

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2179

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2179

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2179

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-19-05

Tape Number	Side A	Side B	Meter #
1	X		0-END
1		X	0-197
Committee Clerk Signature <i>Lisa Ann Berkem</i>			

Minutes: **Chairman Mutch** opened the hearing on SB 2179. All Senators were present. SB 2179. All Senators were present. SB 2179 relating to domestic wineries in North Dakota.

Senator Duaine Espegaard of District 43 in Grand Forks introduced the bill. See written testimony.

Representative Dan Ruby of District 38 appeared in support of the bill.

Representative Ruby: Some of the changes proposed this time in the bill were discussed last time. I was involved with the bill last session. The changes have helped domestic wineries going from being just a hobby to a viable business. The majority product provision limits the majority of what they sell to ND products. The grapes are not grown in the state, efforts are being made to grow grapes. Anytime they can get products over here that they don't have to pay shipping on it is a plus. Many legislators felt that 5 days were too short of a time period for selling, during the last session. For example, the state fair is a 9 day event. Domestic wineries do use distributors to

get their product out, based on the quantity size that they can provide, it is difficult for them to get it out to several different outlets and keep a consistent supply. I appreciate the opportunity to appear before you and am in support of the changes in this bill.

Tony Osowski, who owns wineries in Grand Forks and Fargo appeared in support of the bill.

See written testimony.

Senator Klein: How come you located in Fargo and Grand Forks rather than East Grand Forks or Moorhead where you wouldn't have had any of these issues?

Tony: Because I was born and raised in North Dakota, I've been in business here and like it here.

I didn't want to be anywhere else. At the time we started the business, we didn't start as an actual winery, instead we were a "make your own wine" store. We felt that ND was a great place to be. As things turned out, we would have been much better off in Moorhead or East Grand Forks.

Senator Klein: So, if this doesn't work out, you're just renting space, you could move across the border and wouldn't have all these issues facing you, you could be more successful?

Tony: I would sure hope so.

Senator Klein: Does Minnesota or South Dakota have these other issues that would hamper you like the gallons and the purchase of the local raw product?

Tony: I know that Minnesota does have the 51 % clause, I'm told by other winery owners if the product is not available, that they are allowed to bring it in from out of state. Wineries can sell direct to retailers, as in most wineries throughout the country.

Senator Heitkamp: I appreciate the trouble you are going through, we've had the wine bill in here several times before. There is a three tiered system in ND, with a lot of jobs being created by that system. There is no question this would somewhat circumvent that, its my understanding in Minnesota they have some of the same criteria that we have in ND. We seem to focus on the fact that if we go to Moorhead or East Grand Forks all these troubles will go away, that wasn't the case with their system or the ability to purchase the product.

Tony: I haven't researched the law that closely, but I'm basing it off of what I've been told by people in the wine industry in Minnesota.

Michael Jore from Presque Isle Wine Cellars of Fargo testified in support of the bill. See written testimony.

Senator Nething: The bill has 4 key provisions, the majority ingredient, the 20 day extension, allowing the direct sale, and the increased production. Do these need to be considered as a package?

Michael: Yes. All four of the provisions would help us in the promotion of ND wine.

Senator Klein: How do you propose to get your your product into a restaurant or liquor store at the wholesale level?

Michael: If we develop an excellent working relationship with that individual that would be ideal. The direct sale to retailers and restaurants would be the most beneficial.

Senator Mutch: A wholesaler might not want to deal with the distributon when there is a small amount, might not be worth the effort.

Michael- the bother of the small volume just might not be worth it for the wholesalers. Other states have direct sale winery policies.

Senator Klein- Wouldn't it still be cheaper to go through the wholesaler, rather than shipping it in several different directions? Retailers are hesistant to place in a new product in the market without a track record.

Patrick Ward appeared in opposition to the bill. See written testimony.

Senator Espegaard- How many other states have the 3 tiered system as we have it in ND?

Patrick- I will check into it, I don't have the information on hand.

Senator Klein- Would you like an amendment for wholesalers to also be retailers?

Patrick- No.

Rob Hanson of Johnson Brothers Northwest Beverages appeared in opposition to the bill. See written testimony from Rob, and from Greg Kempel of the Maple River Winery.

Senator Espegaard- What is the objection to the 51% ingredient requirement?

Rob- We want to make ND wine truly a ND product, many of the companies we represent our proud of this fact. Otherwise a winery could bring in 25,000 gallons of grape juice from California and still call it ND wine, when it really isn't.

Senator Klein- What criteria does an item have to have in order to be carried in your warehouse?

Rob- We welcome ND wineries and help distribute their wines. Nobody in my company is turning down domestic wineries. However, I can't force retailers to buy their products. There are 4 domestic wineries in the state of ND right now. When we are contacted by these wineries, we represent their wines. As a distributor/wholesaler my first job is to distribute the product. The 3 tiered system as it is set up is in everyone's best interest.

Senator Mutch- Where are you based out of?

Rob- We are based out of Fargo, and cover the entire state of North Dakota. The home office is in St.Paul.

Senator Fairfield- How many domestic wineries are there in ND?

Rob- There are four.

Senator Fairfield- What kind of an economic impact does that have on wholesalers if there is a distinction between wine manufacturers and domestic wineries?

Rob- If someone brought in an incredible large amount of product that would have a negative impact on the market, incomes would be effected at every level.

Senator Fairfield- Why is the tax commissioner charged with determining an agricultural product is available?

Rob- The reason he is the determining authority is because he is the licensing authority.

Senator Heitkamp- There are four main provisions to this bill. You support keeping the 20 days instead of 5 days, and allowing 25,000 gallons instead of 10,000 gallons. Other than that we have circumvented the 3 tier system.

Rob- Correct. In addition, we have diluted what the state's original definition of a ND winery is.

Senator Espgaard- For clarification purposes, 51% does not bother the 3 tier system

Rob- That is correct.

Bill Shalhoob of the ND Hospitality Association appeared in opposition to some of the changes proposed in the bill. See written testimony.

Senator Mutch- Does it really make a difference to the consumer where the wine comes from? It probably depends on the price.

Bill- Yes. Wine makes up a growing part of today's alcohol market.

Joel Gilbertson representing the ND Beer Wholesalers Association appeared in opposition of the bill.

Joel- We are especially opposed to the direct sales provision, as it would break down the 3 tier system.

Senator Espgaard- Are you opposed to any other part of the bill?

Joel- We are not opposed to the increased production provision or extending the days from 5 to 20.

Jon Engel, a Sales Manager for Congress Inc, distributed written testimony in opposition to the bill.

The hearing was closed. No action was taken.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2179

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-02-05

Tape Number	Side A	Side B	Meter #
1	xxx		870-2090
Committee Clerk Signature <i>Lisa VanBurkom</i>			

Minutes: **Chairman Mutch allowed committee discussion on SB 2179. All Senators were present. SB 2179 relates to domestic winery license.**

Senator Espgaard: This is a bill I brought forward for a constituent. He still wants the fifty-one percent. That's the most important part of the bill. The three tier system is not important to him. I'd like to see it passed. There is a lot of opposition to the fifty-one percent. He is not a domestic winery to start with. He is a manufacturer and he wants to be able to ship in red juice to make wine. It isn't the intent of the law. Amending it to take out the third party disruption at the end of the bill.

Chairman Mutch: What difference does the percent make?

Senator Espgaard: The intention of the agricultural side of it was that we were going to use North Dakota products to make North Dakota wine.

