

2013 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2284

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2284
February 5, 2013
Job Number 18283

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to taxes on alcohol

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Senator Larsen: Said the bill is to establish a beer room, tap room licensor. This bill comes from the micro-breweries that are starting to get a toe hold in the state. They make their own product and they have to go through other entities to get their product marketed. They want to be able to brew their beer and have some market ability or leverage room, so they can get it off the ground. They want someone else to distribute it but want to get a start of the marketing part, so they can make it and sell it in their restaurants and brew pubs. (.01-2:38)

Senator Andrist: Said it is defined as a maximum of 25,000 barrels of malt beverages annually, is that a small business?

Senator Larsen: Said to his understanding it is pretty small. None of these micro-breweries are at that level. They just want to start the process.

Senator Laffen: Said we already have some brew pubs in Fargo, how is this different then want they do?

Senator Larsen: This will allow them to take it out of their building and deliver it to someone across the street, up to a certain amount. Then when it reaches that amount they will have someone distribute it.

Janet Seaworth, Executive Director and Legal Counsel for the North Dakota Beer Distributor Association: Written Testimony Attached (1).

Discussion followed on what this bill will provide for the brew pubs ((13:15-20:38)

Shannon McQuade Eli: Said she is a beer wholesaler in Bismarck. This bill provides for small craft breweries to sell distribute products. As a wholesaler and distributor she carries

many suppliers in her company, from the biggest to the very smallest and a lot of craft breweries from out-of-state and a few from North Dakota. They are to distribute the product when they have grown enough or if they want to distribute right away.

Todd Sattler: Co-Owner and assistant brewer at Laughing Sun Brewing Company LLC. Written Testimony Attached with Amendment (2 & 3) (25:00-39:10)

Senator Murphy: Asked if there will be a problem with the former testifiers.

Todd: Said they discussed amendments with the distributors. They are looking at this as an opportunity to draft legislation or pass legislation to accommodate large brewers. This won't harm them at all and it won't affect distribution. They will use distributors because they will provide a function for them. For the small brewer they need to have off-sales the way he described and if they got up to 10,000 barrels and wanted to distribute they could do that state wide and make that work.

Chairman Klein: Commented that it sounded like he was pretty much in opposition to everything the wholesalers are doing. Aren't you looking for something different?

Todd: Said he didn't think so. The amendments they are seeking are few and not consequential to the distributors or their interest.

Chairman Klein: Asked when he started out with his partner last year, did they know what the laws in North Dakota were.

Todd: Said they did but also new there are 38 states that are allowing what they are asking for today.

Chairman Klein: Said he understands that the 38 states that he mentioned had not thrown the three tier system out.

Todd: Said the way the alcohol laws are administered by the states results in complete variation from state to state.

Discussion continued and Todd was asked to sit down with the wholesalers to work this out, (42:00-54:30)

Mike Frohlich, Co-Owner of Laughing Sun Brewing Company LLC: He talked about the problems with the bill the way it is written. (55:16-1:04:49)

Jon Lakoduk, President and Founder of Little Deep Brewing Company, Minot: Written Testimony Attached (4).

Jacob Maxson, Attorney and Part Owner of Souris River Brewing: Said that the bill in its current state benefits them more than the bill not passing at all. The law as it currently stands they are not able to self-distribute in any capacity. (1:13-1:16)

Rudy Martinson, Executive Director of the North Dakota Hospitality Association: Said they represent the retail end of the sales of alcohol. They are talking about two different types of license here; this bill talks about a brewer license or a manufacturer license that would allow them to have this tap room and dispense their own product. There exists in current law what is called a brew pub license which is a retail license. His understanding is that most of the businesses that are operating here have one of those or intend to get one. That allows for some different things. Under the brew pub license you are allowed to sell the beer they brew and also other alcohol. (1:17-1:19:22)

Daniel L Rouse, Attorney for the North Dakota Office of State Tax Commissioner: Said they are here in a neutral capacity. There is a rich complexity to this issue and there are a number of different options between micro-brewery, domestic brewery, brew tap and pubs. They want to make sure that they get this clear and get it right and into a format that they can administer. They would like to collaborate with all of the parties and see if they can't help orchestrate something that they can ultimately administer.

Chairman Klein: Asked if he was comfortable with the initial bill?

Dan: Said he was and he concurred with the amendment offered by Miss Seaworth to make it constitutional. As it is with that amendment only, they could administer it.

Discussion followed about the new amendments provided. (1:21-1:24:44)

Mike: Said for clarification the state brew club license does not allow you to sell wine, spirits and other things, it is determined by a city license.

Nick Holwegner, Souris River Brewing: Written Testimony Attached (5) did not speak.

Chairman Klein: Closed the hearing.

