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10/22/03

Date

2043 SEATTLE INDUSTRY, BUSINESS AND LABOR

SB 2376

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2376

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-05-03

Tape Number	Side A	Side B	Meter #
1		xxx	2748
2	xxx		0
Committee Clerk Signature <i>Lisa VanBerkem</i>			

Minutes: Chairman Mutch opened the hearing on SB 2376. All Senators were present.

SB 2376 relates to the direct sale of alcoholic beverages.

Senator Judy Lee introduced the bill.

Senator Espegard: You said it limits the wine, but is also increasing the number.

Senator Lee: Actually, it reduces it. We are looking at 15 cases of wine per year.

The broker that she buys from won't charge shipping if she buys three cases at a time.

Senator Klein: Who is the "watchful eye" over you?

Senator Lee: The problem is the wineries won't ship to us because the current law has a \$50.00 fee on shipping to ND.

Senator Heitkamp: Is the wine you are ordering not available in ND?

Senator Lee: No, there are a lot of small wineries in other states with very unique wines that we like to order.

George O'Neill, representing himself, spoke in support of SB 2376.

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Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2376

Hearing Date 02-05-03

See George O'Neill written testimony.

He is a collector of fine wine. He is a member of a wine club with 60 current members.

Senator Every: Can you buy wine over the internet?

George: Not currently. If the law were changed one could order over the internet.

Senator Espgaard: This bill allows 48 gallons of wine per year. Did you make this exclusive to wine, not whiskey or beer?

George: I think it was all lumped together.

Brad Burgum, also spoke in support of SB 2376. See written testimony.

Naomi Nakamoto, wanted to go on record in support of the bill.

David Hopkins also wanted to go on record in support of the bill.

Terrance S. Adams also wanted to go on record in support of the bill.

Brian Hill, Polar Packaging Place, Bismarck, supported the bill. See attached testimony.

Bonnie Staiger also wanted to go on record in support of SB 2376.

Neutral Testimony on SB 2376.

Rick Clayburg, North Dakota Tax Commissioner, had a neutral stand point on SB 2376.

He stated that there would be a 15 million dollar (per biennium) loss in tax money with internet shipping. He discussed his concerns with the tax loss. When you put tax collection down to the consumer level, it is hard to collect them. It is his job to make sure that all taxes are being paid.

Joan Galster, State Tax Dept., was neutral as well.

Senator Krebsbach: How many wineries are there in ND?

Joan Galster: 2

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Page 3
Senate Industry, Business and Labor Committee
Bill/Resolution Number 2376
Hearing Date 02-05-03

Testimony in Opposition to SB 2376.

Dan Kuntz, Wholesalers Assoc., spoke in opposition to the bill. See testimony written by Janet Seaworth.

Robert Hanson, President of the Johnson Brothers Liquor Company, spoke in opposition to SB 2376. See written testimony

Kevin Register, Chairman of the Board of Congress Inc, spoke in opposition to the bill. See written testimony

Patty Lewis, ND Hospitality Assoc. spoke in opposition to the bill.

Hal Gershman, Happy Harry's Liquor, also wanted to go on record in opposition.

Tom Miller, Captain Jacks Liquor in Bismarck, was also opposed to the bill.

Hearing was closed. No action taken.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2376

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-12-03

Tape Number	Side A	Side B	Meter #
1		xxx	3,900
Committee Clerk Signature <i>Lara VanBerkom</i>			

Minutes: Chairman Mutch opened the discussion on SB 2376. All Senators were present.

There was brief discussion from the committee.

Senator Every moved a DO NOT PASS. Senator Espegard seconded.

Roll Call Vote: 6 yes. 1 no. 0 absent.

Carrier: Senator Every

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FISCAL NOTE
Requested by Legislative Council
01/28/2003

Bill/Resolution No.: SB 2376

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.

SB 2376 is expected to have a fiscal impact of less than \$5000 in 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:	02/04/2003

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Date: 2-12-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2376

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Every Seconded By Espegard

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman		X			
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp	X				
Sen. Mike Every	X				
Sen. Duane Espegard	X				
Sen. Duane Mutch, Chairman	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Every

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

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REPORT OF STANDING COMMITTEE (410)
February 12, 2003 1:21 p.m.

