

1999 HOUSE POLITICAL SUBDIVISIONS

HB 1286

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1286

House Political Subdivisions Committee

Conference Committee

Hearing Date 01-22-99

Tape Number	Side A	Side B	Meter #
1	x		7.4-34.4
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: BILL SUMMARY: A bill for an Act to create and enact a new section to chapter 5-02 of the N.D. Century Code, relating to the retail sale of alcoholic beverages.

Chairman Froseth opened the hearing with those present: Chairman Froseth, Vice Chair Maragos, Rep. Delmore, Rep. Disrud, Rep. Eckre, Rep. Ekstrom, Rep. Glasheim, Rep. Gunter, Rep. N. Johnson, Rep. Koppelman, Rep. Niemeier, Rep. Rose, Rep. Severson, Rep. B. Thoreson, and Rep. Wikenheiser.

Vice Chair Maragos, testified in support of the bill and was also a cosponsor. The prime sponsor, Rep. S. Kelsh, testified in support and explained the purpose to the committee. Rep. Kelsh read a letter from Keith Bosek, owner/general manager of Bottle Barn Liquors in Fargo, Moorehead, and West Fargo. (See attached testimony)

Rep. S. Kelsh : This bill will allow cities and other political subdivisions the ability to set their own ordinances regarding home delivery of alcohol.

Rep. Eckre : It is legal, right now, for Bottle Barn in Moorehead to deliver to Fargo and W. Fargo residence.12.4

Rep. Kelsh : It is not legal to cross state lines.

Chairman Froseth : How are the state liquor taxes handled when it is delivered from out of state to North Dakota?

Rep. Kelsh : There is no delivery across state lines now.

Rep. N. Johnson : 14.1 If this is enacted, you couldn't sell outside your county.

Rep. Kelsh : That's correct, only sell within your jurisdiction.

Rep. Koppelman : 14.5 If this bill passed, and a customer was closer to a store not in his state what would want to deliver across state lines, would that be allowed under this bill.

Rep. Kelsh : To the best of my knowledge, MN has the same laws that we do prohibiting delivery across state lines to N.D.

Vice Chair Maragos : If this was passed, and a city passed a resolution, but the county did not, where would the lines of authority kick in. Can a legally licensed off-sale deliver outside the county? Is there a problem of jurisdiction?

Rep. Kelsh : This bill only applies to various political subdivisions, if someone to have a delivery outside the city limits they would have to appeal to county commission.

Bob Bennett, N.D. Attorney Generals Off., : 16.7 testified to help clear up some of the questions brought up. There are a lot of regulations through the State Treasurers Office that prohibit the importation of liquor into N.D. The bill limits the authority to the licensee of that city or county. A city of Bismarck licensee could not go to Wing , or elsewhere in the county, and do that ,

because it would be beyond that jurisdiction. We do have as part of our licensing in N.D. the ability to grant off-sight permits like beer gardens, etc. for special events.

Rep. Koppelman : 20.8 Do you in the Att. Generals Off. have any enforcement's concerns should this bill pass, and do you think the verification issue should be part of the bill?

Bob : I don't think we would have any more concern than with any other licensee.

Rep. N. Johnson : 24.2 If surrounding counties all have ordinances that allow this bill, can Cass County deliver to West Fargo?

Bob : The way the bill is written, Fargo delivers to Fargo, Cass County delivers to Cass County, can not overlap their authority.

Vice Chair Maragos : Could a person who is 21 years old, go in with a grocery list and buy liquor, and takes it to person who wanted the liquor for dinner, and he collects for the cost of the product plus cost of gas. Has this person violated any law with regards to alcohol distribution?

Bob : This issue has been brought up before. This relates to where the sale occurred. If the sale is made between the customer and the store and established beyond any reasonable doubt that the sale was on the licensed premises, you can have any one pick it up. The safest for the store is to say "I will deliver". Key is where did the sale occur.

Rep. B. Thoreson 30.9 Can Cass County deliver into Fargo, since Fargo is in Cass County?

Bob : I don't think the bill would allow that. Has to stay within their jurisdiction.

