

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1339

2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1339
January 24, 2011
Job # 13309

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to domestic brewery licenses; relating to taxes on alcohol

Minutes:

Chairman Keiser: Opened hearing for HB 1339

Representative Ruby: I am from District 38. We are back here again with a bill to discuss licensing another type of alcohol. A number of years ago there was a bill on License for a farm winery. A couple of years later I was asked by some businessmen who were interested in starting a winery to make some changes to make this a more viable business. We have since made a few changes to the original bill in 2003. There are now 8 wineries in state and 3 more are being proposed. Last session we put in a bill for distilleries license which was very similar to the winery bill dealing with distilleries license. There are now 3 distilleries licensed in the state. One of the things I looked at is the comments from people on breweries and I did know that we had a micro brewery law, and was wondering why that was not working like the wineries, as that law has been in place for much longer. There is some difference as far as licensures are basically a retail license, so they have a much higher cost. There is only one microbrewery in the state it is in Fargo and pretty much of their product is brought in from Minnesota. Obviously something isn't working here. I asked for a bill to be drafted that would be similar to the other two license so there would be some consistency for people who would want to start a small brewery and sell from their premises, on or off sale or to wholesalers. Since I have introduced this bill numerous people have let me know that they are interested doing this and are happy this was proposed. This bill is very similar to the other bills with one major difference. I am not asking that the majority of ingredient be North Dakota products. The reasoning is, to brew beer is a little bit different animal. I know you can grow hops here but do not know at what quantity. The cheapest product they can use more than likely would be the closest to the area. If it is wheat, they are pretty much going to get it here anyway. The bill is consistent in the amount of gallons. In exporting beer they would go with barrels. In the micro-brewing law there is a reference to exporting so many 1000 barrels. I don't understand export. One of my co sponsors noted that on line 17-18 in the winery law, subject to local ordinance for on sale and off sale, may be made on Sunday between 12:00 noon and 12:00 midnight. Most cities in the state, their ordinance is until 2:00. I might look at an amendment to be consistent with state law.

Chairman Keiser: As I understand the tax commissioner, to issue a new brewery license the cost would be \$100.00 initially and each year after.

Representative Ruby: Correct.

Chairman Keiser: This would allow "On Sale and Off Sale".

Representative Ruby: Yes that is currently what is done at distilleries and wineries now. That is where the limit of 12,000 gallons applies to those sales, if they are sending it direct to consumer or sell it from their premises. Previously there was no limit to what they would sell to the wholesalers for a year. But they are not getting close to selling to any of those limits.

Chairman Keiser: It also allows for free samples. Is that different?

Representative Ruby: The small sample for the tastes.

Chairman Keiser: The Special Event is the same as created in the winery, up to 20 days. Are those separate 20 days or a combination of days?

Representative Ruby: Yes

Chairman Keiser: No wholesaling. The other addition is that they can have a "On Sale retail license at a restaurant if the restaurant was owned by the brewery.

Representative Ruby: Yes

Representative Boe: Did you consult other states?

Representative Ruby: No, I wasn't sure I was going to put this in till session started. I had looked at the changes along with a gentleman who could not be present. He looked at the micro brewery law and could see why that isn't viable with that law and this bill would be. (Also was knowledgeable in the winery law) He went through it and here are some of the changes: the licensure was much higher, events and so forth. What other states do with it is all over the board.

Chairman Keiser: Anyone else

Mike Froelich: I am in support of this bill and will speak on some of the questions you had on State law and Montana Law. I am in the process of opening a brew pub in Bismarck. One of the things I would like the committee to consider is the part of the clause that says unfair competition and self distribution law that is in North Dakota. We are one of the 12 states that do not allow self distribution. 38 states do. Most of our surrounding states do, with the exception of South Dakota. If you would even consider looking into that he felt he would have some ideas on that. As far as ingredients, you can't get commercial hops

growers in North Dakota, as far as malters there is a Cargill but most of the malt around here comes from Briese, WI. The yeast companies are not located here either.

Representative Boe: Could you expand on what Montana laws are.

Mike Froelich: Montana law allows for a tapping room, they have a 3 pint maximum in their tapping room. Their tapping room can only be open from 4-8, and can only sell 3 pints per person. In Montana you can distribute up to 60,000 barrels. South Dakota has tap rooms in their brewery. I'm looking at a brew pub which we would manufacture and sell at the premise. Our system is small and would not have the ability to distribute. I am selling it to Mc Quades between \$90.00 and \$110.00 projected for that. I would like to set up a small operation, downtown that has a restaurant across the street. I can't say to that restaurant would you like a keg of our beer and walk the keg across the street. I have to go through a distributor. Minnesota Law you can distribute up restaurant to 25,000 barrels yourself. Craft brewery is growing 9%, they are expanding and getting bigger is helping tax revenues and jobs.

Representative Ruby: Is it more expensive for startup costs and brewing for a brewery compared to a winery?

Mike Froelich: Yes, the brew system is very expensive. For Example; the Rattlesnake Creek has a 7 barrel system, which is 14 kegs per batch was \$250,000 brand new. The 3 ½ barrel system that I have is \$35,000 right now and we will need to spend another 25 to 30 thousand to have the essential equipment to put the 400 barrels up. You are looking at 70 to 80 thousand to get it going, which is about as small commercial as you can get it.

Representative Boe: Surrounding states, or the states in the US, is there someone in the US that has something similar to what we are purposing here?

Mike Froelich: If you go to the Brewer's Association.org, there is a list of self distribution laws that is listed by states.

Representative Nathe: How are you regulated right now and how would it change with this bill?

Mike Froelich: As the statue is now the cities are going to craft a license for us, the State right now limits the following: you can manufacture up to 10,000 barrels and are taxed at 8 cents a gallon for the beer, you file quarterly returns, you can't be a wholesaler or distributor but as a Brew Pub you can brew and sell on site. I am unsure Brewery being limited to 25,000 gallons is like a on-site tapping room.

Chairman Keiser: The portion of this bill that is similar to the winery bill, winery is typically located where the grapes are, out in the country where there is not a large population base. Micro Breweries tend to be located in more densely populate areas. They have already city ordinances relative to restaurants and ownership and footprints and ratios. Aren't Micro-Breweries different in that respect in terms of allowing them to have a restaurant and there for automatically get a on sale license circumventing the local sub divisions authority?

Mike Froelich: We are offering a different product. We would be looking at a license on the cities side that 80% of our sales would be coming from our craft beer. I am not looking to have other beers on tap there, only my beer. I am not looking to have control of the market on the production

Rodney Hougan: I won the Red Trail Vineyard at Buffalo, ND: I wasn't going to testify on this bill until the topic of hops came up. We are growing hops in North Dakota; we grow hops in our vineyard. We have two varieties, one is called cascade and the other is called lamp. I support this bill. It's economic development for our state.

Chairman Keiser: Anyone here in opposition to HB 1339?

Janet Seaworth, Executive Secretary & Legal Counsel for North Dakota Beer Distributors Association: (see attached testimony).

Representative Boe: Do you think if we make it like the wine bill where it is required that a large percent of the supplies are products of North Dakota, so that would govern it some so it wouldn't go so fast, would you find a little more support in this?

Janet Seaworth: I don't know. It really doesn't address some of the other problems. One of the issue that is in the forefront of continued litigations in 23 states, is if you allow a micro brew pubs to have some of these exceptions to self distribute, can you do that if you put a volume cap on it? Whether that volume cap will save you from a constitutional violation under grand holm is it's under litigation now. Mu concern is that if you pass legislation like this, you run the risk of open expensive and time consuming litigation because it is easy picking. If you lose, as a state, the state is on the hook for the attorney's fee. I caution you because this kind of bill would in fact peek people's attention.

Representative Ruby: You must of recycles the testimony from 2003, dealing with the 3 tier system because since 03 we have had domestic brewery and winery license. This is not creating the problems you have mentioned in your testimony. How can you explain that has been is working and not challenged?

Janet Seaworth: I didn't change the testimony on the 3 tier system because that didn't change. The 3 tier system still exists today. It has been very effective and has been in place since 1933. Domestic winery does require some North Dakota products. And further just because no one has challenged those laws doesn't mean that they pass the constitution muster.

