taxes on time, they voluntarily complied. This gives them the discretion whether or not they want to pursue civil action for penalties. If they get voluntary compliance, most regulatory agencies won't start a law suit. Sometimes, all it takes is a letter, and that is lots easier then taking someone to court.

Rep. Kretschmar : Under current law, is there teeth to enforce it if some manufacturer from another state doesn't follow the law?

Dan : If they did not get the permit at all, they would be subject to the penalties that apply to that particular chapter of law dealing with wholesalers. That would be a class B misdemeanor. It's difficult to enforce this in ND. We feel this bill gives more authority. We at least bring an action for an injunction from shipping.

Rep. Kretschmar : Wouldn't there be additional problems if we had a foreign shipper of wine?

Dan : Absolutely, but we have international laws to deal with that.

Rep. Maragos : Imported products have to go through customs.

Rep. N. Johnson : Currently we have federal legislation that precludes any taxes being placed on e-commerce. Does our state law supersede being able to tax that?

Dan : The wine institute says they are willing to pay the sales tax. There are other law suits going on in other jurisdictions that strictly prohibit direct shipments. The question is whether the 21st amendment, which gives the states total regulatory authority of the liquor industry, would supersede those restrictions against collection of the taxes.

Bill Shalhoob, ND Hospitality Assoc./Retailors of Liquor: testified in support of bill. **(SEE ATTACHED)** It is a privilege to have a liquor license, not a right. No one knows what the volume of sales over the Internet is. This means a lot of taxes are not being paid to the state of ND. Our retailers are at a great disadvantage. It's unrealistic to keep this unfair edge, so please pass SB2397.

Rep. Herbel : Has there been a noticeable decline in wholesale liquor sales due to the internet?

Bill : Opposition will say that it has increased even with e-commerce. No signs for the numbers.

Chair Froseth : Do you see an important problem with e-commerce sales?

Bill : Yes. How do you know if you are selling to a 17 year old on Internet.

Rob Hanson, Ed Phillips & Sons : testified for this bill. We want a fair playing field. We pay more taxes then any other industry. I submit monthly reports to the state where I collect all the taxes for everything I have sold. The state has a copy of every transactions, no matter how small, up in boxes in Kathy Gilemore's office. I don't know where they go, but we are required to make these reports. We are open to audits at any time. Every single bottle of liquor that gets sold in ND is accounted for. Is there a check and balance system in place, now. Yes. Are we trying to do the same thing in e-commerce, yes. I urge a Do Pass.

Rep. N. Johnson : Why this special level playing field, when there isn't one for furniture or clothes?

Rob : Ours is a unique industry. We report more, pay more taxes, and can't sell our products to just anyone. We have the right and responsibility, within ND, to regulate alcoholic beverages. Federal government has not given us that law. We did that ourselves. There are 30 states that don't allow any shipments into their state. It needs to be regulated and held accountable, just like us within the state.

Jared Anderson, Congress Inc. : in support of bill. Alcohol is the only product specifically mentioned in the US Constitution. ND has some history with the 21st amendment in clarifying how far states rights go. We took a case to the Supreme Court concerning shipments of alcohol to the military bases. We won. The state has some history. This bill addresses the lack of controls placed in licensing and taxing from outside the state.

Janet Seaworth, ND Beer Wholesaler Assoc : in support of SB2397. **(SEE ATTACHED)**

Tom Miller, owner Captain Jack's Liquor : in support of SB2397. This is a step in the right direction. We want the out of state shippers to have some responsibility and accountability.

George O'Neill, Fargo:(5355) opposed to bill. Here representing Valley Wine Society. **(SEE ATTACHED)**

Vice-Chair Severson : Do you see a problem with a minor ordering wine?

George : No. They are not getting their booze from a shipment. They don't have that much pre-thought or time it takes to do this by e-mail.

Rep. Ekstrom : (5950) How about agreeing to pay the additional sales tax if you order wine from another state?

George : I would be less opposed to that then I am to this bill. I still don't know why this

commodity is being treated differently then other commodities. The Valley Wine Society would be willing to live with paying the sales tax.

Vice-Chair Severson : Has your society gone to liquor establishments to see if you can order a a particular wine there?

George : Yes, sometimes they can. Small family owned wineries don't go through distributors, but go direct to customers. We couldn't get those at a local establishment.

Rep. Maragos : How many bottles to you buy per year by shipment?

George : Less than 3 cases over the Internet. Most lines I purchase at a local store. Some are collectors items and can't buy in ND.

Rep. Delmore : In fairness to the retailer and wholesalers in ND, they pay higher percentage of taxes then most businesses do.

Brian Hill, owner Polar Package, Bismarck : testified in opposition to SB2397. **(SEE ATTACHED)** He discussed history of liquor industry and prohibition and when it was repealed. Today we have two families who distribute all the liquor and wine through the state. There are three families that own the majority of liquor stores in the state. The two distributors and three families want to protect their monopoly. Any fees, licenses, or fines on the shipments to ND will effectively kill the chances of the citizens of ND to have a choice.

Naomi Nakamoto, Fargo : opposed to this bill. I am just a wine drinker.

Bob Hanson, Wine Institute : (490) opposed to SB2397. **(SEE ATTACHED)** We have always support paying sales taxes. There is nothing that shows minors are misusing this issue. There are questions of constitutionality with this bill.

Rep. Delmore : (870) Are you for or against this?

Bob : We accept the amendments and worked on these. We are opposed without the amendments.

Bob Olheiser , Deputy State Treasurer : neutral on the bill. Here to tell you that the system works now in the state treasurers office. No need to change anything. I think this is tied to SB2053, which will transfer to the tax department, the responsibility that is currently in the state treasurers department.

Chair Froseth : Can you comment on how the regulations will be effected in this bill.

Bob Olheiser : We in ND basically obey the law. We believe that if you pass a law, people will obey because is it a law. The wholesalers in ND are very good about complying with state law.

Chair Froseth : Any further testimony? Hearing none, SB2397 is closed.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2397 b

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 3-22-01

Tape Number	Side A	Side B	Meter #
2	xx		3300--end
2		xx	1--1000

Committee Clerk Signature

Minutes: Chair Froseth : Let's discuss the amendments on SB2397 brought by Dan Kuntz. Sponsors said the "shall" needs to stay in. All parties liked the amendments from the senate.

Rep. N. Johnson : If "shall" is left in, there is no latitude for a first time offense I just don't like this bill for a free market society.

Chair Froseth : The language just means it has to be reported.

Rep. Eckre : That's right, and it will be up to the US attorney to do something, if he/she wants.

Rep. Maragos : **I move the amendments.**

Rep. Delmore : **I second.**

Rep. N.Johnson : **I move to further amend line 9 to $50 instead of $1,000 and page 3, line 30 to $50 instead of $1,000.**

Rep. Disrud : **I second.**

VOICE VOTE: 2 No's and the rest Yes. Amendment Passed.

Rep. Maragos : **I move a DO PASS AS AMENDED.**

Rep. Herbel : **I second.**

VOTE: 3 YES and 11 NO with 1 absent. FAILED.

Vice-Chair Severson : **I move a DO NOT PASS AS AMENDED.**

Rep. Disrud : **I second.**

VOTE: 8 YES and 6 NO with 1 absent. PASSED. Rep. N. Johnson will carry the bill.

18337.0201
Title.0300

Adopted by the Political Subdivisions Committee

March 22, 2001

VK
3/23/01
1 of 2

HOUSE AMENDMENTS to ENG.SB2397 HOUSE POL. SUBS 3-26-01

Page 2, line 1, overstrike "as described"

Page 2, line 2, overstrike "under subsection 1 or 2" and insert immediately thereafter "holding a valid manufacturer's or retailer's license issued by the state of its domicile"

Page 2, line 8, replace "permit" with "license"

Page 2, line 13, remove "including invoices for each shipment" and replace "the price of the product" with "for each shipment"

Page 2, line 14, replace the first "and" with ", the date" and remove "the customer's name and address,"

Page 2, line 15, replace "manufacturer or retailer of alcoholic beverages who violates" with "direct shipper is subject to section 5-03-06."

Page 2, remove lines 16 through 18

Page 2, line 19, remove "of that civil penalty upon violation of this subsection."

Page 2, line 20, replace "a civil" with "an"

Page 2, line 21, replace "to recover the civil penalty provided in this" with "may request award of"

Page 2, line 22, remove "subsection, together with"

Page 2, line 23, remove the first "treasurer"

Page 2, line 26, replace "shall" with "may"

Page 2, line 29, replace "shall" with "may"

HOUSE AMENDMENTS to ENG. SB2397 HOUSE POL. SUBS. 3-26-01

Page 3, line 22, overstrike "as described"

Page 3, line 23, overstrike "under subsection 1 or 2" and insert immediately thereafter "holding a valid manufacturer's or retailer's license issued by the state of its domicile"

Page 3, line 30, replace "before" with "within thirty days of" and replace "sale or" with "first"

HOUSE AMENDMENTS to ENG. 2397 HOUSE POL. SUBS. 3-26-01

Page 4, line 3, remove "including invoices for each shipment" and replace "the price of the" with "for each shipment"

Page 4, line 4, remove "product", replace the first "and " with ", the date", and remove "the customer's name and address,"

Page 4, line 5, replace "manufacturer or retailer of alcoholic beverages who" with "direct shipper is subject to section 5-03-06."

Page 4, remove lines 6 through 8

Page 4, line 9, remove "the imposition of that civil penalty upon violation of this subsection."

Page 4, line 10, replace "a civil" with "an"

Page 4, line 11, remove "to recover the civil penalty"

Page 4, line 12, replace "provided in this subsection, together with" with "may request award of"

Page 4, line 13, remove "tax commissioner"

Page 4, line 16, replace "shall" with "may"

Page 4, line 20, replace "shall" with "may"

Renumber accordingly

Date: 3-22-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2397

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Rep. Maragos Seconded By Rep. Herbel

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth		✓	Rep. Wayne W. Tieman		✓
Vice-Chair Dale C. Severson		✓			
Rep. Lois Delmore		✓			
Rep. Rachael Disrud		✓			
Rep. Bruce Eckre		✓			
Rep. Mary Ekstrom		✓			
Rep. April Fairfield	AB				
Rep. Michael Grosz		✓			
Rep. Jane Gunter		✓			
Rep. Gil Herbel	✓				
Rep. Nancy Johnson		✓			
Rep. William E. Kretschmar	✓				
Rep. Carol A. Niemeier		✓			
Rep. Andrew G. Maragos	✓				

Total (Yes) 3 No 11

Absent 1 abs

Floor Assignment

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

Date: 3-22-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2397

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number 18337.0201 .0300

Action Taken Do Not Pass As Amended

Motion Made By Vice Chair Severson Seconded By Rep Disrud

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore		✓			
Rep. Rachael Disrud	✓				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom		✓			
Rep. April Fairfield	AB				
Rep. Michael Grosz	✓				
Rep. Jane Gunter	✓				
Rep. Gil Herbel		✓			
Rep. Nancy Johnson	✓				
Rep. William E. Kretschmar		✓			
Rep. Carol A. Niemeier		✓			
Rep. Andrew G. Maragos		✓			

Total (Yes) 8 No 6

Absent 1 ab.

Floor Assignment Rep. Johnson

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

REPORT OF STANDING COMMITTEE

SB 2397, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2397 was placed on the Sixth order on the calendar.