Rep. Disrud : 31.5 I knew someone who was an alcoholic and a taxi driver always delivered liquor to her. One day she overdosed and died. Is there any liability to the taxi driver or store?

Bob : Possibly. If you deliver to a minor or to already intoxicated person, etc. ; it depends on the individual facts. Any civil liability is independent of the liquor law.

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House Political Subdivisions Committee

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Chairman Froseth asked for more testimony in favor, any against, hearing none, hearing closed.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1286-a

House Political Subdivisions Committee

Conference Committee

Hearing Date 1-28-99

Tape Number	Side A	Side B	Meter #
2		x	51.59.0
Committee Clerk Signature <i>Pam Dewey</i>			

Minutes: Chairman Froseth asked committee to bring forward 1286 for consideration.

Rep. S. Kelsh : 51.7 explained his amendments brought forward to committee.

ACTION TAKEN: Vice Chair made a motion to pass amendments and Rep. Ekstrom seconded the motion. Voice vote taken with all yes.

Rep. B. Thoreson made a motion to DO PASS as amended and Vice Chair Maragos seconded the motion. ROLL CALL: 11 YES and 3 NO and 1 ABSENT. Vice Chair Maragos will carry the bill.

90424.0101
Title.0200

Prepared by the Legislative Council staff for
Representative S. Kelsh
January 22, 1999

VR
1/29/99

HOUSE AMENDMENTS TO HOUSE BILL NO. 1286

Page 1, line 9, replace "attorney" with "delivery must be made in accordance with section 5-01-09, by an employee of the licensee, and after verifying the age and identity of the person receiving the alcoholic beverages at the time of actual delivery."

Page 1, remove line 10

Renumber accordingly

Date 1-28-99

Please type or use black pen to complete

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1286

House POLITICAL SUBDIVISIONS Committee

- Subcommittee on _____
 - Conference Committee
- } Identify or check where appropriate

Legislative Council Amendment Number 90424.0101

Action Taken Do Pass as amended

Motion Made By Rep. Thoreson Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth			Rep. Wikenheiser		
Vice Chair Maragos					
Rep. Delmore					
Rep. Disrud					
Rep. Eckre					
Rep. Ekstrom					
Rep. Glassheim					
Rep. Gunter					
Rep. Johnson, N					
Rep. Koppelman					
Rep. Niemeier					
Rep. Rose					
Rep. Severson					
Rep. Thoreson, B					

Total 11 3
(Yes) (No)

Absent -1-

Floor Assignment Rep. Maragos

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE

HB 1286: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1286 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "attorney" with "delivery must be made in accordance with section 5-01-09, by an employee of the licensee, and after verifying the age and identity of the person receiving the alcoholic beverages at the time of actual delivery."

Page 1, remove line 10

Renumber accordingly

1999 SENATE POLITICAL SUBDIVISIONS

HB 1286


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HOUSE BILL 1286

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 26, 1999

Tape Number	Side A	Side B	Meter #
1	x		0 to 4299
Committee Clerk Signature 			

Minutes:

SENATOR LEE: opens the hearing on HOUSE BILL 1286

REPRESENTATIVE KELSH: introduction of HOUSE BILL 1286, see testimony

SENATOR WATNE: subsections 5-01 and 5-01.9 which also stipulate that they cannot have any prior records, how is the delivery person know whether this person is competent

REPRESENTATIVE KELSH: yes, they would have to do that

SENATOR LEE: any questions

SENATOR FLAKOLL: what problem would there be if someone were delivering from the county into the city

REPRESENTATIVE KELSH: alcohol would only be delivered within the county ordinance, follow up by the attorney general

SENATOR LYSON: would the counties be allowed to make ordinances from this

Page 2

Senate Political Subdivisions Committee

Bill/Resolution Number Hb1286

Hearing Date February 26, 1999

REPRESENTATIVE KELSH: that is true, reasoning behind this, is because of someone buying two stores, one in ND and the other in Minnisota, Attorney General says that state law has to change in order for this to happen

SENATOR LEE: this is an enabling act for another Senate bill

REPRESENTATIVE KELSH: right

SENATOR LEE: any further questions

SENATOR KELSH: city or county, any instances where townships that shouldn't be included in this, and do they get licensed?