Senator Klein: The idea is if these people import all of these grapes and then call it North Dakota wine, it's not, it's grapes raised elsewhere and that is where the rub is.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2179

Hearing Date 2-02-05

Senator Espegard : It's a matter of where you can get the best product.

Senator Krebsbach: As I recall, I think there are two things we can take out of the bill and still pass it. That would be in Section 1, page 1, and the other was on page 2, the wording on line 17 and 18. My indication hopes they would support the first part of that. They do not object to the twenty days.

Senator Krebsbach moved to amend lines 17 and 18.

Senator Klein seconded.

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

Senator Klein moved to adopt the amendments.

Senator Krebsbach seconded.

Roll Call Vote: 5 yes. 2 no. 0 absent.

Senator Klein moved a DO PASS AS AMENDED.

Senator Espegard seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Espegard

FISCAL NOTE
 Requested by Legislative Council
 03/17/2005

Amendment to: Engrossed
 SB 2179

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed SB 2179 with House Amendments changes the requirements for a domestic winery license. Tax revenues are not altered. The fiscal impact of Engrossed SB 2179 with House Amendments is expected to be less than \$5000.

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

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

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

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	03/18/2005

FISCAL NOTE
 Requested by Legislative Council
 02/14/2005

Amendment to: SB 2179

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed SB 2179 changes the requirements for a domestic winery license. Tax revenues are not altered. The fiscal impact of Engrossed SB 2179 is expected to be less than \$5000.

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

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

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

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/14/2005

FISCAL NOTE
 Requested by Legislative Council
 01/12/2005

Bill/Resolution No.: SB 2179

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2179 changes the requirements for a domestic winery license. Tax revenues are not altered. The fiscal impact of SB 2179 is expected to be less than \$5000.

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

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

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

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/18/2005

Date: 2-2-05
Roll Call Vote #: 23

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2179

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Klein Seconded By Espegard

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		Senator Fairfield	X	
Senator Klein, Vice Chairman	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Espegard

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

REPORT OF STANDING COMMITTEE

SB 2179: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2179 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "a" and replace "license" with "wine sales and special events"

Page 1, line 10, remove the overstrike over "~~may be granted an~~"

Page 1, line 11, remove the overstrike over "~~exemption~~" and remove "are exempt"

Page 1, remove the overstrike over lines 12 through 14

Page 1, line 15, remove the overstrike over "~~quantity or quality of produce~~" and remove "for a particular type of wine if the tax commissioner"

Page 1, line 16, remove "determines an ingredient" and remove the overstrike over "~~to an extent that renders compliance~~"

Page 1, line 17, remove the overstrike over "~~with the majority ingredient utilization requirement infeasible~~" and remove "is not available to"

Page 1, line 18, remove "make that type of wine"

Page 2, line 14, remove the overstrike over "~~A domestic~~"

Page 2, remove the overstrike over lines 15 and 16

Page 2, line 17, remove the overstrike over "~~a wholesale liquor license.~~" and remove "Notwithstanding any other provision of law, a domestic"

Page 2, line 18, remove "winery may sell directly to a person with a retail license."

Page 2, line 22, remove "on wine sold directly"

Page 2, line 23, remove "to a retailer" and remove "the wholesale taxes and"

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2179

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2179

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-8-05

Tape Number	Side A	Side B	Meter #
1	x		0-45.3
Committee Clerk Signature <i>Jody Runke</i>			

Minutes:

Chairman Keiser: Opened the hearing on SB 2179.

Senator Espgaard: Appeared in support of bill and also was a sponsor. This bill deals with domestic wine license and wineries across the state. This is a new industry that was established in the state about 2 sessions ago. The bill before you deals with a couple of items to allow the industry to expand, it allows them to raise there gallon age from 10,000 gallons to 25,000 gallons and allows them more time to show their products from 5 days to 20 days, they have special shows to exhibit their products. The original bill that came in had a few other items on it that included to have more then 51% of its products produced in the state of North Dakota, that has been taken out of the engrossed bill.

Representative Potter: Appeared in support of bill and also was a sponsor, when this bill came about a couple of sessions ago, it more about nitch marketing wine making, such as chokecherry, raspberry, rhubarb. I think this needs to be a little more expansive, you will hear more about the

business particularly in the Grand Forks, Fargo area. the 51% has been a problem for this particular wine maker because his product, as you all know we do not grow a ton of grapes in ND. It would be great for us to get into that market also.

Tony Osowski, Vintner's Cellar Wineries, Grand Forks and Fargo: Appeared in support of the bill and also provided a written statement (SEE ATTACHED TESTIMONY).

Pat Ward, Zuger, Kirmis, and Smith: Appeared in support of SB 2179 and provided a written statement (SEE ATTACHED TESTIMONY).

Mike Jore, Presque Isle, Wine Sellers, Fargo, ND: Appeared in support of bill in Pennsylvania, we have been in business for about 40 years we are trying to work with the industry here, we got things going with NDSU in their ag. dept. with trying to grow some grapes, they have 2 test plots, including several other growers in the state for growing grapes, the problem is they freeze to death here in the state, so we are trying to get some varieties that won't and that is what is taking the time, so that is the conflict on how to go about it, addressing a couple other things just briefly most other states when it comes to deciding an exemption there is a possibility to have an exemption if the fruit is not available in the state, that is done in almost all the other states at least in conjunction with the ag. commissioner.

Jared Anderson, Congress, Inc. of Fargo, ND: Appeared in support of bill as currently written and provided a written statement (SEE ATTACHED TESTIMONY).

Brian Kramer, ND Farm Bureau: Appeared in support of the bill, this is an expansion of the wine industry in the state and it is good for ag diversification in the state.

Rob Hansen, Wine, Spirits, and Beer Wholesaler of Ed Phillips and Sons of Fargo, ND:

I just wanted to say that we are in support of the bill as it stands right now, I think to change it and go back to the original issues in the original bill would be regressive at best.

Bill Shalhoob, ND Hospitality Association: We also support as engrossed, I think there is a slight definition change, a domestic winery, if you are licensed as a domestic winery, you can sell to the public, so the question is licensing or not, we would resist and changes from anybody else being able to sell directly to the public, we would try to resist those changes, we believe in the three tier system would provide an even playing field to all the retailers across the state.

Representative Johnson: What is the difference between a domestic winery and a manufactured winery?

Bill Shalhoob: 51% would be the difference. If you are a domestic winery your getting 51% of your product from ND or you are applying to the tax commissioner in times that you can't get 51%.

Rob Hansen: The definition of a domestic winery says by law that 51% of their products has to come from ND product, and the reason that was put in was to promote ND as a State as well, there is no problem with wines being created in ND, that aren't 51%, the only difference is that it cannot be claimed as a ND winery as such there are provisions put into the state that allow an advantage to the domestic winery to promote the ND product, what they don't want to see happening is somebody bring in 50,000 and turning it into 2 Buck Chuck, that is not the proper image that we want to put forth in the state of ND, I know that the ag. department has a lot of time, money and labor invested in the ND wineries.