Page 2, line 1, overstrike "as described"

Page 2, line 2, overstrike "under subsection 1 or 2" and insert immediately thereafter "holding a valid manufacturer's or retailer's license issued by the state of its domicile"

Page 2, line 8, replace "permit" with "license"

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Page 4, line 16, replace "shall" with "may"

Page 4, line 20, replace "shall" with "may"

Renumber accordingly

2001 TESTIMONY

SB 2397

TESTIMONY
SB 2397
Bob Hanson, Wine Institute
Senate Political Subdivisions Committee
February 9, 2001

Good morning Chairman Cook and members of the committee. I am Bob Hanson, representing the Wine Institute. I am here today in opposition to SB 2397.

Legislature passed last session, which the Wine Institute supported, as did the liquor wholesalers, beer wholesalers and beverage alcohol retailers, put into effect strong measures to keep alcohol beverages purchased by individuals from out of state sources, for personal consumption, from getting into the hands of underage individuals. This same legislation allowed adults of legal drinking age to purchase a limited amount of legal alcohol products from out of state sources without being in violation of state law. That became law through a lot of give and take on both sides of the issue. During the negotiations last session with the very groups who are now proposing SB 2397, we, the Wine Institute, did propose the tax issue to these groups, and it was rejected. The Wine Institute believes in honoring its commitment to that agreement and did not request legislation this session to upset the compromise agreed to last session.

A. WHERE'S THE PROBLEM?

1. No reported violations in sale to minors, or adults buying more than allowed in law.
2. Both amount of alcohol beverages sold by North Dakota wholesalers, and wholesale alcohol taxes paid by these wholesalers, have increased from 1998, the year prior to 1999 law being enacted, and end of 2000.
    a. Wine sales by instate wholesalers increased from 542,000 gallons and $292,000 in taxes in 1998 to 593,000 gallons and $318,000 in taxes in 2000.
    b. Liquor sales by instate wholesalers increased from 975,000 gallons and $2.4 million in taxes in 1998 to over 1 million gallons and $2.5 million in taxes in 2000.
    c. Beer sales by instate wholesalers increased from 16.8 million gallons and $2.55 million in taxes in 1998 to 17.1 million gallons and $2.57 million in taxes in 2000.
3. Sales tax is covered by use tax law.
4. Maximum wholesale liquor tax on amount allowed under the law passed last year is $1.19 for wine under 17%; $1.43 for wine over 17%; $2.38 for champagne; $5.94 for distilled spirits; $.18 for bulk beer and $.36 for canned and bottle beer. A person is only allowed to purchase one case of alcohol per month under this law.

B. CONSTITUTIONALITY

1. Quill case - Prohibits states from collecting state sales taxes if company doesn't have a physical presence in state. Federal government has also enacted law prohibiting any new taxes on Internet sales. If the tax collection section is passed, the members of the Wine Institute will comply. However, I don't believe you can, today, enforce the collection of these taxes by others who our residents contact and want to purchase products from.
2. November 17, 2000 New York Times article: Manhattan Federal District Court judge rules NY law effectively banning direct sale of cigarettes to New Yorkers via Internet "is likely to be unconstitutional." Article also stated this ruling "could accelerate a major trend in Internet-related court cases: findings by judges that a state's attempt to regulate Internet activities within its borders runs afoul of the Constitution's commerce clause. In the past few years, at least five different federal or state judges in five different states have struck down state-based Internet laws on commerce clause grounds." The article went on to state "Currently, several cases asserting that state bans on Internet wine sales violate the commerce clause are clogging court dockets."

C. ANTI ECONOMIC DEVELOPMENT

1. Establishes another unnecessary barrier to attracting desirable companies with high level positions to state.
2. Invites retaliatory actions from other states relating to North Dakota direct marketers. Example: Pride of Dakota; HB 1404 which allows for farm wineries in the state.

D. DISCRIMINATORY, UNFAIR, PUNITIVE & UNREALISTIC

1. This bill imposes a double penalty for someone who ships to someone in the state they are not suppose to. The penalties in the current law involve written notification for 1st offense, class A misdemeanor for 2nd offense and it's a class C felony if it happens a 3rd time. In this bill, an additional fine of $25,000 is imposed. In addition, this $25,000 fine is levied if the shipper fails to file a sales or wholesale alcohol beverage tax return. Additionally, there are already penally sections in the law for failure to file and report both wholesale alcohol and sales taxes. Why the heavy handedness. No other retailer, of any product or service, must pay a fine of $25,000 if they fail to file a tax return, which in this case could be for as little as $.13 for a bottle of wine or $1.19 for a whole case of wine as allowed under existing law. Assessing a heavier, unreasonable penalty on out of state companies, than on in state companies is unfair, discriminatory and punitive.
2. No other retailer, either in state or out of state, of any product or service, is required to submit the individual names and addresses of everyone they sold to with what they purchased, how much they paid, and how much they bought.
3. No other out of state direct marketer, of any type of product, who does not have nexus in our state, must obtain a "direct shipper license" let alone pay $1000 for it.
4. No other direct marketer of any type of products who does not have nexus in our state must pay these types of taxes in our state. Other retailers in our state who have few sales are allowed the option of filing semiannually or annually and are not mandated to file quarterly. This bill is truly government bureaucracy at its best, and for what reason.
5. No other seller of any product from another state, who does not have nexus in our state, must pay our state sales taxes on purchases where possession of the item purchased is taken in that state.

This bill is obviously discriminatory towards out of state businesses, blatantly anti-business, clearly punitive, probably unconstitutional and opens door for retaliatory action against North Dakota direct marketing businesses. I don't believe that is the image and message we want to send to people and businesses outside our borders.

It is our position and belief that everyone, including government should be on the side of innovation and consumer choice. Senate Bill 2397 takes just the opposite approach.

On behalf of the Wine Institute and all consumers of our product, we respectfully request a do not pass on Senate Bill 2397.

Statement
Vern Thompson
SB 2397
February 9, 2001

Good morning Chairman Cook and members of the Senate Political Subdivisions committee.

I am Vern Thompson, former state senator from Minnewaukan, district 12 and the prime sponsor of the original legislation which is being addressed in SB 2397.

As I am unable to appear in person today, I have asked Bob Hanson to give you my testimony on my behalf.

I just want to say that last session everyone and all interests in this issue, including myself, worked extremely hard at reaching a compromise acceptable to all regarding the Internet sales of alcohol, and we did.

I believed the compromise agreed to was to have been the end of the issue.

SB 2397 is, in my mind, an outright breech of the agreement reached last session. I am disappointed this legislation was introduced now. I believe once a deal has been reached, everyone involved should live by it. Because I value my integrity and I consider my word to be my bond, I must register my opposition to SB 2397 and request you to give the bill a do not pass recommendation and to urge its defeat on the floor.

Thank ycu.

Vern Thompson

JOHNSON BROTHERS NORTHWEST BEVERAGES, INC.

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

February 8, 2001

To: ND Legislative Committee on
Industry, Business and Labor
Dwight Cook, Chairman

I am writing in support of SB 2397 which addresses the issue of out-of-state interests selling spirits, wine and malt directly to ND residents.

As a wholesaler of all three of these products, we are subject to all of the laws of North Dakota which regulate this industry. We are licensed by the state and we collect and submit ND excise taxes on all alcoholic beverages that we sell. We also report monthly all of our sales by county to the state treasurer's office.

ND retailers are also licensed, both by the state and by their local government. These licenses vary by county and/or city. They are also required to collect and submit state sales taxes and any local sales surtax which applies to these products on a quarterly basis.

Every business in the alcoholic beverage industry in ND pays taxes. Income taxes, FICA taxes, etc. We all employ ND residents who pay taxes and are part of the ND economy.

The out-of-state interests who ship these products into North Dakota are responsible for none of the above.

SB 2397 would correct this inequity.

I ask you to support SB 2397 and require the out-of-staters to put something back into North Dakota – not just profiteer without accountability.

Thank you for your consideration.

Anthony J. Engedal

Tony Engedal
General Manager

Direct Shipping SB 2397

Thank you chairman Cook and committee members. I am Jared Anderson, Vice President of Congress Inc, a North Dakota wine & spirits wholesaler. I would like to talk today in favor of SB2397. We all know that the Internet is here to stay. It has become a part of our lives. You can get on the web and find any product produced in every corner of the world and have it delivered to your door. It is a very powerful tool. It is just that though a tool. The change is in speed and access to information not in the basic transaction. It is still a product with a buyer and a seller agreeing on a price. In the case of alcoholic beverages, we as a society have decided that there needs to be some level of control through licensing and taxation. Alcohol is different. The state has a right expressed in the US Constitution to control alcohol within its boarders. No other product has this right spelled out so clearly in the highest law in the land.

The state has put the taxes and license fees in to control businesses. If a North Dakota citizen who runs a wholesale or retail alcoholic beverage business, has his livelihood at risk if he breaks the laws, shouldn't an out of state business have some responsibility too? I think this bill addresses the problem in a fair manner that the Wine Institute has accepted in other states. It gives the state a license that it can revoke if there are problems and it collects taxes on the sales of a highly taxed and regulated product.

I know that one of the issues raised by the direct shippers is that wholesalers and retailers are protectionist and only looking out for themselves and their pocketbooks. If any of you have a chance to see the price the on line companies are charging, please compare it to the shelf price at your local retailer. In many cases it is the same as the local retail price. This is without freight (this shows as a separate charge over and above the product charge), without any state tax, without retail or wholesale overhead (payrolls to local North Dakota citizens). There is a lot of money for them shipping direct. All we are looking for is some fairness on this issue. Attached is a sheet detailing the economic impact of the wine and spirits wholesaling in North Dakota.

I hope you will support this bill. Thank you. I would be happy to answer any of your questions.

Jared Anderson
Vice President
Congress Inc
701-282-0985
Jareda@congressincnd.com

The Economic Contribution to North Dakota of Wine and Spirits Wholesaling

The economic role of wine and spirits wholesalers is to provide efficient distribution of products from multiple producers and importers to hundreds of retail outlets. In the process, wine and spirits wholesalers create jobs, pay wages and taxes, and add value.

This direct economic activity of wine and spirits wholesaling, in turn, causes additional growth in the economy. Wholesalers buy goods and services, such as trucks, motor fuel, computers, and accounting services. Wholesaler employees spend their wages on such things as housing, cars, education, and vacations. Economists refer to this rippling economic activity as the "the multiplier effect."

The table below shows both the direct and the total economic contribution to North Dakota of wine and spirits wholesaling. The total economic contribution represents the direct and the resulting multiplier effect, including how these impacts cross state borders. The "economic activity" shown in the table below is the equivalent of Gross Domestic Product (GDP), or the value-added at each stage of production in the U.S. economy.

Economic Contribution, 1999

	Direct	Total
Jobs	140	520
Wages ($000)	$5,060	$14,110
Economic Activity ($000)	$14,400	$47,480

Wine and spirits wholesalers directly support both federal and state excise taxes on products sold in North Dakota. Further, the economic activity generated by wine and spirits wholesaling results in additional public revenue to the state, local and federal governments.

Public Revenue, 1999

	Direct[a]	Total
State and Local ($000)	$2,800	$4,440
Federal ($000)	$10,730	$19,810

[a] State: state excise taxes and gross receipts tax, where applicable.
Federal: excise and occupational taxes and import duties.

Source: Steve L. Barsby & Associates, Inc.

Mr. Chairman and Senators

My name is Brian Hill. I am a owner, operator of Polar Package Place a retail wine, beer and spirit store in Bismarck, ND.

This bill just goes to show the mafia like tactics and greed that our two liquor distributors have. Their only intention is to keep the citizens of this state from being able to enjoy products not available to them in the conventional way. No winery or brewery is going to pay $1000.00 to sell a few bottles or cases to a patron, thus killing the chance for the people of North Dakota to be able to enjoy special hard to find products.