Module No: SR-27-2411
Carrier: Every
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

**SB 2376: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO NOT PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2376 was
placed on the Eleventh order on the calendar.**

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2003 TESTIMONY

SB 2376

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10/22/03

Date



Opposed

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

Honorable Chairman Mutch
Senators of the Industry, Business and Labor Committee
North Dakota State Legislature

I am Robert Hansen. I reside in Fargo and am president of the Johnson Brothers Liquor Company, which has been a ND business since the 1970's. We employ approximately 100 people who reside in Cass, Grand Forks, Ramsey, Ward, Stark, Morton, Stutsman and Burleigh counties. I am here to testify in opposition to Senate Bill 2376, which relates to the direct sale of alcoholic beverages.

This bill is especially noteworthy because it allows outside entities to unfairly compete with licensed ND businesses. Our first concern is that although the bill limits direct shipment of liquor and beer to personal use, it is unclear whether wine could be resold by the unlicensed individual.

In addition, current law requires the shipper to attain a direct shipping permit from the state and pay an annual fifty dollar fee. The shipper is also required to 1) report all shipments into the state (the quantity and date) and 2) calculate and submit to the state the applicable ND excise tax. It is my understanding that the Tax Commissioner's office is now receiving fees and collecting from out-of-state shippers with no complaint or resistance. This system works.

SB 2376 (page 2, lines 8 through 15) would require the direct shipper to just notify the state of any shipments in to the state and the name and address of the recipient. The rest of the accountability shifts to the ND resident who receives the shipment. This person/group must then calculate and pay the state excise tax as well as any sales tax. This releases the shipper from any accountability/responsibility and places the tax collection burden on the state.

The ND resident who receives the shipment also picks up a heavy burden. Along with the requirements for calculating, collecting, reporting and submitting the taxes due on all alcoholic beverages shipped into the state, this person/group is exposed to whatever legal actions that may be incurred by

Importers & Distributors of Liquors • Wines • Beers • Waters

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not reporting or incorrectly submitting these taxes. In effect, we are putting ND residents at risk of breaking the law every time they receive any of the alcoholic beverages shipped to them.

Licensed North Dakota businesses who sell alcoholic beverages to consumers are retailers. As a wholesaler, I cannot also be a retailer and a retailer cannot also be a wholesaler; the law is very specific about that. Under SB 2376, an individual could be both wholesaler and retailer without any license at all.

State and local license regulations permit North Dakota alcoholic beverage businesses to:

- 1) Buy a license – federal, state and, where applicable, local.
- 2) Collect and submit alcohol beverage taxes to the state Tax Commissioner at little or no expense to the state.
- 3) Employ tax-paying citizens of ND.
- 4) Pay ND income, unemployment, workman's comp and sales taxes.
- 5) Support our local communities as well as regional or statewide causes.

Under SB 2376 we would have to compete with out-of-state businesses who do none of the above.

The issue of direct shipments of alcohol first came before the Legislature in 1999. At that time, the Wine Institute, an association of California wineries, supported a bill amendment to allow direct shipment of alcoholic beverages. A copy of their testimony is attached to my testimony. I want to quote what the Wine Institute was proposing if they were given the right to make direct shipments in North Dakota.

'We can lessen the impact on similar in-state businesses by enacting a law licensing the out-of-state businesses, requiring them to pay the proper state and local taxes, limiting the amount of alcohol they sell, prohibiting them from selling to minors, and imposing a hefty penalty for violating any of these requirements. The wine industry has agreed to all of these conditions.

The amendments offered by the Wine Institute, which are also attached to my testimony, included:

- 1) A requirement to be licensed by the state with an initial registration fee of \$100 and an annual renewal fee of \$25.

- 2) A limitation of one case per month could be shipped to any person in the state.
- 3) A requirement to pay the North Dakota sales and wholesale taxes on the direct shipments.

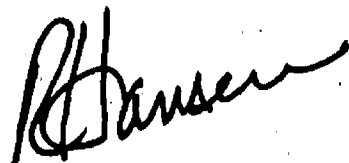
Unfortunately, not all of these conditions were included in the 1999 legislation that first allowed direct shipment of alcoholic beverages in North Dakota. Two years ago, the Legislature approved a bill to include these requirements on the direct shippers.