Dan Rouse, Legal Counsel, North Dakota Office of State Tax Commissioner: I am here to offer and amendment to Engrossed SB 2179. and this is a friendly amendment, (SEE

ATTACHED TESTIMONY). In a nut shell here is what the tax department is proposing to do to this bill, page 1, line 22, 23, those get removed, line 24, the first word and the period gets removed. so in short the sub section 2 of 501 17 is simply removing the first sentence, the first sentence has from the beginning, when it use to be called the farm winery law, made it a requirement that farm wineries, and now domestic wineries, produce to us the tax department a copy of the sample of the label they put on their bottles, frankly this was part of the law because that is what we did with other liquor wholesalers. We have in our agency HB 1159, we have asked for the legislature to remove that requirement for all other forms of liquor as well, the reason is we don't need it, we are more interested in the more traditional regulatory aspects of this area which. are they licensed? are they otherwise qualified to produce the product? and we see this as an extra burden for the industry. there has been some questions on why the tax department the regulatory agency and not the ag. department, the legislative body 2 sessions ago that much like we do with many other areas of taxes, we should be the one to control the regulation and taxation of this, if you recall, I believe the legislative history of this bill was that the tax department would consult with the ag dept. before it made any determination as to whether conditions were favorable or unfavorable in granting an exemption to the 51 % requirement, that is part of the legislative history.

Hearing closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2179

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-9-05

Tape Number	Side A	Side B	Meter #
2	x		49.6-end
2		x	0-14.1
Committee Clerk Signature <i>Jody Ranke</i>			

Minutes:

Chairman Keiser: Reconvened on SB 2179.

Representative Ruby: One of the things that I was thinking as I was listening, I know what the original intent of the bill was to remove the majority requirements, and selling to a retailer, I would ask for some kind of support for a graduated type of provision, they could have a higher per ton age and have that drop down in a 4 to 5 year period, to the 51%, and the reasons being I believe all of them won't have a problem with that, it would be in their best interest because of the shipping and people are more interested in that type of product.

Representative Amerman: I challenge any one in this room, to tell me that Bobcat is not a North Dakota Product, and I will also tell you that there is not a part in that bobcat that comes from North Dakota, except for the labor.

Representative Ekstrom: It is possible with domestic wines to up the alcohol

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House Industry, Business and Labor Committee
Bill/Resolution Number SB 2179
Hearing Date 3-9-05

percentage.

Representative Keiser: You really are hurting the top end, and that is why

California is so strict, they have well above 51%.

Hearing closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2179

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-14-05

Tape Number	Side A	Side B	Meter #
2	x		6.2-22.7
Committee Clerk Signature <i>Jody Romke</i>			

Minutes:

Chairman Keiser: Reconvened on SB 2179.

Representative Ruby: I do have the amendment for the committee to consider. Based on the discussion I thought there seem to be some acceptance for making some kind of exemption to the majority requirements, for a short period of time when the wineries are just starting off. the amendment is on the first page starting at line 8. must be at least 10% in the second year of licenser, 20% in the third year, and 30% of the fourth year 40% in the fifth year, and 51% in the sixth year, and removes the word majority, basically a winery would be allowed to use what ever product available to them whether in or out of state and after that they would be under the requirements as stated in the amendments. It's pretty opened for the most part, but it is guided by federal guide lines already.

Representative Ruby: I move to **ADOPT** amendments that I presented on SB 2179.

Representative BOE: I **SECOND** the motion to adopt amendments.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2179

Hearing Date 3-14-05

Motion carried **VOTE: 10-YES 4-NO 0-Absent.**

Representative Nottestad: I move to **ADOPT** the amendment by Tax Commissioner.

Representative Ekstrom: I **SECOND** to further **ADOPT** additional amendments on **SB 2179**.

Motion carried. **VOTE: 14-YES 0-NO 0-Absent**

Representative Nottestad: I move a **DO PASS AS AMENDED** on SB 2179.

Representative N.Johnson: I **SECOND** the **DO PASS AS AMENDED** motion.

Motion carried. **VOTE: 13-YES 1-NO 0-Absent**

Representative Vigesaa will carry the bill on the floor.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2179

Page 1, line 8, overstrike "A majority of the" and insert immediately thereafter "The percentage of"

Page 1, line 9, overstrike the third comma and insert immediately thereafter "which"

Page 1, line 10, after "state" insert "must be at least ten percent in the second year of licensure, twenty percent in the third year of licensure, thirty percent in the fourth year of licensure, forty percent in the fifth year of licensure, and fifty-one percent in the sixth and subsequent years of licensure"

Page 1, line 11, overstrike "majority"

Page 1, line 15, overstrike "majority"

Re-number accordingly

Roll Call Vote #: _____ Date: 3-14-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House SB 2179 **INDUSTRY, BUSINESS AND LABOR** Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment .0401 presented by Ruby.

Motion Made By Rep. Ruby Seconded By Rep. Boe

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman		X	Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth		X			
Rep. J. Kasper	X				
Rep. D. Nottestad		X			
Rep. D. Ruby	X				
Rep. D. Vigessaa		X			

Total (Yes) 10 No 4

Absent _____

Floor Assignment _____

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

March 4, 2005

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2179

Page 1, line 22, overstrike "Before a domestic winery sells any wine, the licensee must register with the state"

Page 1, overstrike line 23

Page 1, line 24, overstrike "produced."

Renumber accordingly

Roll Call Vote #: 2 Date: 3-14-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2179

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment by Tax Commissioner

Motion Made By Rep Nottestad Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 14 No 0

Absent _____

Floor Assignment _____

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

Roll Call Vote #: 3 Date: 3-14-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2179

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Nottestad Seconded By Rep. N. Johnson

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman		X	Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Vigesaa

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

REPORT OF STANDING COMMITTEE

SB 2179, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed SB 2179 was placed on the Sixth order on the calendar.

Page 1, line 8, overstrike "A majority of the" and insert immediately thereafter "The percentage of"

Page 1, line 9, overstrike the third comma and insert immediately thereafter "which"

Page 1, line 10, after "state" insert "must be at least ten percent in the second year of licensure, twenty percent in the third year of licensure, thirty percent in the fourth year of licensure, forty percent in the fifth year of licensure, and fifty-one percent in the sixth and subsequent years of licensure"

Page 1, line 11, overstrike "majority"

Page 1, line 15, overstrike "majority"

Page 1, line 22, overstrike "Before a domestic winery sells any wine, the licensee must register with the state"

Page 1, overstrike line 23

Page 1, line 24, overstrike "produced."

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2179

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2179

Senate Industry, Business and Labor Committee

xxxx Conference Committee

Hearing Date 4-04-05

Tape Number	Side A	Side B	Meter #
1	xxx		20-620
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Chairman Espegard called the conference committee to order. Members present were:

Senator Espegard, Senator Krebsbach, Senator Heitkamp, Rep. Vigessa, Rep. Clark, and Rep. Thorpe.

Rep. Vigessa: The first change is one brought forth by the North Dakota Tax Department and that was the amendment striking "before a domestic winery sells any wine, the licensee must register with the state tax commissioner". The tax department no longer requires the registration of beer and liquor labels because this is a federal statute, so in order to keep everyone the same, they didn't feel it was necessary for that to be sent in. Then the other amendment is talking about the graduated percentage required to be considered a domestic wine. Our committee felt that the winery business in North Dakota is something that is new and expanding and admittedly, North Dakota isn't your best spot in the world to grow some of the product we need for wine. Right now, the percentage necessary to be considered to be a domestic winery is 51%. This amendment would graduate that percentage requirement, starting with actually zero the first year and then

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2179

Hearing Date 4-04-05

graduating up to, in the sixth year, fifty-one percent. That is simply to allow more people to get into the business.

Senator Espegard: Do they have to label it as "bottled in North Dakota" or is it a North Dakota wine?

Rep. Vigessa: It would be bottled in North Dakota. Federal law indicates that to be called a North Dakota wine, seventy-five percent of your product has to be from North Dakota.

Senator Krebsbach moved that the Senate accede to the House amendments.

Rep. Clark seconded. Roll Call Vote: 6 yes. 0 no. 0 absent.