My business pays license fees in excess of $4000 in order to sell around $2 million in sales, and I have competition. The Alcohol distributor's in North Dakota pays $1000.00 to do around $50 million in sales each, and they have absolutely no competition on the same brand. Why don't we just change this license fee to a $100,000.00

There is a distributor behind me that has open accounts for their own sales people that violates the law by selling products to an unlicensed person. This is keeping a sale from me and cheats the state of Sales tax. It seems to be ok for them to skirt the law to benefit themselves'. There is another distributor behind me who gives special accounts exclusive rights to particular items and special deals, not available to others in the industry. But these are the same people testifying in their behalf.

I hope you'll stop this bill, but in the interest of fairness if you consider this bill I would like to introduce an amendment to this bill relating to the marketing of alcoholic beverages in North Dakota, requiring the liquor distributors to abide by the same laws as our beer distributors in NDCC section 5-03

Sincerely;

Brian J. Hill

Below is an amendment to Senate Bill 2397 relating to the marketing of alcoholic beverages in North Dakota.

I request that the following language be added as a new section to NDCC 5-03.

Discrimination prohibited. A liquor wholesaler must offer all of its products to all licensed alcoholic beverage retailers in the state and may not refuse to sell any of its products to these retailers. No liquor wholesaler may discriminate among the licensed alcoholic beverage retailers in the state in the price of its products sold to the retailers or in price promotions.

ED PHILLIPS & SONS CO. OF NORTH DAKOTA

1358 North 39th St., P.O. Box 1978 • Fargo, ND 58106 • (701) 277-1499 • *Fax* (701) 282-8869

February 8, 2001

To: ND Legislative Committee on
Industry, Business and Labor
Dwight Cook, Chairman

I'm Rob Hansen. I am the president of Ed Phillips & Sons, a licensed wholesaler of spirits, wine and malt in the state of North Dakota. I'm here to testify in support of SB 2397 and answer any questions you have of me.

SB 2397 seeks to level the playing field between North Dakota businesses and out-of-state interests that sell (or would like to sell) beverage alcohol to North Dakota residents. The system as it is now is unfair.

Every North Dakota business involved in the sale of beverage alcohol is required to:

1) **Be licensed by the state. Retailers must also have local licenses for spirits, wine and malt. Different licenses are required for on and off premise businesses. Even special events – concerts, rodeos, etc. are required to be licensed to sell beverage alcohol.**

2) **Report all beverage alcohol sales to the state.**

3) **Collect all applicable taxes for the sale of beverage alcohol. For licensed retailers, this means collecting the state sales tax as well as any local taxes levied on these products and submitting these taxes to the state quarterly. For example, Fargo has a 1% city sales tax and ½% county sales tax over and above the state sales tax of 7% on beverage alcohol. Many other communities also have surtax.**

   Wholesalers are required to monthly report all sales of spirits, wine and malt products and pay the state excise taxes on these products.

In addition, every bev-al business in North Dakota employs people who pay taxes and pays FICA taxes on the wages these employees earn. Ed Phillips & Sons employs 45 to 50 people, depending on the time of year.

The out-of-state interests have no such responsibilities, burdens or costs.

1) **They pay no state or local license fees.**

2) **They are not required to collect or pay any state excise tax or sales taxes on the products they sell.**

3) **They employ no ND residents.**

I think the bill is fair as written.

1) **The license fee is considerably less than the fees paid by ND businesses for the privilege of doing business.**

2) **The tax collection and reporting requirements are only as demanding as those imposed on the ND retailers and much less than ND wholesalers.**

3) **The penalties only affect those who do not comply with the ND law. ND businesses have a huge investment in this industry. Failure to comply can cost incredible sums of money and ND jobs.**

In summary, these out-of-state businesses -- as the law currently stands – have an advantage in every sense over the North Dakota businessman. They contribute nothing to the state of North Dakota and actually cost the state money in missed tax collections. As a ND businessman, I'm not looking for an advantage; I'm trying to compete on a level playing field. After all, what's fair is fair.

Thank you for your consideration.

R Hansen

Robert L. Hansen
President

TESTIMONY
SB 2397
February 9, 20001
Senate Political Subdivisions Committee

NDBWA
PO Box 7401
Bismarck, ND 58507
(701) 258-8098

Janet Demarais Seaworth
North Dakota Beer Wholesalers Association

Mr. Chairman, members of the committee, my name is Janet Seaworth, I am the Executive Director of the North Dakota Beer Wholesalers Association. There are eighteen beer wholesalers in North Dakota, all family owned and operated wholesalers; many in their third generation of family ownership.

NDBWA supports the intent and purpose of SB 2397, which is to license out-of-state distributors. For beer wholesalers, this is an issue of fairness. The alcohol beverage industry in North Dakota, as in all states, is a heavily regulated industry. Where, when, and to whom one may sell alcoholic beverages is strictly regulated. And the products are heavily taxed. North Dakota wholesalers alone pay more than 2.5 million dollars in wholesale taxes each year (that's about $150,000 per wholesaler) for the privilege of distributing malt beverages in North Dakota. They also pay license fees ($200 per year) and they must file monthly shipment reports and pay taxes on a monthly basis. If they don't, they are subject to civil and criminal penalties:

Failure to pay tax when due: add 5% per month of tax unpaid until paid
Failure to file report: $100 for each day reports delinquent
Filing fraudulent return: amount equal to tax evaded is added to tax due and wholesaler guilty of class C felony
Violation of any provision of Title 5: license revocation/Class B misdemeanor

Currently, out of state shippers distributing alcoholic beverages in North Dakota bear none of these responsibilities. In effect, current state law discriminates against in state distributors and provides an unfair advantage and immunity from state regulation to out-of-state distributors. We think its fair that out-of-state distributors have the same or similar responsibilities as in-state distributors. At the very least, they should be licensed, they should pay taxes, and they should report to the state. While there appears that there may be some disagreement as to the details of these requirements; we are not so concerned about the details of these requirements (what the license fee should be, how often they should report, what the penalty should be). This is really a wine issue, and the direct shipment of beer is negligible. However, if this state is going to allow direct shipment of beer, then it has a responsibility to regulate those shipments. We would urge this committee to support licensing, payment of taxes, and reporting requirements for out-of-state distributors and we would leave the details of those requirements to your good judgment. Thank you.

Summarily excluding a nonresident from the right to distribute liquor in Kansas just because the applicant has not resided in the State of Kansas for ten years cannot be said to genuinely bear on whether the applicant will comport himself according to governing standards and distribute liquor in the state in a moral and ethical manner. Such summary denial is especially offensive in light of the Court's findings, supra, that there are neutral, nondiscriminatory alternatives readily available to protect Defendants' interests in conducting comprehensive and accurate background checks on nonresident applicants to minimize the infiltration of crime in Kansas. See Dickerson v. Bailey, 87 F. Supp.2d at 709-10 (where court held Texas anti-direct-shipment law facially discriminated against interstate commerce and could not be saved by the Twenty-first Amendment because the state did not prove there were no "reasonable nondiscriminatory alternatives" in exercising its core powers). [16]

IV. Conclusion

Based on the discussion above, the Court finds, rather than exercising a core concern of the Twenty-first Amendment, the challenged residency requirement constitutes nothing more than "mere economic protectionism" and works only to insulate Kansas residents from outside competition. See Cooper v. McBeath, 11 F.3d at 555 ("While courts have recognized generally the need 'to combat the perceived evils of an unrestricted traffic in alcoholic beverages' as a permissible, if vague, purpose of the Twenty-first Amendment, 'laws that constitute mere economic protectionism are . . . not entitled to the same deference.'") (quoting Bacchus, 468 U.S. at 276). As such, the Twenty-first Amendment fails to "save" the residency requirement at issue from this Court's finding, supra, that the residency requirement in section 41-311(d) of the KLCA is an impermissible limitation on interstate commerce in violation of the dormant Commerce Clause.

Accordingly, it is hereby ordered that Plaintiffs' motion for summary judgment is granted and Defendants' cross motion for summary judgment is denied. It is further ordered that the residency requirement found in K.S.A. 41-311(d) is hereby declared to be unconstitutional and Defendants, their successors, agents, and employees are enjoined and restrained from implementing, enforcing, or acting in reliance upon the K.S.A. 41-311(d) residency requirement.

Pursuant to 42 U.S.C. § 1988, Plaintiffs are entitled to an award of attorneys fees, costs, and expenses associated with the prosecution of this case. Counsel are ordered to confer and attempt to reach an agreement regarding the fee award. See D.Kan. Rule 54.2.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this _____ day of February, 2001.

_____

David J. Waxse

United States Magistrate Judge

1. Plaintiffs also assert in their Complaint that the KLCA residency provisions violate the Privilege and Immunities Clause of the United States Constitution. Plaintiffs opted, however, not to move for summary judgment on those grounds.

2. Upon Defendants' motion, and without objection from Plaintiffs, this Court previously dismissed

TESTIMONY ON SB 2397
BILL SHALHOOB
ND HOSPITALITY ASSN

Mr. Chairman and members of the committee, the North Dakota Hospitality Assn. and its 500 members support SB 2397. We believe it corrects practices that go directly to the issues of competitiveness and fair play.

As background it is fair to say that sales of liquor and the liquor business have always been treated differently than any other commodity. Generally, it is a privilege, not a right, to have a liquor license. Anybody who desires to can open a clothing, grocery, or furniture store. All that's needed is a desire to compete, some capital, and a few permits. Off sale liquor licenses are restricted in quantity by a city's population and are the only business license that has a market value that rises and falls with the economy. It is one of the few products the State has seen fit to put an excise tax on, and we as retailers pay an additional 2% sales tax on our sales, which I believe is the only product in the state to do so. For this privilege of doing business, we also pay substantial state and local license fees. Average costs for these fees are in excess of $3,000.00 per year.

SB 2397 is a step toward correcting the unfair balance that exists in today's market place. Our retailers are restricted by statute to selling only in the political subdivision in which their license is issued. For the modest fee in this bill a retailer gets the entire state to sell to. Our retailers are not allowed home deliveries, yet the retailers targeted here can deliver directly to every home in the state. Attached to this testimony are several pages from www.ambrosiawine.com as an example of the retail activity SB 2397 targets. If a company can sell $1,000.00 of product at a 75% cost of merchandise, they would realize a $400.00 gross profit. In the case of finer wines that may be the price of

one or two cases of product. All of the costs described in this bill would be recovered at that point and every additional sale contributing to profit.

We do not believe it is unfair or unrealistic to require these vendors to pay a license fee or the same taxes that our local stores are required to. Or that they should be subject to the same kinds of penalties our members are. We urge a do pass on SB 2397.

