

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1365

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1365

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7503

Committee Clerk Signature	<i>Ellen LeTang</i>
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**Chairman Keiser: Opened the hearing on HB about prohibiting recyclers, scrap metal dealers or scrapyard operators from purchasing certain beer kegs & provide a penalty & effective date.**

Dave Weiler~Representative from District 30. The bill today deals with beer kegs being stolen.

It's a growing problem around the country. About half the states in the country have already passed legislation and we ask for considerable consideration in passing HB 1365.

Bill Delmore~Representing Kelsch Law Firm for Anheuser-Bush Company. See testimony attachment.

Representative N Johnson: If I steal a keg, there is no place that I can sell it, legally?

Delmore: That's true.

Representative Thorpe: How are these salvage yards (inaudible).

Delmore: The health department will tell them. They don't register in North Dakota but they have a list and other identification. We would certainly get the information out to them.

Primarily the people who are enforcing would be the health inspectors who see the kegs.

Representative Ruby: My crews might find some of these because they couldn't sell them.

Where would they take them if they didn't have identification tag? Is there a place to properly deliver them to, who didn't steal them but end up with them?

Delmore: Best thing to do would be to take them back to the distributor.

Representative Ruby: With two distributors in my area, they would know if it's theirs if there is no numbers on it?

Delmore: No, they would not but they would certainly know how to handle it.

Representative Ruby: Is there a deposit on them.

Delmore: Yes, they do pay; they get their deposit back when they bring it back empty. It is put out back but it's difficult to have a big locked storage because they are so big. That is when they are being stolen, after they have their deposit has been returned.

Representative Boe: How would I legally get a keg?

Delmore: There is a reason for a deposit, they are owned by the individual brewer, so there is no way to legally get a keg.

Representative Boe: So if I have a keg, I could assume that it is legally stolen. What is the law now about buying stolen property?

Olson: We do. Right now, one of the difficulties it's difficult to trace. Right now as a scrap dealer, I cut it up. I don't know as a scrap dealer, it's just stainless steel.

Representative Ruby: If somebody paid the deposit and decided to keep, they probably thought they bought the keg with their deposit.

Olson: I had no idea is cost \$140 to restore a keg. The deposit is more the case it helps recover some of the cost.

Representative Nottestad: I don't know how much it will do in the long run. Talks about stolen cooper situation and scrape dealers take it any way.

Olson: You are exactly right. Responsible dealers will follow and will cut quite a bit. It will cut the big loads like 50 to 80. That cost is going on to the people.

Representative Nottestad: If an inspector sees this big load, they have a violation.

Representative Ruby: What is a scrap dealer suppose to do or are they required to report it?

Also, are trash dealer suppose to report it?

Olson: Just refuse it. There is no requirement to report it.

Janet Sewart~North Dakota Beer Wholesalers Association. See testimony attachment.

Chairman Keiser: Have Minnesota and South Dakota seen any reduction?

Sewart: They have.

Representative Ruby: If somebody finds and call the distributor, do they get refunded?

Sewart: They are glad to get them back, no questions asked.

Representative Thorpe: Can they take them across the border?

Sewart: I can't answer that?

Is there anyone here in opposition, neutral position?

What are the wishes of the committee?

**Representative Ruby: Move a do pass on HB 1365.**

**Representative Clark: Seconded.**

**Voting roll call was taken with a Do Pass on HB 1365 with 11 yea's, 0 nay's, 2 absent  
and Representative Thorpe is the carrier.**

Date: Jan 21-2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1365

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ As Amended

Motion Made By Ruby Seconded By Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman <u>Ab</u>			Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigasaa	✓				

Total (Yes) 11 No 0

Absent 0

Floor Assignment Thorpe

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

**REPORT OF STANDING COMMITTEE (410)**  
January 21, 2009 6:18 p.m.

**Module No: HR-12-0686**  
**Carrier: Thorpe**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1365: Industry, Business and Labor Committee (Rep. Kelser, Chairman)**  
recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
HB 1365 was placed on the Eleventh order on the calendar.

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1365

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1365

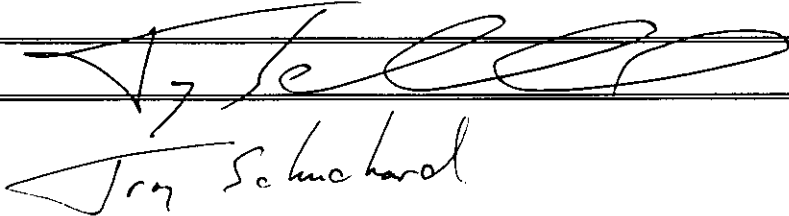
Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 17, 2009

Recorder Job Number: 11072

Committee Clerk Signature



Minutes:

**Chairman Klein:** Opened the hearing on HB 1365, all members present.

**Dave Weiler:** Representative District 30 introduced HB 1365 and testified in support. This is a multi-million dollar problem. People are renting kegs of beer then they turn around and sell them. This bill is introduced to make it illegal for someone to purchase one of these.