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2284
February 18, 2013
Job Number 19120

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to taxes on alcohol

Minutes:

Amendment and Vote

Chairman Klein: Opened the meeting and handed out the amendments. The amendments handed out were an agreement between Todd Sattler and the beer folks. Mr. Gilbertson took a look at the amendment and pointed out that the severability clause which was agreed to and was excluded by the council. Amendments Attached (1) and (2)

Joel Gilertson, North Dakota Beer Distributors Association: Said the reason for that is; first of all there is a tenth circuit court of appeals decision saying that there are constitutional problems with allowing a special privilege if there is a limitation on production. There are no other circuit courts that have held that, but just in case that would happen to come up we want to make sure they don't toss out the whole three tiered system. That is the purpose for the severability clause.

Chairman Klein: Asked if that was also the clause placed on the wine issue for that same reason.

Joel: Said correct.

Senator Murphy: Asked if they were getting rid of the mileage requirement.

Chairman Klein: Said the 150 miles is gone, it was left over language from the bill that was withdrawn.

Senator Murphy: Motioned to adopt the amendments.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0

Senator Murphy: Motioned a do pass as amended.

Senate Industry, Business and Labor Committee
SB 2284
February 18, 2013
Page 2

Senator Sinner: Seconded the motion.

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

Floor Assignment: Senator Murphy

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2284
February 19, 2013
Job Number 19211

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to taxes on alcohol

Minutes:

Discussion

Chairman Klein: Talked about the vote on the amendment with the severability clause and leaving it in and letting the House tweak it. The severability clause is already in statute but the beer guys think it still needs to be in there.

Senator Murphy: Asked if it was the wholesalers who thought it was necessary.

Chairman Klein: Said yes, they were the ones that negotiated with Todd and the beer guys. It is part of the code so it should cover it.

FISCAL NOTE
Requested by Legislative Council
01/21/2013

Amendment to: SB 2284

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
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Revenues						
Expenditures						
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- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

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

SB 2284 authorizes brewer taproom licenses and subjects the brewers' products to the wholesale liquor and beer tax.

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

Section 1 of SB 2284 contains the provisions of the proposed brewer taproom license, including the imposition of an annual license fee of \$500. Section 2 of SB 2284 imposes the state's wholesale liquor tax on the products of the brewer taproom licensee.

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.*

If enacted, SB 2284 may result in an increase in state general fund revenues in the 2013-15 biennium, from the new license fee and additional wholesale liquor tax revenue. However, the amount of the potential increase is unknown.

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

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/01/2013

FISCAL NOTE
Requested by Legislative Council
01/21/2013

Bill/Resolution No.: SB 2284

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

SB 2284 authorizes brewer taproom licenses and subjects the brewers' products to the wholesale liquor and beer tax.

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Section 1 of SB 2284 contains the provisions of the proposed brewer taproom license, including the imposition of an annual license fee of \$500. Section 2 of SB 2284 imposes the state's wholesale liquor tax on the products of the brewer taproom licensee.

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Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/01/2013

February 20, 2013

JLB
2-20-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2284

Page 1, line 2, remove the first "and"

Page 1, line 3, after "alcohol" insert "; and to provide for a statement of legislative intent and severability"

Page 1, line 9, replace "located within this state to produce beer" with "producing no more than twenty-five thousand barrels of malt beverages annually"

Page 1, line 15, remove "to wholesale malt"

Page 1, line 16, remove "beverage licensees"

Page 1, line 17, replace the underscored semicolon with an underscored period

Page 1, line 20, replace the underscored semicolon with an underscored period

Page 1, line 21, after "c." insert "Sell beer manufactured on the licensed premises for off premises consumption in brewery-sealed containers of not less than twelve ounces [36 liters] and not more than 5.16 gallons [19.53 liters]."

d. Sell and deliver beer produced by the brewery to licensed beer wholesalers.

e."

Page 1, line 22, replace the underscored semicolon with an underscored period

Page 1, line 23, replace "d." with "f."

Page 1, line 23, after "beer" insert "produced by the brewery"

Page 1, line 23, remove "one hundred fifty miles [241.40]"

Page 1, line 24, replace "kilometers] of the brewery" with "the state"

Page 3, after line 18, insert:

"SECTION 3. LEGISLATIVE INTENT - SEVERABILITY. A licensee who manufactures more than twenty-five thousand barrels of malt beverages annually may not use the sales and distribution activities identified in section 1 of this Act. In the event that a court of competent or final jurisdiction holds that any section of title 5 is unconstitutional or otherwise invalid, the invalidity does not affect other provisions or applications of title 5 that can be given effect without the invalid provisions or application, and to this end the provisions of title 5 are severable."

Renumber accordingly

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2284**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0797.01001

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

Motion Made By Senator Murphy Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman 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. 2284**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0797.01001

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

Motion Made By Senator Murphy Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman 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 2284: 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 2284 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the first "and"

Page 1, line 3, after "alcohol" insert "; and to provide for a statement of legislative intent and severability"

Page 1, line 9, replace "located within this state to produce beer" with "producing no more than twenty-five thousand barrels of malt beverages annually"

Page 1, line 15, remove "to wholesale malt"

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Page 3, after line 18, insert:

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Renumber accordingly

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

SB 2284

2013 HOUSE STANDING COMMITTEE MINUTES

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

SB 2284
March 13, 2013
Job 19813

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to taxes on alcohol

Minutes:

Attached testimony, 1 and 2

Hearing opened.

