

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

1298

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10/3/03
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2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1298

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1298

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
2		X	3314-end
3	X		0-3797
Committee Clerk Signature <i>Elizabeth R. Fier</i>			

Minutes: **CHAIR KEISER:** Opened hearing on HB 1298

REP. RUBY: Described the intent of the bill

REP. JOHNSON: On page two, line 28, why does the language say "quarterly or annually"?

Rep. Ruby stated that "annually" was added because some of the small wineries may not be able to report quarterly.

REP. FROSETH recalled that Political Subs had this bill during the last session and was wondering if the change from 1,000 to 10,000 gallons would put the wineries into a different licensing category. Rep. Ruby was not sure, but said that another law deals with the manufacturing aspect. The fee on this bill is increased to \$100 and the Tax Department did not say it was a problem.

REP. EKSTROM: Why is the length of sale limited to five days for special events? What about the State Fair and Pride of Dakota? Rep. Ruby noted the opposition came from the Retailers

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number 1298
Hearing Date 1-28-03

Association. Rep. Ruby suggested the language could say "for the length of the event." They want to open the market for people to diversify.

REP. SEVERSON reviewed the issues from the 2001 session. The bill originated from wine-tasters. Retailers did not want people to ship in wine and sell it. Rep. Froseth said there were two separate bills; one for manufacturing and one for shipping in more than 1,000 gallons/yr.

REP. RUBY: When they discussed the limit with the wholesalers and retailers, it was determined with there was no problem with the volume. Most people will never meet the 10,000 limit, but if the demand is such, there will also be a demand in the retail market as well as the wholesale market.

REP. ZAISER: Supports the concept, but is wondering how we monitor if the products are from ND? Rep. Ruby believes the growers themselves would keep each other in check or perhaps have the Tax Department in charge.

REP. BOE: Why the Tax Dept. and not the Attorney General, who licenses retail liquor. Rep. Ruby replied that it is a "fee" or "tax." Rep. Keiser noted that it was moved from Treasury because in essence, it is a tax.

JEFF PETERSON (Pointe of View Winery): Supports with written testimony.

REP. EKSTROM: How many acres are now planted with grapes/fruit? Peterson did not have an answer at the moment, but knows they are at the bottom of the agricultural statistics list. Rep. Ekstrom asked what varieties are grown and Peterson answered that the University of Minnesota and University of SD are working on hybrids for cold-weather varieties.

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House Industry, Business and Labor Committee

Bill/Resolution Number 1298

Hearing Date 1-28-03

REP. KASPER: What is the amount of gross income/acre for the farmer? Peterson noted that it depends on the variety.

REP. ZAISER: How do you monitor the in-state product? Peterson believes people would not buy without the local appeal. However, monitoring is easy because there is quite a bit of federal paperwork that needs to be filed. When asked by Rep. Zaiser if there are routine regulatory system, Peterson answered that it is mostly a complaint system.

REP. RUBY: Are there requirements with tax on all of the paperwork? Peterson replied no.

REP. KEISER questioned why the emergency clause is included. Peterson replied that the growers would like to get this started right away for planning purposes.

REP. BOE: Is brandy fortification common? Peterson replied that it is. The tax structure changes for fortified wines.

DAN KUNTZ (ND Wholesale Liquor Assoc.): Worked with Peterson and supports the bill.

REP. KLEIN: Any objections to making an exception to the five days for the State Fair? Kuntz replied that it was the retailers who were concerned. You can still promote the length of the fair, you just can't sell.

PATTI LEWIS (ND Hospitality Assoc.): Supports for tourism and the beverage industry.

However, she reminded the committee of the three tiered system in ND. The law needs to be fair to the retailers and asked that big holes in the law are not opened. The wineries can still sell at the fair if they let the retailers sell for them.

REP. KEISER: Would the industry support language specific to the State Fair? Lewis said that the 5 days was their final answer when she talked to her colleagues.

GREG KEMPEL (Pres. of Maple River Winery): Opposed with written testimony.

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House Industry, Business and Labor Committee

Bill/Resolution Number 1298

Hearing Date 1-28-03

RUBY: Do you really think people would pay the license fee to have a winery in their apartment? Kempel noted this bill changes the intent of the 2001 bill.

REP. FROSETH pointed out that licensing through the tax department would take care of his location concerns. They won't issue a license to an apartment. The cities have ordinances as well. Kempel questioned how many cities have ordinances. He needs a state beverage and retail license, but the wineries do not.

REP. SEVERSON asked for Kempel's comments on the quantity increase. Kempel said that the fee should increase if the quantity is increased.

REP. KEISER: How many gallons does the Maple River Winery produce. Kempel said they produced 5,000 gallons this year. Noted there are not enough wine drinkers in ND.

GARY ANDERSON (Dir. of Sales & Special Taxes, Tax Dept.): Neutral. Described alcohol laws. The Tax Dept. licenses wholesale and manufacturers licenses. The Attorney General licenses retailers. The Tax Dept. handles micro brews because they do both manufacturing and retail.

REP. FROSETH: Asked Anderson to discuss his view of the location of wineries issue. Anderson said that it appears the winery does not have to be a farm, but just produced in ND.

REP. KLEIN: Would you need 6 employees as Kempel suggests? Anderson said he doesn't believe so. The industry is growing and will require administration, but they did not require new staff when they received the duties from the Treasury. They can utilize the county extension offices as well as the USDA..

REP. ZAISER: Most cities have liquor laws. Would they not be able to limit wineries?

Anderson said that most cities do have them. The key phrases are on lines 13 and 14 of page 2.

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House Industry, Business and Labor Committee

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Hearing Date 1-28-03

Would like to see communities authorize the winery and then the winery applies through the Tax Department.

