

Testimony of Patrick Ward on behalf of ND Wholesale Liquor Distributors
in Opposition to SB 2318

Senate Finance and Tax

February 10, 2021

Chairwoman Bell and Members of the Senate Finance and Tax
Committee:

My name is Patrick Ward and I represent the North Dakota Wholesale
Liquor Dealers Association in opposition to SB 2318. While we support
some parts of this bill, there are other parts we oppose.

Our ND liquor and beer wholesalers have been doing business with liquor
retailers on the Fort Berthold reservation, including with the Four Bears
Casino, for many years under ND state and federal licensing laws.

About three years ago, the MHA nation adopted a new tribal liquor
ordinance and regulations. Those regulations were sent to North Dakota
wholesalers and retailers doing business within the boundaries of the
reservation by the Tribal Tax department. The wholesalers and retailers
were being told to register with the Tribe to receive a wholesale or retail
liquor license from the tribe.

As part of that registration process, the wholesalers and retailers were asked to submit to tribal court jurisdiction and regulations to do so, as well as pay a licensing fee. There were provisions in that law and the implementing regulations enacted more onerous than any under state law. The wholesalers, who are not located on the reservation, and retailers on private fee land within the reservation boundary, objected. We tried to work out a compromise which was unsuccessful. And so, for a time, wholesalers stopped making deliveries to those businesses.

We did appear here last session on SB 2257 which allowed for these State-Tribal tax compacts to be created. We supported that bill as did the MHA Nation.

However, near the end of the session after the bill had passed the House and Senate, the Tribe began to ask for a modification to the bill to increase the amount of its share of the tax. No modification was made. Following the session, no agreement was reached between the state and MHA, despite one or more meetings between the Tax Commissioner and MHA.

Since that time and up until just before January of this year, the Tribal Business Council had been granting monthly exemptions to allow wholesale deliveries on the reservation without requiring the wholesalers to get licensed by the tribe. My clients value the business relationship with the tribe and would like to continue their business. Accordingly, we would ask that the language on page 3, line 29, "not in conflict with federal law" be deleted. We would ask that new language be inserted at page 3, line 27 to provide: "A ND licensed wholesaler shall

be permitted to deliver to retailers within reservation boundaries as authorized by state law and without having to register or obtain additional licensure from a tribe.”

We respect and understand the sovereignty of the tribes over tribal members on Tribal owned land. However, we disagree that the tribe should have authority to enforce its regulations or rules against nonmembers of the tribe for activities taking place on their own private property or off the reservation. None of the ND wholesalers of beer or liquor are located on the reservation. Rather than submit to dual regulation, many of my clients would rather not do business on the reservation.

Wholesalers are already heavily regulated by the federal and state government. My clients pay the wholesale liquor tax on every bottle of wine or spirits they bring into this state. ND Wholesalers are not inclined to subject themselves to other regulatory authorities or courts when the state is the one collecting the tax, enforcing compliance, and distributing the tax under the Compact.

We are neutral on how the tax is split but we would oppose any attempt at dual taxation or regulation.

We would be happy to work with this committee and with the MHA Nation to come to an accommodation that would improve this bill.

Without that, we strongly urge a Do Not Pass on SB 2318.