0:26 **Janet Seaworth, executive secretary and legal counsel for the North Dakota Beer Distributors Association:** Began her written testimony, attachment 1. Paused in her testimony to allow the bill sponsor to address the committee.

0:58 **Senator Oley Larson, District 3:** Provided background on the bill.

1:45 **Representative Ruby:** Question on fee for license

2:00 **Senator Larson:** Provided background on the fee

2:39 **Janet Seaworth:** Resumed testimony. Refer to written testimony, attachment 1.

9:09 **Representative Ruby:** Question on cap on selling own product from premises

9:53 **Janet Seaworth:** Gave example to give perspective to the cap. When someone hits that maximum volume level, there will probably be a push to increase that volume level to allow them to have the taproom.

10:55 **Representative Becker:** Asked about provision for having one tap license

11:08 **Janet Seaworth:** The intent of this bill is for a brewer, not to allow a brewery to have multiple retain outlets.

11:35 **Representative Becker:** The wording of this bill prevents you from having a second taproom.

11:46 **Janet Seaworth:** It would not prevent you from having a second taproom if you have a second brewery.

11:52 **Representative Becker:** Does it prevent you from having a second taproom without having a second brewery?

11:56 **Janet Seaworth:** Yes.

12:00 **Representative Becker:** What is the reason behind that? Gave example regarding a second location.

12:23 **Janet Seaworth:** Yes, it does. We have to keep in mind that what might be good for a small brewer might also be good for a large national brewer. The intent is to prevent the kind of overreaching that you have from a manufacturer to a consumer. The intent here is not to allow what would essentially be multiple retail outlets. Gave example regarding brewpubs.

13:40 **Representative Becker:** Does Surleys have only one location?

13:44 **Janet Seaworth:** My understanding is they have one location, one taproom.

14:03 **Chairman Keiser:** Question on licensing by local political subdivision

14:14 **Janet Seaworth:** I fully expect that cities and counties will be looking at this.

14:30 **Mike Frohlich, co-owner of Laughing Sun Brewery:** Shared support for the bill and role he played in its development.

15:15 **Representative Becker:** Was the idea of having a second location brought up?

15:38 **Mike Frohlich:** If you created a second brewery, you could maybe create a second taproom license in that other municipality. Technically, you would be limited to one in one city. Shared examples to give perspective to the maximum volume level.

16:36 **Representative Sukut:** Could you have two locations in Bismarck if you had two breweries?

17:00 **Mike Frohlich:** Technically you would be able to have only one taproom license, according to the bill. So if I have my brewery license and have a taproom downtown, I can distribute to other bars in the area. I would be allowed to serve my product out the door. Gave examples.

18:21 **John Lakoduk, president and founder of Little Deep Brewing Company to be located in Minot:** Refer to written testimony, attachment 2.

23:07 **Representative Ruby:** Is it a problem for you that the cost of this license is different from the others?

John Lakoduk: It is not an issue for me personally.

23:31 **Representative M. Nelson:** Are you able to source barley and then have it malted to your specs, or are you subject to commercial malt? Restated question for clarity.

24:09 **John Lakoduk:** We certainly could do that. There are minimums for the malt houses. Gave examples of smaller malt houses.

24:50 **Shannon McQuade-Eli, local beer wholesaler in Bismarck:** Available for questions regarding wholesaler perspective.

Opposition:

Neutral:

Hearing closed.

Representative Ruby **moved for a Do Pass**; Representative Beadle seconded.

Roll call vote on a Do Pass. Motion carried.

Yes - 14

No - 0

Absent - 1

Carrier: Representative Becker

FISCAL NOTE
Requested by Legislative Council
01/21/2013

Amendment to: SB 2284

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/01/2013

FISCAL NOTE
Requested by Legislative Council
01/21/2013

Bill/Resolution No.: SB 2284

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Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/01/2013

Date: 3-13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2284**

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 Ruby 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		no			
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigasaa	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Becker

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

REPORT OF STANDING COMMITTEE

SB 2284, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2284 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2284

PROPOSED AMENDMENTS TO SENATE BILL NO. 2284

Page 1, line 9, replace "located within this state to produce beer" with "producing no more than twenty-five thousand barrels of malt beverages annually"

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Page 1, line 23, remove "one hundred fifty miles [241.40]"

Page 1, line 24, replace "kilometers] of the brewery" with "the state"

Page 3, after line 2, insert:

"7. A licensee who manufactures more than twenty-five thousand barrels of malt beverages annually may not use the sales and distribution activities identified in this section."

