

2013 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2147

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2147
February 6, 2013
Job Number 18365

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to direct shipment of alcoholic beverages from out of state

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Senator Judy Lee: Said it came to her attention that you can't ship wine from the small wineries to North Dakota. Amendment Attached (1) (.30-4:45)

Robert Harms, Lobbyist for the Wine Institute: Said that there was a glitch in the North Dakota statute that said; if you are going to ship wine into North Dakota you had to be either a retailer or a manufacturer in your state of domicile. A shipping house or fulfillment house that Senator Lee was describing was neither a retailer nor manufacturer, so they couldn't qualify for a North Dakota direct shipper's license.

Sally Jefferson, Lobbyist for the Wine Institute: Written Testimony Attached (2).

Senator Laffen: Asked if the winery still pays the taxes.

Sally: Said that's correct.

Senator Sorvaag: Asked what an alcohol shipper's agreement for the common carrier was.

Sally: Said that is an agreement that the wineries and the carrier signs together. It requires that the winery must comply with the state laws that are imposed, related to direct shipments and the carriers are also required to comply.

Senator Sorvaag: Said that is saying the carrier is involved in making sure it is delivered to somebody that is twenty-one or older.

Sally: Said absolutely.

Chairman Klein: Asked if the rules are similar state to state.

Sally: Said that some are similar. Thirty-nine states permit direct to consumer shipping.
(10:00-11:30)

Pat Ward, North Dakota Wholesale Liquor Dealers: Said they worked with Mr. Harms and Senator Lee on the amendments and would ask them to adopt the two set of amendments going from the tax department and the one from Mr. Harms. They support the bill and understand this is just a shipping issue.

Dan Rouse, Legal Counsel to the Office of North Dakota Tax Commissioner: Said he has an amendment that will level the playing field, see Attachment (3). (13:10-16:16)

Chairman Klein: Closed the hearing.

Senator Murphy motioned to adopt the amendments.

Senator Laffen seconded the motion.

Roll Call Vote: Yes - 7 No - 0

Senator Murphy moved a do pass as amended.

Senator Unruh seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Murphy

February 6, 2013



Handwritten signature and date: 2-6-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2147

Page 1, line 18, after "5." insert ""Direct shipper" means a person that is licensed by the commissioner and ships or causes to be shipped alcoholic beverages directly into this state to a consumer for the consumer's personal use and not for resale.

6."

Page 1, line 20, overstrike "6." and insert immediately thereafter "7."

Page 1, line 22, overstrike "7." and insert immediately thereafter "8."

Page 2, line 1, replace "8." with "9."

Page 2, line 5, replace "9." with "10."

Page 2, line 8, replace "10." with "11."

Page 2, line 9, replace "11." with "12."

Page 2, line 11, replace "12." with "13."

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Page 2, line 17, replace "14." with "15."

Page 2, line 19, replace "15." with "16."

Page 2, line 20, replace "16." with "17."

Page 2, line 23, replace "17." with "18."

Page 2, line 26, replace "18." with "19."

Page 2, line 28, replace "19." with "20."

Page 3, line 3, remove "in-state or"

Page 3, line 5, remove "in-state or"

Renumber accordingly

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2147**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Senator Murphy Seconded By Senator Laffen

Senators	Yes	No	Senator	Yes	No
Chariman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2147**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Senator Murphy Seconded By Senator Unruh

Senators	Yes	No	Senator	Yes	No
Chariman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

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

REPORT OF STANDING COMMITTEE

SB 2147: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2147 was placed on the Sixth order on the calendar.

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Renumber accordingly

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2147

2013 HOUSE STANDING COMMITTEE MINUTES

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

SB 2147
March 12, 2013
Job 19807

Conference Committee

Kristie Helgler

Explanation or reason for introduction of bill/resolution:

Relating to direct shipment of alcoholic beverages from out of state

Minutes:

Testimony 1

Hearing opened.

Senator Judy Lee, District 13: Introduced SB 2147. Explained problematic area in existing legislation regarding fulfillment houses. There have been some amendments added, and friendly amendments will be offered.

3:56 **Representative Vigesaa**: On page 3, section 2, it talks about adding civil penalty for illegal shipment. Was there not a penalty prior and that is what will be adding?

Senator J. Lee: Redirects the question to the tax department.

Robert Harms, lobbyist for the Wine Institute: 5:10 Distributed written testimony, attachment 1.

7:14 **Representative Boschee**: Is this saying any vineyard or wine distributor can ship directly to any household?

7:43 **Robert Harms**: The only thing this bill does is simply allow an out of state winery to use a fulfillment house to ship wine into ND that they would otherwise have to do themselves.

8:46 **Representative Ruby**: Does the fulfillment house have to be licensed or permitted in the state, or does the winery have to get that?

Robert Harms: The fulfillment house will now be treated as a licensed logistic shipper.

9:33 **Representative Vigesaa**: Licensed carriers are like UPS, FedEx, correct?

Robert Harms: Correct.

9:50 **Chairman Keiser:** On the bottom of pg 3, who is having to purchase the direct shipping license?

