

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2177

2007 SENATE JUDICIARY

SB 2177

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2177**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: 1214

Committee Clerk Signature

Moria L. Salby

Minutes: Relating to penalty for unlawful delivery of alcohol to certain persons.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Lindess, Dis. #20 Introduced the bill (meter :011) Gave testimony – Att. #1 Referred to a clipping he had from a Fargo Forum quoting Sen. Lyson many years ago. Also showed a card from the funeral of his nephew, who was hit by a drunk driver at age 15. The past Senator Trenbeath was a friend and pall bearer at the funeral. When I see him today I often wonder where my nephew would have been if still alive.

Sen, Nething reviewed the changes the bill would make to the current language (meter 6:07)

Testimony in Opposition of the Bill:

Aaron Birst, Legal Counsel, ND State Attorneys Assoc. (meter 8:00) gave testimony – Att. #2.

Sen. Fiebiger questioned, do we not have other crimes that we mandate offense to leaving the discrepancy up to the Judge? Yes. And is it not the Judge who decides a sentence, not an attorney? Yes. Discussion of the sentencing process. (meter 9:39) Do you not agree that the current law is weak? Yes. Sited a scenario (meter 15:00)

Sen. Nething spoke (meter 17) of how in ND we like to give people a second chance, and discussed the possibility if we changed the 1st offense to match existing language and use our 1st offense language on the 2nd offense, the 2nd offense language to the 3rd offense and then forth. This would be mimic our current D.U.I. Laws.

Testimony Neutral to the Bill:

Bob Harms, ND Hospitality Assoc.(meter 20:53) Had a recommended amendment. He had issues with the term "knowingly". This is already language in the existing bill. The other amendment would hold the "minor responsible.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2177**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1294

Committee Clerk Signature

Maria L Solberg

Minutes: Relating to penalty for unlawful delivery of alcohol to certain persons.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators are present. Sen. Nething opened with the following committee work:

Sen. Nething references Mr. Harms amendment. The committee discussed the States Attorneys dis-like of the bill. Reviewed changing the violations to make the 1st violation-the second. On line 12 change the 2nd to the third.

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass Amendment and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

Sen. Olafson made the motion to Do Pass SB 2177 as Amended and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nething**

Senator David Nething, Chairman closed the hearing.

Date: 1-17-07

Roll Call Vote # 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2177

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Olafson Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Fiebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Nething

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

REPORT OF STANDING COMMITTEE

SB 2177: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2177 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "first" with "second"

Page 1, line 12, replace "second" with "third"

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2177

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2177

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 3961

Committee Clerk Signature

R. Kinross

Minutes:

Chairman DeKrey: We will open the hearing on SB 2177.

Sen. Elroy Lindaas: (see attached testimony).

Rep. Dahl: Are you aware, are judges letting them off easy. They can do what you're asking in this bill. However, we're taking their discretion for those second offenses away from the judiciary. In your opinion it's a problem.

Sen. Elroy Lindaas: I have yet to see that whole punishment handed out. Typically it is a \$50 or \$100 fine. A few days of their suspended sentence and then they're let off. That's why they think it is kind of funny, I guess. The second offense, as this bill was amended by the Senate, that's when the punishment takes over. If they haven't learned by the first offense that they were doing something wrong and there were consequences, the 2 and 3rd offense would indeed have some serious consequences.

Rep. Klemin: Your testimony related to delivery of alcoholic beverages to persons under 21 years of age. This statute also includes another group, delivery to a habitual drunkard, incompetent or an obviously intoxicated person. You didn't mention any of that in your testimony. What is your opinion on the application of this additional language to persons in those other categories; obviously an intoxicated person, for example.

Sen. Elroy Lindaas: That's an area of the law that's already in existence and I really hadn't planned on going in and changing any of that. That's something I think we should leave as is.

Rep. Klemin: So the new language that you are adding, says for 2nd violation of this section. That section includes what you were concerned as well as these other things. I gather than that you are really concerned about the under 21 part of this. Do you have any objection to an amendment to this to limit it to that situation, rather than the other ones that you aren't intending to cover.

Sen. Elroy Lindaas: I really don't have any experience on the other part of that law. I guess I would not object if there was something offered as an amendment to perhaps that portion of the law, although I wouldn't discount that there are some serious consequences with delivering alcohol to those people also.

Chairman DeKrey: Thank you. Further testimony in support of SB 2177. Testimony in opposition.

Robert Harms, ND Hospitality Association: (see attached testimony and amendment).
Opposed.