Re-number accordingly

After the amendment language shown on Sen. Klein's amendments for page 3, line 2, insert the following:

"In the event that a court of competent or final jurisdiction holds that any section of this title is unconstitutional or otherwise invalid, the invalidity does not affect other provisions or applications of this title that can be given effect without the invalid provisions or application, and to this end the provisions of this title are severable."

Joel Gilbertson

On behalf of the North Dakota Beer Distributors Association

SB 2284

Testimony before the Senate Industry Business and Labor Committee
February 5, 2013

Mr. Chairman, members of the Senate Industry Business and Labor Committee,

My name is Janet Seaworth, I am Executive Director and Legal Counsel for the North Dakota Beer Distributors Association. We have 17 family owned and operated distributorships in North Dakota. Many are now in their third generation of family ownership.

SB 2284 seeks to nurture the growth of small production brewers, while recognizing the states' interest in maintaining a comprehensive, transparent, accountable and stable system of regulation for the distribution and sale of alcoholic beverages. Alcohol is a unique product which has detrimental effects if it is abused. Alcohol is not toothpaste and it is highly regulated for a reason.

North Dakota, like all states and the federal government, regulates the manufacture, distribution and sale of alcohol through a three-tier system that divides the industry into the supplier, distributor, and retailer levels. The underlying purpose of the three-tier system is to keep the levels separate and independent so that the economic forces and incentive to promote excessive consumption are minimized. Prior to Prohibition, a brewer often owned a retailer "lock, stock, and barrel" and could exert pressure on the retailer to sell its products regardless of the social costs. After the repeal of Prohibition, it was determined that a wholesaler should be inserted between the manufacturer and the retailer and consumer in order to avoid the problems with "tied houses" that lead to Prohibition in the first place. SB 2284 provides a very narrow exception to our current system of regulation.

The craft beer industry is growing. Our neighboring states Minnesota and Montana each have over 40 small brewers. Those states have something North Dakota doesn't have – laws that address the unique needs of small brewers. They believe, as we do, that a strong three tier system is required in order to effectively regulate alcohol, but that limited exemptions may be appropriate for small producers in order to nurture small business, create jobs, expand the tax base, and promote diversity of product.

SB 2284 permits small brewers producing less than 25,000 barrels to provide samples and sell their product on-sale at the brewer premises or a restaurant owned by the brewery. This privilege is incident to the brewer tap room license. The bill also permits small brewers to self-distribute their product. Allowing this limited exemption and privilege allows an additional avenue to market and promotes diversity of product. The bill also allows small brewers to continue to use wholesalers, since the partnership between the craft brewer and distributor is necessary to fuel growth and jobs in the craft beer industry. If small brewers want to grow, they will need distributors.

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While we do not oppose the limited exceptions for small brewers in SB 2284, it is important to remember that both distributors and craft brewers all over this country are succeeding today because of a strong and dynamic three tier system of alcohol regulation, which balances competitiveness with the public good. There will always be differences of opinion and competing interests regarding the appropriate role of alcohol in our society. That is why a reasoned, balanced approach is necessary when considering exceptions to the tied-house laws and three-tier system of alcohol regulation. We believe SB 2284 strikes that balance.

We must also consider that whatever exceptions and special privileges are afforded small breweries in North Dakota, the same must be afforded to small breweries located elsewhere. With the simple amendment to remove the "in this state" language to clarify that the privileges afforded small brewers are available to all small brewers, in-state and out-of-state, we believe the bill is constitutionally sound.

In closing, I would like to thank Senators Jerry Klein and Oley Larsen for their willingness to work with various parties to craft a bill that creates a great environment for small, craft breweries but maintains the protections necessary in our regulatory and distribution system.

Thank you.

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

Prepared by NDBDA
February 1, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2284

Page 1, line 9, replace "located within this state to produce beer" with "producing no more than twenty-five thousand barrels of malt beverages annually"

Renumber accordingly

Testimony in Support of Amended

SENATE BILL NO. 2284

Senate Industry, Business and Labor Committee – February 5, 2013

Chairman Klein, Senate Industry, Business and Labor Committee, my name is Todd Sattler. I am co-owner and assistant brewer at Laughing Sun Brewing Company LLC, located in downtown Bismarck. My partner is Mike Frohlich and he will be testifying shortly.

I am also an attorney in private practice and a lobbyist speaking today on behalf of several small breweries that are just getting started here in North Dakota, including Laughing Sun, Souris River Brewing Company in Minot, Little Deep Brewing Company, also in Minot, and Buffalo Commons Brewing Company in Mandan. These breweries -- which constitute all of the breweries that currently brew beer in North Dakota -- support SB 2284 but only if it contains the few small, but extremely important amendments that we have submitted today.