Zinfandel

Alderbrook Vnyds & Winery 1998 OVOC Zinfandel
The perfect all-around Zinfandel. Plush and sexy enough to drink alone, but with plenty of lively acidity to pair with food.
$17.50/Bottle $15.75/Bottle/Case of 12 order # W-AL-Z98-0

Burgess 1992 Zinfandel
Spicy and intense, balanced and complex. Drink now or hold for 3 to 4 years.
$20.00/Bottle $18.00/Bottle/Case of 12 order # W-BU-Z92-0

De Loach 1998 California Zinfandel
Spicy, juicy, and very, very smooth. A great everyday Zin with most foods.
$12.00/Bottle $10.80/Bottle/Case of 12 order # W-DL-Z98C0

Dry Creek Vineyard 1997 Heritage Clone Zinfandel
Heritage Clone Zinfandel smashes the myth that vines must be old to make great wine. This nine-year-old vineyard produces a wonderful wine with blackberry, plum, and chocolate flavors are bolstered by earthy, dusty notes.
$15.00/Bottle $13.50/Bottle/Case of 12 order # W-DC-Z97H0

Miner Family 1997 Napa Valley Zinfandel
Software King Dave Miner and wife Emily hit the jackpot with this medium-bodied, bright, and complex Zin. Old friend (and lead-off hitter extraordinaire), Gary Brookman leads the winemaking for this "pay really close attention to this one" winery.
$20.00/Bottle $18.00/Bottle/Case of 12 order # W-M1-Z97N0

Pacific Star 1997 Reserve Zinfandel
Turn left at the huge golden gates of the City of Ten Thousand Buddhas at the end of Talmage Road east of Ukiah, where the Bartolomei Family has dry farmed 75 year old vines to find the fruit for this powerful, ripe Zinfandel.
$20.00/Bottle $18.00/Bottle/Case of 12 order # W-P2-Z97R0

Rosenblum 1997 Richard Sauret Vineyard Paso Robles Zinfandel
A big favorite of ours with that distinctive Paso Robles flavor of very intense raspberry and pepper. Kent Rosenblum hits the mark again!
$18.00/Bottle $16.20/Bottle/Case of 12 order # W-RB-Z97S0

Schuetz Oles 1997 Esther's Reserve Zinfandel
Excellent Napa Zin with zin-fully rich, full-bodied flavors. Even better the next day (if you can hold on to it that long!).
$23.00/Bottle $20.70/Bottle/Case of 12 order # W-SZ-Z97E0

Sky Vineyards 1996 Mt. Veeder Zinfandel
If Jimi Hendrix were a Zinfandel (and who knows, he may be), he would be this one from Sky with its hard driving, full-throttled, Mt. Veeder fruit. "Excuse me while I kiss the Sky."
$18.00/Bottle $16.20/Bottle/Case of 12 order # W-YS-Z96V0

Trentadue 1995 Zinfandel
Classic Zin with old vine characteristics of jammy, rich fruit, laden with black pepper and spice. A small percentage of Petite Sirah was added for color and balance to this robust, full-bodied wine.
$14.50/Bottle $13.05/Bottle/Case of 12 order # W-TD-Z95-0

Trio Winery 1997 Dry Creek Zinfandel
Three vineyards were behind this concentrated wine with the trademark berry and bramble characteristics of Dry Creek fruit. Juicy blackberry and blueberry mix with the dense, supple tannins to support a richly intense wine.
$18.00/Bottle $16.20/Bottle/Case of 12 order # W-TR-Z97D0

Wellington 1996 Casa Santinamaria Zinfandel
After five successful, fruitful (sorry) years of making wine from this Sonoma Valley vineyard, the '96 is the first [illegible] Wellington. Bright raspberry and blackberry are at the forefront of this seamlessly [illegible] wine. Arrivederci Casa Santinamaria!
$17.00/Bottle $15.30/Bottle/Case of 12 order # W-WE-Z96C0

More Ambrosia Collections

Stock Up On Really, Really Good Chardonnay Case
$268.00 Regular Price $334.00, Save 20!
What more could you ask for? A case of reserve quality Chardonnay for 20% off AND (nearly) enough wine to get you through all of your holiday entertaining.
2-'96 Mayacamas
2-'97 Chappellet Estate
2-'97 Kendall-Jackson Camelot Vineyard
2-'97 Silverado Limited Reserve
2-'97 Stag's Leap Wine Cellars Napa Valley
2-'97 Trefethen Estate
order # M-HSTOCK

Three Decade Cabernet Trio
$160.00 Regular Price $190.00, Save [illegible]!
Watch the years fly by with this triumphant trio of stellar Cabernets from Napa, including Francis (don't call me the Godfather) Coppola's Rubicon, Mr. (call me Bob) Mondavi's Napa, and Joe (my barrels are just fine) Heitz' Bella.
1-'79 Niebaum-Coppola Rubicon
1-'89 Robert Mondavi Napa Valley
1-'95 Heitz Cellar Bella Oaks Vineyard
order # M-CDECADE

The United State of Merlot Sampler
$165.00 Regular Price $194.00, Save 15%
No pomp and circumstance here, just good solid wine. Merlot is in good hands with this triad at the helm. And you should see their flag!
2-'97 Whitehall Lane Napa Valley
2-'97 Vine Cliff Napa Valley
2-'97 Fisher Vineyards RCF
order # M-MUNITED

Cellar Candidates Cabernet Collection
$449.00 Regular Price $528.00, Save 15!
We looked into our crystal Cabernet ball and saw a long, fruitful future for these youngsters (or was it a tall, dark stranger?). OK, here's what you do: 1) Buy this case. 2) Remove a bottle from your cellar each year. 3) Open and evaluate for future aging potential. (Yeah, we know, this scientific stuff can be strenuous.)
3-'96 Prize Vineyard
3-'96 Liparita Cellars Howell Mountain
3-'96 Fisher Kinds Family Estate
3-'97 Merryvale Reserve
order # M-CCELLAR

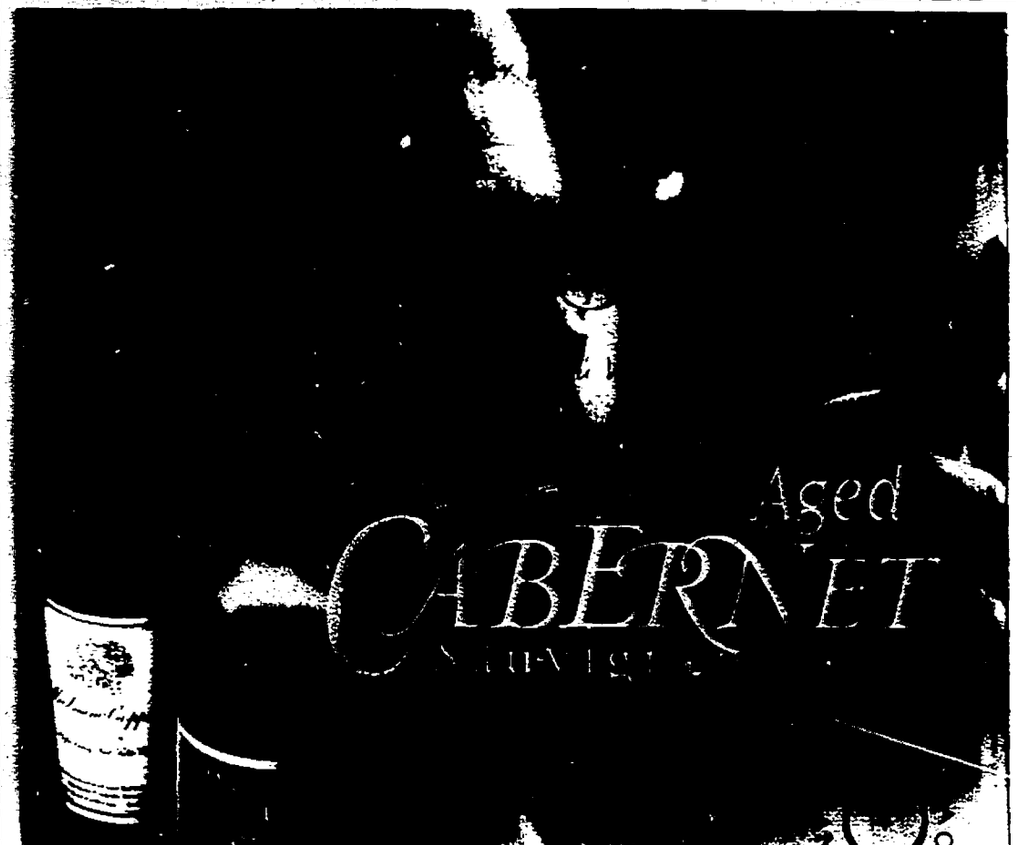
Regional Pinot Sampler
$98.00 Regular Price $127.90, Save 23%!
What do these three wine growing regions have in common? Cool weather and the fact that Pinot thrives in each. So what do we do? Package them all together in one tidy bundle for your appraisal. Cool, huh?
2-'97 Robert Stanley Las Carneros
2-'97 Wild Horse Central Coast
2-'98 De Loach Russian River Estate
order # M-PREGION

Built for Zin Case
$198.00 Regular Price $239.06, Save 17%!
Of all the guilty wine pleasures available, we often prefer to walk on the wild side with this California native. And we love the Zinfandel descriptors like brambly, peppery and jammy. Or as our friends at *WineX* magazine might put it: "A ZZ Top meets the Beastie Boys gig". Go ahead, wallow in the guilt.
2-'96 Mazzoco Dry Creek Valley
2-'97 La Crema Reserve
2-'97 Lambert Family Town Connection
2-'97 Rosenblum Cellars Richard Sauret Vineyard Paso Robles
2-'97 Schuetz Oles Esther's Reserve
2-'98 Alderbrook Vineyards and Winery OVOC
order # M-ZBUILT

Tiny Bubbles Trio
$99.00 Regular Price $120.00, Save 18%
Bubble your pleasure, bubble your fun with this terrific trio of magical, tickle your nose elixir. (How do they get those tiny bubbles in the bottle anyway?) Three of the best from California and France. (Where's Doc Ho when you need him?)
1-Domaine Chandon Etoile
1-'92 Delamotte Blanc de Blancs
1-'95 Schramsberg Blanc de Noir
order # M-STINY

1-800-435-2225 LET'S TALK WINE

For even more d[illegible]



...r to last 100 years.

...ebaum-Coppola 1980 or 1981 Rubicon

Upon release, these wines were huge with massive fruit and tannins, but age has begun to soften them. They remain big, rich, and intense with plenty of ripe fruit, but they are more balanced and complex now than they were upon release. The flavors are displaying cedar notes, mature currant, spice, chocolate, raspberry, plum and black cherry. These 19 and 20 year olds are still so big that it looks like Francis Coppola's dream may come true: Wines to last 100 years!! Amazing.

'80 - $105.00/Bottle $94.50/Bottle/Case of 12 order # W-NC-C80RO
'81 - $100.00/Bottle $90.00/Bottle/Case of 12 order # W-NC-C81RO 90 *Robert Parker 1989*

Heitz Cellar 1994 Trailside Cabernet Sauvignon *On the Cabernet trail.*

Joe Heitz helped bring international fame to Napa Valley wines with his superb Martha's Vineyard Cabernets. And his fabulous Cabernets from their 100-acre Trailside Vineyard in Rutherford take that fame to another level. Traditionally, Heitz' Cabernets are marked by cedar, currant, and spice notes, and this Cabernet is no different. The '94 Trailside is full and round with aromas and flavors of cherry, leather, cedar, mint, plum, pepper, licorice, and cocoa—traditional Heitz, and uniquely good!

$55.[redacted] $49.50/Bottle/Case of 12 order # W-HC-C94TO

...rdan 1988 Cabernet Sauvignon *Life's lubricator.*

Jordan characteristically produces supple, elegant and refined Cabs with a polished texture. The '88 in particular is vibrant and racy, with bright fruit, herb, currant, spice, and vanilla flavors. It's been aging nicely and is ready for consumption. Obviously, oil and gas executive Tom Jordan knew what he was doing when he switched lubrications!