Representative Ruby: About the Supreme Court, about treating manufactures from in state, out of state being the same. We currently have that with the wineries where upon a manufacture getting a permit in North Dakota they can send the product to the consumer and we treat them the same. Why do you think this is different and in violation of our law?

Janet Seaworth: Because there are no caps. They can sell an unlimited quantity.

Chairman Keiser: You represent the beer wholesalers. Two parts to the litigation question: Are the wineries such as Gallo have not challenged our winery law, have the beer

wholesaler made any kinds of statements that if this law were to be passed there would be a forth coming challenge?

Janet Seaworth: I don't think you would get any challenges from the wholesaler's tier, what you would get a challenge from the out of state shippers, manufacturers and in some cases out of state retailers, who in some cases, seek to pretend that they were manufacturers. What happens in most instances in other states, is when these laws have been challenged, the wholesalers enter these as interveners to protect the 3 tier system and their roll in that?

Chairman Keiser: When this is challenged, you also mention the expense most times it is very expensive. If the state were to lose the case, the state would than pay for both sides of attorneys or just our states attorneys?

Janet Seaworth: Both sides of attorneys. In The state of Washington the attorney's fees extended to 5 million dollars. Even though the state prevailed on 7 out of 9 counts, the fact that they lost in two of the counts they were responsible for all the attorney's fees.

Representative Kreun: What information or recommendation would you give a gentleman to start up a business?

Janet Seaworth: Start with the brew pub legislation that is already allowed, in fact he could start with the Brewery and not sell on premise.

Representative Kreun: What would his capital investment be?

Janet Seaworth: Well it would probably be less than some of the retail licenses that are going for in the varies of cities. They are going up to \$150,000.

Representative Kreun: Actually the license is not the key issue. The capital investment and going through process of going through a distributor and the wholesaler. Basically you would have to go through that sale. Do they have the opportunity to say that they won't sell that product?

Janet Seaworth: No, all wholesalers under state law are required not to discriminate against retailers. The investment, the initial question you would have to ask is, do I want to be a retailer. If you just want to be a brewer, than you have the initial start up cost associated with being a brewer. If you want to be a retailer too, you would have some additional costs.

Representative Kreun: But one of the things here is that you are at the mercy of the wholesaler and distributor to get your product out on the market. That is one of the things you look at when you start a business, is how do you get your product out there? I think that there are a lot of road blocks out there.

Janet Seaworth: Anyone who wants a distributor right now in North Dakota can get one or has one.

Representative Boe: On the distributor's part, they are not allowed to discriminate. How would that work? If I was to go to a distributor, would they give me a proposal on costs?

Janet Seaworth: Most of the time, when I get calls that are looking for a distributor, I refer them to my distributors. They look at the distributors and what that distributor can add to the value of their product and make a determination who they want to use. They may go with one or they may go to several.

Representative Boe: Would price come into the factor. Would cost versus not just what they can offer you for a promotion or size of territory be a factor? Is there some kind of consistency in the industry?

Janet Seaworth: If a manufacturer, would to suggest of dictate the price of what the product is sold he would be guilty of antitrust violation. The package would be more access to the market, rotate my product and what are you going to do to service my product. Because the tiers have to be separate under the 3 tier system we not only have 3 tier concern we also have antitrust concerns.

Representative Ruby: Since we have the micro brewery license and the brew pub and this has been in place for quite a while and we only have one of them, why do you think that is and why don't we have more of them if you think that's such a viable business model?

Janet Seaworth: I don't know. I would have to ask my local distributors. I am sure it is a variety of factors. Frankly beer sales have been flat for the last decade or so. I would have to ask my distributors.

Rob Hanson General Manager of Ed Phillips and Sons and Northwest Beverage in Fargo, a member of the Beer Wholesalers Association and the Director of the Wine and Spirits Wholesalers Association: I would like to add my support to Janet's opposition of this bill.

Chairman Keiser: Opposition, neutral?

Blaine Braunberger State Tax Department: I'm here for a resource. Our office watches over, is responsible for and regulates the 3 tier system.

Chairman Keiser: There is a fiscal note here are you familiar with the fiscal note?

Blaine Braunberger: I did not see that Fiscal Note this morning

Chairman Keiser: It just came down this morning and there is no fiscal impact, do you concur with that?

Blaine Braunberger: Yes we would.

Representative N Johnson: The term liquor wholesale on the top of page 2 line1, what would be the correct terminology in that line?

Blaine Braunberger: The correct terminology would be to strike liquor and spell it as North Dakota Wholesaler.

Chairman Keiser: Closed the hearing on HB 1339.

2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1339
January 24, 2011
13315

☐ Conference Committee

Committee Clerk Signature

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Relating to domestic brewery licenses; relating to taxes on alcohol

Work Committee Minutes:

Chairman Keiser: Opens the work session on HB 1339.

Representative Ruby: Not knowing what is going to happen on this one but I would like on page 2, line 1, remove the word liquor at the end of the sentence.

Representative Ruby: Make the motion.

Representative N Johnson: Second.

Chairman Keiser: We have a motion.

Voice vote, motion carried.

Chairman Keiser: The amendment is on the bill as before us, what are the wishes of the committee?

Representative Ruby: Moves a Do Pass as Amended.

Representative Sukut: Second.

Representative Ruby: This is an old friend in the way that it's very similar except for the one change that we had the majority of product requirement. It was mainly because of the commercial grade hops, malting and yeasts. It's a different kind of animal. However federal law has specific requirements.

Chairman Keiser: There was the concern on the 12 midnight on page 1, lines 18 & 19, is there anything wrong if we strike that entire sentence?

Representative Ruby: Withdraw the motion.

Chairman Keiser: The motion for a Do Pass as Amended was withdrawn. Is there a further amendment?

Representative Ruby: Move to strike the whole sentence starting on line 17 thru 19.

Vice Chairman Kasper: Second.

Voice vote, motion carried.

Representative Ruby: Moves a Do Pass as Amended.

Representative Sukut: Second.

Chairman Keiser: Further discussion?

Roll call was taken on a Do Pass as Amended on HB 1339 with 10 yeas, 4 nays, 0 absent and Representative Ruby is the carrier.

FISCAL NOTE
Requested by Legislative Council
04/11/2011

Amendment to: Engrossed
HB 1339

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1339 with Senate Amendments authorizes domestic breweries in the state, creates an annual licensing requirement, and imposes alcohol taxes on the alcoholic products of domestic breweries.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of Engrossed HB 1339 with Senate Amendments imposes an annual license fee of \$100 on domestic breweries. Section 2 of HB 1339 imposes the alcohol taxes on the beer produced by a domestic brewery. The fiscal impact is unknown.

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	04/11/2011

FISCAL NOTE

Requested by Legislative Council
01/18/2011

Bill/Resolution No.: HB 1339

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1339 authorizes domestic breweries in the state, creates an annual licensing requirement, and imposes alcohol taxes on the alcoholic products of domestic breweries.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of HB 1339 imposes an annual license fee of \$100 on domestic breweries. Section 2 of HB 1339 imposes the alcohol taxes on the beer produced by a domestic brewery.

It is not known if there will be any domestic breweries that become licensed and start operating and paying alcohol taxes as a result of HB 1339. It is not possible to estimate the fiscal impact of HB 1339.

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/22/2011

Date: Jan 24 - 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1339

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

strike last word

Date: Jan 24-2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1339

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigasaa					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

motion withdrawn

Date: Jan 24-2011

Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1339

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Further Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigasaa					

Further amend motion

Total Yes _____ No _____

Absent _____

voice vote - motion carried

Floor Assignment _____

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

strike language - strike
all of 18 & mid m

17 - sub.

January 24, 2011

VR
1/24/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1339

Page 1, line 17, remove "Subject to local ordinance, sales"

Page 1, remove line 18

Page 1, line 19, remove "midnight."