Before getting into the bill and our amendments, I'd like to take just a minute to talk about our small business, Laughing Sun Brewing Company. We rent a 1500 square foot store front in downtown Bismarck, on 5th Street, just across from the Peacock Alley. We signed the lease in May, 2012, completely demolished and rebuilt the space, working mostly long nights and weekends. We opened in November, 2012. Our space provides barely enough room to operate a small brew house on one side and a pub on the other side that seats a maximum of 70 people. We brew beer about three times per week and that process -- especially when we brew a double batch of beer -- can take up to 12 hours. We are open five days per week and employ eight staff persons, all of whom have families and live in Bismarck or Mandan. We pay a federal and state excise tax simply for the privilege of making beer. We collect and pay sales tax to the state.

All of the beer we make at Laughing Sun is sold on the premises at the brewery. Under current law, we are prohibited from selling the beer we make directly to liquor stores and bars. We are prohibited from selling our beer to our customers in traditional packaging, like cans, bottles and kegs. Instead, our off-sale is limited to containers between 64 ounces and 3 gallons. And we have to have to find a distributor, and enter into a contract with the distributor, in order to sell our beer any place other than our pub. There are no valid reasons for these limitations. We are often asked by our customers why they can't buy and take home cans or bottles or kegs of our beer. We tell them "it's just the law." That there is no good reason for it, "it's just the law."

These circumstances make it extremely difficult to start, much less sustain, a small brewery in North Dakota. Mike and I, and the other brewers you'll hear from shortly, have taken the leap anyway, simply because we love to produce handcrafted beer and have people enjoy it. We've been encouraged by other states whose laws allow for off-sale in traditional packaging and allow for self-distribution. Thirty-eight states – but not North Dakota – allow self-distribution. Most of those also allow off-sale in cans, bottles, and kegs.

Last summer, I visited the Crow's Peak Brewery in Spearfish, South Dakota. They had a brew house not much larger than Laughing Sun's brew house, but they also had a canning machine in back that operated for about an hour while I was there. They took the cans they had just sealed and placed them in a glass-front cooler behind the bar. Customers would come in after work or on a weekend and head home with a six-pack of their favorite beer under their arm. It is what craft beer lovers want and expect in a small brewery. Direct sales in traditional packaging and the ability to self-distribute are key components in sustaining the small breweries in these states. We simply want the same opportunity here, in North Dakota.

The current bill, which was drafted by Ms. Seaworth and her client, The Association of Distributors, does very little to help the small brewer in North Dakota. It allows for self-distribution, but only in a 150-mile radius and only if the brewery uses all of its own trucks and equipment. There is no justifiable reason for these limitations. Even if we were able to purchase trucks and insurance and hire drivers, we couldn't make that work. We would need to distribute state-wide. Thus, our amendments allow for state-wide distribution.

Similarly, off-sale when not allowed at all as in this bill, or confined to unusual packaging -- 64-ounce growlers, for example -- makes it extremely difficult to sell enough beer to stay in business as a small brewery. Again there is no justifiable reason for these limitations. Our amendments allow for off-sale in traditional packaging from 12-ounce cans and bottles up to 15.5 gallon kegs.

So, let me finish by going directly to the specific amendments in our proposal:

Page 1, line 9, replace "located within this state to produce beer" with "producing no more than twenty-five thousand barrels of malt beverages annually" This amendment simply ensures that the bill complies with existing law, which requires that state liquor laws apply with equal force to in-state and out-of-state breweries.

Page 1, lines 15 and 6, remove "to wholesale malt beverage licensees" This amendment ensures taprooms will not be limited to sales to wholesalers and instead may sell beer to their customers for consumption on and off the premises, and to retailers.

Page 1, line 17, replace "malt beverages" with "beer"; Page 1, line 18, replace "malt beverages" with "beer" These amendments provide for consistency throughout the bill and use a term that is defined in the law ("beer") rather than an undefined term ("malt beverage").

Page 1, line 18, remove “manufactured on the licensed premises” This amendment will allow the taproom to sell beer that is manufactured by other brewers.

Page 1, line 20, after “brewery;” insert a new subsection: Sell malt beverages manufactured on the premises for off premises consumption in brewery-sealed containers of not less than 12 ounces and not more than 15.5 gallons This amendment would allow breweries to sell their beer off-sale in traditional packaging.

Page 1, lines 23 and 24, replace “one hundred fifty miles [241.40 kilometers] of the brewery” with “the state” This amendment would allow statewide self-distribution.

Page 2, remove lines 16 through 20. This amendment is consistent with current brewery reporting requirements and avoids an additional report based on the brewery’s sales to distributors.

Page 2, line 22, replace “wholesaler” with “sales” This amendment ensures that brewers will not be required to pay a wholesaler tax in addition to their brewer tax. Brewers already pay a brewer’s tax of .08 per gallon of beer sold for the privilege of selling beer in North Dakota. They should not be required to pay another indirect sales tax for the same act of selling beer.

Page 2, line 24, replace “The annual wholesaler tax reports are” with “A brewer taproom is required to file a monthly sales report with the tax commissioner by the fifteenth day of the month following the month in which the sales report with the tax is made. The report must be prepared and submitted in a form and manner as prescribed by the tax commissioner.”; Page 2, remove lines 25 through 31; . Page 3, remove lines 1 and 2. These amendments allow brewers who self-distribute to continue reporting to the tax commissioner as a brewer rather than switching to wholesaler tax reporting.