$95.00/Bottle $85.50/Bottle/Case of 12 order # W-JV-C88-0

Oakford Vineyards 1988 or 1989 Cabernet Sauvignon *Killer combo!*

There's a new game in town, a winery with some very impressive women at the helm. Oakford Vineyards is owned by Carol Wilson, the General Manager is her daughter Melanie Mooers, and producing the wine is winemaker extraordinaire Heidi Peterson-Barrett. A very impressive combo! Speaking of combos, the 1988 is complex and medium-bodied with a smooth finish. Aromas of black cherry, licorice, coffee, and herbs emanate, while the flavors include chocolate, raspberry, and black cherry. The '89 still appears youthful with mouthwatering fruit and chocolate flavors in a full body. In both cases, a touch of elegance is just beginning to show through along with a slight mustiness, which is so characteristic of great aged Cabernet.

'88 - $57.00/Bottle $51.30/Bottle/Case of 12 order # W-OD-C88-0
'89 - $50.00/Bottle $45.00/Bottle/Case of 12 order # W-OD-C89-0

Grgich Hills 1992 or 1994 Napa Valley Cabernet Sauvignon *Electrifying!*

While Mike Grgich might have helped put Napa on the map in the 70s with his Chardonnay, he really electrifies us with his Cabernets. The '92 & '94 Cabernets are opulent, almost sexy, with bright berry and chocolate aromas and creamy flavors. They simply wow you with their finesse and elegance, displaying hints of cedar and spice and finish with a clean, polished aftertaste.

'92 - $64.00/Bottle $57.60/Bottle/Case of 12 order # W-GH-C92NO
'94 - $60.00/Bottle $54.00/Bottle/Case of 12 order # W-GH-C94NO

Frias Vineyards 1992 Cabernet Sauvignon *Famous neighbors.*

Frias Vineyards is surrounded by impressive neighbors—Far Niente, Freemark Abbey, Beringer, and Grace Family Vineyards among them. Needless to say, they have found an excellent place to grow grapes. This is a big, powerful Cabernet with incredible aging potential; the dark red color has not diminished over the years. It is a complex wine with aromas and flavors of chocolate, licorice, violets, and bright fruit.

$50.00/Bottle $45.00/Bottle/Case of 12 order # W-FG-C92-0

Far Niente 1994 or 1995 Cabernet Sauvignon *Now or later.*

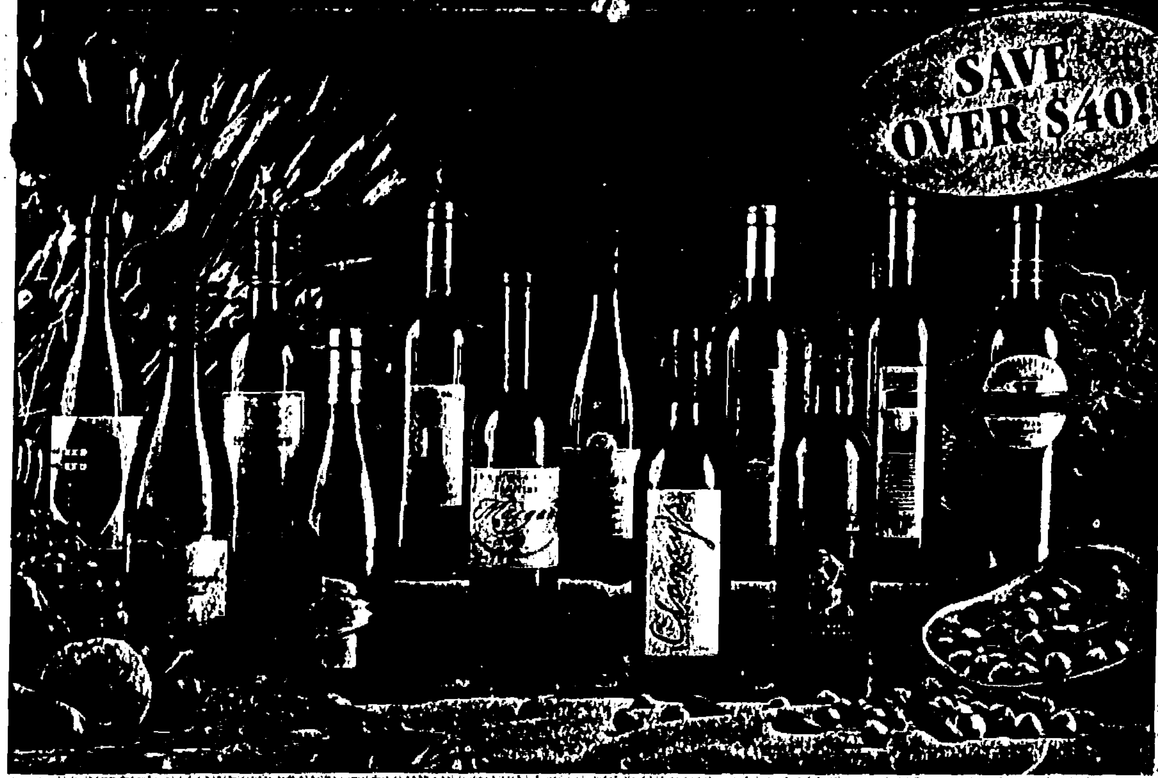
The '94 & '95 Cabernets are excellent examples of the high quality this winery is capable of producing. The '94 is rich, round, and smooth with aromas and flavors of tobacco, mint, cedar, and black fruit. The '95 vintage is powerful and intense, with flavors ranging from spicy black cherry, leather and cedar, to succulent, rich, and juicy dark fruit. Both Cabs have great aging potential, but the excellent balance makes them suitable for drinking now.

'94 - $150.00/Bottle $135.00/Bottle/Case of 12 order # W-FN-C94-0 91 *Wine Spectator 2/28/97*
'95 - $135.00/Bottle $121.50/Bottle/Case of 12 order # W-FN-C95-0 91 *Wine Enthusiast 9/97*
92 *Wine Spectator 8/15/98*

Heitz Cellar 1993 Napa Cabernet Sauvignon *Sibling rivalry?*

What has Martha's mint, Bella Oaks' elegance, and Trailside's intensity? The Heitz Napa! A delicious blend of the Heitz Cabernet vineyards, the '93 brims with the rich black cherry, currant, and famous mint of its siblings. Truly a harmonious family blend.

8 AUSTRALASIAN PREMIUM SAMPLER – $149.99



1. KING'S CREEK PINOT GRIS 1998. Similar to an Alsace version, this Australian wine has a musky citrus nose, ripe peach and green apple flavors, distinct back palate spices and well-balanced acidity. 91 Points, Wine Enthusiast.

2. KONRAD & CONRAD SAUVIGNON BLANC 2000. From an excellent Marlborough vintage, this wine stands out. This classy wine is weightier than most and has the requisite acidity along with loads of assorted juicy fruit flavors.

3. ST MARY'S SHIRAZ 1998. Cool-climate Shiraz from Coonawarra at its finest. Dark, light-capturing colors, aromatics of coconut and vanilla intermixed with spice, pepper and rich black fruits. Intense and serious.

4. CAIRNBRAE CHARDONNAY 1999. From New Zealand's Marlborough region, this complex, full-bodied wine has vibrant citrus, pear and almond aromas and flavors backed by American oak. Delicious with pinpoint balance.

5. TEMPLE BRUER MERLOT RESERVE 1997. A legend in Langhorne Creek, this winery is renowned for its eclectic range. This region has the daytime heat of the Vale and the long, cool evenings of Coonawarra. 100% organic.

6. MARGAN SEMILLON 2000. Made by Andrew Margan, the king of Australian Semillon, this polished wine is in a class by itself: wonderful aromatics and flavors, lifted notes of lemon grass, citrus peel and lime blossoms.

7. ZENITH PINOT NOIR MARLBOROUGH 1999. A surprising depth of rich, vibrant color. The red fruits are bright and vibrant: enticing strawberry, cherry and spice with a slight earthy character that will gain complexity with age.

8. PETER LEHMAN CLANCY'S RED BLEND 1998. A rich, very extracted wine with ripe red and black berry fruit, a touch of cedar and spicy oak, and a long and well-balanced finish. Rich and full. 92 pts, *Wine Spectator*.

9. TWELVE STAVES GRENACHE 1999. Harvested from a single vineyard in Australia's McLaren Vale, this wine is vibrant and spicy with rich flavors of cherry and raspberry, and an underpinning of peppery tones. Explosive!

10. PERRINI CABERNET SAUVIGNON 1998. In a very fruit-forward style, this Cab is soft-textured with lifted black fruits of cherry, blackberry and currant. Fine-grained tannins and driving fruit intensity reflect a big, open personality.

11. MUDDY WATER PINOT NOIR 1999. Nothing murky about this wine made by Belinda Gould, previously of California. It shows pure bright fruit with deftly interwoven oak treatment. Burgundian style in this Kiwi wine.

12. KURTZ SHIRAZ 1998. Showing Barossa character, this wine was harvested from 40-year-old vines. Ripe and round with assorted black fruits of plum, cassis and raspberry and a chocolaty edge on the finish. Lush and mouthfilling. Tiny production.

9 SOUTH AMERICAN SAMPLER

3-Pack – $39.99

1. NORTON MALBEC 1997. [illegible]

2. TRAPICHE FOND DE CAVE CABERNET SAUVIGNON 1997. A traditional style from [illegible]

3. MONTES ALPHA CHARDONNAY 199[illegible]

10 SOUTHERN HEMISPHERE SAMPLER

3-Pack – $39.99

[illegible]

11 SOUTHERN HEMISPHERE COLLECTORS' *6-Pack* – $149.99

1. LUIS FELIPE EDWARDS RESERVE CABERNET SAUVIGNON 1997. A Chilean winery on the move with a new mission statement. With the help of consulting oenologist Brian Croser out of Australia, the emphasis is on cleaner, brighter [illegible]

2. RUST EN VREDE ESTATE 1997. Owner [illegible] is planning to concentrate all his considerable efforts on this flagship blend. [illegible]

3. ARTHUR'S CREEK CABERNET SAUVIGNON 199[illegible]. [illegible] this small producer makes his first appearance [illegible]

4. HIDDEN VALLEY PINOTAGE 199[illegible]

5. [illegible] SHIRAZ 199[illegible]

6. MOUNTFORD CHARDONNAY 199[illegible]

Presented by
Dan Kuntz

TESTIMONY OF NORTH DAKOTA WHOLESALE LIQUOR DEALERS ASSOCIATION

During the 1999 Legislative Session Senate Bill 2216 was introduced to prohibit the direct shipment of alcoholic beverages from outside North Dakota to persons in North Dakota. Opponents of SB 2216 wanted individuals to have the right to order alcoholic beverages, primarily certain wines that were unavailable in North Dakota, from out-of-state sources.

SB 2216 was amended and later enacted at section 5-01-16 of the Century Code to allow individuals to order up to 12 bottles of wine or liquor or a case of beer per month from outside the state for personal use. Although SB 2216 was amended to allow direct shipment of alcoholic beverages for personal use, the amendment did not require the out-of-state shippers to pay the North Dakota taxes or comply with the other regulatory requirements that apply to North Dakota wholesalers and retailers selling alcoholic beverages in North Dakota. Under the current law, a manufacturer or retailer could essentially operate a virtual bottle shop serving North Dakota customers from outside North Dakota without paying any of the taxes or meeting any of the other North Dakota regulatory requirements as long as they shipped no more than a case of liquor per month to any individual customer.

SB 2397 would amend N.D.C.C. § 5-01-16 to add the following requirements on direct shippers of alcoholic beverages:

1. The direct shipper must be a licensed manufacturer or retailer in its place of domicile.

- This will assure the manufacturer or retailer is a legitimate business enterprise and its product is subject to some level of health and safety inspection and approval.