REP. JOHNSON: Asked Anderson to explain the differences between manufacturers and this bill. Anderson said this bill limits the volume and the ingredients. Manufacturers do not have these limits.

REP. ZAISER: Are the fees appropriate? Anderson said the department has no position on the fees.

REP. BOE: With the change to "domestic" from "farm," will there be a push to commercial? Anderson said he understood the bill to mean the product has to be produced within the acreage owned by the winery. Rep. Boe asked if it will have to be classified as commercial because of the "domestic" language. Anderson believes it will, but not a restriction on location.

CHAIR KEISER: Closed hearing on HB1298

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1298

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/29/03

Tape Number	Side A	Side B	Meter #
2		x	29.0-38.8
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Keiser** called for committee work on HB 1298

Rep. Tiegan moved a Do Pass. **Rep. Froseth** seconded the motion.

Rep. Ruby: Regarding the special use permit, my constituent wants the public to know that this product is a lot of compromise on several areas with wholesalers, retailers. The five day compromise is OK for everyone now.

Rep. Johnson: What is the difference between a domestic winery and a manufacturer license?

Rep. Froseth: The winery wouldn't have to be located on a farm, or in a rural area. Products must all be grown in the state of North Dakota. We passed something that's working. Two small wineries are now up and running.

Chairman Keiser: Commercial and domestic: there's a difference in fees. The commercial has no limit on volume that it can produce or no restrictions on where the raw products are grown.

Both are limited to manufacturing and selling to wholesalers. The three tier alcohol beverage system is being maintained with the exception that we are allowing them to be a manufacturer

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1298

Hearing Date 1/29/03

but a retailer. We're trying to create an appropriate atmosphere and opportunities for this industry. The commercial wine operation representative, they have few restrictions on their product.

Rep. Ruby: One other thing about the word "farm". It's not clearly defined.. Original bill required 51% of the product be produced in North Dakota but it didn't stipulate that the product had to be grown on the same farm. The original legislation was far too vague. The wholesalers were responsible for using the word domestic rather than farm now. They can't sell from their property but they don't have the restrictions on volume or origin.

Chairman Keiser: A lot of polarization was compromised on this bill, thanks to Rep. Ruby.

Rep. Johnson: Are there restrictions where this can be done?

Chairman Keiser: Local zoning controls commercial, residence, industrial zones.

Results of the roll call vote were: **13-0-1.**

Rep. Tiegan will carry this on the floor.

FISCAL NOTE
Requested by Legislative Council
03/31/2003

Amendment to: HB 1298

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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.

If enacted, with proposed amendments, HB 1298 will likely have a fiscal impact of less than \$5000 for the 2003-05 biennium.

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

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

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

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, 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:	Kathryn L. Strombeck	Agency:	Tax Department
Phone Number:	328-3402	Date Prepared:	03/31/2003

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10/2/03
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FISCAL NOTE
Requested by Legislative Council
01/14/2003

Bill/Resolution No.: HB 1298

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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.

If enacted, HB 1298 may result in a small amount of additional wholesale liquor tax and associated fees. This potential small fiscal effect is indeterminable, but likely less than \$5000 for the 2003-05 biennium.

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

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

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

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, 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:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	01/27/2003

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Date: 1/29/03
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1298

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Tieman Seconded By Froseth

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Rep.Boe	✓	
Rep.Severson, Vice-Chair	✓		Rep.Ekstrom	✓	
Rep.Dosch			Rep.Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep.Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad	✓				
Rep. Ruby	✓				
Rep.Tieman	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Tieman

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

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10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
January 30, 2003 10:22 a.m.

Module No: HR-18-1331
Carrier: Tieman
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1298: Industry, Business and Labor Committee (Rep. Kelsor, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1298 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-18-1331

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2003 SENATE JUDICIARY

HB 1298

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1298

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/19/03

Tape Number	Side A	Side B	Meter #
1	X		4.7 - End
			0.0 - 6.5
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony in Support of HB 1298

Rep Ruby - Dist #38, Introduced the bill (meter 5.1) Discussed history of the last sessions bill.

Discussed what this bill does- allowing the "farm" winery to have tastings and increasing production to make wineries profitable. The tax departments interpretation and how this bill will better clarify this. Spoke of how a retailer could not go directly to winery. Originally this bill was a "hobby" we want to make this a business. We want to make the wineries a growing market. Attracting more wineries and tourism having attached restraints selling there product. Spoke of "disaster clause"- using only ND products (meter 9.7) Elaborated on the change of "farm" to "domestic" (state) winery.

Discussion of what the "House" did with the bill. (meter 12.2)

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Senate Judiciary Committee
Bill/Resolution Number HB1298
Hearing Date 03/19/03

Sen. Traynor questioned what "other" fruit consisted of? Choke cherries.

Sen. Nelson spoke of the 51% local product-How much product do we have and can we locally product this with enough product? Some of the grapes being grown here will take five years to mature. What is fruit base-can it be rhubarb or dandelions.

Sen. Dever questioned why we should put any limit on? Discussion of production would mirror what the market demands. (meter 20) Is a farm/restaurant consider an incorporation. Discussion of the phrase "fortification" process. (meter 22.9)

Rep. Kasper - Dist. #46, Spoke of (meter 24) Minnesota winery that he stops at on his way to his lake home in Walker, MN. Discussed the development he has seen this business go through over the years to become a very profitable They had there first winery festival-great success.

Discussed Amendment..

Jeff Peterson - Pointe of View Winery, Burlington (meter 28.4) Read Testimony - Attachment #1 Discussed how present law hinders production.