Now that the out-of-state wineries have the right to make direct shipments in North Dakota, SB 2376 would remove the conditions that the wineries initially proposed in 1999 apparently because of a concern that some of the wineries find the conditions burdensome.

The requirements under current law are not burdensome. North Dakota is still one of the more liberal states in allowing the direct shipment of alcoholic beverages. Attached to my testimony is a listing from the Wine Institute website that summarizes the status of direct shipping in the states. As you can see, most states either prohibit entirely or limit the quantity of direct shipments to an amount less than that allowed under North Dakota law.

Current law does not restrict consumer choice. In fact, wineries restrict consumer choice. North Dakota wholesalers and retailers are in the business of providing product to the consumer, but some wineries refuse to sell to wholesalers because they make a better margin selling their product direct to consumers. If a winery doesn't want to pay a \$50 license fee, and applicable taxes, then it is not serious about doing business in North Dakota. The current law is fair in its regulation of direct shippers. It simply requires direct shippers to comply with some of the same basic regulatory requirements that apply to North Dakota wholesalers and retailers.

I ask you to vote NO on SB 2376. Thank your for your time and consideration.


Robert L. Hansen
President

STATEMENT
Bob Hanson, Wine Institute
SB 2216, House Judiciary Committee
February 24, 1999

Technology, credit cards, telephones and the Internet, are all here to stay. The question is which path is the state going to take in dealing with these relating to consumer choice and alcohol.

North Dakotans want to buy wine from out-of-state wineries. This is evidenced by the attached listing of addresses of those who expressed such a desire while visiting California wineries.

One approach is for government to come down heavy on those who, such as wine collectors and connoisseurs, want to buy wine or other alcohol, which may not be available in North Dakota, from out-of-state businesses. This is exactly what SB 2216 does. SB 2216 makes those people in North Dakota who buy any alcohol from an out-of-state business, felons. This subjects them to imprisonment, heavy fines, and loss of both their right to vote and own firearms. Out-of-state businesses who sell, or deliver, it to people in North Dakota would also be felons. We agree with the *Bismarck Tribune's* 2/18/99 editorial(attached) this is not the right approach. Our concerns including penalties, prohibiting North Dakota products from reentering the state, violation of stockholder rights and possible unconstitutionality, is attached.

SB 2216's supporters have stated its purpose is to keep alcohol out of the hands of minors who use the Internet. This is laudable even though there's little evidence nationally or in North Dakota it's happening now. However, SB 2216 doesn't increase the penalty for those who sell or deliver alcohol to minors within the state, where virtually all these violations occur, to the same level it imposes on out-of-state businesses for "any" sale in North Dakota. Neither the Wine Institute nor any responsible person wants alcohol in the hands of minors, regardless of source. Whether minors get their alcohol from someone in-state, or out-of-state, it's wrong and the penalty should be the same for everyone.

The other, and we believe more sensible approach, would be to turn these technologies to our advantage like 31 other states have done. Using technology to buy, or sell, legal products shouldn't be a criminal offense. We can lessen the impact on similar in-state businesses by enacting a law licensing the out-of-state businesses, requiring them to pay the proper state and local taxes, limiting the amount of alcohol they sell, prohibiting them from selling to minors and imposing a hefty penalty for violating any of these requirements. The wine industry has agreed to all these conditions. (See attached WINE INDUSTRY CODE FOR DIRECT SHIPPING.)

The more responsible path, in our view, would be a law allowing people their constitutional right to choose to do business in interstate commerce; embodies the free enterprise system while providing safeguards for existing businesses; makes out-of-state businesses taxpayers instead of felons; and provides a friendly, rather than hostile business environment.

We urge you to amend SB 2216 to do this. Such an amendment is attached. If you don't add this or a similar amendment, we respectfully request the bill be killed, as the felony penalty goes beyond reasonableness.

I have attached several other pieces of information from various sources on this issue for you.

Thank you.

Attachment 1

PROPOSED AMENDMENTS TO SENATE BILL 2216

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 5 of the North Dakota Century Code, relating to the purchase of alcohol for personal use, the duties of the state treasurer, and collection of taxes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA

SECTION 1. A new chapter to title 5 of the North Dakota Century Code is created and enacted as follows:

Out-of-state shipments allowed. Notwithstanding any other law or rule, any person licensed in another state as an alcoholic beverage manufacturer, producer, supplier, importer, wholesaler, distributor or retailer who obtains an out-of-state shipper's license may ship up to one case per month of any alcoholic beverage directly to a person in this state, who is at least twenty-one years of age, for the person's personal use and not for resale.