2. The direct shipper must obtain an annual direct shipper license from North Dakota and pay an annual license fee to North Dakota of $1,000.

- The license fee compares to a $500 license fee required of North Dakota alcoholic beverage manufacturers, a $1,000 license fee for liquor wholesalers, a state retail license fee of between $50 to $150 and local retail license fees of between $200 to $2,000.

3. The direct shipper must pay the North Dakota wholesale and retail taxes.

- The North Dakota wholesale tax on wine ranges from $.50 to $1.00 per wine gallon. Wholesale liquor taxes currently generate over $10 million per biennium in North Dakota.

- The retail tax on alcoholic beverages is 7% of gross sales. North Dakota retailers are also be subject to additional local taxes.

4. The direct shipper must file quarterly reports with North Dakota.

- The reporting requirement would assure compliance with North Dakota law including payment of taxes. North Dakota wholesalers and retailers must file these reports on a monthly basis.

SB 2397 is patterned after similar legislation from Louisiana. (See Attachment 1). The main components of the Louisiana statute were reached as a result of a compromise between the Wine Institute and Louisiana wholesalers, administrators and legislators.

A comparison of SB 2397 and the similar provisions of the Louisiana law are as follows:

	2397	Louisiana Law
Licensed in state of domicile	Yes	Yes
Direct shipment & license fee	$1,000	Originally $100, now $150 for manufacturers and $1,500 for retailers
Payment of applicable state taxes	Yes	Yes
Report filed with state	Quarterly	Originally annually, now monthly
Civil penalty	$25,000	Originally $10,000 for everyone, now $25,000 for retailers
Notification of state & federal authority	Yes	Yes
Shipment limitations	144 bottles per consumer per year	65 bottles per consumer per year

SB 2397 will not prohibit the direct shipment of alcoholic beverages. Even with the requirements of SB 2397, North Dakota will still be one of the more liberal states in allowing the direct shipment of alcoholic beverages as approximately 30 states prohibit direct shipments either entirely or by common carrier. SB 2397 will simply subject direct shippers to some of the same requirements that apply to North Dakota wholesalers and retailers.

The North Dakota Wholesale Liquor Dealers Association requests your support of SB 2397.

STATE OF LOUISIANA
DEPARTMENT OF REVENUE

[redacted]
Governor

CYNTHIA BRIDGES
Secretary

ATTENTION: Out of State Shippers of Alcoholic Beverages

The 1998 Regular Session of the Louisiana Legislature passed Act 71, which repealed R. S. 14:93.20 included provisions for authorization of wholesalers, retailers and producers to ship alcoholic beverages directly to Louisiana consumers for their personal consumption.

An application form is enclosed for any manufacturer or retailer wishing to engage in the sale or shipment of sparkling or still wine to Louisiana consumers for their personal use. This application is renewable annually with a fee of $150.00 for manufacturers and $1,500.00 for retailers; the effective date will be the date the application is approved. The renewal date will be July 1 of subsequent years.

Additionally, any authorized manufacturer or retailer who makes sales or shipments of sparkling or still wines to Louisiana consumers is required to file monthly, the "Louisiana Tax Return for Sparkling and Still Wines Shipped Direct to Consumers" and the "Louisiana Sales Tax Return". You will be required to indicate all pertinent information concerning shipments and must pay all applicable taxes for such shipments. The reports are due within 20 days after the close of the preceding month. These forms are sent out monthly. If you do not receive this form by the first of the month in which the return is due, please contact this office immediately.

If you have any questions concerning this information, please contact our office.

Excise Taxes Division
Taxpayer Support and Services Section
(225) 925-7652

cf

Post Office Box 201 · Baton Rouge 70821-0201
Telephone 225-925-7537 · 225-922-7538 (TDD)
An Equal Opportunity Employer

Attachment 1

Requirements for direct shipments of wines to Louisiana consumers

Direct shipments to Louisiana consumers of sparkling wines or still wines must meet all of the following conditions:

1. The required annual registration tax must have been paid, and written authorization to make direct shipments must have been received from the Department of Revenue.

2. The consumer must be 21 years of age or older.

3. The sparkling wine or still wine must be for the consumer's personal consumption.

4. The total amount of sparkling wine or still wine shipped to any single household address must not exceed 48 bottles of 750 milliliters per calendar year.

5. The manufacturer or retailer making direct shipments to Louisiana consumers must hold a valid license issued by its state of domicile. A copy of that license must be provided to the Louisiana Department of Revenue.

6. The package in which the sparkling wine or still wine is shipped must be prominently labeled as containing beverage alcohol.

7. All packages in which sparkling wine or still wine is shipped must be received by a person 21 years of age or older.

8. Each package in which sparkling wine or still wine is shipped must contain an invoice indicating the date of the shipment, and it must give a full and complete description of all items included in the shipment, including the price.

9. All excise and sales and use taxes assessed by the State of Louisiana on sparkling wine or still wine shipped direct to Louisiana consumers must be paid monthly by a certified check accompanying a monthly return and copies of all invoices transmitted with direct shipments for that month.

10. The seller or shipper who is a manufacturer must not be a party to any direct or indirect agreement with a Louisiana registered wholesale dealer that grants the wholesale dealer the right to purchase and sell any sparkling wine or still wine produced by the manufacturer. However, sales of sparkling wine or still wine perfected on the premises of the manufacturer and completed by shipment to a consumer in Louisiana are allowed.

LEVEL 1 - 7 OF 25 DOCUMENTS

LOUISIANA STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2000 SUPP., (1999 SESSION) ***

LOUISIANA REVISED STATUTES
TITLE 26. LIQUORS--ALCOHOLIC BEVERAGES
CHAPTER 2. ALCOHOLIC BEVERAGE CONTROL AND TAXATION
PART III. GALLONAGE TAX

<=1> GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

La. R.S. 26:359 (2000)

359. Importation of alcoholic beverages by wholesalers only

A. Except as provided in Subsection B of this Section, no alcoholic beverages as defined in R.S. 26:241(1) produced or manufactured outside of this state shall be sold or offered for sale in Louisiana, or shipped or transported into the state, except to the holder of a wholesaler's permit. Delivery of alcoholic beverages produced or manufactured outside of this state shall be made at the place of business of the wholesaler shown on the wholesaler's permit, and must be received and warehoused by the wholesaler at that place of business, where such alcoholic beverages shall come to rest before delivery is made to any retailer.

B. (1) Notwithstanding the provisions of Subsection A of this Section, sparkling wine or still wine may be sold and shipped directly to a consumer in Louisiana by the manufacturer or retailer of such beverage domiciled outside of Louisiana, provided both that all taxes levied in R.S. 26:341(B) have been paid in full and that all of the following apply:

(a) The consumer is twenty-one years of age or older.

(b) The sparkling wine or still wine is for that consumer's personal consumption.

(c) The total amount of sparkling wine or still wine shipped to any single household address does not exceed forty-eight seven hundred fifty milliliter bottles per calendar year.

(d) The manufacturer or retailer engaging in such direct sales holds a valid manufacturer's or retailer's license issued by the state of its domicile

(e) The package in which the sparkling wine or still wine is shipped is prominently labeled as containing beverage alcohol.

(f) The package in which such sparkling wine or still wine is shipped is received by a person twenty-one years of age or older.

(g) The package contains an invoice indicating the date of the shipment, providing a full and complete description of all items included in the shipment, and stating the price thereof.

(h) The manufacturer or retailer has complied with the provisions of Subsections C and D of this Section.

(i) The seller or shipper who is a manufacturer is not a party, directly or indirectly, to any agreement in which a wholesaler licensed by the state of Louisiana has been granted the right to purchase and to sell any sparkling wine or still wine produced by the manufacturer. This does not include any sale of sparkling wine or still wine perfected on the premises of the manufacturer and completed by shipment to a consumer in Louisiana otherwise made in accordance with the provisions of this Subsection.

(2) For all purposes under this Title, the point of sale for transactions made pursuant to this Subsection shall be the place of domicile of the manufacturer or retailer. Delivery to the consumer in Louisiana shall be deemed to have occurred upon the placing of such beverages into the possession of a common carrier for transport into the state of Louisiana.

C. (1) Any manufacturer of sparkling wine or still wine engaging in the direct sale and shipment of such beverages under the provisions of Subsection B of this Section shall make an annual application to the secretary of the Department of Revenue for authority to make such shipments and shall pay the annual tax of one hundred fifty dollars levied by R.S. 26:341(B)(1) prior to selling or shipping any sparkling wine or still wine into the state of Louisiana.

(2) Any retailer of sparkling wine or still wine engaging in the direct shipment of such beverages under the provisions of Subsection B of this Section shall make an annual application to the secretary of the Department of Revenue for the authority to make such shipments and shall pay the annual tax of one thousand five hundred dollars levied by R.S. 26:341(B)(2) prior to selling or shipping any sparkling wine or still wine into the state of Louisiana.

(3) The annual application for authority to make such shipments shall be in a written form specified by the secretary of the Department of Revenue, and shall include the express agreement of the manufacturer or retailer to pay all excise and sales and use taxes assessed by the state of Louisiana on the sparkling wine or still wine sold and shipped pursuant to Subsection B of this Section. A copy of the current manufacturer's or retailer's license issued to such manufacturer or retailer by the state in which the manufacturer or retailer is domiciled shall be submitted to the secretary of the Department of Revenue with the application. No other permit or license shall be required of any such manufacturer or retailer in connection with the direct shipment of sparkling wine or still wine pursuant to Subsection B of this Section.

D. Any manufacturer or retailer who sells and ships directly to a consumer in Louisiana pursuant to Subsection B of this Section shall, within twenty days after the end of each calendar month, file with the secretary of the Department of Revenue a statement showing the total number of bottles sold and shipped during the preceding calendar month, the sizes of those bottles, the name brand of each sparkling wine or still wine included in such shipments, the quantities

of each sparkling wine or still wine included in such shipments, and the price of each item included in such shipments. All excise and sales or use taxes due to the state of Louisiana on the sparkling wine or still wine sold and shipped pursuant to Subsection B of this Section shall be remitted by certified check at the time of the filing of the required statement and copies of all invoices transmitted with each such shipment shall be attached to the statement. This statement shall be made on forms prescribed and furnished by the secretary of the Department of Revenue and shall include such other information as the secretary of the Department of Revenue may require.

E. The provisions of R.S. 26:85, 142, 143, 348 through 350, 360, 364, and 365 shall not apply to manufacturers and retailers authorized to engage in the direct sale and shipment of sparkling wine or still wine under the provisions of Subsection B of this Section.

F. Any retailer of alcoholic beverages who violates any provision of this Section shall be subject to a civil penalty in the amount of twenty-five thousand dollars. Any retailer that sells and ships directly to consumers in Louisiana pursuant to Subsection B of this Section shall, on the application for authority to make such shipments filed with the secretary of the Department of Revenue in accordance with Subsection C of this Section, acknowledge in writing the civil penalty established in this Subsection and shall consent to the imposition thereof upon violation of this Section. The secretary may initiate and maintain a civil action in a court of competent jurisdiction to enjoin any violation of this Section and to recover the civil penalty established in this Subsection, together with all costs and attorney fees incurred by the secretary incidental to any such action.

G. Upon determination by the secretary of the Department of Revenue that an illegal sale or shipment of alcoholic beverages has been made to a consumer in Louisiana by either a manufacturer or retailer of such alcoholic beverages, the secretary shall notify both the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and shall request those agencies to take appropriate action.