Rod and Sue Balenger - Fargo, Jeff Peterson statement (meter 33) Attachment #2.

Sen. Traynor discussed Federal regulations superseding what we do.

Sen. Dever questioned the use of other products, i.e.; honey, choke cherry's, grapes and the ATF laws regulating grains to fall into a different category.

Dan Kuntz - ND Retail Association We are in support of this bill. The 10,000 gallon would limit potential abuse.

Sen. Nelson discussed Casselton winery and it's ability to do taste testing.

Testimony in Opposition of HB 1298

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Senate Judiciary Committee
Bill/Resolution Number HB1298
Hearing Date 03/19/03

Tony Odesky - Bitner Cellars Stores We are applying for a manufactures license. This bill puts us against these people and takes us away from the tourism.

Sen. Nelson asked how many manufactures in the state of ND? Two

Greg Kempel - Maple River Winery, Casselton. Read Testimony (tape 2, side 1) Attachment #3c

Sited Title 5, Alcoholic Beverages chapter-Attachment 3b, Highlighted bill-Attachment 3a.

Problem with Title, location of winery - could it be near a school?

Senator John T. Traynor, Chairman closed the hearing

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Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1298

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/24/03

Tape Number	Side A	Side B	Meter #
1	X		22 - 29
Committee Clerk Signature			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill: Discussion on how do we deal with the objections to the bill. Discussion of their original intent to be a manufacturing entity. Discussed the current law and this legislation would not limit a "tasting" of products for the public.

Motion Made to DO PASS Amendment to HB 1298 by Sen. Trenbeath and seconded by Sen. Dever

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Made to DO PASS HB 1298 by Sen. Lyson and seconded by Sen. Dever

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Sen. Lyson

Senator John T. Traynor, Chairman closed the hearing.

Lu Costa Rickford
Operator's Signature

10/3/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1298

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/25/03

Tape Number	Side A	Side B	Meter #
1	X		44.8 - End
1		X	0.0 - 17.5
Committee Clerk Signature			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill:

Sen. Lyson discussed the Attorney General's comments. They do not have any problem. This bill gives the tax department to give the domestic winery a license to dispense alcohol on the premises on sale or off sale via a tasteing or leaving with the product. Some of the issues are page 2, line 9 - Special Ordinances discussed the "on sale" and "off sale" and the city ordinances for Sunday sale-special permit you would not have to pay the fee but you still need to abide by these rules.

Discussion of wine Vs sparkling wine.

Gary Anderson - Office of the Tax Commissioner.

1. Manufacturing License - wholesale
2. Wholesale / Distributors

Y. Costa Rickford
Operator's Signature

10/3/03
Date

Page 2
Senate Judiciary Committee
Bill/Resolution Number HB 1298
Hearing Date 03/25/03

3. Retail Sales

You can only hold one license, unless you are a Micro Brew Pub. They may carry two.

Discussion of how a Domestic Winery would fall into the Micro Brew category. Sampling can be done on all three cases.

Discussion of zones, of Manufacture Vs Domestic. We can not please everyone with this one bill. Spoke of making an amendment by Sen. Trenbeath

Motion Made to DO PASS Amendment by Senator Thomas L. Trenbeath and seconded by Senator Dick Dever

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Motion made to DO PASS HB 1298 as amended by Sen. Lyson and seconded by Sen. Dever

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Sen. Lyson

Senator John T. Traynor, Chairman closed the hearing.

Lu Costa Rickford
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1298

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/26/03

Tape Number	Side A	Side B	Meter #
1	X		16.1 - 44
Committee Clerk Signature <i>Monica L. Solberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Sen. Lyson made a motion to reconsider HB 1298

Rep Ruby - Dist #38 (meter 16) Thanked committee for time. After speaking to the people who sponsored the bill they have a problem with the amendment. Discussed unintended consequences brought up with the amendment- gave example; Rhubarb wine. Producer made a barrel of it. It went very well. He bought everything they had from the instate producer. He then purchased some from CISCO products, and instate distributor. I do not know where his rhubarb came from, the majority of the product was ND grown. Since we are still developing and growing enough product in the state. The language of "each container" makes the variables of the startup process almost impossible. The are also using the University of Minnesota to work with him setting up test plots around the state to grow a hybrid grape. This will take four years

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Operator's Signature

10/3/03
Date

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Senate Judiciary Committee
Bill/Resolution Number HB 1298
Hearing Date 03/26/03

just to get a grape produced that you can even use. He is presently working with the MN vineyards to test market-to see if people even want the product. Discussed ATF guidelines and being in accordance to Federal Law-that we can not supersede.

Discussion of rewarding/changing amendment. Discussion of instate production being cheaper to buy with minimal shipping costs. Based on market we could not produce something like a California winery can mass produce equitably. They need to produce a unique product.

Discussed "intent" of the bill.

Sen. Lyson discussed how could one enforce a "by the Bottle" ruling.

Rep Ruby - spoke of having enough flexibility to get the product growing.

Discussed concerns and how both parties would like "by the bottle" removed.

Formulated amendment. (meter 27)

Sen. Trenbeath stated that his objection is legitimate in defense of the Maple River Winery. This presents an unfair competitive advantage to the domestic winery.

Motion Made to DO PASS Amendment 30175.0402 on HB 1298 by Sen. Lyson and seconded by Sen. Nelson

Roll Call Vote: 4 Yes. 1 No. 1 Absent

Motion Passed

Motion Made to DO PASS HB 1298 as amend by Sen. Lyson and seconded by Sen. Dever.

Roll Call Vote: 4 Yes. 1 No. 1 Absent

Motion Passed

Floor Assignment: Sen. Lyson

Senator John T. Traynor, Chairman closed the hearing.