Senator Espegard will carry the bill.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) 2179 (, as (re)engrossed):

Your Conference Committee

For the Senate:	Attend	Vote	For the House:	Attend	Vote
Chair Espegard	P	Y	Rep. Vigesaa	P	Y
Sen. Krebsbach	P	Y	Rep. Clark	P	Y
Sen. Heitkamp	A	Y	Rep. Thorpe	P	Y

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 5724/H726 S723/H725
 the (Senate/House) amendments on (SJ/HJ) page(s) 897 - _____

and place 2179 on the Seventh order.
727

, adopt (further) amendments as follows, and place
 _____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged
 and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 04/04/05
 CARRIER: Sen. Mutch
 LC NO. _____ of amendment
 LC NO. _____ of engrossment
 Emergency clause added or deleted _____
 Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

SB 2179, as engrossed: Your conference committee (Sens. Espegard, Krebsbach, Heitkamp and Reps. Vigesaa, Clark, Thorpe) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 897 and place SB 2179 on the Seventh order.

Engrossed SB 2179 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

SB 2179

SB 2179
JANUARY 19,2005
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

Chairman Mutch and members of the Committee, for the Record I am Duaine Espegard representing District 43 in Grand Forks.

The bills we passed last session or two established rules that allow for a domestic winery.

The previous bills allowed wine to be produced but required a majority of the ingredients to be grown or produced in the state. The existing statute allowed for an exemption to this provision when the tax commissioner, by his own motion found that the ingredient was not available because of crop failure etc.

A local domestic winery came to me with this bill because of economic reasons and survival of this industry depends on the proposed provisions intend to cure.

SB 2179 say that a domestic winery is exempt from this majority ingredient if the ingredient is not available to make that type of wine. An example would be grape juice to make Red Wine. Grapes are not widely grown in the state thus the reason for the bill.

The bill also increases the amount of wine a winery my make from 10,000 gallons to 25,000 gallons and allows 20 days instead of 5 days a winery may give out free or to sell wine by the glass subject to local ordinances.

SB bill 2179 also seeks to allow for the sale of wine directly to a retailer and collect the tax.

The bill also includes an emergency clause

Members of the committee that concludes my testimony and would be happy to stand for questions but I am sure there are those hear who can answer better the I.

SB 2179

**Mr. Chairman, Committee Members.
It is an honor to be here today.**

I am Tony Osowski. My wife Judy and I have wineries in Grand Forks and Fargo. We need your help. We started business as a make your own wine store about 3 ½ years ago. Not enough people are interested in making their own wine for us to be successful so a little over a year ago we started making Dakota Prairie wine for resale, but are not able to sell enough to be profitable. The current law needs to be changed if we and the North Dakota wine industry are to be successful. The changes contained in this bill will bring North Dakota in line with the majority of other states by providing the opportunity for small wineries to succeed and be viable businesses and become an important part of our economy.

Unless you are a domestic winery, you can only sell your product to a wholesaler. Even though we are a federally licensed and bonded winery, we can't sell a bottle of wine in our tasting room. We cannot ship wine. Even though we have customers who want to purchase our products we are forced to send them away. Retailers often do not stock our products and customers just can't get it. This was very evident after we attended the 4 Pride of Dakota shows. We spent a lot of time and money and gave out nearly 20,000 samples to promote our wine. Every day we would get calls from people wanting our wine and unable to buy it. Had we been able to sell at these events, we could have sold at least 1000 bottles of wine. These were impulse sales that we just didn't get. This is lost revenue to both us and the state.

Current law does not allow us to be a domestic winery. It requires at least 51% of the ingredients to be grown in North Dakota. While wine can be made from anything from worms to weeds, the most common ingredient used in the production of wine throughout the world is grapes. The wines we currently make are grape wines. We are not opposed to using locally

grown ingredients for our production, and wish we could; however, there is a very limited supply available here. There are new varieties of grapes becoming available that may produce very good quality wines, but they are not yet available. It takes from 3 to 5 years to get full production from a vineyard and we simply can't afford to wait that long. The reason we bring grape juice in to make our wines is because the grapes simply are not available here. Even if we should choose to make fruit wines, as the other wineries do, supplies are currently very limited. It is unfair to us to be told what kind of wine to produce and to be unable to have the same sales opportunity the other wineries have.

If all ND manufacturers had to use 51% ND produced raw materials there would be very little product made here. I spent 30 years in the farm equipment manufacturing and I'm sure 99% of the raw materials were not produced here. We employed up to 70 people and did a lot for the economy and the state.

I have heard that the 51% requirement is to protect and enhance our agriculture. I am certainly not opposed to helping agriculture, but if we really want to help Agriculture, let's require grocery store to sell 51% ND products. That will make a real difference. A stable, profitable wine industry will help ND Agriculture and the economy in general. Is the opposition really worried about agriculture or about protecting special interests?

The majority requirement must be removed or exempted, when the product is not available here.

Five event days are not enough. Small wineries need to get their products to the people and therefore need to be able to go where the people are. In a state as rural as we are there is just not enough traffic to our stores to provide enough exposure to our products. This is a much needed change.

The 10,000 gallon cap on sales needs to be raised. . Internet sales and shipping will also add considerably to wine sales. We

are not near there yet, but as the industry grows, I am sure the wineries will grow as well and this will be a problem and should be corrected.

Small wineries need to have control of their sales and should be allowed to sell directly to licensed retailers. There are 2 wholesalers that have a monopoly on distribution. We are lucky to be working with Northwest Beverages, however, should we ever have a falling out, (Maybe after this testimony) and they chose not to handle our wine, I would not be able to sell my product. I have 1000 cases of wine I would have to dump out. Customers want it, but I can't sell it. I could very well be put out of business unless I could come to terms with the other wholesaler. I am not allowed to become a wholesaler if I have any financial interest in a manufacturing or retailing operation. The only way I could do this would be to divorce my wife of 33 years and start wholesaling after she cleans me out. That's if she still wanted me to sell her wine.

It takes a lot of work and promotion to get a new product established in the marketplace. I don't think anyone will put as much effort into getting it done as the winery owner and, currently, this is out of our hands. The wholesaler's future and success does not depend on how well our wines do. They are very big companies with many products. Our future and that of our employees depends entirely on how well our products do. We have the incentive needed to provide the extra effort. Most states, including MN and SD, allow wineries to sell their product directly to retailers. This has not destroyed or even hurt the 3 tier system, but does let the wineries sell their own products.

This bill does not prevent wineries from selling through wholesalers. If that is the best way to market our product, and it may well be in a rural state like ND, it will make sense to do so. I think this should be a business decision and not a legislative one. That is just free enterprise. Earn the business and you get it.

I wish I could make good enough wine at a reasonable enough price to be a serious threat to the rest of the industry, but I think that is just a dream. Without large markets and large scale production, our production and input costs are just too high.

All of our wine is made in ND, by North Dakotans. Besides Judy and me, we have two full time and six part time employees. We rent retail locations for our stores. We collect and pay taxes. When we went into this business, we never even considered starting anywhere else, but had we realized what we were up against, we would not be here. We grew up here and live in ND and don't want to have to move. We are proud of our state and want to continue to build our business and contribute to our economy, but we have to make a living.

All we ask is to be able to have a chance to sell our products. Let the marketplace determine our success or failure. This bill will not cost the state anything, but it will generate increased revenue for the state, increase employment, and add to the economy in general.

One has to wonder if the opposition to the changes in this bill are really interested in providing jobs, economic gains, and the benefit a healthy wine industry provides ND. Are they interested in the betterment of ND or in protecting their own special interests?