Page 2, line 1, remove "liquor"

Renumber accordingly

Date: Jan 24 - 2011

Roll Call Vote # 4

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1339

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark		✓	Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson		✓			
Representative Kreun	✓				
Representative Nathe		✓			
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 10 No 4

Absent _____

Floor Assignment Rep Ruby

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

REPORT OF STANDING COMMITTEE

HB 1339: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1339 was placed
on the Sixth order on the calendar.

Page 1, line 17, remove "Subject to local ordinance, sales"

Page 1, remove line 18

Page 1, line 19, remove "midnight."

Page 2, line 1, remove "liquor"

Renumber accordingly

2011 SENATE JUDICIARY

HB 1339

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1339
3/16/11
Job #15537

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to domestic brewery licenses, relating to taxes on alcohol

Minutes:

There is attached testimony

Senator Nething – Chairman

Representative Dan Ruby – Introduces the bill and explains how it came about and what it does. He says since the change in the winery law there is now 8 wineries licensed, and potential for 3 more coming later this year and 3 distillery licenses. He goes on to tell about things that have been said about the other wine or brewery bills. He explains the 3 tier system and rebukes what opponents may say.

Senator Nelson – Asks about line 12 - 16 of the bill

Rep. Ruby – He said that was copied from other licenses and has nothing to do with the sale of the product. He mentions they do sometimes sell things out of the tasting rooms.

Senator Nelson – Says the language is confusing.

Senator Sitte – Asks if we didn't have a law in place for a brewery long ago when there was a brewery in downtown Bismarck.

Rep. Ruby – Replies that was under the micro brewery license. He says this bill is still subject to local ordinances.

Senator Sitte – Asks why the 25,000 gallon limit.

Rep. Ruby – Says the limits are from what they can sell from their premises or direct consumer only.

Mike Frohlich – Bismarck – Looking to open up a brew-pub in Bismarck – See written testimony.

Rod Ballinger – Bear Creek Winery, Fargo – See written testimony.

Opposition

Janet Seaworth – Executive Secretary and Legal Counsel for the ND Beer Distributors Association – See written testimony.

Senator Nething – Questions the bill being unconstitutional and asks what she was referring to.

Seaworth – Responds there are unlimited off-sale and the direct shipment to consumers. She goes on to say there is some concern with special events provisions that would be unconstitutional. She says the Granholm Decision says, what you allow for an in-state producer you must allow for an out-of-state producer.

Senator Olafson – Asks if a constitutional challenge would quickly be forthcoming if we pass this bill.

Seaworth – Responds that she has had an opportunity to watch litigation for several years culminating in the Granholm Decision. She says there are a group of lawyers in this country that make their living on alcohol litigation. She explains how they bring these lawsuits to test the constitutionality. She says we are ripe to test their legal theories and there is very active litigation from the big box retailers. She gives examples of this.

Senator Sorvaag – Asks if the distributors have exclusive rights with the major breweries.

Seaworth – Replies they have exclusive territories and franchise and the extent of their exclusivity is based on their franchise agreement with the brewer.

Senator Sorvaag – States there is really no incentive for them to give any of the upstarts a chance to distribute their products because they are naturally going to promote the products of the larger brewers.

Seaworth – States our laws require that distributors may not discriminate against retailers. She said what happens is you have the largest manufacturers cutting deals with the largest retailers to the exclusion of everybody else.

Senator Sorvaag – Said he is talking about the brewer and the distributor's relationship.

Seaworth – Many of the wholesalers welcome the opportunity to carry the small craft brewers and are doing so actively.

Senator Sitte – Asks how she is coming up with unlimited quantities when the bill says 25,000 gallons.

Seaworth – Replies the difference is the 25,000 is a volume cap, unlimited direct sale is how much you can sell to the consumer. Gives examples.

Senator Sitte – Relates when she went through a distillery and they talked about select barrels go out to premium people. She asks if this is in conjunction with the commerce clause, she says they must not be violating it if they openly talk about it.

Seaworth – Says the proponents of the bill talk about the fact that 39 states allow self distribution. She said you need to be careful when you talk about self distribution with regard to beer because it is not clear on what they are talking about. Are they talking about sales on premise to consumer or sales to retail, or sales to wholesalers with certain exceptions. She says you need to go to the 39 states that allow it and see what the exceptions are and are they allowing it for out of state entities as well. She says that is the only way you will satisfy the commerce clause in the Granholm Decision.

Shannon McQuade-Eli – President and Owner of McQuade Distributing – She says she does not see why this bill is necessary because the system is not broken. She thinks brew pubs should be allowed to sample on premise and sell glassware & tee shirts and distribute growlers off-sale to their customers. Her concern is how they would sell to retail accounts. She speaks of wanting to sell local craft beers and be their distributor. She says craft beers are a trend that is here to stay. Her concern is with the three tier system of which distributors are the second tier. She explains what they do on the system. She said it is in her best interest to support local beers because that is what people are going to buy at a higher profit margin.

Senator Nething – Asks when she has a beer to distribute does she have the authority under her franchise agreements.

McQuade-Eli – Says she has the ability to support the smaller ones as much as the larger.

Senator Nething – Asks if the product needs to meet her standards.

McQuade-Eli – Responds, yes it must meet their standards. She talks about the different brands.

Senator Olafson – Says he is concerned about the brewer that could direct ship to consumers.

McQuade-Eli – She replies as a distributor to have an out of state brewer directly ship to a retail account frightens her. She explains how she could be out of business.

Senator Olafson – Said he worries about the control issues.

McQuade-Eli – Explains what they do about underage sales and programs they have that would go away.

Senator Sitte – Asks what the smallest quantity of craft beer she would consider taking on in her company.

McQuade-Eli – Responds saying the brewer she has now does about 2800 barrels a year and she is the only wholesaler in ND to carry that product. She spoke of a nano-brewery coming to Bismarck that will do very small quantities but she still wants their business.

Randy Christenson- Distributor from the Fargo area – Opposed to the bill because it creates some material exceptions to the 3-tier system particularly in the unlimited quantities in sales to consumers. He relates a story and the different boards and programs he is a part of. As he understands in 1339 there would no requirement to obtain a local, or state retail license if you have the \$100 brewer license. He says this raises concerns with the states attorney's, and city attorney's office. He believes it is in direct conflict with the public safety and other issues they have tried to address on college campuses. He says selling and distributing alcohol bears a certain amount of social responsibility.

Rob Hanson – President of the Wine and Spirits Wholesalers Association – urges a do not pass.

Neutral

Jerry Hjelmstad – ND League of Cities – Proposes an amendment.

Daniel Rouse – Legal Counsel to the ND Office of State Tax Commissioner – See written testimony.

Tom Trenbeth – Chief Deputy Attorney General for ND – He is concerned with this bill and also 1340. He says the Attorney General is a big supporter of small business and has always encouraged new industry. The Attorney General is concerned with the constitutionality. He says they see their office very probably being in the position of defending a constitutional challenge to each of these bills. Challenges to the commerce clause in situations like this fall under the purview of 42USC 1983, a 1983 action which was a civil rights action. He says when you lose civil rights actions you pay both sides and that is why there is no end to reasonable and unreasonable challenges. They favor the concept that each of these bills is trying to promote.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1339
3/22/11
Job #15843

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to domestic brewery licenses, relating to taxes on alcohol

Minutes:

Senator Nething – Chairman

Committee work

Senator Olafson moves to adopt the amendment .02001

Senator Lyson seconded

Verbal vote – all yes

Discussion on the League of Cities amendment

Senator Olafson moves to adopt the amendment by the League of Cities

Senator Nelson seconded

Verbal vote – all yes

Senator Olafson moves a do not pass as amended

Senator Nelson seconded

Roll call vote – 6 yes, 0 no

Motion passes

Senator Nething will carry

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1339

Page 1, line 2, remove "domestic"

Page 1, line 12, remove "domestic"

Page 1, line 18, remove "domestic"

Page 1, line 22, remove "domestic"

Page 1, line 24, remove "domestic"

Page 2, line 1, remove "domestic"

Page 2, line 6, remove "domestic"

Renumber accordingly

Date: 3/22/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1339

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
12.02.001
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal yes.