30175.0401
Title.0500

Adopted by the Judiciary Committee
March 25, 2003

[Signature]
3-25-03

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1298

Page 1, line 9, remove "majority of the wine produced by a domestic" and overstrike "winery"

Page 1, line 10, overstrike "must be"

Page 1, line 11, remove "produced" and overstrike "from grapes, grape juice, or other fruit bases, or honey"

Page 1, line 12, overstrike "grown and produced in"

Page 1, line 13, overstrike "this state" and after "winery" insert "majority of the ingredients by volume, excluding water, of each container of wine, produced by a domestic winery, must be grown and produced in this state"

Renumber accordingly

0101

Date: March 25, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1298

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30175.0401

Action Taken DO PASS Amendment

Motion Made By Sen. Trenbeath Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment _____

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

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Date: March 25, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1298

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30175.0401

Action Taken DO PASS as Amended Engrossed House Bill

Motion Made By Sen. Lyson Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Sen. Lyson

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

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La Costa Rickford
Operator's Signature

10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 26, 2003 8:38 a.m.

Module No: SR-54-5773
Carrier: Lyson
Insert LC: 30175.0401 Title: .0500

REPORT OF STANDING COMMITTEE

HB 1298: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1298 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "majority of the wine produced by a domestic" and overstrike "winery"

Page 1, line 10, overstrike "must be"

Page 1, line 11, remove "produced" and overstrike "from grapes, grape juice, or other fruit bases, or honey"

Page 1, line 12, overstrike "grown and produced in"

Page 1, line 13, overstrike "this state" and after "winery" insert "majority of the ingredients by volume, excluding water, of each container of wine, produced by a domestic winery, must be grown and produced in this state"

Renumber accordingly

old

Date: March 26, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1298

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion made to reconsider HB 1298 into committee

Motion Made By Sen. Lyson Seconded By Sen. Trerbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment _____

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

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La Costa Rickford 10/3/03
Operator's Signature Date

30175.0402
Title.0600

Adopted by the Judiciary Committee
March 25, 2003

[Handwritten signature]
3-26-03

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1298

Page 1, line 9, remove "majority of the wine produced by a domestic" and overstrike "winery"

Page 1, line 10, overstrike "must be"

Page 1, line 11, remove "produced" and overstrike "from grapes, grape juice, other fruit bases, or honey"

Page 1, line 12, overstrike "grown and produced in"

Page 1, line 13, overstrike "this state" and after "~~winery~~" insert "majority of the ingredients by volume, excluding water, of wine produced by a domestic winery, must be grown and produced in this state"

Renumber accordingly

Date: March 26, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1298

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30175.0402

Action Taken Motion made remove overstrike "of each container" line 2

Motion Made By Sen. Lyson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath		X			

Total (Yes) FOUR (4) No ONE (1)

Absent ONE (1)

Floor Assignment _____

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

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La Costa Rickford
Operator's Signature

10/2/03
Date

Date: March 26, 2003
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1298

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30175.0402

Action Taken DO PASS AS 2 TIMES AMENDED

Motion Made By Sen. Lyson Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath		X			

Total (Yes) FOUR (4) No ONE (1)

Absent ONE (1)

Floor Assignment Sen. Lyson

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

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Operator's Signature

La Costa Rickford

Date

10/3/03

REPORT OF STANDING COMMITTEE (410)
March 27, 2003 8:20 a.m.

Module No: SR-55-5857
Carrier: Lyson
Insert LC: 30175.0402 Title: .0600

REPORT OF STANDING COMMITTEE

HB 1298: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1298 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "majority of the wine produced by a domestic" and overstrike "winery"

Page 1, line 10, overstrike "must be"

Page 1, line 11, remove "produced" and overstrike "from grapes, grape juice, other fruit bases, or honey"

Page 1, line 12, overstrike "grown and produced in"

Page 1, line 13, overstrike "this state" and after "~~winery~~" insert "majority of the ingredients by volume, excluding water, of wine produced by a domestic winery, must be grown and produced in this state"

Renumber accordingly

2003 TESTIMONY

HB 1298

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Operator's Signature

La Costa Rickford

Date

10/2/03

FISCAL COSTS

Prepared by:
Greg Kempel, MBA
Susan Kempel, MLS

January 26, 2003

***This copyrighted information was not prepared as an official North Dakota Fiscal Note. It was prepared solely by Greg and Susan Kempel for the purpose of showing the additional costs that could be incurred by the State of North Dakota with the enactment of this legislation. No state personnel or agency had input in regards to this prepared statement. ***

State fiscal cost:

Fiscal Cost #1

- 1) Current license is \$500.00
- 2) Proposed license change is \$100.00
- 3) \$400.00 loss each license
- 4) 3 licenses=\$1200.00 loss per year, \$2400.00 loss per biennium

Fiscal Cost #2

- 1) New State Tax Department employees
 - a. 1 to monitor weather conditions in North Dakota
 - b. 1 to monitor pest infestations in North Dakota
 - c. 1 to monitor plant disease epidemics in North Dakota
 - d. 1 to issue special events permits
 - e. 1 to enforce/"policy" special events permits
 - f. 1 to verify fruit used has been grown in North Dakota
 - g. 6 Additional Employees @\$35,000.00 with benefits included equals \$210,000.00 cost per year, \$420,000.00 loss per biennium

Other Costs:

There will be additional costs on the city and county level to enforce special permits.

Fiscal Income

New income will be extremely insignificant due to potential loopholes found in this legislation, HB 1298.