Out-of-state shipper's license - Requirements. Before sending any shipment to a person in this state, the out-of-state shipper must obtain from the state treasurer an out-of-state shipper's license by filing an application with and as prescribed by the state treasurer; paying a one hundred dollar registration fee; providing the state treasurer with a copy of the shipper's current alcoholic beverage license issued in another state; and any other information required by the state treasurer.

Duties of shipper. An out-of-state shipper licensee may not ship more than one case of any alcoholic beverage per month directly to any person in this state.

1. An out-of-state shipper licensee shall ensure that all containers of alcoholic beverages shipped directly to a person in this state are conspicuously labeled with the words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."
2. An out-of-state shipper licensee shall report annually to the state treasurer the total of alcoholic beverages by type shipped into the state the preceding calendar year, in the manner and on the forms prescribed by the state treasurer.
3. An out-of-state shipper licensee shall pay to the state all sales taxes and wholesale alcohol beverage taxes due from direct sales made to persons in this state in the preceding calendar year in the manner prescribed by law. The amount of these taxes are to be calculated as if the sale were in this state at the location where delivery is made.
4. Upon request, an out-of-state shipper licensee shall permit the state treasurer to audit the out-of-state shipper's records.
5. An out-of-state licensee shall file with the secretary of state an agent for the service of process and is deemed to have consented to the jurisdiction of any state or local agency and the courts of this state concerning enforcement of this chapter and any related laws, rules or regulations.

-1-

Attachment 2

Deanna Waller
Operator's Signature

10/22/03
Date

License renewal. The out-of-state shipper may renew its license annually with the state treasurer by paying a twenty-five dollar renewal fee and providing the state treasurer a copy of its current alcoholic beverage license issued in another state.

Reciprocal enforcement. Upon notification by authorities in another state that imposes a reciprocal enforcement policy, a licensee proved to be making illegal direct shipments to consumers in that state is subject to action by the state treasurer and the attorney general. These actions may include fines and a suspension or revocation of any alcoholic beverage license.

Penalty. A person who willfully violates this chapter is guilty of a class A misdemeanor. A person who is shipped alcoholic beverages for personal use is not criminally liable based on the status of licensure of the shipper if that person did not know of the status. This section does not apply to a producer of alcoholic beverages holding a basic permit from the bureau of alcohol, tobacco and firearms. Upon determination by the state treasurer that a holder of a federal basic permit from the bureau has made an illegal shipment to consumers in this state, the state treasurer shall notify the bureau by certified mail."

Renumber accordingly

-2-

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Who Ships Where

[Direct Shipments Home Page](#) | [Wine Institute Home Page](#)

- [Background](#)
- [Frequently Asked Questions](#)
- [State Shipping Laws](#)
- [State Control Checklist](#)
- [State Wine Excise Tax Rates](#)
- [Current Events](#)
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State-by-State Shipping Statutes & Carrier Status

The following state-by-state list of shipping provisions and carriers is provided courtesy of Coalition for Free Trade (707/747-1556). This list is meant as a tool to better understand who ships where for wineries to consumers; it should not be considered as legal advice. If you have questions regarding the legality of shipping to certain states, please call Wine Institute's State Relations Department at (415) 358-7530.

A-B-C-D-E-F-G-H-I-J-K-L-M
N-O-P-Q-R-S-T-U-V-W-X-Y-Z

[Click here for link to print one-page version of the Who Ships Where list \(courtesy of Coalition for Free Trade\)](#)

State	General Interstate Shipping Provisions	Legal Amount	Intrastate	DHL	FedEx	UPS
Alabama	Direct Shipments Prohibited	Prohibited	No	No	No	No
Alaska	Limited Quantity	Reasonable quantity	Yes	Yes	Yes**	No
Arizona	Direct Shipments Prohibited	Prohibited	No	No	No	No
Arkansas	Direct Shipments Prohibited	Prohibited	No	No	No	No
California	Reciprocity	2 cases per month	Yes	Yes	Yes	Yes
Colorado	Reciprocity (Permit is Required) - on-premise orders only	2 cases per month	Yes	Yes	Yes	Yes
Connecticut	Limited Quantity/ Consumer Permit Required	Check with ABC	Yes	No	No	No
Delaware	Direct Shipments Prohibited	Prohibited	No	No	No	No