Date: 3/22/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1339

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
Leque of Cistis
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal - yes

Date: 3/22/11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1339

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	<input checked="" type="checkbox"/>		Carolyn Nelson	<input checked="" type="checkbox"/>	
Curtis Olafson - V. Chairman	<input checked="" type="checkbox"/>				
Stanley Lyson	<input checked="" type="checkbox"/>				
Margaret Sitte	<input checked="" type="checkbox"/>				
Ronald Sorvaag	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Nething

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

REPORT OF STANDING COMMITTEE

HB 1339, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1339 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "domestic"

Page 1, line 11, after "other" insert "state"

Page 1, line 11, after the underscored period insert "A local governing body may require a domestic brewery that intends to sell beer at retail to obtain a local retail alcoholic beverage license, and subject to the provisions of this section, require compliance with local regulations for the retail sale of alcoholic beverages."

Page 1, line 12, remove "domestic"

Page 1, line 18, remove "domestic"

Page 1, line 22, remove "domestic"

Page 1, line 24, remove "domestic"

Page 2, line 1, remove "domestic"

Page 2, line 6, remove "domestic"

Renumber accordingly

2011 TESTIMONY

HB 1339

Testimony
HB 1339
January 24, 2011
House Industry, Business and Labor Committee

Mr. Chairman, members of the Committee, my name is Janet Seaworth. I am the executive secretary and legal counsel for the North Dakota Beer Distributors Association. We have 17 family owned and operated beer wholesalers in North Dakota. Many are now in their third-generation of family ownership. We are opposed to HB 1339.

We cannot support a bill that is unnecessary, that calls for further erosion of the three-tier system, and that provides an unconstitutional preference for in-state brewers.

North Dakota law already allows brewers and brewpubs. Anyone who wants to establish a brewery may do so, by obtaining a license and paying the annual license fee of \$500. Likewise, anyone may establish a microbrew pub by obtaining both a brewer and retail license. This bill would allow someone to get a "domestic brewery" license by paying a mere \$100 - and there is no requirement that the "domestic brewery" use any North Dakota products in the brewing process. This isn't a "domestic brewery" bill. It's a bill to allow a brewer to operate as a manufacturer, wholesaler and retailer, for a mere \$100.

This bill calls for the further erosion of the three-tier system. It allows a "domestic brewery" to sell its products for on-sale and off-sale consumption in retail lots. In other words, the domestic brewery will operate as a manufacturer, wholesaler, and retailer, in violation of the three-tier system. The three-tier system of alcohol distribution was put into place after the repeal of prohibition in 1933 in order to prevent the abuses that lead to prohibition in the first place. That system requires that the distribution of alcohol go through three tiers: the manufacturer, the wholesaler, and the retailer. There may be no integration between the tiers. Prior to prohibition, manufacturers owned retailers "lock, stock and barrel." As a result, they were able exert pressure on the retailer to sell its products exclusively, and they pushed the sale of their products without regard to social consequences. That "tied-house" lead to the problems which precipitated prohibition. When prohibition was repealed by the 21st Amendment in 1933, the federal government and states established the three-tier system for alcohol distribution - and mandated that a wholesaler separate the supplier and retail tiers. Now, we have those who would seek to bypass the three-tier system. That might be an attractive business model, but it is not in the public interest. The three-tier system balances appropriate social controls with a competitive marketplace. We know what happens when alcohol is deregulated. We need only remember what occurred prior to prohibition, and during prohibition when alcohol was banned and there was no regulation, and organized crime decided to do some "economic development" of its own. Today, we can look at what's happening in the United Kingdom. Alcohol deregulation has lead to rampant alcohol abuse and calls for a return to active alcohol regulation. This bill is a step backward in active alcohol regulation. It calls for an exception to the three-tier system that we urge you not to

support.

This bill calls for an unconstitutional in-state preference. The bill would allow a "domestic brewery" to sell its products for on-sale and off-sale consumption in unlimited retail lots. We don't allow out-of-state breweries to do that. Out of state breweries may ship direct to consumers in limited quantities and only for personal use. This discriminatory preference for an in-state brewery is unconstitutional under *Granholm v. Heald*. In *Granholm*, the court invalidated two states' direct shipping laws allowing in-state wineries to ship wine they produced directly to consumers, but barring out-of-state wineries from doing the same. The Court was clear "that States may not give a discriminatory preference to their own producers." 544 U.S. 460, 486. HB 1339 provides a specific exception to North Dakota's three-tier system favoring in-state producers. That is not allowed under *Granholm*.

The bill discriminates against existing brewers and retailers.

- Allowing this "domestic brewery" to operate for \$100, and sell its product for on or off sale in retail lots discriminates against existing brewpubs and retailers, who have to pay considerably more than \$100 for a license.
- There is no limit on the amount of sampling. Yet brewpubs' samples are limited to 16 oz. per patron.
- The bill allows for special event permits wherein the domestic brewer can give free samples and sell its beer. Retailers can't do this without going through the permitting process.
- The bill forbids domestic brewers from wholesaling and requires them to go through a "liquor" wholesaler. We are going to assume that is a clerical error resulting from the fact that the drafters of the bill simply lifted language intended for domestic wineries and tried to make it fit for breweries.

In sum, it does not seem reasonable to us to allow legislation that is unnecessary, that erodes the three-tier system, that provides for an unconstitutional in-state preference for producers, and that unfairly discriminates against existing brewers and retailers. We ask you to oppose HB 1339.

Janet Demarais Seaworth
Executive Secretary and Legal Counsel
North Dakota Beer Distributors Association

HB 1339 & 1340

I am testifying in support of this bill, but only with changes in certain provisions of this bill. Currently North Dakota is the only state in the union to not have a brewery. Montana ranks 2nd in breweries per capita with 27 (as of 2008), and Minnesota ranks 29th, with 22 breweries. Surly Brewing company, of Brooklyn Center, MN is looking at a \$20 million expansion.

What do these states have in common that North Dakota lacks.... Self Distribution. Thirty-Eight states have self-distribution laws in statute. Current Montana law allows for self-distribution of up to 60,000 bbls (a barrel equivalent to 31 gallons). Minnesota law allows for self distribution if the brewer has a wholesaling business (something that current ND Century Code does not allow).

The craft brewing industry is growing. In 2009, overall beer sales were down, but craft beer sales were up 9%. The industry is growing, but not in North Dakota. We have the barley here, but no maltsters. We can grow hops here, but no one does it on a commercial level. We talk about value added agriculture. If we can open the door to breweries in North Dakota, we open the door to businesses that support the brewing industry.

HB 1340 allows domestic wineries to self-distribute. That provision has been stripped in HB 1339. I would like to see that put back into the language of this bill. Should we be treating wineries and breweries differently from each other, or do we want a consistent Century Code that treats businesses fairly. In addition to this language change, I would like to encourage the committee to also add this language for micro-breweries and brew pubs.

Opponents of this bill, and my proposed changes to this bill, will say that this undermines the 3-Tier system of Manufacturer, Wholesaler, and Retailer. Thirty-eight states already have self distribution law in statute. I am in the process of opening a brewpub in Bismarck. My production model for the first years of operation is a 400 bbl capacity. My estimates are that we could possibly distribute at most 10% of this capacity for a total of 80 kegs per year. And if we were looking to distribute to anyone of any distance, we would be going through a wholesaler anyway, for feasibility sake. I would venture to guess that 80 kegs/yr is less than 1% of any of the distributors in Bismarck.

We have an opportunity to help bring a new industry to the state, creating jobs, and tax revenue. Wholesalers are not going to be put out of business by this law. Starting a brewery is a major undertaking. Initial investment is very high. Without self-distribution, profits are cut in half.

I think there is a balance to be found. Montana has achieved such balance. I would like to encourage you to amend the current state of HB 1339 and put back the self-distribution clause, and expand that clause to cover microbreweries and microbrew pubs.

Thank you for your time.