VOTE NO ON HB 1298

1. Attorney General Opinion
2. No Fiscal Note prepared?
3. Extra/Unwanted? burden for the State Tax Department
4. Duplication of existing laws
5. Local/City/County government circumvention
6. We don't need wineries in personal homes, apartments, near elementary schools, in drug free zones.
7. City Planning and Zoning nightmares
8. Terrible precedent---taverns and liquor stores next
9. Cost of over \$400,000 per biennium.....who is going to pay????????????????????
10. Special Event permits.....no input from City/County/Local governments
11. No fees for a special event permit....who pays the costs?

Greg Kempel
Maple River Winery
628 Front Street
Casselton ND 58012
www.mapleriverwinery.com
greg@mapleriverwinery.com
701-361-0773

**** BE PART OF HISTORY ****

Fruit Prices from Maple River Winery, LLC

1. All trees must be inspected and verified by MRW employees
2. Discount reduced for rotten/discolored/damaged fruit
3. MRW insurance covers MRW on private property harvesting
4. Prices good for 2003 season only.
5. 2004 prices will be announced at Marketplace 2004

Apples 10,000 pounds needed .25/# delivered	Crab Apples 10,000 pounds needed .25/# delivered
Plums 3,360 pounds needed .25/# delivered	Strawberries 2,800 pounds needed .50/# delivered
Chokecherries 3,200 pounds needed 2.00/# delivered w/out stems/leaves .50/# delivered w/stems/leaves	Raspberries 2,160 pounds needed 1.00/# delivered
Juneberries 1,680 pounds needed .50/# delivered	Cherries (All varieties) 2,800 pounds needed .50/# delivered

Totals

36,000 pounds contracted for 2003 growing season

18 tons to be contracted for 2003 growing season

additional harvest by MRW employees from area sites

expect 18 tons fruit for production 2003

other fruits will be analyzed as to potential such as Apricots or Grapes

Contact greg@mapleriverwinery.com for more details

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La Costa Rickford
Operator's Signature

10/2/03
Date

Hold the line on beer outlets

The Minot City Council's Liquor and Gambling Committee did the right thing in holding the line on where alcohol is sold in the city. Minot does not need more off sale outlets.

Wednesday, the committee refused a request for a retail beer sales license by a convenience store and gas station.

The issue could come before the full city council again Monday. If it does, the council should

also refuse to expand the number of alcohol vendors in the city.

With that said, the co-op convenience store does make a convincing argument. Store management wants to sell beer because it has a strong weekend and summer traveler trade.

Such a license would benefit commerce at this and other qualifying convenience stores. The sale of beer at such stores would also provide a benefit to a customer looking for, as the name of the store implies, simplified shopping.

At first glance, then, it seems there is little reason for the city council not to approve the request. There is, though, a more overriding issue.

Alcohol sales are regulated because state residents have acknowledged that such products can cause trouble. Too much drink, to a single person or to a community and problems escalate. Drunk driving or underage drinking are just two and a combination of both is a particularly troubling local issue.

It's true that public policy should consider the benefits of a decision of which responsible people would take advantage. Clearly, the vast majority of the co-op store's customers would use such a new option prudently. However, the expansion of alcohol sales carries a potentially serious downside for local communities.

Minot has ample off-sale liquor sales outlets. For now, the city council ought to follow the recommendation of its own committee and draw the line.

MINOT
DAILY
NEWS
1/10/2003

La Costa Rickford
Operator's Signature

10/2/03
Date

Att #1

Introduction
HB 1298
Jeff Peterson

I represent Pointe of View winery in Burlington. I'd like to begin by giving you a quick overview of the winery business, since this business is relatively new to North Dakota. Because the wine industry is highly regulated, a potential new winery must submit an application to the ATF to operate such premises as well as becoming bonded to insure the federal excise tax. We are required to keep meticulous records in order to calculate this tax. We must also submit an application to the state and must pay a wholesale tax as well as retail tax. Again, record-keeping is very important. Since we are considered a food processing plant, the county health department has inspected our premises to insure public safety. If we should decide to move our operation out of the rural area and into a small community, local ordinances would determine where we could locate. We carry a million dollars in alcohol liability insurance; more than the average on and off-sale establishment. We are required by law to use 51% North Dakota product in making our wine, however, there are a great number of North Dakota crops that lend themselves well to winemaking and in the last year, our wine was made from 91% North Dakota product.

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La Costa Rickard
Operator's Signature

10/3/03
Date

Pointe of View Winery is a two family operation in Burlington, ND, formed in 2002, we specialize in producing wines made from North Dakota fruits and honey.

** We're here today to promote changes in the current farm winery law with bill 1298. Although originally intended to be a supplemental income type business, current laws don't even allow that, yet alone the ability to grow. Costs and risks associated with wineries represent a major burden on the ability to generate income. Current law does not allow a winery to realize a profit.

** We were able to start because we had access to a building and spent 12 months of evenings and weekends doing 100% of the remodeling and setup ourselves. Financing was also required to make all this happen. Ultimately our goal is to move the operation in to the community as a tourist attraction. This cannot happen with current law.

** Wineries benefit states on different levels, that includes agriculture, tourism, and tax revenue at the wholesale and retail level.

** Our target market for our wines is the tourists. For every \$3.00 spent at a winery in a community another \$1.00 also goes into the community through spending at other stores. Current wine law will require any farm winery to close their doors once they have reached their sales limit for that year.

** This past year we have been contacted by many growers across North Dakota that want to expand their operations in order to provide fruit for wineries, but current law stifles potential agricultural growth for fruits with the limit on sales.