District of Columbia	Limited Quantity	1 bottle per month	Yes	Yes	Yes	No
Florida	Felony	Prohibited	No	No	No	No
Georgia	Limited Importation (Felony: non-compliance)	Check with ABC	No	Yes	Yes	No
Hawaii	Reciprocity	2 cases per year	Yes	Yes	Yes	No
Idaho	Reciprocity	2 cases per month	Yes	Yes	Yes	Yes
Illinois	Reciprocity	2 cases per year	Yes	Yes	Yes	Yes
Indiana	Felony (for non-basic permit holders)	Prohibited	Yes	No	No	No
Iowa	Reciprocity	2 cases per month	Yes	Yes	Yes	Yes
Kansas	Direct Shipments Prohibited	Prohibited	No	No	No	No
Kentucky	Felony	Prohibited	No	No	No	No
Louisiana	Shipper Permit Required & Ltd. Quantity, only without wholesaler representation	4 cases per year	Yes	Yes	Yes	No
Maine	Direct Shipments Prohibited	Prohibited	Yes	No	No	No
Maryland	Felony	Prohibited	No	No	No	No
Massachusetts	Limited Quantity/ Consumer Permit Required (no such permits known to be issued)	Check with ABC	Yes	No	No	No
Michigan	Direct Shipments Prohibited	Prohibited	Yes	No	No	No
Minnesota	Reciprocity (no internet sales)	2 cases per year	Yes	Yes	Yes	No
Mississippi	Direct Shipments Prohibited	Prohibited	No	No	No	No
Missouri	Reciprocity	2 cases per year	Yes	Yes	Yes	Yes
Montana	Consumer Permit Required	Check with ABC	No	No	No	No

3 of 4

2/3/03 11:07

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Washington	Reciprocity - Shipping License Required	2 cases per year	Yes	Yes	Yes	Yes
West Virginia	Reciprocity	2 cases per month	Yes	Yes	Yes	No
Wisconsin	Reciprocity	1 case per year	Yes	Yes	Yes	Yes
Wyoming	Limited Quantity/ Permit Required	2 cases per year	Yes	Yes	Yes	No

** Federal express only ships to certain zip codes within Alaska. [Click here for a complete listing.](#)

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[BACK TO TOP](#)

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Comments to [wineinstitute@wineinstitute.org](#)
Last Modified Wednesday October 9, 2002

Testimony of Kevin Register, Chairman of the Board of Congress Inc., a North Dakota Wine and Spirits Wholesaler.

Mr. Chairman, and members of the committee,

My name is Kevin Register, Chairman of the Board of Congress Inc. A local, family-owned, North Dakota Wine and Spirits Wholesale company that has been doing business in the state of North Dakota since 1904. I'm also a member of the fourth generation of family members committed to improving our business within the state of North Dakota.

Congress Inc. employs 49 people, and has office and warehouse locations in Bismarck and Fargo, with an office location in Grand Forks. We service 1,519 retailers within the state of North Dakota, such as restaurants, bars, and package stores. These businesses employ over 24,000 people and generate over \$5 million in local and state alcohol taxes for North Dakota annually. As a company, Congress Inc. generates over \$1.2 million in state alcohol taxes for North Dakota annually.

I'm opposed to Senate Bill No. 2376 because it opens up the restrictions and regulations put in place by the 21st Amendment, which ensures tax collection and an orderly marketplace created by our country's "Three-Tier" system.

Under rights granted them by the 21st Amendment to the U.S. Constitution, all states are authorized to maintain strict controls over the sale and distribution of wine, beer, and liquor within their borders to enable tax collection and ensure an orderly marketplace. The relationship among Producers, Wholesalers and Retailers created our country's "Three-Tier" system. The goal was—and remains today—to promote and maintain competition in local markets and serve as an efficient way to collect state excise taxes.

Our Three-Tier system embodies the notion of responsible access. It allows states to enforce prohibitions against underage access. It efficiently collects and verifies excise taxes. It requires Wholesalers and our Retail partners to pass a rigorous licensing process highly regulated by state and federal laws. And it allows the state to easily take action against those businesses that violate its laws regarding beverage alcohol sale, distribution, and product purity.