Mike Frohlich

Chairman Nething and members of the committee

I am owner of the Bear Creek in Fargo and a significant part of my business plan includes wine tasting events at my winery. Although most of our customers do drink wine, there are some who attend prefer beer instead. This bill would allow me the opportunity to provide crated beers for tasting and add to the ambiance of a wine tasting event. Many brewmasters learned their beer making craft at home and most winemakers started their ventures in fermentation as amateur beer makers. With that in mind, there is already much knowledge out there on the science of beer brewing and this legislation would be a great compliment to the domestic wine and distillery laws. I would appreciate your support for HB 1339. Thank you for your time. Rod Ballinger

Chapter 436

436.1401 Wholesalers to be granted exclusive sales territory by manufacturer and outstate seller of beer and malt beverages.

Minnesota

License to self-distribute: Yes (limited)

Chapter 340A

The commissioner shall issue a wholesaler's license to a brewer only if (1) the commissioner determines that the brewer was selling the brewer's own products at wholesale in Minnesota on January 1, 1991, or (2) the brewer has acquired a wholesaler's business or assets under subdivision 7a, paragraph (c) or (d). (g) A brewer that manufactures malt liquor in Minnesota may, if the brewer does not manufacture in Minnesota in any year more than 25,000 barrels of malt liquor or its metric equivalent, own or have an interest in a malt liquor wholesaler that sells only the brewer's products.

Missouri

License to self-distribute: No

Title 20, Chapter 311

Sec. 311.195 The holder of a microbrewer's license may also sell beer and malt liquor produced on the brewery premises to duly licensed wholesalers. However, holders of a microbrewer's license shall not, under any circumstances, directly or indirectly, have any financial interest in any wholesaler's business, and all such sales to wholesalers shall be subject to the restrictions of sections 311.181 and 311.182.

Mississippi

License to self-distribute: No

Title 67

§ 67-3-46. Manufacturers of light wines or beer prohibited from acting as wholesalers or distributors.

Montana

License to self-distribute: Yes

Title 16, Ch. 39

(<60k) 16-3-214 a brewer who manufactures less than 60,000 barrels of beer a year (a) sell and deliver beer from its storage depot or brewery located in Montana to: (i) a wholesaler; or (ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or (iii) the public.

Nebraska

License to self-distribute: No

Chapter 53

Section 53-169 The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer.

Nevada

License to self-distribute: No

CHAPTER 369

NRS 369.382 a supplier shall not engage in the business of importing, wholesaling or retailing alcoholic beverages in this State.

New Hampshire

License to self-distribute: Yes

Title XIII, sec. 178:12&13

Brewers ("Beverage Manufacturers") who produce less than 15,000 barrels and sell less than 5,000 barrels in-state per year can opt for self-distribution. Brewpubs can also self-distribute, though brewpubs can only produce fewer than 2,500 barrels. (provided by brewer).

New Jersey

License to self-distribute: Yes

Title 33:1-10

Limited brewery license. 1b. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages in a quantity to be expressed in said license, dependent upon the following fees and not in excess of



Breweries Per Capita 2008

Breweries Per Capita Rank	Total Breweries	State	Breweries Per Capita
1	19	Vermont	32,698
2	27	Montana	35,831
3	93	Oregon	40,753
4	31	Maine	42,466
5	103	Colorado	47,956
6	14	Alaska	49,021
7	10	Wyoming	53,267
8	100	Washington	65,492
9	7	Delaware	84,548
10	66	Wisconsin	85,272
11	15	New Hampshire	87,721
12	16	Idaho	95,239
13	15	Nebraska	118,895
14	16	New Mexico	124,022
15	70	Michigan	142,906
16	5	South Dakota	160,839
17	8	Hawaii	161,025
18	16	Nevada	162,510
19	17	Kansas	164,831
20	75	Pennsylvania	165,977
21	221	California	166,320
22	18	Iowa	166,809
23	38	Massachusetts	170,999
24	14	Utah	195,459
25	29	Missouri	203,848
26	5	Rhode Island	210,158
27	16	Connecticut	218,828
28	28	Indiana	227,743
29	22	Minnesota	237,291
30	32	Virginia	242,784
31	26	Arizona	250,007
32	21	Maryland	268,267
33	42	Ohio	273,474
34	33	North Carolina	279,467
35	3	DC	291,031
36	6	West Virginia	302,411
37	41	Illinois	314,672
38	14	South Carolina	319,986
39	56	New York	348,041
40	14	Tennessee	443,921
41	39	Florida	469,957
42	18	New Jersey	482,370
43	7	Oklahoma	520,337
44	16	Georgia	605,359
45	7	Kentucky	609,892
46	1	North Dakota	641,481
47	36	Texas	675,749
48	4	Arkansas	713,848
49	5	Alabama	932,380
50	4	Louisiana	1,102,699
51	1	Mississippi	2,938,618



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[Number of Breweries](#)

[Breweries per Capita](#)

[Market Segments](#)

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FACTS

- Craft brewers currently provide an estimated 100,000 jobs in the U.S., including serving staff in brewpubs.
- Growth of the craft brewing industry in the first half of 2010 was 9% by volume and 12% by retail dollars.
- Overall, U.S. beer sales were down an estimated 2.7% by volume in the first half of 2010.
- Growth of the craft brewing industry in 2009 was 7.2% by volume and 10.3% by dollars compared to growth in 2008 of 5.9% by volume and 10.1% by dollars.
- Craft brewers sold an estimated 9,115,635 barrels* of beer in 2009, up from 8,501,713 in 2008.
- Overall, US beer sales were down 2.2% in 2009.
- Imported beer sales were down 9.8% in 2009, equating to a loss of 2.8 million barrels.
- The craft brewing sales share in 2009 was 4.3% by volume and 6.9% by dollars.
- Craft brewer retail dollar value in 2009 was an estimated \$6.98 billion, up from \$6.32 billion in 2008.
- 1,595 breweries operated for some or all of 2009, the highest total since before Prohibition.



* 1 barrel = 31 US gallons

Last updated on 8/9/10

Photo © 2010 istockphoto.com

EVENTS

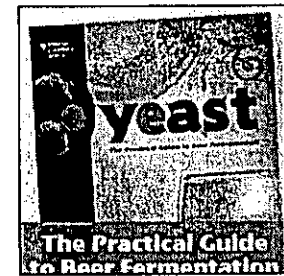
THU FEBRUARY 17, 2011
February Power Hour

TUE MARCH 08, 2011
Craft Brewers Pavilion at
Nightclub and Bar Show -
March 8-9, 2011

WED MARCH 23, 2011
Craft Brewers Conference -
March 23-26, 2011

MON MAY 16, 2011
American Craft Beer Week -
May 16- 22, 2011

FRI JUNE 03, 2011
SAVOR: An American Craft
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June 3-4, 2011



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- Facts
- Beer Sales
- Number of Breweries
- Breweries per Capita
- Market Segments
- Craft Brewer Defined

Marketing Tools

- Export Development Program

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Power Hour

BEER SALES

First Half 2010 Craft Beer Industry

- Growth of the craft brewing industry in the first half of 2010 was 9% by volume and 12% by retail dollars.
- Overall, U.S. beer sales were down an estimated 2.7% by volume in the first half of 2010.

2009 Craft Beer Industry Production Volume

Regional craft breweries	7,053,996 bbl
Contract brewing companies	365,132 bbl
Microbreweries	989,644 bbl
Brewpubs	706,863 bbl

Domestic Craft Beer Sales

2009	9,115,635 barrels
2008	8,501,713 barrels

How big is the US beer market?

Overall US Beer Market in 2009:

- Down 2.2%
- Approximately \$101 billion
- Selling 205,676,000 barrels of beer.

Where:

- 1 barrel = 31 US gallons
- 31 US gallons = 2 half-barrels
- 2 half-barrels (15.5 gallon) kegs = 13.78 cases (of 24 12-ounce bottles).

See [Craft Brewer Defined](#) for more details on industry definitions.

Important Information

Media should contact Paul Galza, Julia Herz, or Barbara Fusco at the Brewers Association for more information. 1.888.822.6273 or +1.303.447.0816.

Comprehensive reports and analysis will be printed in the May/June 2010 issue of *The New Brewer*, The Journal of the Brewers Association, released in mid-May. The issue can be purchased directly from the Brewers Association by calling 1.888.822.6273, +1.303.447.0816.