SB 2397
Testimony in Opposition to SB 2397
Feb 9, 2001 10:15am
Political Subdivisions Committee

Chairman Cook and Members of the Committee

My name is Stacy Staiger. I am standing in today for my mother, Bonnie Larson Staiger who has been called out of town on business. Her testimony is this:

I am not offering this testimony in my usual capacity as a lobbyist. For this bill, I am a private citizen and wine enthusiast who supports our area liquor retailers with 99% of my purchases.

Several times a year I travel to other parts of the country and always plan stops at area boutique wineries. I've found them in such unusual places as suburban Virginia and southwest Florida. I seldom return without a bottle or two that is not available on the retailer's shelves back here at home. Occasionally, I may have a case or partial case shipped to me.

Last session, the liquor distributors and a handful of retailers were behind a bill that was similar to this one and the state's wine collectors rose up against it. In that battle we struck a compromise that the liquor people were very happy with. We thought we had a deal and we played fair. Little did we know that they planned all along to come here again and ask for even more than they did last session.

So here they are again. And again we charge that the liquor people who support this bill are overzealous where no problem exists. This bill is not about collecting taxes because the total volume from these purchases is miniscule. At the very least they are attempting to kill a fly with a front-end loader.

Is their motivation as simple as greed or is it restraint of trade?

It is my personal opinion that this bill is unacceptable and that no amendments or compromises are acceptable. We had a deal. I ask that you give this bill a DO NOT PASS recommendation.

Bonnie Larson Staiger
419 East Brandon Drive
Bismarck ND 58503

701-223-3184

3-16-01

Presented by
Dan Kuntz
Before the
House Political
Subdivisions Committee

TESTIMONY OF NORTH DAKOTA WHOLESALE LIQUOR DEALERS ASSOCIATION ON ENGROSSED SENATE BILL NO. 2397

During the 1999 Legislative Session Senate Bill 2216 was introduced to prohibit the direct shipment of alcoholic beverages from outside North Dakota to persons in North Dakota. Opponents of SB 2216 wanted individuals to have the right to order alcoholic beverages, primarily certain wines that were unavailable in North Dakota, from out-of-state sources.

SB 2216 was amended and later enacted at section 5-01-16 of the Century Code to allow individuals to order up to 12 bottles of wine or liquor or a case of beer per month from outside the state for personal use. Although SB 2216 was amended to allow direct shipment of alcoholic beverages for personal use, the amendment did not require the out-of-state shippers to pay the North Dakota taxes or comply with the other regulatory requirements that apply to North Dakota wholesalers and retailers selling alcoholic beverages in North Dakota. Under the current law, a manufacturer or retailer could essentially operate a virtual bottle shop serving North Dakota customers from outside North Dakota without paying any of the taxes or meeting any of the other North Dakota regulatory requirements as long as they shipped no more than a case of liquor per month to any individual customer.

Engrossed SB 2397 would amend N.D.C.C. § 5-01-16 to add the following requirements on direct shippers of alcoholic beverages:

1. **The direct shipper must obtain an annual direct shipper permit from North Dakota and pay an annual fee to North Dakota of $50.00.**

   - **The license fee compares to a $500 license fee required of North Dakota alcoholic beverage manufacturers, a $1,000 license fee for liquor wholesalers, a state retail license fee of between $50 to $150 and local retail license fees of between $200 to $2,000.**

2. The direct shipper must pay the North Dakota wholesale and retail taxes.

   - The North Dakota wholesale tax on wine ranges from $.50 to $1.00 per wine gallon. Wholesale liquor taxes currently generate over $10 million per biennium in North Dakota.

   - The retail tax on alcoholic beverages is 7% of gross sales. North Dakota retailers are also be subject to additional local taxes.

3. The direct shipper must file reports with North Dakota.

   - The reporting requirement would assure compliance with North Dakota law including payment of taxes. North Dakota wholesalers and retailers file similar reports.

SB 2397 was amended in the Senate to address objections raised by the Wine Institute and other opponents. We have since met with the Wine Institute and have drafted proposed amendments to Engrossed SB 2397 which we would like to present for the Committee's consideration. The amendments would make the following changes:

1. The direct shipper must be licensed in its state of domicile. (Page 2, lines 1-2)

   - This assures the direct seller is a legitimate business enterprise and its product is subject to some level of health and safety inspection and approval.

   - A similar provision was removed by the Senate amendments to SB 2397 – we believe this change was an unintended result of the amendments.

2. The license fee for retailers would increase to $1,000. The license fee for manufacturers such as wineries would remain at $50. (Page 2, lines 8-9)

   - The out of state retailers have the ability to ship any alcoholic beverage to any point in the state.

3. The reports filed by the direct shipper would not need to include the price of the product or the customer's name and address but must reflect the date and quantity of each shipment. (Page 2, lines 13-14)

   - The change would assure customer confidentiality, however, the information could be obtained by the regulatory agency through audits. Including the date and quantity of each shipment in the reports will demonstrate obvious violations.

4. The amendment removes the specific civil penalty provisions but clarifies the direct shipper is subject to the reporting and tax penalty provisions applicable to wholesalers and manufacturers. (Page 2, lines 15-19)

   - Direct shippers would be subject to the same penalty provisions as North Dakota wholesalers. In addition, any specific requirements applicable to sales taxes would also apply to the direct shipper.

5. The amendment clarifies that the regulatory agency's authority to take action against a direct shipper that is in violation of North Dakota's law is discretionary rather than mandatory.

SB 2397 will not prohibit the direct shipment of alcoholic beverages. Even with the requirements of SB 2397, North Dakota will still be one of the more liberal states in allowing the direct shipment of alcoholic beverages as approximately 30 states prohibit direct shipments either entirely or by common carrier. SB 2397 will simply subject direct shippers to some of the same requirements that apply to North Dakota wholesalers and retailers.

The North Dakota Wholesale Liquor Dealers Association requests your support of SB 2397.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2397

Page 2, line 1, overstrike "as described"

Page 2, line 2, overstrike "under subsection 1 or 2" and insert immediately thereafter "holding a valid manufacturer's or retailer's license issued by the state of its domicile"

Page 2, line 7, delete "or retailer"

Page 2, line 8, after "shipping" delete "permit" and insert "license"

Page 2, line 9, after the period insert "A retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipment license from the state treasurer and pay an annual fee of one thousand dollars within thirty days of making the first shipment."

Page 2, line 13, delete "including invoices for each shipment" and after "showing" insert "for each shipment" and delete "the price of the product"

Page 2, line 14, after the first "and" insert "the date" and delete "the customer's name and address." Confidentiality.

Page 2, line 15 delete "A manufacturer or retailer of alcoholic beverages who violates" and insert "A direct shipper is subject to section 5-03-06."

Page 2, remove lines 16 through 18

Page 2, line 19, delete "of that civil penalty upon violation of this subsection."

Page 2, line 20, delete "a civil" and insert "an"

Page 2, line 21, delete "to recover the civil penalty provided in this" and insert "may request award of" discretion instead of mandated

Page 2, line 22, delete "subsection, together with"

Page 2, line 23, delete "treasurer"

Page 2, line 26, after "treasurer" delete "shall" and insert "may"

Page 2, line 29, after "and" delete "shall" and insert "may"

Page 3, line 22, overstrike "as described"

Page 3, line 23, overstrike "under subsection 1 or 2" and insert immediately thereafter "holding a valid manufacturer's or retailer's license issued by the state of its domicile"

Page 3, line 28, delete "or retailer"

Page 3, line 29, after "shipping" delete "permit" and insert "license"

Page 3, line 30, after "dollars" delete "before" and insert "within thirty days of" and after "the" delete "sale or" and insert "first" and after the period insert "A retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipment license from the state tax commissioner and pay an annual fee of one thousand dollars within thirty days of making the first shipment."

Page 4, line 3, delete "including invoices for each shipment" and after "showing" insert "for each shipment" and delete "the price of the"

Page 4, line 4, delete "product" and after the first "and" insert "the date" and delete "the customer's name and address."

Page 4, line 5 delete "A manufacturer or retailer of alcoholic beverages who" and insert "A direct shipper is subject to section 5-03-06."

Page 4, remove lines 6 through 8

Page 4, line 9, delete "the imposition of that civil penalty upon violation of this subsection."

Page 4, line 10, delete "a civil" and insert "an"

Page 4, line 11, delete "to recover the civil penalty"

Page 4, line 12, delete "provided in this subsection, together with" and insert "may request award of"

Page 4, line 13, delete "tax commissioner"

Page 4, line 16, after "commissioner" delete "shall" and insert "may"

Page 4, line 20, after "and" delete "shall" and insert "may"

TESTIMONY ON SB 2397
BILL SHALHOOB
ND HOSPITALITY ASSN

Mr. Chairman and members of the committee, the North Dakota Hospitality Assn. and its 500 members support SB 2397. We believe it corrects practices that go directly to the issues of competitiveness and fair play. The bill as amended also differentiates between two distinct sectors of the liquor industry and addresses each in a suitable manner, the manufacturer who sells his product in small quantities and the retailer who is in direct competition with our members.

As background it is fair to say that sales of liquor and the liquor business have always been treated differently than any other commodity. Generally, it is a privilege, not a right, to have a liquor license. Anybody who desires to can open a clothing, grocery, or furniture store. All that's needed is a desire to compete, some capital, and a few permits. Off sale liquor licenses are restricted in quantity by a city's population and are the only business license that has a market value that rises and falls with the economy. It is one of the few products the State has seen fit to put an excise tax on, and we as retailers pay an additional 2% sales tax on our sales, which I believe is the only product in the state to do so. For this privilege of doing business, we also pay substantial state and local license fees. Average costs for these fees are in excess of $3,000.00 per year. Trade sources have estimated sales of liquor over the internet somewhere between 1.0 and 3.5 billion dollars per year. Using the smaller number and applying it on a per capita basis to North Dakota, sales would be estimated at one million dollars per year. Over $100,000.00 of tax revenue is being lost to the state each year.

SB 2397 is a step toward correcting the unfair balance that exists in today's

market place. Our retailers are restricted by statute to selling only in the political subdivision in which their license is issued. For the modest fee in this bill a retailer gets the entire state to sell to. Our retailers are not allowed home deliveries, yet the retailers targeted here can deliver directly to every home in the state. Attached to this testimony are several pages from www.ambroslawine.com as an example of the retail activity SB 2397 targets. If a company can sell $1,200.00 of product at a 75% cost of merchandise, they would realize a $400.00 gross profit. In the case of finer wines that may be the price of one or two cases of product. All of the costs described in this bill would be recovered at that point and every additional sale contributing to profit.

We do not believe it is unfair or unrealistic to require these vendors to pay a license fee or the same taxes that our local stores are required to. Or that they should be subject to the same kinds of penalties our members are. We urge a do pass on SB 2397.

TESTIMONY
SB 2397
March 16, 20001
House Political Subdivisions Committee

NDBWA
PO Box 7401
Bismarck, ND 58507
(701) 258-8098

Janet Demarais Seaworth
North Dakota Beer Wholesalers Association

Mr. Chairman, members of the committee, my name is Janet Seaworth, I am the Executive Director of the North Dakota Beer Wholesalers Association. There are eighteen beer wholesalers in North Dakota, all family owned and operated wholesalers; many in their third generation of family ownership.