We personally have over 400 brands of alcohol to choose from. We represent over 300 wines, and of the wines we currently inventory, there are over 2,000 sizes, flavors, and styles to choose from. We take a great deal of pride in fulfilling requests from Retailers and consumers alike in finding and inventorying wines requested by them. The opportunity to inventory these requests is of course dependent upon the OK of the wineries to allow us to distribute and sell their products.

Beverage alcohol is unique. It is the only product specifically controlled by the Constitution. I don't believe changing the laws to make private citizens responsible for paying Wholesaler and Retailer taxes to the state tax commissioner on all alcoholic beverages they personally receive in this state, as an efficient process of tax collection and legal control, ensuring an orderly marketplace of beverage alcohol in North Dakota.

We currently have a law on the books that allows for the limited and controlled shipment of beverage alcohol. It has compliance checks built into it for tax collections, and safety checks in place in hopes of keeping underage kids from receiving beverage alcohol via direct shipment.

Lets keep the needed controls of alcohol in place.

I urge you to vote no on Senate Bill #2376, to the proposed changes to the existing law.

Thank-you for your time.

TESTIMONY

SB 2376

February 5, 2003

Senate Industry Business and Labor Committee

Janet Demarais-Seaworth

North Dakota Beer Wholesalers Association

Mr. Chairman, members of the committee, my name is Janet Seaworth, I'm the Executive Director of the North Dakota Beer Wholesalers Association. Our association is comprised of 17 family owned and operated wholesalers, many in their third generation of family ownership. We appear in opposition to SB 2376, which seeks, for all practical purposes, to remove the state's ability to regulate the direct shipment of alcohol to North Dakota consumers.

This is an issue of fairness and involves the state's right and responsibility to regulate the flow of alcoholic beverages into North Dakota. The proponents of this bill would remove all licensing requirements, remove the responsibility to pay taxes, and in effect, strip the state of any ability to monitor interstate shipments. North Dakota will have to rely on the kindness of strangers to come forward and pay excise and sales taxes on the products they purchase from out-of-state shippers. I don't think the state should hold its breath waiting for these taxes to come pouring in.

We think it's wrong to allow out-of-state shippers to be free of licensing requirements and the duty to pay taxes, while in-state retailers and wholesalers are subject to licensing fees, tax payment and the full gamut of regulatory requirements. If SB 2376 passes, North Dakota law would favor out-of-state shippers who would be permitted to sell alcoholic beverages to North Dakota consumers without the same licensing requirements, regulation, accountability and taxation as the in-state concerns. We think it's 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.

Perhaps it bears repeating that the state has the unquestioned authority to regulate the flow of alcohol into North Dakota. As the United States Supreme Court stated in *North Dakota v. United States*, 495 U.S. 423, 431-32(1990), "the State has established a comprehensive system for the distribution of liquor within its borders. That system is unquestionably legitimate." It is entirely appropriate that the state license out-of-state shippers and require them to pay taxes. We urge you to reject SB 2376.

Thank you.

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Janet Seaworth
Operator's signature

10/22/03

Date

Testimony Before The
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

regarding

SENATE BILL 2376

provided on February 5, 2003

by

George W. O'Neill, Ph.D.

Fargo, ND

Chairman Mutch, Vice Chair Kline, and Members of the Senate Industry, Business and Labor Committee, good morning. I am George O'Neill, a citizen of North Dakota for the past 25 years, residing in Fargo. I am a collector and consumer of fine wines and I'm here today speaking for more than 60 members of the Valley Wine Society in Fargo who support Senate Bill 2376. Current North Dakota law does not allow wine enthusiasts to purchase wines from small "boutique" wineries. I, like many of my friends, 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. Current law prevents me from buying wines directly from a winery unless the winery is 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, who may be buying just a few bottles of wine. "Boutique" wineries have plenty of customers in other states.

The Valley Wine Society to which I belong holds monthly meetings where members sample and learn more about wines. To increase the breadth of our knowledge of wines, we frequently bring in wines that cannot be purchased in North Dakota. Current North Dakota law prohibits us from having wine shipped to a North Dakota address; consequently, we have wines shipped to one of the members of our group residing in Minnesota. Wine lovers who do not live in border communities don't have that option.