Rep. Klemin: We have a section already, 5-01-08, about persons under 21 entering licensed premises. I'm sure you looked at that. That section provides for a Class B misdemeanor. The amendment that you're proposing seems to me to be taking that Class B misdemeanor in 5-01-08 and turning it into a Class A misdemeanor in section 5-01-09. Is that what we're doing.

Robert Harms: We think that would be appropriate. We think that is good for one party is good for the other party.

Rep. Klemin: So why aren't we amending 5-01-08 instead of 5-01-09.

Robert Harms: That would be an appropriate approach as well. The point that we want to make is that if the business owner is subject to mandatory penalties for knowingly violating the

law, then the other participant in the transaction, who also knowingly is involved in violating the law should face the same consequences as the business owner who's business is in jeopardy because of the conduct that we're talking about here.

Rep. Koppelman: Were you opposed to the bill in the Senate and if so, regarding your amendment, why it didn't find favor there, or is this new information that's come forward.

Robert Harms: We did oppose the bill on the Senate side. We proposed the amendment that we have before you this morning. One thing that we were able to accomplish on the Senate side was at least to amend the bill so that the mandatory penalties were removed, downgraded from what was before mandatory.

Rep. Koppelman: Is it more reasonable now.

Robert Harms: It's a better bill now but we don't think that it is a good bill.

Rep. Koppelman: When I look at this section of law, I don't necessarily think of alcohol serving licensed establishment that you represent, I am thinking more of people that might supply alcohol to minors inappropriately, if he/she can buy it legally and then turn around and gives it to minors. I realize that it can apply to you. However, it has a standard that when a person knowingly delivers alcoholic beverages, and as an attorney you know what that means. Wouldn't that for anybody who works in an establishment that serves alcohol for him/her to be prosecuted under this statute, either as it stands now or if this bill passes, wouldn't there have to be a demonstration that they knew this person was a minor and they were ignoring the law, rather than I didn't know.

Robert Harms: You are correct, the knowing requirement that is contained in the statute will in fact, require a showing to demonstrate that to meet that part of the statute. Our objection goes back to two basic points. We don't think there has been a demonstrated need for the bill itself, nor do we think there has been an indication that changing the law will have the desired

affect. We do think the judges in ND have the appropriate discretion to impose appropriate sentences, to weigh each case based upon the unique circumstances that each case represents. We think that's the way public policy should be framed in ND, and in the event that you think the bill is good policy, then we think we should apply the same policy to both participants in the transaction, to both the license owner and the minor who is purchasing it.

Rep. Meyer: Under this bill, the way it is written, it would definitely affect the bartender, if he were serving a person who was obviously intoxicated. He would be subjected to a second and third violation if he were serving to an intoxicated person. I guess my question would be, is that defined anywhere, or is it just a common sense thing. I'm not saying a bartender would do that, wouldn't he fall under those provisions, where he could be charged with a 2nd or 3rd violation just automatically if someone would press the point that the person was obviously intoxicated to me, but not obviously intoxicated to the bartender.

Robert Harms: The term intoxicated person, I don't know if it is defined in the code, I don't think it is. But it still would require a showing of knowing as part of the violation. But to answer your overriding question, is the bartender likely to be subject to the bill for serving someone who is intoxicated, the answer is yes. How it would apply to those other classifications that Rep. Klemin raised earlier, I don't know.

Rep. Onstad: You talk about statistics, ND leads the nation in underage drinking, and also leads the nation in binge drinking. So taking those current statistics into consideration, our judges are probably not sending out a stiff enough message. Don't you think that the bill adds some mandates to that and that might help.

Robert Harms: I guess the statistics that I was referring to, is that we can't actually demonstrate that the courts are not handling these cases appropriately, that we don't have sufficient penalties being applied, and if we were to pass 2177, that it would in fact have some

kind of positive affect on the two statistics that you just mentioned. I don't think we can demonstrate either of those.

Rep. Onstad: TN has some of the lowest rates in the nation, they have fines up to \$2500 or up to 11 months in prison. So I would think that there would be a showing that there are some results.

Robert Harms: I would say that we have a change in public behavior as a result of the broader applications, whether you want to address smoking or our eating habits, or how we deal with alcohol. One bill isn't going to change that. If we want to address the problems that you talked about, I think a broader approach and I think I heard some discussions about a resolution dealing with that, studying the problem of underage drinking. That may be the smarter approach as opposed to creating a mandatory penalty when the need isn't demonstrated and we are not convinced that the courts in ND aren't doing their job appropriately.