Page 3, line 2, after “control” insert a new subsection: “In the event that a court of competent jurisdiction with final decision-making authority holds that any section of this title is unconstitutional or otherwise invalid, the invalidity does not affect other provisions or applications of this title that can be given effect without the invalid provisions or application, and to this end the provisions of this title are severable.” This amendment ensures that if any provision of this bill that is found by a court to be invalid, all other provisions will stay in effect.

So, with these amendments the brewers are asking for essentially three things that are not contained in the bill drafted by the distributors: 1. Self-distribution statewide as opposed to a 150-mile radius; 2. Off-sale in traditional packaging; and 3. The ability to sell beer from other breweries. These amendments would remove limitations that serve no justifiable purpose and yet are critical to allow small breweries to succeed in this state. These simple amendments would ensure that North Dakota has a taproom law that benefits all breweries in the state, big and small.

We would urge a **DO PASS** recommendation for **HB 2284 with, but only with, the Proposed Amendments**. Absent the amendments I urge a **DO NOT PASS** on this bill. I will be happy to answer any questions.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2284

Page 1, line 9, replace "located within this state to produce beer" with "producing no more than twenty-five thousand barrels of malt beverages annually"

Page 1, lines 15 and 6, remove "to wholesale malt beverage licensees"

Page 1, line 17, replace "malt beverages" with "beer"

Page 1, line 18, replace "malt beverages" with "beer"

Page 1, line 18, remove "manufactured on the licensed premises"

Page 1, line 20, after "brewery;" insert a new subsection:

"Sell malt beverages manufactured on the premises for off premises consumption in brewery-sealed containers of not less than 12 ounces and not more than 15.5 gallons;"

Page 1, lines 23 and 24, replace "one hundred fifty miles [241.40 kilometers] of the brewery" with "the state"

Page 2, remove lines 16 through 20.

Page 2, line 22, replace "wholesaler" with "sales"

Page 2, line 24, replace "The annual wholesaler tax reports are" with "A brewer taproom is required to file a monthly sales report with the tax commissioner by the fifteenth day of the month following the month in which the sales report with the tax is made. The report must be prepared and submitted in a form and manner as prescribed by the tax commissioner."

Page 2, remove lines 25 through 31

Page 3, remove lines 1 and 2

Page 3, line 2, after "control" insert a new subsection:

"In the event that a court of competent jurisdiction with final decision-making authority holds that any section of this title is unconstitutional or otherwise invalid, the invalidity does not affect other provisions or applications of this title that can be given effect without the invalid provisions or application, and to this end the provisions of this title are severable."

Renumber accordingly

Testimony in Support of Amended
SENATE BILL NO. 2284
Senate Industry, Business and Labor Committee – February 5, 2013

Mr. Chairperson and committee members,

My name is Jon Lakoduk from Minot, I am the President and Founder of Little Deep Brewing Company to be located in Minot. I was born and raised in Minot, so was my brother and other business partner. We all found a calling to small business in high school and college; specifically I found my passion for small business watching my grandfather manage a busy grocery store during my childhood.

According to Scott Metzger, professor of economics at University of Texas at San Antonio; craft brewers are horribly inefficient at producing beer. The industry average is 112 barrels per employee. For comparison, Anheuser Busch produces approximately 2,800 barrels per person.

Little Deep Brewing Company forecasts one barrel (31 gallons) of beer at retail will need approximately 52 hours of payroll. I forecast that we will sell almost 500 barrels at retail in our first full year of operation, leading to a payroll budget of \$250,000 just for service staff (equivalent to 22 part time positions) plus the additional staff hours for production, sales and management. Make no mistake, we are still extremely small and will be looking to sell most of our beer over our own bar. We will distribute maybe 300 barrels of beer per year to other retailers...like I said before every small. But we expect to grow and add more jobs and more money into the local economy. Do you want to grow your district's local economy and create jobs?

It seems that the state is very serious about tourism, craft breweries are tourist destinations in themselves. Tourists may stay in North Dakota a day or two longer if they visit breweries and learn about North Dakota beer. But as it stands now, tourists can only buy a growler (half gallon glass jug) to go from the brewery. You must treat growlers like you would milk; kept refrigerated and best consumed as soon as possible. This makes it impossible for tourists to share the great beer from North Dakota with their friends. To take bottles back home, they would have visit a local liquor store to purchase off-sale; for which there is no valid reason. Special single batches that have aged in

wooden barrels for six months and spent another six months naturally carbonating and conditioning would suffer from the prohibition of off-sale. One should consume these batches like fine wine and they also get better with age.