REPRESENTATIVE KELSH: not that I am aware of

SENATOR LEE: beer and wine license for bed and breakfasts and where the license comes from

SENATOR MARAGOS: dealt with licenses outside the city but they would not issue a license unless the township board approved it, although the township board doesn't have the authority to issue a license, paid quite a bit of attention to by the county commissioners before the license is issued. Support this bill. Minot can already deliver booze because it is written in the home rule charter, no one being prosecuted for delivering to a habitual offender.

SENATOR WATNE: favorite eating place and expecting a beer with dinner

SENATOR MARAGOS: no, unless the delivery person is over the age of 21, distinction between bottle shops and pizza parlors

SENATOR FLAKOLL: places where alcohol can't be delivered

SENATOR MARAGOS: this law allows "just" the delivering of alcohol under the exact same rules as the existing law, store can go to the customer, Minot's capability to deliver alcohol to the customer at this point

SENATOR KELSH: safety factors involved with this bill and preventing drunk driving

SENATOR MARAGOS: looking at a worst case scenario, this would exist even by them driving

SENATOR KELSH: eliminating drunk drivers by having the alcohol delivered at home

SENATOR MARAGOS: it would have the tendency to create a safer environment

SENATOR LEE: questions

SENATOR FLAKOLL: insurance companies and changing the perimeters involved because of this additional service and the liability thereof

SENATOR MARAGOS: I have done this yet but everyone that I talked to in Minot has told me that insurance coverage has not cost me another penny

SENATOR LEE: anything else

BOB BENNETT: (attorney generals office), here to respond to questions and small amendments to the engrossed house bill. See attached testimony

SENATOR LEE: does the home rule charter currently provide for this service

BOB BENNETT: would have to look and see what the home rule charter says and check the statute that goes along with this legislation and where the sale takes place

SENATOR LEE: what about taxi cabs that would pick up and deliver alcohol

BOB BENNETT: this bill would not change the way that it would be done, this bill would not allow taxi cab drivers to do this, it would have to be someone from the liquor store. Could not send wife or spouse under this bill. Prepayments would be allowed

SENATOR LEE: store being forced to hire a person to be a delivery person if taxi cabs are not allowed to do this

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Senate Political Subdivisions Committee

Bill/Resolution Number Hb1286

Hearing Date February 26, 1999

BOB BENNETT: amendment in the house was added for the control over the business as far as delivering alcoholic beverages, people who are trained knowledgeable in doing this. Business license would be at stake if the delivery was not proper. Economic incentive for the store or business to follow the guidelines

SENATOR FLAKOLL: could call up a liquor store and have them deliver the alcohol but not a cab

BOB BENNETT: if the bill passes or does not pass

SENATOR FLAKOLL: if the bill passes would this be possible

BOB BENNETT: if this bill passes you could call a liquor store and order this alcohol and have the order come to your home, sale could occur on the sale premises

SENATOR FLAKOLL: amendments would prohibit alcohol to an institution that already sells alcohol

BOB BENNETT: that could be appropriate in this instance

SENATOR KELSH: Mandan could not deliver into the city of Bismarck

BOB BENNETT: correct, language on line 9 which refers to this.

SENATOR LEE: any further testimony, opposed to HOUSE BILL 1286

BRYCE HILL: See testimony

SENATOR LEE: safety factor in delivered alcohol and seeing this as a positive factor in this bill

BRYCE HILL: YES

SENATOR LEE: middle of the road area that would eliminate the need for oversight and keep people off the streets who have more to drink

BRYCE HILL: that would be great

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Senate Political Subdivisions Committee

Bill/Resolution Number Hb1286

Hearing Date February 26, 1999

SENATOR KELSH: laws that are on the books now with checking id's and the consequences of what happens if the id isn't checked.