NDBWA supports SB 2397, which will license out-of-state distributors. For beer wholesalers, this is an issue of fairness. The alcohol beverage industry in North Dakota, as in all states, is a heavily regulated industry. Where, when, and to whom one may sell alcoholic beverages is strictly regulated. And the products are heavily taxed. North Dakota wholesalers alone pay more than 2.5 million dollars in wholesale taxes each year (that's about $150,000 per wholesaler) for the privilege of distributing malt beverages in North Dakota. They also pay license fees ($200 per year) and they must file monthly shipment reports and pay taxes on a monthly basis. If they don't, they are subject to civil and criminal penalties:

Failure to pay tax when due: add 5% per month of tax unpaid until paid
Failure to file report: $100 for each day reports delinquent
Filing fraudulent return: amount equal to tax evaded is added to tax due and wholesaler guilty of class C felony
Violation of any provision of Title 5: license revocation/Class B misdemeanor

Currently, out of state shippers distributing alcoholic beverages in North Dakota bear none of these responsibilities. In effect, current state law discriminates against in state distributors and provides an unfair advantage and immunity from state regulation to out-of-state distributors. We think its fair that out-of-state distributors have the same or similar responsibilities as in-state distributors. At the very least, they should be licensed, they should pay taxes, and they should report to the state.

We would urge this committee to support SB 2397, providing for licensing, payment of taxes, and reporting requirements for out-of-state distributors. Thank you.

Listed below are proposed amendments to Senate Bill 2397 relating to the marketing of alcoholic beverages in North Dakota.

I request that the following amendments be added to SB 2397.

1. Amendment to NDCC 5-02-01. This prohibits a person who holds several retail alcohol beverage licenses for stores of various sizes from buying all its products under one license and then transferring products to the stores which would not otherwise be able to buy the product in quantity discounts. This puts all retailers on a level playing field and was the ruling of the Attorney General's office until just a few years ago.

PROPOSED AMENDMENT

5-02-01. State and local retail license required -- Prohibited sales or transfers-Penalty - Exception. Except as provided in section 5-02-01.1, any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and the governing body of any city, or board of county commissioners if said business is located outside the corporate limits of a city, is guilty of a class A misdemeanor. This license does not allow a licensed alcoholic beverage retailer to make sales or transfers of any alcoholic beverages to another licensed alcoholic beverage establishment regardless of whether or not the licensed establishment is owned by the same person, such a violation is a class A misdemeanor. This section does not apply to public carriers engaged in interstate commerce.

2. Add a new section to NDCC 5-03. This amendment would require liquor wholesalers to treat all their customers the same as far as product promotions, quantity discounts and availability of products. This is the current law for beer wholesalers. Liquor wholesalers should be required to do the same for their customers.

PROPOSED AMENDMENT

NEW SECTION TO NDCC 5-03

Discrimination prohibited. A liquor wholesaler must offer all of its products to all licensed alcoholic beverage retailers in the state and may not refuse to sell any of its products to these retailers. No liquor wholesaler may discriminate among the licensed alcoholic beverage retailers in the state in the price of its products sold to the retailers or in price promotions.

Polar Package Place

2150 East Thayer Ave.
Bismarck, N.D. 58501

Phone 701-258 8770
Fax 701-258-2367 daytime only

opposed

March 15, 2001

Mr. Chairman and committee members.

My name is Brian Hill, I am the owner of Polar Package Place, a retail liquor store in Bismarck. I would like to explain to all of you a little history of the liquor and beer industry during and afterwards of the 13 yrs of prohibition. There were families like the Seagrams, Gallo and Sebastiani that continued to make their products legally. These products were made for spiritual and medicinal needs and of course the bootleggers.

When our Congress repealed prohibition, they gave the power to regulate the distribution of alcoholic products to the states. Funny thing these states were not prepared so they went to these same big companies and former bootleggers to help set the rules. These same bootleggers whom had 13 years of experience to perfect their systems made the rules. It is obvious who's butt they wanted covered and their thoughts on competition. (remember the St. valentines massacre)

Well today we have 2 families that distribute all of the liquor and wine throughout our state. They and the 3 Families that own the majority of liquor stores in this state want to protect their monopolies. Any fees, licenses or fines on the shipment of products into this state will effectively kill the chances of citizens of this state to have a choice. The same people who purchase these hard to find items by mail-order or the Internet are all ready paying a fee, its called freight, about $50.00 on a case of wine. If you vote to pass this bill you will be killing the bill passed last session and passed unamanously by both houses and was agreed to by their side. You will be giving these 5 families the total monopoly on the products they choose. Consumers will eventually be forced to pay the price of no competition. Should we bow down to the power of greed, I pray not. Thank You. Brian J. Hill

3-16-01
opposed

Testimony Before The
HOUSE POLITICAL SUBDIVISIONS COMMITTEE
regarding Senate Bill 2397

Chairman Froseth, Vice Chair Severson, and Members of the House Political Subdivisions Committee, good morning. I am George O'Neill, a resident of North Dakota, living in Fargo. I am here representing a group of over 60 wine enthusiasts, called the Valley Wine Society. We are in opposition to SB 2397 which, in effect, prevents us and other wine enthusiasts from purchasing wines from small "boutique" wineries. I am a collector of fine wines. I enjoy collecting unusual and rare wines from small winemakers. Just like other forms of collecting, the joy is in obtaining something that not everyone has. "Boutique" wineries are those which produce small quantities of wine, often of high quality. Small wineries do not sell to North Dakota dealers or distributors, but rather to individual buyers. I am opposed to SB 2397 because this legislation would prevent me from buying wines directly from a winery unless the winery was willing to purchase a $50 permit and file cumbersome paperwork. A small winery is not going to purchase such a permit or file such paperwork for one customer. If I want to buy, say 3 bottles from Calafia, I certainly don't want the winery to pass on the $16.66 per bottle permit fee on to me. And even if I were willing to reimburse the winery for their permit, would they be willing to file all the paper work just to sell 3 bottles of wine? I don't think so.

Why is wine being treated differently from other goods? North Dakotans can buy books, clothing, food, computers, appliances, and just about anything from mail order catalogues or over the Internet and have it shipped to them from out-of-state. There are no permits required or papers to file. Why are wine collectors being discriminated against? It simply is not fair.

If this bill is about collecting sales taxes, then let us have a bill that provides for such tax collection, not a bill which in essence prohibits citizens from purchasing hard-to-find items not available in North Dakota.

If this bill is about protecting one segment of the North Dakota economy at the expense of people like me who enjoy rare wines, then it is a discriminatory bill and it should be defeated.

I ask you to oppose Senate Bill 2397.

Thank you.

George W. O'Neill, Ph.D.
3507 Par Street
Fargo, ND 58102

Opposed
3-16-01

SB 2397
Testimony in Opposition to SB 2397
Mar 16, 2001
Political Subdivisions Committee

Chairman Froseth and Members of the Committee

My name is Bonnie Larson Staiger. My testimony is being written and submitted in my absence.

I am not offering this testimony in my usual capacity as a lobbyist. For this bill, I am a private citizen and wine enthusiast who supports our area liquor retailers with 99% of my purchases.

Several times a year I travel to other parts of the country and always plan stops at area boutique wineries. I've found them in such unusual places as suburban Virginia and southwest Florida. I seldom return without a bottle or two that is not available on the retailer's shelves back here at home. Occasionally, I may have a case or partial case shipped to me.

Last session, the liquor distributors and a handful of retailers were behind a bill that was similar to this one and the state's wine collectors rose up against it. In that battle we struck a compromise that the liquor people were very happy with. We though we had a deal and we played fair. Little did we know that they planned all along to come here again and ask for even more than they did last session.

So here they are again. And again we charge that the liquor people who support this bill are overzealous where no problem exists. This bill is not about collecting taxes because the total volume from these purchases is miniscule. At the very least they are attempting to kill a fly with a front-end loader.

Is their motivation as simple as greed or is it restraint of trade?

It is my personal opinion that this bill is unacceptable and that no amendments or compromises are acceptable. We had a deal. I ask that you give this bill a DO NOT PASS recommendation.

Bonnie Larson Staiger
419 East Brandon Drive
Bismarck, ND 58503

701-223-3184

TESTIMONY
SB 2397
Bob Hanson, Wine Institute
House Political Subdivisions Committee
March 16, 2001

Good morning Chairman Froseth and members of the committee. I am Bob Hanson, representing the Wine Institute. I am here today in opposition to SB 2397.

Legislation passed last session, which the Wine Institute supported, as did the liquor wholesalers, beer wholesalers and beverage alcohol retailers, put into effect strong measures to keep alcohol beverages purchased by individuals from out of state sources, for personal consumption, from getting into the hands of underage individuals. This same legislation allowed adults of legal drinking age to purchase a limited amount of legal alcohol products from out of state sources without being in violation of state law. That became law through a lot of give and take on both sides of the issue. The Wine Institute believes in honoring its commitment to that agreement and did not request legislation this session to upset the compromise agreed to last session.

A. WHERE'S THE PROBLEM?

1. No reported violations in sale to minors, or adults buying more than allowed in law.
2. Both amount of alcohol beverages sold by North Dakota wholesalers, and wholesale alcohol taxes paid by these wholesalers, have increased from 1998, the year prior to 1999 law being enacted, and end of 2000.
    a. Wine sales by instate wholesalers increased from 542,000 gallons and $292,000 in taxes in 1998 to 593,000 gallons and $318,000 in taxes in 2000.
    b. Liquor sales by instate wholesalers increased from 975,000 gallons and $2.4 million in taxes in 1998 to over 1 million gallons and $2.5 million in taxes in 2000.
    c. Beer sales by instate wholesalers increased from 16.8 million gallons and $2.55 million in taxes in 1998 to 17.1 million gallons and $2.57 million in taxes in 2000.
3. Sales tax is covered by use tax law.
4. Maximum wholesale liquor tax on amount allowed to be purchased each month under the law passed last year is $1.19 for wine under 17%; $1.43 for wine over 17%; $2.38 for champagne; $5.94 for distilled spirits; $.18 for bulk beer and $.36 for canned and bottle beer. A person is only allowed to purchase one case of alcohol per month under this law.

B. CONSTITUTIONALITY

1. Quill case - Prohibits states from collecting state sales taxes if company doesn't have a physical presence in state. Federal government has also enacted law prohibiting any new taxes on Internet sales. If the tax collection section is passed, the members of the Wine Institute will comply. However, I don't believe you can, today, enforce the collection of these taxes by others who our residents contact and want to purchase products from.
2. Possible violation of commerce clause. At present time there are cases in federal courts in 6 states challenging laws such as this one (Florida, Indiana, Kansas, Michigan, Texas and Virginia) and 1 in New York dealing with whether states rights supercede the Constitution's Commerce clause.

C. ANTI ECONOMIC DEVELOPMENT

1. Establishes another unnecessary barrier to attracting desirable companies with high level positions to state.
2. Invites retaliatory actions from other states relating to North Dakota direct marketers. (Example: Pride of Dakota; HB 1404 which allows for farm wineries in the state.)

D. DISCRIMINATORY, UNFAIR, PUNITIVE & UNREALISTIC

1. No other out of state direct marketer, of any type of product, who does not have nexus in our state, must obtain a "direct shipper license" let alone pay $1000 for it.
2. No other direct marketer of any type of products who does not have nexus in our state must collect and pay these types of taxes to our state.

This bill is probably unconstitutional and opens the door for retaliatory action against North Dakota direct marketing businesses. I don't believe that is the image and message we want to send to people and businesses outside our borders.

It is our position and belief that everyone, including government should be on the side of innovation and consumer choice. Senate Bill 2397 takes just the opposite approach.

However, in the spirit of compromise the Wine Institute has, at this time, agreed to go along with the proposed amendments being offered by state's liquor industries.