I envision a time when North Dakota brewers with a taproom can pour beer of other breweries, further increasing tourism in and around the areas where breweries operate. The on-sale of other breweries beer will allow those of us that operate taprooms to educate our consumers on other beer styles that we don't or can't brew. This would benefit the distributors of other local and regional brands; as some of us may not self-distribute outside our respective cities.

The profits made at the brewery don't line the pockets of investors in another state or country; the money stays in the local community's economy. We rely on other small business for goods and services for our operation. Our profits will put our sons in football and hockey, it will put our daughters in dance and piano lessons, it will allow the owners of the business to take a vacation with our families that have sacrificed so many things to see us follow our dreams.

Little Deep Brewing Company is forecasted to use approximately 65,000 pounds of barley malt in our first year of operations. That barley could come from North Dakota, be malted in Minnesota and return to North Dakota to be crafted into beer. I had the privilege to introduce North Dakota brewers to the North Dakota Grain Growers Association and North Dakota Barley Council; they loved our passion for craft beer and plans for North Dakota. They could see the potential for North Dakota farmers to grow the varieties of barley to supply the malt-houses that sell to North Dakota brewers.

Small business is the heart of North Dakota and our state has been experiencing a mass exodus of young people and entrepreneurs due to lack of opportunity in the state. I want to continue to call North Dakota my home, as it has been my entire life; but I will not do so unless I can follow my dreams in here. I urge you to vote "DO PASS" with the amendments and in light of testimony from Mr. Sattler and the rest of the brewers. This bill would make it much easier to take my plans from paper to pint glass and continue to operate in the state you and I call home.

Thank you for your valuable time and consideration,
Jon Lakoduk

**Testimony in Support of Amended
SENATE BILL NO. 2284**

Senate Industry, Business and Labor Committee – February 5, 2013

Hello, my name is Nick Holwegner and I am representing Souris River Brewing out of Minot, ND. We recently opened our doors for business on January 3rd 2013. Already we employ almost 30 people and are continuing to hire more employees. We are bringing a lot of jobs to the city of Minot and the State of North Dakota. If all goes well for us, we have a plan to expand in the future, which means even more jobs for North Dakotans. The distribution laws that govern our business need to be updated to reflect the current state of the industry, just as they have in 38 other states. I'm happy to be here right now, because it means that we are not the only ones that realize this. Some representatives of the distribution companies are here to show that they are willing to work with us, which we appreciate, but the bill in its current state is not that helpful to the different types of brewing companies as a whole. I urge you to listen to the thoughts of my colleagues and consider these few amendments that would help us thrive as small businesses. Thank you.

We would urge a **DO PASS** recommendation for **HB 2284 with, but only with, the Proposed Amendments**. Absent the amendments I urge a **DO NOT PASS** on this bill. I will be happy to answer any questions.

① SB 2284

3-13-2013

SB 2284

Testimony before the House Industry Business and Labor Committee
March 13, 2013

Mr. Chairman, members of the House Industry Business and Labor Committee,

My name is Janet Seaworth, I am Executive Secretary and Legal Counsel for the North Dakota Beer Distributors Association. We have 17 family owned and operated distributorships in North Dakota. Many are now in their third generation of family ownership.

SB 2284 seeks to nurture the growth of small brewers, while recognizing the states' interest in maintaining a comprehensive, transparent, accountable and stable system of regulation for the distribution and sale of alcoholic beverages.

North Dakota, like all states and the federal government, regulates the manufacture, distribution and sale of alcohol through a three-tier system that divides the industry into the manufacturer, distributor, and retailer levels. The underlying purpose of this system is to keep the levels separate and independent so that the economic forces to promote excessive consumption and control of the distribution chain are minimized. Prior to Prohibition, a brewer often owned a retailer "lock, stock, and barrel" and could exert pressure on the retailer to sell its products regardless of the social costs. After the repeal of Prohibition, it was determined that a wholesaler should be inserted between the manufacturer and the retailer and consumer in order to avoid the problems with "tied houses" that lead to Prohibition in the first place. SB 2284 provides a very narrow exception to our current system of regulation, in that it allows a small brewer to engage in some limited sales to retail and sales direct to the consumer.

The craft beer industry is growing. North Dakota already allows microbrew *pubs*, which are bar/restaurants with the special privilege of brewing beer primarily for sale in the restaurant and bar. We have a few brew pubs in North Dakota and two small brewers, but our neighboring states Minnesota and Montana each have over 40 small brewers. They have something North Dakota doesn't have – laws that address the unique needs of small brewers. They believe, as we do, that a strong three tier system is required in order to effectively regulate alcohol, but that limited exceptions may be appropriate for small producers in order to nurture small business, create jobs, expand the tax base, and promote diversity of product. SB 2284 is patterned after what is now allowed in Montana and Minnesota, but it is in fact more generous, as it allows the small brewer some off-sale privileges.