** Some folks would argue that if you want to sell more of your product then why not operate under a manufacturers license. There are problems with that. First: rural economic development is a central benefit of a efficient farm wine industry and strictly manufacturing for wholesale only does not allow for that benefit as it relates to tourism for the community. Second: In order to sell through solely wholesale channels forces manufacturers to pay only low prices for fruit. Our proposed changes allow the opposite. Farm wineries are able to pay farmers 70-200% more for local fruit than a typical wine manufacturer would. The farmer should not have to be concerned over prices every year. Third: manufacturers produce large

quantities of wine and need to also market their product outside of the state, thus sales taxes won't be realized by the state, sales taxes that can be realized with a farm winery's ability to sell at retail.

**

Bill 1298 allows for a wine industry to grow and North Dakota to realize long-term benefits. The wine industry has doubled in the last 12 years. Some states are seeing a new winery built every 20 days. Of course all this growth this fast is not without risk, some fail as a result of getting too big too fast or not identifying their market in markets already saturated with wineries. North Dakota is currently in the infant stage and nothing but positive growth can be seen, but we need the changes bill 1298 proposes in order for an industry to flourish.

Thank You!

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La Costa Rickford
Operator's Signature

10/3/03
Date

From: Rod and Sue Ballinger
To: the Judiciary Committee relating to Bill # 1298

It was our intention to be at the hearing, but unfortunately, our work has prevented us from being there. We apologize for this, however, we have asked Jeff Peterson of Point of View winery to read our statement.

We have made wine for many years and have just recently built a winery south of Fargo. We kept the design consistent with the architecture of rural North Dakota and it presents itself as a "turn of the century" barn. This bill would allow us the opportunity to open our place to the public and put our wines up for tasting and sale. We see a great potential in the development of wineries in North Dakota and the Fargo area. We also see huge benefits to our state in terms of agriculture {fruit growing}, marketing, and tourism. It would be just one more product marketed as "pride of North Dakota".

We've received overwhelming support from the community of Fargo as we pursued the idea of starting a winery. The passage of this bill would allow us to make our "dream" a reality and make it equitable for us to do so. Thank you so much for your time.

Rod and Sue Ballinger

Lu Costa Rickford
Operator's Signature

10/3/03
Date

HB 1298

Benefits from wine industry: (with some history)

Investment in the wine industry and government support for it has expanded in large part because of the benefits, economically, that the industry represents. A typical "winegrape"(fruits?) vineyard will produce a gross value of between \$3,000 and \$15,000 per acre, per year with minimum inputs of fertilizer, pesticides and other non-capital, non-labor products. Work in a vineyard-winery, as an economic unit, is spread over much of the year with winter pruning, spring training, summer marketing and fall harvest and wine production. Such a cycle is a natural catalyst of rural stability both for family farmers and their employees. The process of winemaking and the on-site marketing of wines, add additional value. For smaller wineries selling most of their wine at retail, this often leads to gross wine sales of between \$15,000 and \$75,000 per acre. A twenty-acre vineyard-winery combined unit can easily produce gross sales of between \$200,000 and \$1.5 million. Such an enterprise can support a family farm and additional year round employees

Costs and the risks associated with wineries represent a major burden on the gross income of a winery, but most of the investment is spent locally. And while winery equipment, tanks and barrels are often sourced out-of-state, even under minimal estimates, two-thirds of the wineries investment is poured back into the local economy.

Given the benefits, many states encourage the development of rural wineries. In their initial phases, they bring with them strong local investments. In the long-term, they produce stable rural employment somewhere in the range of five to ten employees. Aside from this direct impact, there is also significant tourism income generated by their presence.

Wineries enable the growth of business in rural communities. By spurring an influx of visitors, wineries indirectly cause additional growth in rural areas through job creation. Roughly estimated, for every \$3 spent at a winery, tourists will add \$1 additional to the local economy. Restaurants, bed and breakfasts and boutiques are all given greater viability, in rural districts where wineries are successful, because of the larger pool of potential customers. By enriching the cultural diversity of rural areas, states become better able to entice urban visitors. In the long term, encouraging such growth produces healthier rural economies.

In the last quarter century, many states, recognizing the economic potential and positive dividends of the wine industry, have been repaid with dramatic dividends. Early standouts include Oregon (1983), Washington (1981), New York (1976), Virginia (1980) and Colorado (1977). These states have experienced phenomenal growth in the period collectively seeing a 900% increase. Likewise, these states have invested in research and supported mechanisms for state wineries to promote their products. They have further featured wineries as a major tourist attraction. These factors have combined to produce environments conducive to successful rural businesses.

In recent years other states have made commitments to local wineries and have witnessed a similar wave of success without negative structural impact. Iowa (1985), Oklahoma (2000) and North Carolina (1987), which only a decade ago had only a handful of wineries, now account for nearly sixty wineries, with only growth and enthusiasm on the horizon.

Rural economic development is a central benefit of an efficient wine industry.

A common practice among wineries is to develop their property into a cultural center. Wineries will often sponsor dinners, concerts, art fairs, harvest celebrations, weddings, and like events, in the desire to create an environment that draws people for reasons other than wine tasting. Facilitating such events also directly serves the goals of bringing urbanites and out-of-staters, who might otherwise be ignorant of the industry, into contact with it. Moreover, such events if organized and promoted properly, encourage repeat visits by consumers.

Where states have made even moderate investments in wineries, they have been repaid with enormous economic dividends. Wineries enrich rural culture and tourism, lead to the growth of rural economies and create new sources of tax revenue. By assisting local producers and encouraging local development of resources, the state becomes more likely to establish a unique indigenous industry and reap enormous benefits from relatively modest efforts.