Robert Harms: Whoever is doing the shipping is who will have to pay the fee to the tax department.

Chairman Keiser: What is the penalty if they do not do that?

11:14 **Robert Harms:** I don't have that information, maybe the tax department knows.

Chairman Keiser: There is a penalty in the section above that. But I do not see a penalty if a winery has not obtained the direct shipping license.

12:28 **Representative Amerman:** Is this just for wine, or can it be for other alcohol?

12:53 **Robert Harms:** I think the statute applies to spirits.

13:18 **Representative Becker:** Has the penalty for multiple offenses been adjusted to a felony on the second offense instead of the third now?

Robert Harms: That is my understanding as well.

14:26 **Blaine Braunberger,** supervisor of alcohol taxes in the state tax department: Am available for questions.

Chairman Keiser: This applies to all spirits?

Blaine Braunberger: Page 4, lines 1-4, it states wine, beer, or other alcohol.

15:14 **Chairman Keiser:** Question regarding the stiff penalty for a second offense, is it really necessary to put people in prison?

Blaine Braunberger: Yes we do have a problem in our state.

Chairman Keiser:

Blaine Braunberger: Yes, we do have a problem. A lot of wineries do not register as a direct shipper; they wait until we find them.

Chairman Keiser: Section 3 refers to sections 1 and 2 above it, it seems like it would be for large shipments, not one or two bottles. In subsection 5 says that it is just a fine and not so severe?

Blaine Braunberger: This portion under the direct shipper law is affecting a manufacturer or retailer in its state of domicile and that is why they can ship direct if they are licensed.
18:15

Chairman Keiser: I am confused, are you telling me someone could be put in prison for shipping one bottle of alcohol?

19:03 **Blaine Braunberger:** It would be a fine along with a notification that they would receive.

Chairman Keiser: So you notify them and they send one more bottle ?

Blaine Braunberger: Correct

Chairman Keiser: We will be holding this bill and you need to rethink that section

19:39 **Representative Vigesaa:** Page 3 subsection 5 it says that it does not apply to a transaction with proper licensing.

20:11 **Blaine Braunberger:** That is correct; it is because of not registering as a shipper.

20:27 **Representative Ruby:** The language about a class C felony is existing language.

Chairman Keiser: It doesn't mean we shouldn't look at it.

21:06 **Dan Rouse,** Legal Counsel to the ND Office of State Tax Commission: Here at the tax commissioner's request. The penalty on page 3, line 19, is applicable to the direct shippers and it is a graduated penalty. Under the proposed language, there is a civil fine associated with that. Then the graduated penalty transfers over to the class C felony. In the years I have been here, we have not gotten to that level. We get the attention of the shippers, and they comply. Distributed proposed amendments, attachment 2. Explained content of amendments and rationale behind suggested amendments.

25:36 **Representative Vigesaa:** If this passes, how do you notify companies around the country?

Dan Rouse: We have a couple of ways; the ones that are already licensed with us get notified. Information is put on our website. I think you will find that that language exists in other states. We also pass the information onto the International entities as well.

28:42 **Representative Kasper:** Page 3, lines 14-21. Do you remember who proposed the amendments?

Dan Rouse: That was in the language that came to us from the National Wine Institute

Representative Becker: Have you levied a misdemeanor to anyone that shipped. I do not see this as a graduated procedure.

Dan Rouse: No. Explanation of graduation procedure, there is always ways to work out a lesser deal such as a misdemeanor.

Representative Kasper: Page 3, lines 14 through 21, who proposed the amendments to change that section.

Representative Kasper: What will the response be when you notify them that it could be a felony.

Dan Rouse: You will find that most other states have this already in place.

Representative Kasper: I would like to see the data.

Representative Vigesaa: Will this fee be all new for the UPS's of the world?

Dan Rouse: A number of carriers simply refuse to bring the product into ND, there is several reasons why but one is that they don't want us to be able to audit our records.

Pat Ward, 32:04 North Dakota Wholesale Liquor Dealers: Would like to testify as neutral.

Hearing closed.

Chairman Keiser: The only question we have would be regarding the penalty.

Representative Vigesaa: Motion to return the penalty phase to the way it was in the previous language so that second offense would be a class A misdemeanor and the third offense class C.

Representative Kasper: Second

Voice vote carried.

Representative Johnson: Motion tax dept amend

Representative Beadle: Seconds

Voice vote carried.

Representative Gruchella: Moves Do Pass as Amended

Representative Kasper: Second.

13-0-2

Carried by Representative Vigesaa

March 12, 2013

VK
3/13/13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2147

Page 3, line 17, remove the overstrike over "~~The second violation of~~"

Page 3, line 18, remove the overstrike over "~~subsection 1 or 2 is a class A misdemeanor~~"

Page 3, line 18, after the second "and" insert an underscored period

Page 3, line 19, remove "after receiving notice of a first violation"

Page 4, line 23, after "commissioner" insert "and include the identification of any logistics or fulfillment houses the licensee used for such shipments"

Page 4, line 24, replace "57-39.2" with "57-39.6"

Page 4, line 25, remove "and include the identification of any logistics or"

Page 4, line 26, remove "fulfillment houses the licensee used for such shipments"

Page 7, line 6, replace "carrier" with "shipper"

Renumber accordingly

Date: 3-12-13

Roll Call Vote #: 31

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2147**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Vigesaa Seconded By Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigesaa					

Voice

Total Yes No

Absent _____

Floor Assignment _____

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

*restore penalty
to previous*

Date: 3-12-13

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2147**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Johnson Seconded By Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigasaa					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
those suggested by tax dept.