I hope you will share my view on what is needed to provide the tools required for a sound and profitable wine industry in North Dakota. This bill and the shipping bill currently in the House will do that. I ask for your support.

Thank you,

27
Thank you for letting me speak before this committee. My name is Michael Jore from Presque Isle Wine Cellars in Fargo, ND. We are a wine supply business for home winemakers and small wineries. We started making wine over 40 years ago in North East, PA. We opened the store in Fargo in June 2003. 3 of the 4 owners are ND natives and wanted to see the wine industry become part of ND's culture. I am part of the family that stayed in ND with the optimistic opinion that wineries could be a reality and have the hopes of adding a domestic winery to our business.

When I did my business plan for the winery here in ND it became readily apparent that there were 2 major problems and a couple minor ones. The first and biggest obstacle was the lack of raw product to make wine and stay within the bounds of the state law requiring that the majority of fruit to be ND grown for winery use. We started reviewing our options and first contacted Rudy Radtke, NDSU Ext. Specialty Crops and put together with Mr. Radtke a seminar at the Carrington research center bringing in a specialist on cold weather grape growing and other speakers familiar with vineyard management. The Ag community responded well to the seminar but it became apparent that cultivars capable of surviving our winters were not yet tried and proven so the risk to the farmer was great. Alternative fruit production was also addressed.

NDSU Plant sciences now has test plots throughout the state to research grape vine varieties that will survive our winters and still get to full maturity in the fall. Grape vines as well as most other fruit bearing trees take 3 to 4 years to reach a fruit producing maturity. The conclusion being - the research will take many years to produce results and then time will be needed for commercial growth to fill the needs of a wine industry in ND.

Exhausting our ideas of how to deal with our raw product problem we thought the exemption clause written into the law to address such issues was a viable option. When Mr. Osowski applied for an exemption from the State Tax Department for this very same issue he was denied exemption. So back to square 1. It became apparent that the good intentions of the law passed just 2 years ago already needed to be amended for a new sustainable wine industry to flourish. Who would have thought that in the past couple years we went from the last of 50 states to have a winery to now leading 6 other states in the quantity of wineries. That exemplifies Governor Hovens remarks in his State of the State Speech "the future is ripe with new possibilities."

When we started talking about winery law changes a few months ago all existing wineries and myself were unified in thought about the changes needed in the law. Yesterday it was brought to my attention that one of our group may have descended from our collective ideas. ~~I can only imagine that the pressure of seeing his wine moved to the back corner of a large package store recently made him think, What if I lose my wholesale business because of supporting the new winery bill.~~ It has become apparent right from the start that we were going to have opposition by the liquor wholesalers. It is understandable that they want to protect their business but when a winery has one customer to sell to for distribution outside winery premises they have a lot of power over the success of said winery. We have found out that big business can monopolize small business. I approached both wholesalers available to me and asked if they would distribute our PA winery wines. These are award winning wines distributed throughout PA and also served in some of the top restaurants in PA. We also had a local built-in following from a tasting we did at the Fargo street fair with the help of Happy Harry's Bottle Shop. Congress listened and even did a wine sampling before prohibiting us from having our wine sold in ND. Northwest did not even sample our wines. The three tier system has kinks. As much as we want to work with the wholesalers they do not seem to be strong supporters of small wineries. ~~I wonder if they had the requirement to sell 51% North Dakota product how they would fair.~~ I have looked at many wine lists in ND restaurants and have yet to see a ND wine listed on the wine menu. Are the wholesalers promoting ND products?

For these 2 reasons I ask for your support approving the changes in the Domestic winery bill.

1. The raw product is not available in the state for a wine industry to flourish. I ask for your support allowing the Tax Department to easily grant exemption from the majority restriction when the fruit for the type of wine a winery wants to make is not available in the state.
2. The success of my business plan depends on selling wine beyond the premises of my winery. I also ask for your support to allow wineries to sell directly to properly licensed establishments in the state of ND. Tax revenue for locally produced wine will increase since each winery has a vested interest in promoting his product. State winery marketing will not be left up to the wholesalers who have little vested interest in selling our wine and have numerous other products to promote.

I also ask for your support for the additional changes in SB1279 that will bring us into harmony with other states winery laws and will help promote the wine industry.

It saddens me to think that there are those that would oppose an industry that has proved itself in state after state to have a major impact on not only small business but sustainable state tourism and state agriculture. In Iowa 1995 2 wineries 2004 – 27. Economic Impact: Est. 100,000 visitors to wineries/over \$1.5 million. We have an opportunity to continue the growth of a brand new industry for North Dakota. The interest shown in such a short period of time shows that ND is ready for the challenge. The agricultural community has shown excellent support and some at their own risk are already doing plantings to provide raw product for the new industry. The more wineries we have in the state the more tourism is improved. It is a dream of mine to be 1 of 5 or more wineries in a small radius. Just think of the tourism traffic that could be drawn. I am proud to run a small business in ND.

Thank you for your kind attention. If there are any questions I would be happy to address them now.

Thank you.

Testimony

Michael Jore

Presque Isle Wine Cellars – Fargo

1725 First Ave N #B

Fargo, ND 58102

701-478-9463

Testimony of Patrick Ward in Opposition of SB 2179

Chairman Mutch and members of the Senate IBL Committee. My name is Patrick Ward. I am a member of the law firm of Zuger Kirmis & Smith. I am here to testify on behalf of the North Dakota Wholesale Liquor Dealers Association. We are here in opposition to SB 2179.

Alcohol is a highly taxed and regulated product. North Dakota for many years, like other states, has maintained a three tiered system for distribution and taxation of liquor. The three tiers consist of the manufacturer, the wholesaler, and the retailer. The wholesale tier is the level at which the state insures collection of alcohol taxes.

The System Enables Efficient Tax Collection

Beverage alcohol is the most highly taxed consumer product in America. Billions of dollars of revenue flow into state tax coffers from sales of beer, wine and distilled spirits. The single most efficient way devised by states to insure 100 percent collection of this massive amount of revenue is to require that all beverage alcohol enter its borders through a licensed wholesaler, who is responsible for paying all alcohol excise taxes. By requiring the thousands of out-of-state suppliers of beer, wine and liquor to sell only to an in-state, licensed wholesaler, the state assures that excise and sales taxes are collected on all beverage alcohol crossing its borders. Collection of sales taxes also is assured

since the retailer can only buy from a licensed wholesaler, who must record all sales to retailers.

SB 2179 would frustrate that three tiered system. It would permit a manufacturer or other person calling itself a "domestic" winery to circumvent the three tiered system and sell directly to retailers. This bill blurs the distinction between a wine manufacturer and wine seller.

In addition, the first paragraph of the bill would allow a so-called domestic winery to manufacture wines in North Dakota from fruit not grown in North Dakota. This was never the intention of the law prior to this bill which was to encourage North Dakota wines. If it isn't North Dakota fruit, it isn't North Dakota wine! This would allow major manufacturers to possibly come into North Dakota and obtain permission to manufacture wine, circumvent the three tiered system, and sell directly to retailers. If we make an exception for wine manufacturers to sell retail, then wholesalers want the right to open retail stores of their own which is prohibited.

We are strongly opposed to SB 2179.

Supporting a State's Constitutional Right to Regulate the Sale and Distribution of Alcohol

Michigan and New York are asking the U.S. Supreme Court (oral arguments Dec. 7, 2004) to uphold a state's ability to regulate the sale and distribution of alcohol. Backed by more than 30 other states, they argue that state governments are entitled to prohibit unaccountable alcohol sales (such as those over the Internet and through catalogs) and require out-of-state producers to sell alcohol through the state-licensed system. The states rely on the Twenty-First Amendment to the U.S. Constitution, which reads:

"The transportation or importation into any state...for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

The 21st Amendment is Clear - States Can Regulate Alcohol

"The States' Twenty-First Amendment power is such that 'the States have virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.'"