Reciprocity with other states is another good reason to pass SB2376. Mr. Greg Kempel has founded a winery in Cassleton, ND, called the Maple Valley Winery. Mr. Kempel would like to sell his product outside of North Dakota, but other states with wineries will not look favorably on importing North Dakota wines if we hamper the sale of wines from their states. This situation has already occurred in Virginia. Wineries there are having difficulty selling their product out-of-state because Virginia law, like North Dakota's, hampers interstate commerce of wine. The Virginia legislature is considering a change in the law at the request of Virginia wineries.

Those who oppose giving North Dakotans the freedom to purchase wines from outside the state have raised two arguments: 1) the loss of sales tax revenue, and 2) the fear that persons under the age of 21 will somehow arrange to pay for and have alcoholic beverages shipped to them. SB2376 addresses both of these concerns.

George W. O'Neill
Operator's Signature

10/22/03

Date

The bill before you calls for collection of sales tax on wine purchased elsewhere and shipped to a North Dakota resident. This represents revenue which the State is currently losing. Some of the wines we collectors enjoy are available in Minnesota but not in North Dakota. Since we cannot have such wines legally shipped to us because of current law, what many people do is buy these wines in Moorhead, or other cities in Minnesota, such as Minneapolis. North Dakota is losing sales tax revenue when this occurs. If we were allowed to have wines shipped directly to us, we would be happy to pay those sales taxes in our own state of residence.

SB2376 has a provision to prevent alcohol from being shipped to minors. Section 1, paragraph 6 requires packages of alcoholic beverages shipped directly to an individual to be labeled with the words, "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY," and the delivery person is required to obtain such a signature.

The current law as it relates to direct sale from out-of-state sellers is not really about sales taxes or minors consuming alcohol. It is really about protecting one segment of North Dakota business, liquor distributors, at the expense of consumers like us who enjoy rare wines. Distributors need to understand that wine enthusiasts will still buy wines from local businesses. Probably over 90% of the wines that wine lovers buy is bought locally. There are good wines available in North Dakota liquor stores and we will continue to purchase wine and other spirits locally. What we want is the freedom to occasionally purchase wines that are not available here in North Dakota.

The current law relating to direct sales of alcoholic beverages is discriminatory and should be amended. I urge you to support SB2376.

Thank you,
George W. O'Neill
3507 Par St.
Fargo, ND 58102

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Deanna Hall
Operator's signature

10/22/03
Date

LADIES AND GENTLEMEN MY NAME IS BRIAN HILL. I AM THE OWNER OF POLAR PACKAGE PLACE IN BISMARCK, A WINE AND SPIRIT RETAILER. I AM HERE IN SUPPORT OF SB 2376. BECAUSE OF THESE SUPPORTERS MY BUSINESS HAS GROWN ALONG WITH EVERY SIDE OF THIS INDUSTRY INCLUDING INCREASED COLLECTIONS OF TAXES. BUT THOSE IN OPPOSITION OF THIS BILL WILL NEVER GIVE UP THEIR GREED TO FORCE PEOPLE INTO NOT HAVING CHOICE. WHEN PEOPLE GO AND VISIT A WINERY IT BECOMES A LASTING MEMORY, SOMETIMES ROMANTIC OTHER TIMES A LEARNING EXPERIENCE THEY DO NOT WANT TO FORGET. THUS THEY COME TO THEIR FAVORITE RETAILER TO SEE IF WE CAN GET THIS WINE. IN MOST CASES WE ARE ABLE TO PROVIDE THIS SERVICE BUT NOT ALWAYS FOR MANY REASONS. THE LAW PASSED LAST SESSION HAMPERSTHEIR CHANCES OF RECEIVING THE WINE OR SPRIT OF THEIR CHOICE. THE OPPOSITION HAS PROMISED TO NEVER GIVE UP INCLUDING SENDING FALSE STATEMENTS TO ALL LEGISLATORS MINUTES BEFORE A VOTE. ONE WHOLESALER HAS REFUSED TO SERVICE MY ACCOUNT BECAUSE OF MY STAND ON THIS ISSUE. I HAVE HAD NO SALESPERSON, THEY REFUSE TO GIVE ME PRODUCT OR SUPPORT ALL AGAINST THE LAW. THEY SHOULD BE THANKING THESE WINE CLUBS FOR BRINGING TO LIGHT THE LOVE AND PASSION OF ENJOYMENT NOT PENALIZING THEM. I RESPECTFULLY ASK YOUR SUPPORT AND A DO PASS ON SB 2376. THANK YOU