BRYCE HILL: like captain Malrey to answer this question

RALPH MOWDER: (BISMARCK POLICE DEPARTMENT) access restriction of the home environment and what happens when the owner will not let you into the home, Jurisdiction and monitoring the delivery of alcohol from County to County or City to City

SENATOR FLAKOLL: would it be possible to set up a sting operation

RALPH MOWDER: planning involved and man power and resources to do this sting operation and what the city ordinance says about the sale of alcohol

SENATOR KELSH: won't it take the same personnel to monitor a liquor store as it would to monitor a home. No additional man power needed

RALPH MOWDER: I can't answer that question

SENATOR KELSH: previous information about a sting operation and responsibility of actions

RALPH MOWDER: there would be some problems with this

SENATOR WATNE: pawnshop bill in relation to this bill and having a form that would acknowledge the age

RALPH MOWDER: some kind of form that would cover this area

SENATOR LEE: any one else who wishes to testify

CONNIE SPRYNCZYNATYK: passing of this law and what will be heard on a local level as part of the city ordinances, locals want to make rules according to each county or city. Make this bill work on the county level

SENATOR LEE: anyone else on HOUSE BILL 1286

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Senate Political Subdivisions Committee

Bill/Resolution Number Hb1286

Hearing Date February 26, 1999

REPRESENTATIVE KELSH: form is now used that requires us to take the name and birthday of each person and enforcement of this bill on people who are younger than the required age

MOTION: close public hearing

MOTION: no action taken

March 5, 1999

DISCUSSION ON HB 1286

VOTE WAS 4 YEAS, 1 NEA, 1 ABSENT

Hold Vote
for S. ~~by~~
Flakoll

Date: 3-5-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1286

Senate Political Subdivisions Committee Committee

Subcommittee on _____
or
 Conference Committee

Reconsidered

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Watne Seconded By Kelsh

Senators	Yes	No	Senators	Yes	No
Senator Lee (Chairman)	/				
Senator Lyson (Vice-Chaiman)		/			
Senator Flakoll					
Senator Watne	/				
Senator Kelsh	/				
Senator Nelson					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Hold on Carrier

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

PROPOSED AMENDMENTS TO ENGROSSED
HOUSE BILL NO. 1286

Page 1, line 9 after "license" insert "except at events designated in an event permit issued pursuant to section 5-02-01.1"

Renumber accordingly

March 1, 1999

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1286

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

Page 1, after line 12, insert:

"SECTION 2. A new section to chapter 5-02 of the North Dakota Century Code is created and enacted as follows:

Prohibition on roving sales. An on-sale licensee shall keep, display, and store containers of distilled spirits in an area from which the public is excluded and, before a request to purchase a particular distilled spirit by a customer, may not move a distilled spirit into an area in which the public is allowed, unless the movement is neither part of nor intended to promote the sale of the distilled spirit."

Renumber accordingly

Date: 3-5-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1286

Senate Political Subdivisions Committee Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 90424.0201

Action Taken Do pass as amended

Motion Made By Watne Seconded By Kelsh

Senators	Yes	No	Senators	Yes	No
Senator Lee (Chairman)	/				
Senator Lyson (Vice-Chaiman)		/			
Senator Flakoll	/				
Senator Watne	/				
Senator Kelsh	/				
Senator Nelson					

Total (Yes) 4 No 1

Absent Nelson

Floor Assignment Flakoll

If the vote is on an amendment, briefly indicate intent:
Do pass as amended

REPORT OF STANDING COMMITTEE

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Renumber accordingly

1999 TESTIMONY

HB 1286

TESTIMONY HB 1286
Keith Bosek, Owner/General Manager
Friday, January 22, 1999

Chairman Froseth and members of the Political Subdivision Committee, for the record I am Keith Bosek, owner/general manager of Bottle Barn Liquors in Moorhead, Fargo, and West Fargo.

I am here to testify in support of HB 1286

As an owner of off-sale liquor stores over the past twenty years, I respectfully request the House to consider this bill allowing delivery of intoxicating beverages.

The liquor store known as the Bottle Barn Liquors in Moorhead, Minn. has been delivering for over twenty years with no problems at all. In fact, we maintain our delivery slips with all information including drivers license numbers and date of births when the customer is close to the legal drinking age. We will even cooperate or notify the Moorhead Police whenever there is a possibility of adults supplying minors with alcoholic beverages.