- Brief filed by more than 30 State Attorneys General, March 2004

"The plain language of both the Twenty-First Amendment and the Webb-Kenyon Act grant states virtually unfettered authority to regulate the importation of alcoholic beverages for delivery or use within their borders."

- Brief filed by New York Attorney General Elliot Spitzer, September 2004

"[The Supreme Court] has uniformly held that the 21st Amendment gives States 'virtually complete control' over the importation and sale of liquor and the structure of the liquor distribution system."

- Brief filed by Michigan Attorney General Michael Cox, July 2004

The 21st Amendment Trumps the Dormant Commerce Clause

"The Supreme Court's decisions shortly after adoption of the 21st Amendment broadly recognized that State beverage alcohol importation and distribution laws were 'unfettered by the Commerce Clause.'"

- Brief filed by Michigan Attorney General Michael Cox, July 2004

"The legislative history and historical context of [the Twenty-First Amendment and the Webb-Kenyon Act] makes clear that they were intended to shield state regulation from the impediments otherwise posed by the dormant Commerce Clause."

- Brief filed by New York Attorney General Elliot Spitzer, September 2004

"As [the Supreme] Court explained in [1984], the purpose of...the Twenty-First Amendment was to create an exception to the 'dormant Commerce Clause' for one product only, so that States could control the flow of alcohol across their borders for use by their residents....[B]oth the Constitution and a federal statute (the Webb-Kenyon Act) now prohibit importation of alcoholic beverages in violation of state law."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

States Have Legitimate Reasons to Regulate Alcohol - Such as Preventing Sales to Minors and Collecting Revenue

"The States have a significant interest in exercising their police powers to protect the health, safety and welfare of their citizens in the area of alcohol shipping."

- Brief filed by more than 30 State Attorneys General, March 2004

"The [lower court's] erroneous decision presents an immediate threat to the core concerns protected by the Twenty-First Amendment - consumption by minors, maintaining an orderly market, and collection of taxes."

- Brief filed by more than 30 State Attorneys General, March 2004

"Michigan's regulatory framework clearly serves valid regulatory purposes of 'promoting temperance,' 'controlling the distribution of liquor,' and 'raising revenue.'"

- Brief filed by Michigan Attorney General Michael Cox, July 2004

"This Court has repeatedly affirmed that while the Twenty-First Amendment does not permit states to ignore other provisions of the Constitution, it does exempt rational state regulation of alcohol importation from the operation of the dormant Commerce Clause."

- Brief filed by New York Attorney General Elliot Spitzer, September 2004

"[The Supreme Court] case—indeed, no opinion of any Justice—has suggested any dormant Commerce Clause limitation on a state's power over physical importation of alcohol for use by its residents. The Court has recognized that legitimate state objectives including tax enforcement and temperance-related objectives such as preventing sales to minors, depend on state control over the physical flow of alcohol..."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

States Should Be Entitled to Control Sales by Out-Of-State Alcohol Sellers

Changes in marketing techniques or national consumer demand for a product do not alter the meaning of a constitutional amendment....In 2000, there were over 2,100 wineries in the country...[and] requiring New York officials to traverse the country to ensure that direct sales to consumers (no matter how small) comply with New York law would render the regulatory scheme useless."

- Decision of the 2nd Circuit Court of Appeals, February 2004

"There is ample rational basis for the Michigan system. Out-of-state sellers ordinarily have no Michigan license and no physical presence in the state. In contrast, licensed...firms are entities whose backgrounds Michigan can investigate, whose premises Michigan can inspect and, if necessary, seize, and whose violations can be punished by enforceable fines or by license revocation."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

"[The other side] ignore[s] the critical differences between in-state and out-of-state wineries. The state imposes a heavy burden of licensing, regulation, and enforcement on in-state wineries, and can impose serious penalties for non-compliance, including license revocation. The same level of regulation and enforcement cannot realistically be imposed on out-of-state wineries."

- Brief filed by health, safety, education and religious groups, July 2004

"The Seventh Circuit noted that the Twenty-First Amendment applies specifically to 'importation' and that, 'Every use of § 2 [of the Amendment] could be called 'discriminatory' in the sense that plaintiffs use that term....If that [application of § 2 to imports] were the sort of discrimination that lies outside state power, then § 2 would be a dead letter.'"

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

The Wine Industry Is Interested in Profits, not Equality

"[T]he claim of disparate treatment of in-state and out-of-state wineries is a ruse. [The other side did] not ask for the in-state 'preference' to be struck down; their sole purpose is to eliminate state regulation of shipments of alcohol from out-of-state."

- Brief filed by health, safety, education and religious groups, July 2004

"The [lower court] invalidated Michigan's ban on wine imports by unlicensed Michigan residents because Michigan allows licensed in-state wineries to ship limited quantities of wine directly to retail customers in the state. It ignored the fact that out-of-state wineries may equally locate in Michigan and be licensed to sell directly, and, that requiring a local presence has been upheld in the tobacco sales context based on police power authority alone."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

The [lower court] ruling not only destroys the keystone of Michigan's alcoholic beverage control system, ...but also has the perverse effect of discriminating in reverse. In-state sellers of wine remain subject to licensing and extensive regulation, and to monetary penalties and loss of their licenses for improper sales (such as to minors), while out-of-state sellers are now free to respond to any order they receive on the telephone or Internet seeking importation, without the substantial burden of...paying for or complying with licenses."

- Brief filed by the Michigan Beer and Wine Wholesalers Association, February 2004

32 state attorneys general and the following groups support a state's right to regulate alcohol:

- American Trauma Society
- American Values
- Committee for a Constructive Tomorrow
- Concerned Women for America
- Eagle Forum
- Kids First Coalition
- Michigan Association of Secondary School Principals
- National Association of Evangelists
- Neighborhood Activists Inter-Linked Empowerment Movement
- Sixty Plus
- Traffic Safety Association of Macomb County
- Traffic Safety Association of Michigan, Inc.

done

at the direction of the Michigan Beer and Wine Wholesalers Association



JOHNSON BROTHERS NORTHWEST BEVERAGES, INC.

1358 North 39th Street • Fargo, ND 58102 • (701) 282-4660 • Fax (701) 282-8869

January 18, 2005

Chairman Duane Mutch,
Members of the North Dakota Senate
Industry, Business and Labor Committee

My name is Rob Hansen, and I'm here to address SB 2179. I am the General Manager of Johnson Brothers Liquor Company (Northwest Beverages, Ed Phillips & Sons), a North Dakota wine, spirits and beer wholesaler.

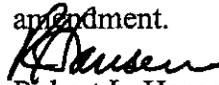
We represent a number of fine suppliers in all beverage alcohol categories and are proud to represent the Maple River Winery, one of four licensed domestic wineries in North Dakota. The North Dakota Domestic Winery is a category created during the last legislative session to help promote the image of North Dakota and our agricultural products. A great deal of support has helped these domestic wineries to do exactly that.

This proposed amendment, SB 2179, is designed to blur the distinction between wine manufacturers and domestic wineries. The intent of the original law was to support and promote wineries who used a majority of North Dakota products. Provisions are in place to address the ability of an existing domestic winery to be exempt from this requirement whenever these products are not available. There was no intent to provide a wine manufacturer with the status of a North Dakota domestic winery.