Rep. Boehning: One of the concerns with the bill in general is that Fargo has quite a few undercover operations where they'll send a minor in to purchase alcohol. I know that once in a while these guys will get stung. The second offense isn't going to keep people from going to jail. Maybe we need to put in a consuming for the minors as well. We're a state high in binge drinking, we need to send a message to the minors as well, that if you get caught a second time you're going to be subject to all these fines and mandatory sentences. I think we need to put consuming in there for the minors.

Robert Harms: I guess the consuming part of it, I hadn't really thought of it. I do want to alert you to another bill that is being heard this week. It calls for mandatory application for sentences for drug and alcohol education for minors. We think those are better approaches

than what is in the bill. We are sympathetic with the problems. We just disagree as to the appropriate solution.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2177

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 4004

Committee Clerk Signature

Minutes:

Chairman DeKrey: We will take a look at SB 2177, providing alcohol to a minor.

Rep. Meyer: I just don't care for mandatory sentences. I think we need to start placing a little bit of faith in our court system and allow them to have enough leeway, for them to see what has happened and be able to sentence accordingly.

Rep. Charging: What is the reverse order, what is the fine and penalty for the minor child.

Rep. Griffin: It is a Class B misdemeanor, 6 months in prison and/or \$1000 fine. I move a Do Not Pass.

Rep. Dahl: Second.

Rep. Charging: What if we stripped the bill of the mandatory sentencing and left the fines.

Chairman DeKrey: That would be present law.

Rep. Charging: Not really, the fines would be higher. I understand, we are high in underage drinking and I think there is an opportunity to make fines a little stiffer.

Chairman DeKrey: During testimony it came out that there is a study resolution on this out there and I think this bill would be putting the cart before the horse actually, if we are going to study it.

Rep. Onstad: There is a study resolution on underage drinking and what works in other states. I'm going to vote no on this. I think the penalty right now, the maximum is one year and \$2,000. By the 2nd and 3rd violations, you are lowering the penalties. My question is, what's typically done in the 2nd and 3rd offense. Are they assessing the same fine each time, or are they increasing those fines each time.

Rep. Kretschmar: Another problem is that if a person bought the alcohol in Grand Forks and he comes home to Ashley and gives it to a minor. The court in Ashley won't know what happened in Grand Forks.

Chairman DeKrey: I asked Rep. Klemin if there could be a civil action if someone was harmed by someone buying them alcohol. He said, of course. If you aren't deterred by the fact that you could lose money, are 48 hours in jail going to deter you.

Rep. Boehning: One of my major concerns, is the undercover operations, so the person gets picked up for the 2nd time for misreading an ID card and be subject to this. I don't think that's quite fair.

Rep. Wolf: If you keep the fines, the parents are going to be the ones that are going to pay the fines. If we were to keep anything, we should keep the jail time, the kids are going to have to do the jail time.

Chairman DeKrey: The clerk will call the roll on a Do Not Pass motion.

12 YES 2 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Kretschmar

Date: 2/27/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2177

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Griffin Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad		✓
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

SB 2177, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2177 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2177

NORTH DAKOTA LEGISLATIVE ASSEMBLY

HB 2177

Mr. Chairman and Senate Judiciary Committee

For the record my name is Elroy Lindess State Senator from Mayville North Dakota District 20. I appear before you this morning as prime sponsor of Senate Bill 2177, a bill that leaves no doubt that the delivery of alcohol to minors is a serious mistake. Some people seem to have the attitude that it is a harmless act and one that has no consequences to themselves as enablers of minors in possession and consumption or what might result because of their actions. The law that requires someone to be at least 21 years of age was enacted for a very good reason. I think we all can appreciate that alcohol in the hands of young people sometimes has disastrous results. I'm sure we have all known young folks who have gotten into dangerous situations ranging from: alcohol poisoning, injuries, automobile crashes and yes, even death. I have lost a niece and a nephew on two separate occasions as a result of being hit by a drunk driver. Both incidents happened nearly forty years ago, and both individuals were deprived of a life beyond 19 years old. They and their families were deprived of what might have been. The joy of watching them mature into adults with all the expectations of a completing education, their entry into a rewarding occupation, courtship, marriage, family, life of their own, things that most of us enjoy and are thankful for having experienced.

What does this have to do with Senate Bill 2177? The drunk driver who killed my nephew was 13 years old, drunk and accompanied by a person over the age of 21 whom had supplied the alcohol. At this point I don't know what the ultimate results of these cases were.