Date: 3-12-13

Roll Call Vote #: 3

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2147**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number 13.0091.03001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Gruchalla Seconded By Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser		ND			
Rep. Dan Ruby		ND			
Rep. Don Vigesaa	✓	ND			

Total Yes 13 No 0

Absent 2

Floor Assignment Vigesaa

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

REPORT OF STANDING COMMITTEE

SB 2147, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2147 was placed on the Sixth order on the calendar.

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Renumber accordingly

2013 TESTIMONY

SB 2147

PROPOSED AMENDMENTS TO SENATE BILL NO. 2147

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Page 3, line 6, remove "in-state or"

Page 3, line 8, remove "in-state or"

Renumber accordingly

**Testimony
In Support of SB 2147
ND Senate Committee on Industry, Business and Labor
February 6, 2013**

Mr. Chairman and Members of the Committee:

I am here to speak in support of Senate Bill 2147 on behalf to the Wine Institute, a non-profit trade association representing almost 1000 California wineries and associate members. California wineries produce 90% of the wine in the United States.

The Wine Institute appreciates the state's support of allowing limited regulated direct wine shipping to its adult consumers. Direct shipping provides consumers with greater product choice and the convenience of home delivery which is particularly important in more rural areas. It also benefits the wine industry in reaching a customer base not previously available as well as the state due to the additional tax and fee collections generated by these shipments.

However, an issue involving the statute has arisen that has resulted in prohibiting the common industry practice of licensed wineries using fulfillment warehouse services to accurately pack and ship wine directly. The term "fulfillment house", as used here, refers to a licensed wine warehouse (located in the same state where a licensed winery is located) where logistics services such as wine storage and "pick-and-pack" assembly of direct to consumer orders. Barring the use of these facilities is problematic because California wineries, of which about 450 of them are licensed North Dakota direct shippers, utilize fulfillment warehouses in preparing almost half of all direct-to-consumer shipments. Some wineries may either initiate all wine shipments from a fulfillment warehouse or use these services to pack shipments only for their wine club or internet and phone orders or those triggered by visits to their tasting room. Use of fulfillment warehouse services is also a standard practice for wholesalers, as well as some control states, for consolidating shipments prior to transport. The prohibition on using fulfillment warehouses for direct-to-consumer shipments has generated such concern in our industry that we advised our members using any third party service support to refrain from direct shipping into North Dakota. Similar fulfillment house operations exist in states such as Oregon, Washington and more recently in Virginia and are also being impacted.

This situation has come about because under the North Dakota Century Code § 5-01-16 a person or entity must hold a valid manufacturer's or retailer's license issued by the state of domicile to qualify for a direct shipping permit from North Dakota, and must hold such a permit before shipping alcohol direct to North Dakota consumers. Since fulfillment warehouses are neither manufacturers nor retailers in their state of domicile, they cannot be licensed as such under the North Dakota statute. So, wineries using fulfillment support are barred from shipping wine directly to North Dakota consumers in the same manner that is common practice in most of the direct-to-consumer shipping states.

SB 2147 would update the current statute by allowing the use of fulfillment warehouses by licensed direct shippers. It would establish a "logistics shipper" license for persons involved in providing fulfillment services on behalf of a licensed shipper and require reporting on direct shipments they handle to the Tax Commission. It is important to note that this requirement would not negate the need for wineries to maintain a direct shippers' license and meet reporting and tax payment requirements, and for signing an "Alcohol Shipper Agreement" with a common carrier. The bill also requires licensed direct shippers to report their use of a licensed logistics shipper's services. It would require licensure and reporting by "alcohol common carriers" so that the Tax Commission can more easily track these shipments to ensure that they are coming from licensed direct shippers and logistics shippers. SB 2147 also significantly stiffens the penalty for violations.

Wine Institute members spend significant resources educating themselves on applicable beverage alcohol law and their compliance therewith, as well as support all states' efforts to prevent unlawful competition. We appreciate that North Dakota is seeking to address complicated issues being faced by state alcohol beverage regulators nationwide. SB 2147 would provide a needed remedy to these issues while prohibiting the unlawful transportation and sale of wine into North Dakota. Wine Institute supports this legislation and respectfully urges its adoption.

Prepared by the
Office of State Tax Commissioner
February 6, 2013

PROPOSED AMENDMENTS TO SENATE BILL 2147

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ND House Committee on Industry, Business and Labor
March 12, 2013**

① 3-12-13
2147

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② 3-12-13
2147

Prepared for the House Industry, Business and Labor Committee
by the Office of State Tax Commissioner
March 12, 2013

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2147

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Renumber accordingly