Another concern I have is allowing any winery, domestic or manufacturer, to serve as a wholesaler and sell directly to retail licensees. Again, provisions are already in place to allow these businesses to sample and sell their products directly to the consumer, either at their facility or at special events (with a permit from the Tax Commission).

At no time has the North Dakota Legislature attempted to create a wholesaler/retailer, wholesaler/supplier category. This system works and should be allowed to continue as is.

I support SB 2179 in its effort to increase the production limits from 10 to 25 thousand gallons, and also to increase the number of special events permits from 5 to 20 in any given year. I ask you to leave the law as it currently is with these two exceptions, which are included in this amendment.


Robert L. Hansen
General Manager

Maple River Winery

Greg Kempel, Proprietor

628 Front Street
Casselton, ND 58012
701.361.0773

Rob,

Thank you for asking me to write a letter regarding SB 2179 on behalf of the Maple River Winery. North Dakota is experiencing nice growth in the wine industry through cooperation on all levels. As far as SB 2179 goes, I am unable to attend the committee hearing on Wednesday, January 19th, but I do have a couple of things I would like you to bring up.

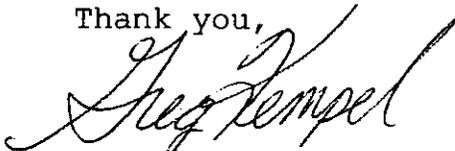
First, I am encouraged that the wine production is being increased to 25,000 gallons from the current 10,000 gallons. Our winery supports that expansion.

Second, I am encouraged that the Maple River Winery will be allowed to sample wine outside of our winery for 20 days instead of the current 5 days. This has been a burden on our winery since we enjoy sampling our North Dakota wine many places. I hope this passes as well.

Third, as far as our winery selling direct to a retailer, our winery does not have the capability or the desire to sell directly to a retailer. Our winery has a great working relationship with our wholesaler and our retailers throughout North Dakota. We value this relationship. Our winery would never be able to cover the entire state distributing our wine.

The views expressed here represent the views of the Maple River Winery in downtown Casselton ND. If anyone has any questions or comments, feel free to contact me at 701-347-5900 or greg@mapleriverwinery.com.

Thank you,



Greg Kempel
Maple River Winery
Casselton ND 58012

ND Hospitality Association Testimony
Senate IBL Committee
SB 2179

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I represent the ND Hospitality Assn. We are opposed to the some of the changes proposed in SB 2179.

Our three tiered system of manufacturers, wholesalers and retailers has served our industry and the State well over the past and we do not see a need to allow a manufacturer to sell directly to a retailer under any circumstances. Our current system allows for a balanced playing field for all retailers in the state.

We do support the changes on page 2, line 3 increasing total quantities from ten to twenty-five gallons and on page 2, line 8 increasing special events from five to twenty days per calendar year.

Thank you for your consideration and I would be happy to answer any questions.

Chairman Mutch and members of the Senate IBL Committee. My name is Jon Engel. I am Sales Manager for Congress Inc. a North Dakota wine and spirits wholesaler. We are here in opposition to SB 2179.

The proposed changes to the law would relax the requirements of a Domestic Winery for using North Dakota grown products. We believe the law was intended to help North Dakota farmers and winemakers to get together and produce a North Dakota grown product.

The proposed changes also would allow a winery to operate as a retailer and a wholesaler and a producer. This is a conflict with the rest of the alcoholic beverage laws. The potential is for outside wineries to come into the state and set up a producer/wholesale/retail operation. This would confuse regulation and tax collection issues both state wide and locally. Alcohol is regulated at each step in the process. Separation of the levels is part of the methods to control the process.

We are strongly opposed to SB 2179.

**Testimony before the House Industry, Business & Labor Committee
Engrossed Senate Bill 2179**

March 8, 2005

Daniel L. Rouse, Legal Counsel to the North Dakota Office of State Tax Commissioner.
Phone: (701) 328-2781; E-mail: drouse@state.nd.us

Mr. Chairman, Members of the Committee:

My name is Dan Rouse. I am Legal Counsel to the North Dakota Office of State Tax Commissioner ("Tax Department"). I am here to offer an amendment to Engrossed Senate Bill 2179.

The amendment we offer would simply remove the first sentence of subsection 2 of section 5-01-17. In other words, the language found on Page 1, lines 22 and 23, and the first part of line 24 would be eliminated. In HB 1159, the Tax Commissioner's agency bill, we sought repeal of the requirement that beer and liquor wholesalers register their brands with the Tax Commissioner before they may sell those brands in North Dakota. By removing the language in Engrossed SB 2179 that we propose, you would provide equal treatment to domestic wineries in this regard. Further, the information presently sent in to the Tax Commissioner under this law is not necessary and creates an additional burden on the domestic wineries. In short, we do not use the information. Therefore, we recommend the requirement be removed from the law.

Accordingly, Mr. Chairman, and members of the Committee, I ask for your favorable consideration of the Tax Commissioner's amendment to Engrossed Senate Bill 2179. I will be happy to respond to any questions. Thank you.

SB 2179 Support of.

Mr. Chairman, Committee Members. My name is Tony Osowski and together with my wife Judy, We own Vintner's Cellar wineries in Grand Forks and Fargo. We need your support for this bill and for the amendments we are asking the IBL committee to make.

We have been in the wine business for 3 ½ years. It started out as a make-your-own wine store, but, because of the large amounts of wine a person has to make, we don't have enough business to be successful. We received a manufactures license and make wine for sale in restaurants and bottle shops. The volume is still not enough. We are a small business trying to survive and do business in North Dakota. Our business desperately needs the exemption clause regarding the 51% ingredients that would allow us to become a Domestic Winery. We need to be able to sell our products the same as the other wineries do. We cannot remain in business without some sort of help in this regard. The current law only allows us to sell only to wholesalers and this is not working. We are not asking the state for any money and, in fact, will generate tax revenue for the state. All we ask is for the chance to sell our products.

It has been said that our product is not a North Dakota product because it does not contain 51% ND produced raw material. This is not totally true. I have spent most of my life in the manufacturing business and, as any accountant will tell you, labor and overhead are always part of the cost. When labor and overhead are considered, well over 51% of the product cost comes from North Dakota. We have chosen to make grape wines because we have found a market for them. The grapes we are currently using are not available in the state and must be brought in. We would like to be able to use locally grown ingredients, but they are not available.

We are the *only* industry to have this restriction. Check with Pride of Dakota and see how many North Dakota products are made from 51% ND ingredients. If someone makes pickled olives, are they grown here? Is the North Dakota coffee locally produced? Are wood products or textile goods made from ND grown raw materials? Are these North Dakota products? *Absolutely!* They are processed here and should be. The State has even set up Pride of Dakota to help promote these businesses. The response at the shows and growth of these businesses backs the soundness of this thinking. Why should the wine industry be treated any differently? Does all the wheat in Dakota Maid flour come from ND? Durum in our pasta? Steel in manufactured products? I could go on and on, but I trust you get my point. The wine industry is being unfairly singled out.

The wine industry is also a tourist attraction and almost every tourist who stops at our stores wants to buy some of our wine. These are impulse purchases that don't happen and out of state dollars go unspent. I have traveled the US extensively when I was in the farm equipment business and have stopped at many wineries. I have never been at one that could not sell me a bottle of wine. How many other North Dakotans have stopped at a local winery and purchased a bottle of wine when traveling? Would they have gone to a liquor store and looked for that wine if they couldn't get it there or would they just go on?