**Senator Andrist:** I don't understand why they just don't increase the deposit on these kegs.

**Dave Weiler:** It has been relayed to me that the majority in the industry fears that increasing deposits might in turn decrease the volume of sales.

**Bill Delmore:** Legal Counsel for Anheiser-Busch testified in support of HB 1365. The problem is not the one guy who sells the keg, it is the one guy who breaks into the back storage place at a local restaurant or bar and steals 20-30 kegs. The recycling place will buy the scrap metal. This is where we can stop this problem. If we cut off the payment for the kegs, it would be our assumption that this problem would go away.

**Senator Nodland:** What kind of money are we talking per keg?

**Bill Delmore:** The actual cost is \$150/keg. Scrap dealers are getting up to \$30/keg.

**Senator Nodland:** How do you see this being enforced?

**Bill Delmore:** The law abiding scrap dealers will not take these anymore.



**Senator Nodland:** You are counting on the scrap dealers being honest.

**Bill Delmore:** That is correct.

**Senator Andrist:** You say they steal 20 at a time, are they stealing them from the warehouse?

**Bill Delmore:** Typically they are stealing them from the bars, particularly after big events such as the 4<sup>th</sup> of July.

**Janet Seaworth:** Executive Director and Legal Counsel for the North Dakota Beer Wholesalers Association testified in support of HB 1365. (See attachment #1)

**Senator Andrist:** Motion for a Do Pass on HB 1365

**Senator Wanzek:** Seconded

**Chairman Klein:** Motion for a Do Pass is approved 7-0, Senator Behm to carry.

Roll Call Vote #: 1

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

**REPORT OF STANDING COMMITTEE (410)**  
March 17, 2009 1:45 p.m.

**Module No: SR-48-5111**  
**Carrier: Behm**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1365: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1365 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1365

**Testimony in Support of HB 1365**  
**House Industry Business and Labor Committee**  
**January 21, 2009**

*Same  
testimony +  
handout given  
to Senate.*

Chairman Keiser and Members of the Committee:

My name is Bill Delmore from the Kelsch Law Firm, Lobbyist No. 388, appearing on behalf of Anheuser-Busch Inc. in support of HB 1365.

Attached to this Testimony is a copy of a story from USA Today regarding the rationale and need for HB 1365.

Across the country breweries and wholesalers have experienced a raft of "keg thefts" having a major effect on their costs. Recently "keg theft" legislation like HB 1365 has been passed in South Dakota, Minnesota and Kentucky.

The market price of scrap metals including stainless steel beer kegs has quadrupled since 2001. This has resulted in an explosion of metal thefts which include man-hole covers, power lines and metal beer kegs.

In recent years US brewers have experienced keg losses due to theft in excess of 380,000 kegs per year. The industry estimates that the replacement costs of kegs lost to theft exceeds \$50 million per year.

In the past few years over half of the states have passed legislation regarding "keg theft".

Because of the high value of beer kegs and because of the brewers desire to reuse and recycle kegs wherever possible, there is no legitimate scrap market for such kegs. Brewers collect all of their kegs, repair them when necessary and reuse them whenever possible. Decommissioned beer kegs are sold to a small number of specialized companies.

This bill simply makes it illegal for scrap metal dealers to accept and purchase beer kegs.  
By reducing the "keg theft" problem, it will save money for the brewers and help to control the cost of beer for consumers.

Please give **HB 1365** a **DO PASS** recommendation.



## Beer kegs become hot commodity for thieves

By Barbara Hagenbaugh, USA TODAY

WASHINGTON — Thieves are stealing kegs, and they aren't doing it to get drunk. In fact, the emptier the better.

Across the country, crooks are snatching stainless steel kegs in alleyways behind bars and breweries or not returning them after keggers to sell for scrap metal.

The trend comes as the stainless scrap price has more than doubled in the last five years, making an empty 18-pound keg worth more than \$13, according to price data for steel scrap sold in Chicago.

Prices in other parts of the country are even higher, with kegs selling for \$30 and up, according to the Beer Institute, the industry trade group. Earlier this year, empty kegs were worth even more, but metals prices have fallen in recent months in a worldwide commodity price drop.

Approximately 300,000 kegs were stolen at a loss of \$50 million in 2007, estimates the Washington-based Beer Institute. Approximately 10% of the 625 million gallons of beer annually sold in the USA is in kegs, which are owned by brewers.

### A 'terribly frustrating' problem

Just a few years ago about 3% to 4% of brewer Sierra Nevada's kegs disappeared because of theft or other loss. Last year, the losses doubled, founder Ken Grossman says. The Chico, Calif.-based brewer owns approximately 180,000 kegs, and each costs \$150 to replace.

"It has been terribly frustrating," says Grossman, who also personally contacts people trying to sell Sierra Nevada kegs on eBay to recover the brewery's property. eBay quickly takes the items down when the auction site is alerted, Grossman says. Grossman notes such added costs eventually get passed along to consumers.

"This will increase the price of beer," he says.