Numerous states have benefited from promoting infant industries leveraging minimal funding to enable these industries to grow rapidly. Oregon, Washington, Virginia, Colorado, Ohio, Texas, Missouri, Michigan, North Carolina, Kentucky, Indiana, Illinois and Iowa, represent examples where early support by states Department of Agriculture has led to rapid growth of a major addition to the agricultural base of the state.

And with this impact North Dakota can realize benefits in the growth of their economies, in the cultural enrichment of rural communities and in the preservation of local farmland through a program of support.

30175.0400

Att #3a

Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1298

Introduced by

Representatives Ruby, Dosch, Ekstrom, Kasper, Meier

Senator Tollefson

- 1 A BILL for an Act to amend and reenact section 5-01-17 of the North Dakota Century Code,
2 relating to domestic winery licenses; and to declare an emergency.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

- 4 **SECTION 1. AMENDMENT.** Section 5-01-17 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **5-01-17. Farm Domestic winery license.**

- 7 1. The state tax commissioner may issue a farm domestic winery license to the
8 owner or operator of a farm winery located within this state to produce table or
9 sparkling wines wine. A farm majority of the wine produced by a domestic winery
10 must be operated by the owner of a North Dakota farm and produce table or
11 sparkling wines produced from grapes, grape juice, other fruit bases, or honey with
12 a majority of the ingredients by volume, excluding water, grown and produced in
13 this state by the farm winery. Licenses Domestic wineries may be granted an †
14 exemption from the majority ingredient utilization requirement whenever the state
15 tax commissioner determines, upon the commissioner's own motion or at the
16 request of a domestic winery, that weather conditions, pest infestations, plant
17 disease epidemics, or other natural causes have reduced the quantity or quality of
18 produce grown in this state to an extent that renders compliance with the majority
19 ingredient utilization requirement infeasible. The exemption is effective for one
20 year unless the state tax commissioner issues a new exemption. A domestic
21 winery may purchase, at wholesale or retail, brandy for use of on-premises
22 fortification. A domestic winery license may be issued and renewed for an annual
23 fee of fifty one hundred dollars, which is in lieu of all other license fees required by
24 this title.

Page No. 1

30175.0400

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Operator's Signature

La Costa Rickford

Date

10/3/02

Fifty-eighth
Legislative Assembly

- 1 2. Before a domestic winery sells any wine, the licensee must register with the state
2 tax commissioner, without a fee, the labels for each type or brand of wine
3 produced. A license authorizes the sale domestic winery may sell, on the farm
4 winery premises, of table or sparkling wines wine produced by that farm winery at
5 on-sale or off-sale, in retail lots, and not for resale, in total quantities not in excess
6 of one ten thousand gallons in a calendar year; glassware; wine literature and
7 accessories; cheese, cheese spreads, and other snack food items; and the
8 dispensing of. A licensee may dispense free samples of the wines offered for sale.
9 Subject to local ordinance, sales at on-sale and off-sale may be made on Sundays
10 between twelve noon and twelve midnight. Labels for each type or brand
11 produced must be registered with the state treasurer, without fee before sale. The
12 state tax commissioner may issue special events permits for not more than five
13 days per calendar year to a domestic winery allowing the winery, subject to local
14 ordinance, to give free samples of its wine and to sell its wine by the glass or in
15 closed containers, at a designated trade show, convention, festival, or a similar
16 event approved by the state tax commissioner. The domestic winery may sell its
17 wine to a liquor wholesaler licensed in this state and may sell or deliver its wine to
18 persons outside the state pursuant to the laws of the place of the sale or delivery.
19 A farm domestic winery may not engage in any wholesaling activities. All sales
20 and delivery of wines to any other retail licensed premises in this state may be
21 made only through a wholesale liquor license. A domestic winery may obtain a
22 domestic winery license and a retailer license allowing the on-premises sale of
23 alcoholic beverages at a restaurant owned by the licensee and located on property
24 contiguous to the winery.
- 25 3. ~~The farm~~ A domestic winery shall pay to the state the wholesaler taxes and the
26 sales taxes on all wines sold at retail by the farm winery licensee as set forth in
27 sections 5-03-07 and 57-39.2-03.2.
- 28 4. ~~The farm~~ A domestic winery shall report quarterly or annually to the state tax
29 commissioner the total quantity of wine sold by type and the amount of taxes due
30 to the state in the manner and on the forms prescribed by the state tax
31 commissioner.

Fifty-eighth
Legislative Assembly

- 1 5. Except as otherwise specified in this section, all provisions of this title govern the
2 production, sale, possession, and consumption of ~~table or sparkling wines~~ wine
3 produced by a ~~farm~~ domestic winery.

4 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure. ,

Page No. 3

30175.0400

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La Costa Rickford
Operator's Signature

10/3/03
Date

3b

**TITLE 5
ALCOHOLIC BEVERAGES
CHAPTER 5-01
GENERAL PROVISIONS**

5-01-11. Unfair competition - Penalty. A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any

Page No. 3

such retailer with anything of value. A retailer may not have any financial interest in any manufacturer, supplier, or wholesaler. A wholesaler may:

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

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Lu Costa Rickford
Operator's Signature

10/3/03
Date

3C

Testimony against HB 1298 from Mr. Greg Kempel, owner of Maple River Winery, Casselton ND 58012.

Mr. Chairman, members of the Senate Judiciary Committee, it is with great honor and respect that I testify before you today. My name is Greg Kempel. I am the owner of the Maple River Winery in Casselton ND, the largest winery in the state of North Dakota. There are currently two full time employees at the winery. We were registered in March of 2001 immediately following our farm winery legislation that was passed last session. I worked with Rep. Bill Pietsch on developing the legislation. Rep. Tom Brusegard and Sen. Judy Lee also co-sponsored the legislation. This legislative session, the "farm winery" legislation is in jeopardy of being harmed. As the main figure in the wine industry the past five years, I feel it is my duty to testify before you in opposition to HB 1298. To assist in following my testimony today, I have prepared documents to look at as we discuss the many problems with this legislation.