It has been said that this will disrupt the 3 tier system. This has not proven true elsewhere in the US. Every state allows their wineries to sell their own wine. 39 states allow wineries to sell directly to retailers. Some states allow them to sell wine from other wineries as well. The 3 tier system is still alive and well and has not been hurt. The more liberal the state laws, the healthier the wine industry has become and the more economic benefits have been realized. Domestic wineries pay all the taxes on the wines they sell.

There is no place in the existing law to allow any time to become a domestic winery. It takes time to develop wines, find sources for fruits, and get to a point where the wine produced from local ingredients is available for sale. There is no way I can start producing wine right now. Fruit will not even be available for at least six months. This is a long time without income. If there is no way to allow an exemption, perhaps a temporary exemption could be allowed. A three year exemption or a declining exemption that would allow a 100% exemption the first year, 90% the second and so on until the 51% is reached, would help a winery reach compliance and allow them to operate at a profitable level. The words "excluding water" should also be removed from

the existing bill, and the ag commissioner should decide on exemptions, since availability is strictly an agricultural issue.

The exemption clause asked for in SB 2179 will allow us to sell our products as a domestic winery. Our businesses in Grand Forks and Fargo will be unable to continue without some sort of change. We need this clause, or some other form of exemption in order to continue our business and to allow the North Dakota wine industry to expand. We are not asking for any money, but only the chance to sell our products. This change will cost the State nothing and will hurt no one, but it will help us and the wine industry. It will bring additional revenue into the State. The state spends millions of dollars trying to get jobs and keep young people here. We currently provide 4 full time and 6 part time jobs and hope to continue doing so and to expand in the future. We need to have the opportunity to sell our product in order to survive and remain in North Dakota.

Thank you for allowing me to be here today.

Thank you for your consideration and support,

Tony and Judy Osowski

March 8, 2005
House IBL Committee

Testimony of Patrick Ward in Support of Engrossed SB 2179

Chairman Keiser and members of the House IBL Committee. My name is Patrick Ward. I am a member of the law firm of Zuger Kirmis & Smith. I am here to testify on behalf of the North Dakota Wholesale Liquor Dealers Association. We are here in support of Engrossed SB 2179. My clients, Rob Hansen of Ed Phillips & Sons, and Jared Anderson of Congress, Inc., will also testify today.

Alcohol is a highly taxed and regulated product. North Dakota for many years, like other states, has maintained a three tiered system for distribution and taxation of liquor. The three tiers consist of the manufacturer, the wholesaler, and the retailer. The wholesale tier is the level at which the state insures collection of alcohol taxes. Our North Dakota wholesalers carry and distribute North Dakota domestic winery products to retailers.

The System Enables Efficient Tax Collection

Beverage alcohol is the most highly taxed consumer product in America. Billions of dollars of revenue flow into state tax coffers from sales of beer, wine and distilled spirits. The single most efficient way devised by states to insure 100 percent collection of this massive amount of revenue is to require that all

beverage alcohol enter its borders through a licensed wholesaler, who is responsible for paying all alcohol excise taxes. By requiring the thousands of out-of-state suppliers of beer, wine and liquor to sell only to an in-state, licensed wholesaler, the state assures that excise and sales taxes are collected on all beverage alcohol crossing its borders. Collection of sales taxes also is assured since the retailer can only buy from a licensed wholesaler, who must record all sales to retailers.

The original version of SB 2179 would circumvent that three tiered system. It would have permitted a manufacturer or other person calling itself a "domestic" winery to circumvent the three tiered system and sell directly to retailers. This bill was fixed in the Senate committee after our objections, and we support the Engrossed version, as written.

The two amendments to prior law on Engrossed SB 2179, which we agree with, increase the quantity sold on premises from 10,000 to 25,000 gallons per year. They also increase the number of event days per year from 5 to 20. This bill also increases the amount for personal use from one case to about two cases of wine per month.

We urge a Do Pass on Engrossed SB 2179. We oppose any further amendments.



"THE WHOLESALE HOUSE OF THE FAMOUS NATIONALLY ADVERTISED BRANDS"

Grand Forks, North Dakota 58201

Fargo, North Dakota 58102

Bismarck, North Dakota 58501

March 7, 2005

To: Chairman George Keiser and Industry, Business and Labor Committee members.
From: Jared Anderson

REGARDING SB 2179

We would like to state our support of the bill as currently written. The proposed increases in the gallons produced and the off site promotion days make it easier for a Domestic Winery to promote and sell their products. We support the current majority ingredient rule.

There are legitimate Domestic Wineries who are making every attempt to produce wine in the state, **produced with North Dakota fruit**. There is currently a provision for them to ask the State Tax Commissioner for an exemption if there is a crop shortage (lines 10 -16), so the Domestic Wineries are protected if they are making an effort to produce their wine with North Dakota fruit and there is a bad growing season. We feel to be designated a Domestic Winery you should have to adhere to the current 51% majority ingredient rule. Changing the language allows someone making no attempt to grow the fruit in North Dakota to be treated as a "Domestic Winery". **Someone who wishes to bring fruit or juice from outside the state can obtain a manufactures license and make wine. That is the way it should be. We feel a Domestic Winery should be just that, a North Dakota company promoting products grown and produced in our state.**

Thank you.

Jared Anderson
President
Congress Inc
A North Dakota Wine and Spirits Wholesaler

1402 39TH ST N • FARGO ND • 58102
PHONE: 701-282-0985 • FAX: 701-282-5691
E-MAIL JAREDA@CONGRESSINCND.COM



"THE WHOLESALE HOUSE OF THE FAMOUS NATIONALLY ADVERTISED BRANDS"

Grand Forks, North Dakota 58201

Fargo, North Dakota 58102

Bismarck, North Dakota 58501

March 15, 2005

TO: ND House members
From: Jared Anderson
Subject: SB 2179

There were some amendments made to SB 2179 concerning the minimum requirements of a wine for domestic wineries in North Dakota. Here is some information I found concerning federal ATF labeling requirements. According to this information from the ATF the domestic winery in North Dakota can't claim it is a North Dakota wine if the grapes come from other than the state they were grown if a vintage date or a varietal is stated on the label. The exemption of 0% the first year 10% the second year ... 50% the sixth year would go against federal law and they would have to state that the wine is not from North Dakota. This goes against the whole intent of the exemption. Since federal law nullifies the exemption at the state level we are passing a law with nowhere to go. I would encourage you to vote down the bill. Passing a state law that goes against federal labeling laws makes no sense. I hope for your support in voting down SB 2179

Alcohol and Tobacco Tax and Trade Bureau
Advertising, Labeling and Formulation Division
1310 G Street, NW, 4th Floor
Washington, DC 20220
Attention: Customer Service Team 1-866-927-ALFD (2533)

I talked to Customer Service Agent: Alexis Jewell

Wine Label laws.

Can you call a wine a North Dakota wine without North Dakota product in it?

If the wine is Vintage dated or has a varietal stated on the label you must state the appellation of where the grapes came from. So if you claim a grape type or a vintage date you have to say where the grapes came from by federal law

Other information on how other states handle content of wines from their states:

Wines produced in the U.S.: When wine labels proclaim California as the "Appellation of Origin", state law requires that 100% of the grapes are from within California. Nearly all other states require that 75% of the grapes come from within that state. If a wine label specifies an officially designated viticulture area, (i.e.: Napa Valley), a minimum of 85% of the grapes must come from within the named region.

Thank you.
Jared Anderson
Congress Inc

1402 39TH ST N • FARGO ND • 58102
PHONE: 701-282-0985 • FAX: 701-282-5691
E-MAIL JAREDA@CONGRESSINCND.COM