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Brian Hill
Operator's Signature

10/22/03
Date

Support

To the North Dakota Senate Industry, Business and Labor Committee

Regarding Senate Bill 2376

Testimony provided on February 5, 2003 by Brad Burgum, Casselton, North Dakota

Mr. Chairman and members of the committee. My name is Brad Burgum and I am a resident of Casselton, North Dakota. I ask for your support of Senate Bill 2376 for two reasons.

First, we are asking for a change in the law to make products, principally wines from small producers that are available in other parts of the county, available for residents of North Dakota to purchase. More than one member of Casselton's Old Willow Tree Wine Club has had to purchase wine in Minnesota that could not be shipped into our state. Why should Minnesota have the sales tax revenue that we could have here at home? The wineries that produce hundreds of thousands of cases of wine annually are all represented. You can find their products in almost every bottle shop in the state. It is the small family producer that has to market directly to the consumer. Wine is like dresses or coats or shoes - one size does not fit all. If a North Dakota consumer has different tastes or wants to purchase a unique or unusual wine direct shipment is the only way to accomplish this.

Second, we live in an interconnected world. While wineries in California and other parts of the country may not depend on sales to North Dakota consumers to survive, similar ventures in our state may well need regional or national markets to prosper. Casselton's newest value added agricultural business, the Maple River Winery, began production last month. The success of Greg and Susan Kempel's venture will depend, in part, on being able to sell their products beyond the bounds of our community and state. Many states already have reciprocal shipping legislation like the provisions in subsection 4 of this bill. We need it here too. North Dakota is not the only state that is currently addressing this issue. In response to a court decision that Virginia's restriction on shipments from out of state wineries was unconstitutional, a Virginia state senate committee this week adopted legislation allowing their residents to buy wine from out of state and their wineries to ship to nonresident consumers. North Dakota needs to do the same to allow businesses like the Maple River Winery the opportunity to export the products they produce.

I urge you to recommend a DO PASS on this bill because it is positive step for our State, our consumers and our wineries. Thank you.

Brad Burgum PO Box 886, Casselton, ND 58012
701-347-4797 bburgum@burgumlaw.com

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Deanna Hallen
Operator's Signature

10/22/03

Date

Support *

SB 2376
Industry, Business and Labor Committee
Senator Judy Lee
February 5, 2003

SB 2376 was introduced to allow the people in North Dakota who enjoy unusual wine and beer to order it from out-of-state vendors and have it delivered to our homes. Currently, if I might order a case of wine, the vendor must pay a \$50 fee for the privilege of selling it to me. I would prefer to order mixed cases, perhaps 3 bottles from each of 4 wineries. But no winery is going to pay \$50 to send me 3 bottles.

The bill limits wine purchased to personal use only, 1 case of beer per month and 15 cases of wine per year. As you are aware, there are wine-of-the-month and beer-of-the-month clubs which provide samples of wines. Often subscriptions to these services are given as holiday gifts without the giver or recipient realizing they could be in violation of the law.

People ordering wine or beer would be required to pay the state taxes. The shipper would be obligated to report to the state tax commissioner the name and address of each recipient and what was shipped. The recipient would pay the taxes.

There are criteria put in place to ensure that people accepting delivery are of legal age. That is obviously important, but I don't think there are many under-age people who will plan ahead 2-3 weeks, pay \$20 or more for each bottle of wine, pay shipping, and find someone over 21 to accept shipping and pay for it. It's more likely that they will try to find someone on the night they get thirsty who'll buy some Bud Light for them and slip them an extra few bucks.

It is also important for our budding North Dakota winery industry to be able to ship out of state, and that would be permitted on page 3. I would like to suggest that we permit shipping within the state of North Dakota also. That is not in the bill as I had expected, but I respectfully request that you consider that, too, as an amendment.

SB 2376 would permit those of us who are interested to purchase a little wine from the wineries we have visited and enjoyed. There are wine clubs throughout the state who enjoy getting together to try new ones, too. I ask that you give SB 2376 a favorable review.