Says Tim Herzog, owner of Flying Bison Brewing in Buffalo, "Everybody has something to lose."

A variety of metal goods have been disappearing in recent years as prices for nickel, copper and other metals have jumped in response to booming global demand. Thieves have been stealing everything from cemetery urns to manhole covers to copper wiring from construction sites.

The beer industry has worked with scrap metal dealers to educate them that accepting a stolen keg is illegal. The Institute of Scrap Recycling Industries (ISRI) has worked with police departments to develop a theft-alert system. If a keg is reported stolen, metal dealers in the region are notified to be on the lookout.

"On the one hand the prices are great," ISRI spokesman Bruce Savage says of the metal price increases. "On the other hand, the high prices are driving criminals to do anything they can."

Working with other industries being hit by metal theft, brewers have pushed for legislation to increase penalties and to expand the recordkeeping needed to buy or sell scrap metal.

In 2006, at least 35 states considered metal theft legislation, according to the National Conference of State Legislatures. At least 24 states passed laws. Some of the states, including Hawaii, Georgia, Ohio and West Virginia, specifically mentioned kegs in the legislation.

"We hope to make life very hard for these people," Beer Institute President Jeff Becker says.

A few states have raised the keg deposits, which are sometimes set by the state, so they're higher than the keg's scrap value. Last year, Michigan raised the deposit from \$10 to \$30. Liquor stores and brewers have also increased deposits.

It's not just a financial burden for brewers. With only one keg manufacturer in the USA, many brewers import, meaning there is a lag time between when brewers lose a keg and when they can get it replaced.

And manufacturers around the world are busy, given the loss of kegs around the globe, meaning turnaround times can be slow, Becker says.

#### **Putting kegs under lock and key**

Brewers and bars are adding fencing, locks and security cameras, and even affixing high-tech, radio-frequency tracking devices to the kegs.

Sierra Nevada recently purchased a \$100,000 machine that etches a code with a laser onto each keg that is read by a machine at the brewery. Once the system is running in a few months, Sierra Nevada will be able to know which kegs are missing and who should have them.

Tarpon Bend, a restaurant-bar in Fort Lauderdale, is designing a special shed to house empty kegs after 13 disappeared from behind the building one Sunday night in April. The kegs were chained and locked. Tarpon Bend lost the \$35 deposit on each keg.

"In nine years, we have never had anything like that happen," Tarpon Bend general manager Gene Beach says.

Buddy Sherman, owner of Southport Raw Bar in Fort Lauderdale, had 12 kegs stolen early in the morning on May 27. The thief, who was videotaped on a surveillance camera, broke through a lock and a chain and then piled the kegs into a late-model van. It took him 10 minutes.

"There's not a lot I can do," says Sherman, who has put a bigger lock on the fencing to the area where the kegs are located. "If they have bolt cutters, they are going to cut the bolt. I'm just trying to make it harder for them."

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#### **Find this article at:**

[http://www.usatoday.com/money/economy/2008-08-24-keg-theft\\_n.htm?loc=interstitialskip](http://www.usatoday.com/money/economy/2008-08-24-keg-theft_n.htm?loc=interstitialskip)

Testimony of Janet Demarais Seaworth  
Executive Director and Legal Counsel  
North Dakota Beer Wholesalers Association

*Same  
testimony + handout  
given to Senate.*

HB 1365  
January 21, 2009  
House Industry Business and Labor Committee

Mr. Chair, members of the Committee, my name is Janet Seaworth. I'm the Executive Director and Legal Counsel of the North Dakota Beer Wholesalers Association. We have seventeen family owned and operated beer distributors in North Dakota. We support HB 1365.

Keg theft is a problem across the country and in North Dakota. According to the Beer Institute, approximately 300,000 kegs were stolen at a loss of \$50 million in 2007. In North Dakota, wholesalers report significant losses. Last year, a wholesaler in Fargo lost 350 kegs at a cost of \$50 each. In Grand Forks, a wholesaler lost 250 kegs last year. These kegs are clearly marked with the brewer's name and the kegs belong to the brewer, so when a keg is stolen, the wholesaler must pay the brewer. In an effort to combat keg theft, brewers and wholesalers have increased keg deposits and have worked with scrap metal dealers to educate them that accepting a stolen keg is illegal. But the thefts continue.

Similar legislation was passed last year in Minnesota and South Dakota. We urge your support of HB 1365.

*For further information, contact NDBWA at 701.258.8098.*



#2



# South Dakota Legislature

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34A-6-107. Purchase of certain beer kegs by recycler, scrap metal dealer, or scrap yard operator prohibited--Violation as misdemeanor. No recycler, scrap metal dealer, or scrap yard operator may purchase any metal beer keg, whether damaged or undamaged, except from the brewer or its authorized representative, if:

(1) The keg is clearly marked as the property of a brewery manufacturer; or

(2) The keg's identification markings have been made illegible.  
A violation of this section is a Class 2 misdemeanor.

**Source:** SL 2008, ch 178, § 1.

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### Chapter 34A-6

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