I believe we have created a service. The elderly, handicapped, or any one else that have trouble getting out during our difficult weather conditions can have an inexpensive way to acquire pop, cigarettes, and certain food items. It's not uncommon to deliver these items with or without alcoholic beverages.

The main purpose for having a delivery service is public safety. We deliver to keep people that have consumed alcohol at home and not on the streets. During a party or special event it's not uncommon that certain beverages run out. That means someone will go out and get more. And in most cases, that person should not be driving. With our service, we hopefully will keep these people at home insuring their safety and other drivers.

I hope this will give you some help with your bill.

Testimony - HB 1286
Senate Political Subdivisions Committee
February 26, 1999
Senator Judy Lee, Chair

Madam Chair and members of the Senate Political Subdivisions Committee. For the record, my name is Keith Bosek, owner and manager of the Bottle Barn Liquors stores in Moorhead, MN, Fargo, and West Fargo. As an owner of off-sale liquor stores over the past 20 years, I respectfully request the House to consider passage of House Bill 1286 which will allow political subdivisions to set their own ordinances regarding delivery of alcoholic beverages.

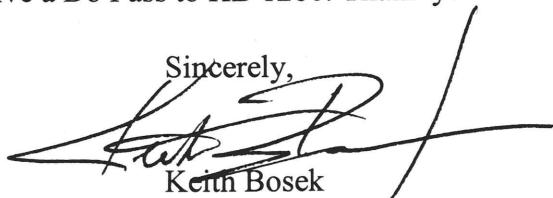
The liquor store known as the Bottle Barn Liquors in Moorhead, Minnesota has been delivering for over 20 years with no problems at all. In fact, we maintain our delivery slips with all the information including drivers' license numbers and dates of birth when the customer is close to the legal drinking age. We cooperate with and notify the Moorhead Police whenever there is a possibility of adults supplying minors with alcoholic beverages.

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I respectfully request that you give a Do Pass to HB 1286. Thank you.

Sincerely,



Keith Bosek

Owner/General Manager

Bottle Barn Liquors

Moorhead, Fargo, and West Fargo

Bryce Hill

Good Morning Madam Chair and Political Subdivision Committee Members.

My name is Bryce Hill. I am the Police Commissioner for the City of Bismarck.

I am here to oppose this bill for a number of reasons.

First and foremost, this bill does not provide for any real degree of enforcement. Truthfully, it's unenforceable.

Under the current law, all liquor transactions now take place in a store. You can observe the purchase and take appropriate action if needed.

It would make possible for the delivery of liquor to almost anyone. How can this be verified? Do recipients sign a form? How is the age checked? As I understand it, a cab could deliver. If you send a bottle

with a cab driver, will he or she check to make sure the person is of lawful age? Why should they, what's their liability? That's not really identified here.

What about a pizza delivery? You order a pizza and six pack. How can you be assured the purchaser is of legal age?

Who's to say this:

The driver (pizza) or liquor delivery person arrives at the door. A sixteen-year old says, "dad or mom is in the shower, here's the money." How careful will the seller be in delivery?

One other point, when the transaction takes place on the doorstep the police are limited in how they respond. In most cases, the officers can not really see who is in the doorway. In addition, the officers

can not under any circumstances go inside the house to determine if the purchaser is of legal age.

What I see here opens a Pandora's Box. It seems like at least once a week, we see some media article that teenage drinking is getting worse. I don't think that any of us doubt the seriousness of this problem. In my opinion, you would enhance the ability of young people in acquiring liquor. This bill really creates more questions than it solves.

Also, in the city of Bismarck we have experienced another unique problem. As some of you may recall, we had a problem with a liquor store that got a county license for \$600. That same individual last summer sold a liquor license for \$80,000. Our local dealers have a hard time in competing. A county license also permits them not to pay local taxes and allows the

sale of liquor on Sunday. Maybe the language could be clarified.

This bill would create several problems. We now have control over a two-mile limit, but what if that person chooses to go out three or more miles, puts in a liquor store, and has the ability to deliver into the city limits? This would take away our control and permit unfair competition. The citizens of Bismarck have stated over many years how they are not really interested in Sunday sales.

For all of the above reasons, we are opposed to this bill and would hope you give a do-not pass.

Thank you. Any questions?