Hand out flowchart

The first problem is with the title of this legislation. From changing the word "farm" to "domestic" will create a nightmare for the State Tax Department. Currently, The State Tax Department can regulate farm wineries to properties 10 acres or more. With the change, a winery could be established ANYWHERE in the state. By anywhere, I mean a residential area, an apartment, a house next to a school. The main problem is that there is not one city in North Dakota that we found with legislation regarding wineries and locations. This will also eliminate the intent of the bill that we hoped for last session. A farm winery was intended to complement a wine manufacturer's license as an incubator. As a farm winery grew, they could move up to the wine manufacturer.

The second problem with this legislation is on page 1, line 9. By crossing out sparkling wines, this legislation would prohibit wineries from producing sparkling wines (champagne-style). For clarification, Chapter 5-01-01 of ND Century Code provides definitions. That is why table and sparkling wines were included in this section last session. This is a definite reason to oppose this legislation. Does not make sense to not allow sparkling wine production???

The third problem lies 3 lines down from the last problem. On page 1, line 12, the water exclusion has been taken out. By doing this creates a potential way of circumventing this legislation with ND water. 49% California grapes plus 51% ND honey/water= ND wine. Or, 2501 gallons of ND honey wine could be produced by a winery along with 2500 gallons of California Cabernet Sauvignon. Since the majority is ND wine, all of it would be labeled ND wine. This is not what we want our wine industry known for nationally.

The fourth problem lies on page 1 lines 13-20. I am very interested on how the State Tax Commissioner plans on determining crop losses. Will someone from the office be responsible for this? This part of the legislation WILL require additional staff. This is a key reason to vote against this bill. We do not need more state employees. The taxpayers do not want additional tax burden and I do not want this additional expense to be levied against my operation. What will be next? Will the Insurance Commissioner be responsible for Income Tax collections?

The fifth problem occurs on page 1 line 19. The large problem is the word, infeasible. Who makes that determination? What criteria will be used? Will the criteria be different for each fruit? What about the free market concept each and everyone is taught? If there is a small wheat crop, the price goes up. Will that be regulated along this line in the future? North Dakota is fortunate enough because it stands for quality. That is why our winery will be paying 25 cents per pound this fall for apples and in the state of Washington last fall, farmers received 1/2 cent per pound. Would that be a case of infeasibility? I think it is called free market enterprise. We have to treat that as something that can't be compromised.

The sixth problem occurs on page 1 lines 20-22 regarding fortification. Chapter 5-01-01 of the ND C.C. provides definitions. The tenth definition within Chapter 5 deals with this already.

The seventh problem occurs on page 1 line 23. An increase from 1000 gallons to 10,000 gallons with only a \$50 increase in the license does not make sense. This license would cost \$100. My license costs \$500. A wholesaler license is \$1000. A retail alcohol license could cost in excess of \$2100.00. Where is the fairness with this legislation?

Finally, now onto page two.

The eighth problem is found on page 2 line 11-16 regarding special events permits issued by the State Tax Commissioner. For a retail alcohol licensee—special permits are issued by local jurisdictions---This new change would be usurping local control on cities who do not have ordinances dealing with wineries on the books...(all cities in ND)...Also no enforcement mechanisms, no jurisdictional controls, no penalties or laws to regulate these? And no cost????

The ninth problem is found on page 2 line 19 regarding wholesaling activities. A winery may not engage in wholesaling activities, but if you happen to look down to line 25, a winery will be required to pay wholesaling taxes. This is a contradiction in the licensing process by admitting a winery will be wholesaling. This could open up problems for a winery also being considered a wholesaler.

The tenth and most severe problem is found on page 2 lines 21-24 dealing with a manufacturing and retail license to co-exist. I would like to refer everyone to page four of the handout which highlights Chapter 5-01-11 of the ND Century Code titled Unfair Competition-Penalty. A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any such retailer with anything of value. Since a domestic winery would be a wine manufacturer, this bill cannot be passed without this subsection being amended. If this subsection is amended for a domestic winery, then it will have to be for all wine, beer and liquor manufacturer's, a dangerous idea. Another reason to vote no on this proposed legislation.

The emergency clause attached to this bill also concerns me. It raises a massive red flag. For an agricultural crop to be established in ND with the implementation of this bill, we are looking at 2-4 years. If this bill was solely for wine production, then why would the emergency clause be attached. Caution always surfaces when a motive isn't evident.

In closing, I would like to thank our legislature, North Dakota currently has the best legal climate in the United States for the development of the wine industry. Since I assisted Rep. Pietsch last session, we have had 4 wineries begin production in the past 18 months. I anticipate if the ND Senate

chooses to stay with the status quo, we will have a minimum of 10 wineries in 3-4 years. With that in mind, I strongly believe that there is no one in this room against the promotion of agriculture, tourism, economic development or the wine industry in North Dakota. I am proud to say that I work, live, and employ people at our winery in North Dakota. Our winery could be located anywhere apples are abundant, but we chose to stay in North Dakota. Our employees are glad we decided to locate in North Dakota.

Legislation like this has the potential to cause more harm than good. By voting this legislation down, you will not harm any wineries in the state of ND. But by supporting this legislation, many problems will arise that will not allow the wine industry to continue its success and rapid growth the past two years.

As an expert in the wine industry, it has been an honor to discuss this legislation with you. Please oppose this legislation. I would be glad to answer any questions you may have.