Over the years we have read the court reports in our local papers listing various actions from the non-sufficient check cases, driving under the influence, minor in possessions and consumption and delivery of alcohol to minors. The cases I am familiar with, delivery of alcohol

to minors are taken quite lightly by the guilty party. Those who I know of have treated it as a joke and even have a laugh about it. It appears that the punishment is not sufficient enough to cause any remorse or a resolve not to do it again. The mandate spelled out in Senate Bill 2177 will be a strong indicator of how serious the citizens of North Dakota feel about this crime and what the potential consequences are. I urge your variable consideration and ultimately A do pass recommendation, and I would stand for any questions you may have? Thank you.

Testimony to the
SENATE JUDICIARY COMMITTEE
Prepared January 16, 2007 by the North Dakota Association of Counties
Aaron Birst, Legal Counsel

CONCERNING SENATE BILL 2177

Chairman Nething and members of the Committee, the North Dakota State's Attorneys Association is here today to oppose Senate Bill 2177.

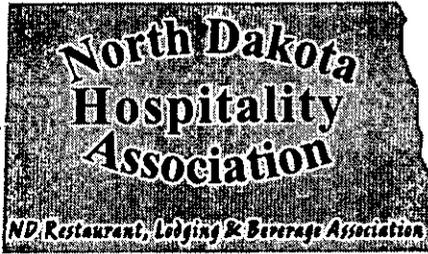
The reason for our opposition is the State's Attorney Association has historically and continues to oppose any measure that imposes minimum mandatory sentences without allowing for any discretion of the judge to impose a sentence fitting the particular facts of the crime.

Certainly, under age alcohol consumption and those who foster it and even profit from it is unacceptable. Those crimes deserve aggressive law enforcement investigation and prosecution. However, imposing restrictions on judges without any allowances for them to deviate creates a system of "one size fits all" which in the criminal justice system is rarely the best solution to a problem.

Judges are elected or appointed to their positions based on their ability to discern differences in factual scenarios and their ability to craft sentences accordingly. Senate Bill 2177 in its current version does not allow for that flexibility.

For the following reasons I ask that you do not support Senate Bill 2177.

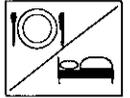
Thank you.



ND's Restaurant, Lodging & Beverage Association



P.O. Box 428 • Bismarck, ND 58502 • Phone: 701-223-3313 • Fax: 701-223-0215
E-mail: ndha@btinet.net • www.ndhospitality.com



Judiciary Committee
North Dakota House of Representatives
February 27, 2007

SB 2177 (MANDATORY SENTENCES: delivery to minors)

Chairman Dekrey and members of the Committee, my name is Robert Harms and I am a lobbyist for the North Dakota Hospitality Association. We have 350 members in North Dakota who are engaged in the hospitality industry including the state's bars and restaurants.

ISSUE: is not about whether juveniles should consume alcohol; it is not about prosecuting people who serve alcohol to minors, but whether there is a need and maintaining judicial discretion to make appropriate decisions if the law is violated.

The North Dakota Hospitality Association **opposes SB 2177** for the following reasons:

1. There has been NO SHOWING of a bona fide need for the bill. There has been little demonstration of facts, statistics and case examples to demonstrate that increasing maximum penalties for delivery to a minor is warranted. No facts, no statistics, no case examples to justify changing the law, so the law should be left alone and not tampered with lightly.

2. SB 2177 invades the province of North Dakota judges, and limits their ability to weigh each case on its own merits and impose a sentence accordingly. This year, you will be asked to approve significant pay increases for District Court judges and judges of the ND Supreme Court, all of whom are legally trained, studied for and pass the ND Bar, undergo regular continuing education requirements so they remain qualified to perform their duties, and who are trained to assess and weigh the facts and law of each case brought before them. SB 2177 removes that discretion, to weigh the unique facts and circumstances under which the case was brought, and instead imposes a mechanical, application of a formula that neither recognizes the unique circumstances of the case, nor applies a rational evaluation of those circumstances. For these reasons also, SB 2177 should be defeated.

Finally, if the bill has favor with the Committee, then we urge an amendment that would apply the same rigid and inflexible penalty to each member of the case who has violated the law, both the person who delivers to the minor as well as the minor who enters the premises, knowingly intending to secure and possess alcohol upon the licensed premises of the owner, through which the minor has jeopardized the very business and livelihood of the owner. (*See amendments*).

For these reasons we feel SB 2177 is bad legislation and should be defeated, or otherwise amended as we suggest. So we ask for a DO NOT PASS recommendation.

AMENDMENTS to SB 2177:

February 26, 2007

INSERT after line 15 the following:

Any minor knowingly entering a licensed premise and purchasing or attempting to purchase alcohol shall be subject to the same penalties as provided in this section.