EVENTS

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February Power Hour

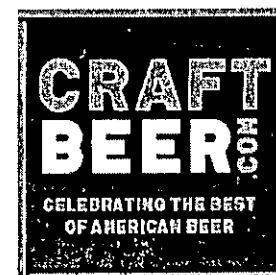
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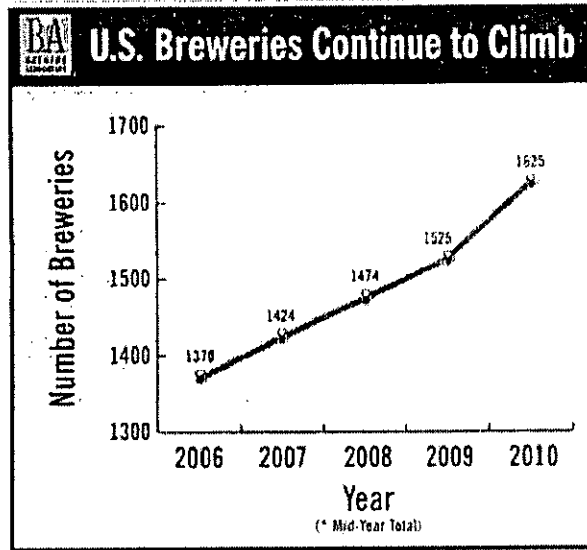
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Power Hour

NUMBER OF BREWERIES

US Breweries July 31 2010

Brewpubs	994
Microbreweries	534
Regional Craft Breweries	71
Total US Craft Breweries	1,599
Large Non-Craft Breweries	20
Other Breweries	21
Total US Breweries	1,640



Source: Brewers Association, Boston, MA. Figures adjusted to reflect mid-year totals.
Graph as of June 30, 2010

US Breweries Operating in 2009

68	Regional Craft Breweries
486	Microbreweries
998	Brewpubs
1,552	Total Craft Breweries
20	Large Breweries (Non-Craft)
23	Other Non-Craft Breweries
1,595	Total US Breweries

US Breweries Operating in 2008

62	Regional Craft Breweries
447	Microbreweries
995	Brewpubs
1,504	Total Craft Breweries
20	Large Breweries
23	Other Non-Craft Breweries
1,547	Total US Breweries

2009 US Openings

47	Brewpubs
63	Microbreweries

2009 US Closings

34	Brewpubs
----	----------

2008 US Openings

66	Brewpubs
58	Microbreweries
1	Regional Craft Brewery

2008 US Closings

45	Brewpubs
----	----------

EVENTS

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16 Microbreweries

15 Microbreweries

2 Regional Breweries (non-craft)

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SELF-DISTRIBUTION LAWS

While this database has undergone several rounds of fine-tuning, it should not be considered the final word on self distribution laws across the country, but rather as a signpost pointing you in the right direction.

We Appreciate Your Feedback

Please review your state's statute citation and provide us feedback based on your actual experiences.

Does the database cite the correct statute(s)?

- Does the database cite all the laws that apply to self distribution in your state?
- Are there provisions relating to licensing and/or production caps that affect self distribution and therefore should also be referenced?
- Are there any current efforts to address the distribution laws in your state?

Your assistance is essential to ensuring the database is both comprehensive and accurate. Please send your comments to [Pete Johnson](mailto:Pete.Johnson@brewersassociation.org).

Alabama

License to self-distribute: No

Title 28

(b) No manufacturer licensee shall sell any alcoholic beverages direct to any retailer or for consumption on the premises where sold, nor sell or deliver any such alcoholic beverages in other than original containers approved as to capacity by the board and in accordance with standards of fill prescribed by the U. S. Treasury Department, nor maintain or operate within the state any place or places, other than the place or places covered by the manufacturer license, where alcoholic beverages are sold or where orders are taken.

Alaska

License to self-distribute: Yes

Title 4

Chapter 04.11. LICENSING Unlimited self distribution to licensed wholesalers and retailers (provided by brewer)

Arkansas

License to self-distribute: Yes

Title 3, Chapter 5, SubChapter 1405

(A)Manufactures at its licensed facility no less than thirty-five percent (35%) of its beer and malt beverages to be sold in the state or purchases from a producer brewery beer or malt beverages in an aggregate quantity not to exceed sixty thousand (60,000) barrels per year; (B)Sells to wholesale or to the consumer for consumption either on or off the premises brand name products of the licensed facility;

Arizona

License to self-distribute: Yes

Title 4

4-205.08. Domestic microbrewery license D. A licensed domestic microbrewery is subject to all of the following requirements: 5. The microbrewery may make sales and deliveries of beer that it has produced to both: (a) Retail licensees that are under common ownership with the microbrewery in any amount. (b) Other licensed retailers in an amount not to exceed ninety-three thousand gallons in any calendar year. (up to 3,000 bbl under 20,000 bbl production cap; unlimited to same-ownership outlets)

California

License to self-distribute: Yes

Business & Professions Code, Div 9

A holder of a beer manufacturers license can sell to a licensed retailer. No restrictions on production size or on-premise (brewpubs). Holders of a Type 75

EVENTS

THU FEBRUARY 17, 2011
February Power Hour

TUE MARCH 08, 2011
Craft Brewers Pavilion at
Nightclub and Bar Show -
March 8-9, 2011

WED MARCH 23, 2011
Craft Brewers Conference -
March 23-26, 2011

MON MAY 16, 2011
American Craft Beer Week -
May 16- 22, 2011

FRI JUNE 03, 2011
SAVOR: An American Craft
Beer & Food Experience -
June 3-4, 2011

SUPPORT YOUR LOCAL BREWERY

Your brewery needs to become part of the SYLB network enlisting beer activists to help support the rights of craft breweries around the country. Visit www.SupportYourLocalBrewery.org



MEMBERSHIP INVESTMENT

More than 2,200 members - owners, CEOs, brewers, marketers, distributors and managers have made the investment. [MORE ►](#)



CRAFT BEER STATISTICS

See [Craft Beer Stats](#) for more information.

Brewpub license with liquor may only distribute through a licensed wholesaler.

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Colorado

License to self-distribute: Yes

[Title 12, 47-402, Manufacturer's license; 512-47-415](#)

12-47-402. Manufacturer's license. Brewers or winers licensed under this section may solicit business directly from licensed retail persons or consumers by procuring a wholesaler's license as provided in this article; except that any malt liquor sold at wholesale by a brewer that has procured a wholesaler's license shall be unloaded and placed in the physical possession of a licensed wholesaler at the wholesaler's licensed premises in this state and inventoried for purposes of tax collection prior to delivery to a retailer or consumer. Brewpubs may sell at wholesale to licensed retailers in an amount up to 300,000 gallons per calendar year.

Connecticut

License to self-distribute: Yes

[Title 30, Ch. 545](#)

Sec. 30-16. Manufacturer permit. (a) A manufacturer permit shall allow the manufacture of alcoholic liquor and the storage, bottling and wholesale distribution and sale of alcoholic liquor manufactured or bottled to permittees in this state and without the state as may be permitted by law.

Delaware

License to self-distribute: No

[Title 4](#)

Statutes only specifically mention the right to sell to a wholesaler.

District of Columbia

License to self-distribute: No

[Title 25, Ch. 1, Subch. 2, sec. 110](#)

(B) The license shall authorize the licensee to sell the beer manufactured under the license to (i) another licensee under this title for resale; (ii) to a dealer licensed under the laws of any state or territory of the United States for resale; and (iii) to a consumer. The licensee may sell beer to the consumer only in barrels, kegs, and sealed bottles, which shall not be opened after sale, or the contents consumed, on the premises where sold.

Florida

License to self-distribute: No

[Title XXXIV, Ch. 563](#)

(b) Except as provided in paragraph (c), no entity or person specified in paragraph (a) may have an interest in the license, business, assets, or corporate stock of a licensed distributor nor shall such entity sell directly to any vendor in this state other than to vendors who are licensed pursuant to s. 561.221(2).