SB 2284 permits a small brewery producing less than 25,000 barrels to have a taproom to provide samples and sell its product on-sale at the brewer premises or a restaurant owned by the brewery. The bill also allows limited off-sale of the brewer's products. These privileges are incident to the brewer license and allow someone visiting a brewery to sample and purchase the product. The bill also permits small brewers to self-distribute their product. Allowing this limited exemption and privilege allows an additional avenue to market and promotes diversity

of product. The bill also allows small brewers to continue to use wholesalers, since the partnership between the craft brewer and distributor is necessary to fuel growth and jobs in the craft beer industry. If small brewers want to grow, they will need distributors.

The license also allows a small brewer to obtain a special event permit for not more than 20 days per year, and the brewer is subject to both the wholesale tax when it is acting as a wholesaler and distributing its own products by making sales to retailers and the sales tax for sales to the consumer.

A brewer may only have one taproom license and may not have ownership in any other tier, thus preventing the vertical integration of the tiers.

Both distributors and craft brewers all over this country are succeeding today because of a strong and dynamic three tier system of alcohol regulation, which balances competitiveness with the public good. We believe SB 2284 strikes that balance. And while the bill provides some limited exceptions to our current regulatory system for small brewers, as Section 3 of the bill makes clear, the intent is not to abandon the regulation of alcohol, but to maintain regulatory control over alcohol in this state and provide another license that addresses the unique needs of small brewers.

In closing, I would like to thank the parties involved for working to craft a bill that creates a great environment for small, craft breweries but maintains the regulatory control necessary to ensure an independent, transparent and stable alcohol distribution system.

Thank you.

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

Testimony in Support of

SENATE BILL NO. 2284

House Industry, Business and Labor Committee – March 13th, 2013

② SB 2284
3-13-2013

Mr. Chairperson and committee members,

My name is Jon Lakoduk, I am the President and Founder of Little Deep Brewing Company to be located in Minot. I was born and raised in Minot, so was my brother and other business partner. We all found a calling to small business in high school and college; specifically I believe my passion for small business was formed while watching my grandfather manage a busy grocery store during my childhood. I keep feeling like something is missing in my professional life; I know I was born to run a business.

According to Scott Metzger, professor of economics at University of Texas at San Antonio; craft brewers are horribly inefficient at producing beer. The industry average is 112 barrels per employee. For comparison, Anheuser-Busch produces approximately 2,800 barrels per employee.

Little Deep Brewing Company forecasts one barrel (31 gallons) of beer sold at retail will require approximately 52 hours of payroll. I forecast that we will sell almost 500 barrels (at retail) in our first full year of operation, leading to a payroll budget of approximately \$250,000 just for service staff (equivalent to 22 part time positions) plus the additional staff hours for production, sales and management. Make no mistake, we are still extremely small and will be looking to sell most of our beer in our taproom. We will distribute just shy of 300 barrels of beer in the first year to other retailers. We expect to grow and add more jobs and more money into the local economy starting in year two.

Do you want to grow your district's local economy and create jobs?

It seems that North Dakota is very serious about tourism and craft breweries are tourist destinations in themselves. Tourists may stay in North Dakota a day or two longer if they visit breweries and learn about North Dakota beer. But as it stands now, tourists can only buy a growler (half gallon glass jug) to go from the brewery. You must treat growlers like you would milk; kept

refrigerated and best consumed as soon as possible. This makes it impossible for tourists to share the great beer from North Dakota with their friends back home. To take bottles back, they would have to visit a local liquor store to purchase off-sale; for which there is no valid reason. Special single batches that have aged in wooden barrels for six months and spent another six months naturally carbonating and conditioning would suffer from the prohibition of off-sale. One should consume these batches like fine wine and they also get better with age.

The profits made at the brewery don't line the pockets of investors in another state or country; the money stays in the local community's economy. We rely on other small business for goods and services for our operation. Everything from copy paper to glassware and bar supplies, we want to support our local economy. Our profits will put our sons in football and hockey, it will put our daughters in dance and piano lessons, it will allow the owners of the business to take a vacation with our families that have sacrificed so many things to see us follow our dreams.

Little Deep Brewing Company is forecasted to use approximately 65,000 pounds of barley malt in our first year of operations. That barley could come from North Dakota, be malted in Minnesota and return to North Dakota to be crafted into beer. I had the privilege to introduce North Dakota brewers to the North Dakota Grain Growers Association and North Dakota Barley Council; they loved our passion for craft beer and plans for North Dakota. They could see the potential for North Dakota farmers to grow the varieties of barley to supply the malt-houses that sell to North Dakota brewers.

Small business is the heart of North Dakota and our state has been experiencing a mass exodus of young people and entrepreneurs due to lack of opportunity in the state. I want to continue to call North Dakota my home, as it has been my entire life; but I will not do so unless I can follow my dreams in here. I urge you to vote "DO PASS", as both brewers and beer distributors found common ground in the amendments made in the Senate. This bill would make it much easier to take my plans from paper to pint glass and operate a small business in the state that you and I call home.

Thank you for your valuable time and consideration,
Jon Lakoduk