Georgia

License to self-distribute: No

[Title 3, Chapter 5](#)

Based on 3-5-32 (no manufacturer can have an interest in a wholesaler operation)

Hawaii

License to self-distribute: Yes

[Title 16, Ch. 281](#)

1. Manufacturers' licenses. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption.

Iowa

License to self-distribute: Yes

[Ch. 123, sec. 124](#)

A class "A" permit allows the holder to manufacture and sell beer at wholesale.

Idaho

License to self-distribute: Yes

[Title 23, ch. 10](#)

A brewer licensed under the provisions of subsection (d) or (e) of this section may be licensed as a wholesaler for the sale of beer to retailers other than at the licensed brewery and one (1) remote retail location.



illinois

License to self-distribute: Yes

Ch.235

ARTICLE V. LICENSES Class 3. In state brewers may make sales and deliveries of beer to importing distributors, distributors, and to non licensees, and to retailers provided the brewer obtains an importing distributor's license or distributor's license in accordance with the provisions of this Act.

Manufacturers of beer outside of Illinois must: obtain a non-resident dealer license (NRD); file registration statements and label approvals, and; sell only to licensed importing distributors.

Indiana

License to self-distribute: Yes

Title 7.1

(c)(20k) (5) If the brewer's brewery manufactures not more than twenty thousand (20,000) barrels of beer in a calendar year, do the following (A) Sell and deliver beer to a person holding a retailer or a dealer permit under this title.

Kansas

License to self-distribute: No

Chapter 41

41-308b. Microbrewery license A microbrewery license shall allow: (1) The manufacture of not less than 100 nor more than 15,000 barrels of domestic beer during the license year and the storage thereof; (2) the sale to beer distributors of beer, manufactured by the licensee;

Kentucky

License to self-distribute: No

KRS Chapter 243.00

243.157 Business authorized by a microbrewery license: (2) A microbrewery license shall not be deemed to be incompatible with any other license except for a distributor's license under the provisions of KRS 243.180.

Louisiana

License to self-distribute: No

Revised Statutes 26:273

§273. Limitations on the issuance of state permits; exceptions -- A. The commissioner shall not: (2) Issue a wholesale dealer's permit to a person or his spouse possessing a manufacturer's permit, retail dealer's permit of either Class A or Class B, or a microbrewer's permit.

Maine

License to self-distribute: Yes

Tille 28

C. A holder of a small brewery license may sell or deliver the product to licensed retailers and wholesalers. The licensee may sell, on the premises for consumption off the premises, malt liquor produced at the brewery by the bottle, case or in bulk to licensed retailers, including, but not limited to, off-premise retail licensees, restaurants and clubs.

Maryland

License to self-distribute: No

Article 2B

§ 2-208. Micro-brewery license. 2) Notwithstanding § 2-201(b) of this subtitle, may not be granted a wholesale alcoholic beverages license.

Massachusetts

License to self-distribute: Yes

138 section 18-19

A 19 license allows brewers to distribute an unlimited amount. A 19C farmer brewers license allows sales at retail and brewers may hold a Sec. 18 wholesalers license to distribute their beer or another brewer's beer.

Michigan

License to self-distribute: No

300,000 barrels of 31 fluid gallons capacity per year and to sell and distribute this product to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse.

New Mexico

License to self-distribute: Yes

60-6A-26.1. Small brewer's license

60-7A-B. Sales to wholesalers. Unless he has a wholesaler's license, no New Mexico manufacturer shall sell or offer for sale any alcoholic beverages manufactured within this state to any person in New Mexico other than wholesalers licensed under the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

New York

License to self-distribute: Yes

Alcoholic Beverage Control, Article 4

If you apply for and receive a microbrewers license, you are entitled to apply for a distributors permit. This permit allows you to self distribute up to a capacity of 60,000 bbl. annually. Once you reach that plateau you must work through distributor networks. If you have a brewpub license the water is murky as to what you can do (some distribute, but must serve on premises only). A brew pub can apply for a Restaurant/Brewer license which allows them to distribute themselves off premises, but only up to 3,000 bbl. per year. This also allows them to operate up to 3 brewpubs in New York State and the distribution is capped at 8,000 bbl. off premises per year aggregate. - provided by brewer. Also see § 51. Brewer's license, sec. 2.

North Carolina

License to self-distribute: Yes

Chapter 18B

§ 18B 1104. Authorization of brewery permit. (7) In areas where the sale is legal, sell the brewery's malt beverages at the brewery upon receiving a permit under G.S. 18B 1001(1). The brewery also may obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale only malt beverages manufactured by the brewery. The authorization of this subdivision applies to a brewery that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than 25,000 barrels, as defined in G.S. 81A 9, of malt beverages produced by it per year. A brewery not exceeding the sales quantity limitations in this subdivision may also sell the malt beverages manufactured by the brewery at not more than three other locations in the State upon obtaining the appropriate permits under G.S. 18B 1001. A brewery operating any additional retail location pursuant to this subdivision shall also offer for sale at that location a reasonable selection of competitive malt beverage products.

North Dakota

License to self-distribute: No

Title 5

5-01-11. Unfair competition - Penalty. A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. CHAPTER 5-01 14 A microbrew pub (>10k barrels per year) may not engage in any wholesaling activities.

Ohio

License to self-distribute: Yes

Title XLIII

§ 4303.02. Permit A-1 may be issued to a manufacturer to manufacture beer and sell beer products in bottles or containers for home use and to retail and wholesale permit holders under rules promulgated by the division of liquor control. The fee for this permit is three thousand nine hundred six dollars for each plant during the year covered by the permit. § 4301.24 This section does not prevent the holder of an A permit from securing and holding a wholesale distributor's permit or permits and operating as a wholesale distributor.

Oklahoma

License to self-distribute: Yes

Title 37

§37-521. Acts authorized by the various licenses. A. A brewer license shall authorize the holder thereof: To manufacture, bottle, package, and store beer on licensed premises; to sell beer in this state to holders of Class B wholesaler licenses and retail licenses and to sell beer out of this state to qualified persons.

Oregon

License to self-distribute: Yes

Title 37, Ch. 471

Brewery licensees can self distribute with no volume restriction. Brewpub licensees can self distribute to one other location and if their production is less than 1000 BBL's in the previous calendar year they can self distribute. 471.220 Brewery license. (1) A brewery license shall allow the manufacture, importation, storage, transportation, wholesale sale and distribution to licensees of the Oregon Liquor Control Commission, and the export of malt beverages.

Pennsylvania

License to self-distribute: Yes

Title 40

PA has historically viewed brewers as always being the 'master distributor' of its brands, permitting PA brewers to self distribute in territories that they have not assigned a wholesaler to do so for them. (provided by brewer)

Rhode Island

License to self-distribute: Yes(?)

Title 3

§ 3-6-15 Manufacturer's interest in business of wholesaler prohibited. – No manufacturer of distilled spirits or wines whose principal place of manufacture is outside of this state shall hold a wholesaler's license

South Carolina

License to self-distribute: No

Title 61

61-4-940 (D) A manufacturer, brewer, and importer of beer are declared to be in business on one tier, a wholesaler on another tier, and a retailer on another tier. A person or an entity in the beer business on one tier, or a person acting directly or indirectly on his behalf, may not have ownership or financial interest in the beer business operation on another tier.

South Dakota

License to self-distribute: No

Title 35

35-8A-8 no manufacturer or brewer, or party directly interested in either of them, may be granted a wholesale license.

Tennessee

License to self-distribute: Yes

Title 57

57-5-101 (2) A manufacturer operating as a retailer pursuant to subdivision (c)(1)(A) may not sell its beer directly to retailers that are located in a county other than the county in which the manufacturer is located. Notwithstanding any provision of law to the contrary, any transfer or sale by a manufacturer operating as a retailer to an off-site retailer's location shall constitute a wholesale sale.

Texas

License to self-distribute: Yes

Alcoholic Beverage Code, Title 3, Ch. 12

Brewpubs are not allowed to distribute (self or otherwise) in Texas. Shipping breweries can self-distribute if they manufacture less than 75,000 bbls of beer per year. You need a manufacturer's license in Texas to make "beer" defined as less than 4% ABW. You need a brewer's permit to make "ale" defined as more than 4% ABW. The 75,000 bbls is calculated as total "beer" and "ale". (synopsis provided by brewer)

Utah

License to self-distribute: Yes (<60k)

Title 32A

32A-8-401 (1) A brewery license allows the licensee to: (d) in the case of a small brewer, sell in accordance with Subsection (5) beer manufactured by the brewer to: (i) a licensed retailer;

Virginia

License to self-distribute: Yes

Title 4.1

§ 4.1-206. Beer licenses (brewer slated a brewery can form a separate distribution company as a distinct legal entity)

Vermont

License to self-distribute: Yes

Title 7

A brewer can hold a wholesalers license and self-distribute, (provided by brewer)

Washington

License to self-distribute: Yes (<60k)

Title 66

66.24.244 (2) Any microbrewery license under this section may also act as a distributor and/or retailer for beer and strong beer of its own production

Wisconsin

License to self-distribute: Yes

Chapter 125

125.29(3) Activities. Subject to s. 125.34 (2), a brewer may manufacture, possess and store fermented malt beverages on the brewery premises and transport fermented malt beverages between the brewery premises and any depot or warehouse maintained by the brewer for which the brewer has a wholesaler's license issued under s. 125.20.

West Virginia

License to self-distribute: Yes

§11-16-6

A brewer whose place of brewing or manufacture is located within the state of West Virginia may act as distributor of his own product from such brewery, place of manufacture or bottling, but must have a distributor's license for distribution from a place other than the place of brewing or manufacture.

Wyoming

License to self-distribute: Yes

Title 12

12-2-201 (a) A wholesale license authorizing the sale of malt beverages only may be granted by the commission to breweries, microbreweries and malt beverage wholesalers resident within this state.

3

Testimony
HB 1339
March 16, 2011
Senate Judiciary Committee

Mr. Chairman, members of the Committee, my name is Janet Seaworth. I am the executive secretary and legal counsel for the North Dakota Beer Distributors Association. We have 17 family owned and operated beer distributors in North Dakota. Many are now in their third-generation of family ownership. They have invested millions of dollars in their businesses, they pay millions of dollars in excise taxes every year for the privilege of doing business in North Dakota, and they are highly regulated. We are opposed to HB 1339.

This is not a "domestic" brewery bill. HB 1339 would create a new brewery license that would expand the rights of brewers by permitting them to sell on-sale or off-sale and ship to consumers in unlimited quantities. The bill is patterned after domestic winery and domestic distillery legislation that allowed special exemptions to regulation for the purpose of encouraging value-added agriculture. Those same exceptions are provided in this bill, yet there is no requirement that the brewery use a majority of North Dakota farm products to manufacture beer. Rather, this bill allows a brewer to operate as a bar - selling on-sale and off-sale - without having to get a retail license. That is a serious deregulation of alcohol. There seems to be a total disconnect with what might be appropriate for a farm winery operating out in the country, and a brewery operating as a bar downtown.

North Dakota law already allows brewers and brewpubs. Currently, North Dakota brewpubs are permitted to brew beer on the premises and are also permitted to hold a retail license and sell alcohol and food directly to the public. This is a privilege no other brewer enjoys. Brewpubs may also sell growlers for off-sale consumption, directly to the public in unlimited quantities. No other brewer is allowed that privilege. And anyone who wants to establish a brewery may do so, by obtaining a license and paying the annual license fee of \$500. The supporters of this bill have argued that it's too onerous to be licensed as a microbrew pub - because microbrew pubs must get a retail license. But every other entity selling alcohol direct to consumers has to get a license - with the exception of those who are selling alcohol made with a majority of North Dakota farm products. Without that requirement, this bill simply allows a brewer to operate as a retailer, for a mere \$100. That is not in the public's interest.

This bill calls for the further erosion of the three-tier system. The three-tier system of alcohol distribution was put into place after the repeal of prohibition in 1933 in order to prevent the abuses that lead to prohibition in the first place. That system requires that the distribution of alcohol go through three tiers: the manufacturer, the wholesaler, and the retailer. There may be no integration between the tiers. Prior to prohibition, breweries owned retailers "lock, stock and barrel." As a result, they were able exert pressure on the retailer to sell its products exclusively, and they pushed the sale of their products without

regard to social consequences. That "tied-house" lead to the problems which precipitated prohibition. When prohibition was repealed by the 21st Amendment in 1933, the federal government and states established the three-tier system for alcohol distribution - and mandated that a wholesaler separate the supplier and retail tiers. Beer has always been produced and sold under the three-tier system in the U.S. Large brewers may only brew beer and sell to distributors. Distributors may only distribute beer and sell to retailers. Retailers may only sell to the public. With the exception of brewpubs, which must also obtain a retail license, each tier is limited to its service focus. The system is designed to moderate competition, inhibit excessive sales pressure, and promote moderation and stability. The system ensures that the number of alcohol outlets is controlled and that vendors of alcohol are licensed and regulated. The very problems with "tied-houses" that lead to prohibition are present in this bill. There is a vertical integration of the tiers.

This bill calls for an unconstitutional in-state preference. The bill would allow a "domestic brewery" to sell and ship its products for off-sale consumption in unlimited retail lots. We don't allow out-of-state breweries to do that. Out of state breweries may ship direct to consumers in limited quantities and only for personal use. This discriminatory preference for an in-state brewery is unconstitutional under *Granholm v. Heald*. In *Granholm*, the court invalidated two states' direct shipping laws allowing in-state wineries to ship wine they produced directly to consumers, but barring out-of-state wineries from doing the same. The Court was clear "that States may not give a discriminatory preference to their own producers." 544 U.S. 460, 486. The two states were required to pay not only their own attorneys fees but the other sides' attorney fees which together, totaled millions. HB 1339 is similarly unconstitutional.

unlimited
off sale -

This bill would eliminate the face-to-face transaction required under state law to purchase beer. HB 1339 would allow a domestic brewery to ship its products to consumers in this state. We don't allow retailers to ship beer direct to consumers. North Dakota law requires a face-to-face transaction and sale on the licensed premises when purchasing alcohol. It is the most effective way to ensure that the purchaser is of age.

North Dakota's regulatory system has worked well for over 75 years. We have an orderly, accountable and transparent alcohol distribution system. HB 1339 threatens to unravel that system and is exposes our laws to significant legal challenges. We ask that you give HB 1339 a Do Not Pass recommendation.

Janet Demarais Seaworth
Executive Secretary and Legal Counsel
North Dakota Beer Distributors Association

**TESTIMONY OF THE NORTH DAKOTA OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE JUDICIARY COMMITTEE**

HOUSE BILL NO. 1339

MARCH 16, 2011

Chairman Nething, and members of the Senate Judiciary Committee, my name is Daniel Rouse. I am Legal Counsel to the North Dakota Office of State Tax Commissioner. I am here today on behalf of Tax Commissioner Cory Fong to express our concerns with House Bill 1339.

The North Dakota Tax Commissioner's Office is responsible for the regulation of all alcoholic beverages manufactured, regardless of origin, that are then sold in North Dakota. Our office collects an alcoholic beverages tax from wholesalers related to the sales into North Dakota of those beverages.

If this bill is enacted, it will create another class of manufacturers the Tax Department will be required to regulate and collect tax from. We also regulate manufacturers, wholesalers, domestic wineries, domestic distilleries, and microbrew pubs.

The last class mentioned, microbrew pubs, has been in state law since 1991. We believe that it may be a better course to amend the microbrew pub law than to create yet another class of manufacturers to regulate. In other words, the microbrew pub law could be amended to allow some of the benefits intended by HB 1339 as well as some of the characteristics now found in the domestic winery and domestic distillery laws. We would be happy to work with the proponents of this bill to craft such amendments.

Mr. Chairman, and members of the Committee, the Tax Commissioner respectfully requests that you take these concerns into consideration when deliberating HB 1339. I would be happy to respond to any questions. Thank you.