

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1400

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1400

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-27-99

Tape Number	Side A	Side B	Meter #
2	x		1927 - end
2		x	0 - 710
2		x	4543 - end
3	x		0 - 245
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **HB 1400**

Rep. Keiser introduced HB 1400 relating to providing for a liquor wholesaler's lien.

Tom Smith, representing the Wholesale Liquor Dealers Assoc. testified in support of HB 1400.

(See written testimony)

Rep. Severson: The current laws aren't giving the wholesaler the option to collect their bills?

Tom Smith: That has been the problem in the past.

Rep. Keiser: Why is there a double standard in a business where the beer is on a cash only basis, and for all other alcohol it's on a credit basis?

Tom Smith: All that I can tell you is that in the law right now it specifies that when the beer distributor delivers the beer, they have to pay cash. Liquor wholesalers do operate on credit.

Robert Hansen of Ed. Phillips & Sons testified in support of HB 1400. (See written testimony)

Jerad Anderson, operations manager of Congress Inc. testified in support of HB 1400. (See written testimony)

Rep. Keiser: What makes liquors different that any other wholesale product?

Jerad Anderson: It is a controlled substance. There are all kinds of laws and regulations, both federal and state levels, putting specific controls on how liquor is handled from the supplier down to the retailer. There are additional requirements on alcohol.

OPPOSITION

Jim Schlosser of ND Bankers Assoc. testified in opposition to HB 1400. (See written testimony)

Jack McDonald of Independent Community Banks of ND testified in opposition to HB 1400.

End of side A, tape 2. Start side B.

Rep. Froseth: could you explain what the uniform commercial code is?

Jack McDonald: That is the purchase money security interest we are talking about. It is the provisions of state law where you can file a lien against certain property.

Chairman Berg closed the hearing.

Tape 2, side B. Meter No. 4543.

Chairman Berg opened the discussion of HB 1400.

Vice Chairman Kempenich said that this bill was brought to the legislature in 1993. The arguments haven't changed any.

Rep. Keiser There are a large number of liens like this on several different things.

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House Industry, Business and Labor Committee

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Rep. Klein: I have a problem with setting up another group that has first priority with this sort of thing. Soon everybody will want the same, so where does it end?

End of side B, tape 2. Start tape 3.

Rep. Severson: I think we would be setting a precedence that we really don't want to get into as legislature.

Rep. Thorpe: I came see the problems that are presented with this bill, but I don't think this bill will be the solution to the problem.

Chairman Berg closed the hearing.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1400 2-2-99

House Industry, Business and Labor

Conference Committee

Hearing Date 2-2-99

Tape Number	Side A	Side B	Meter #
1		x	24.7-28.0
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

Chairman Berg asked the committee what it wished. Rep. Severson made a motion of DO NOT PASS and Vice Chair Kempenich seconded the motion.

ROLL CALL VOTE: 15 YES and 0 No with 0 ABSENT. Passed. Rep. Severson will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

/Resolution No.: HB 1400 Amendment to: _____
 Requested by Legislative Council Date of Request: January 22, 1999

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

Narrative: This fiscal impact of this bill is less than the reporting requirements under either Joint Rule 501 and 502.

2. State fiscal effect in dollar amounts:

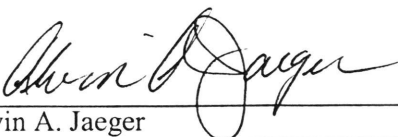
	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	None	None	None	None	None	None
Expenditures	None	None	None	None	None	None

3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: None
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- b. For the 1999-2001 biennium: None
(Indicate the portion of this amount included in the 1999-2001 executive budget:)
- c. For the 2001-03 biennium: None

4. County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
None	None	None	None	None	None	None	None	None

Signed: 
 Typed Name: Alvin A. Jaeger
 Department: Secretary of State
 Phone Number: 328-2900
 Date Prepared: January 22, 1999

PROPOSED AMENDMENTS TO HOUSE BILL 1400

Page 1, line 19, replace “one” with “a”

Page 1, line 20, replace “or gain protection under” with “and also be entered in”, and replace “notice” with “indexing” and remove “, or both”

Page 2, line 13, replace “five” with “ten”

Page 2, line 16, replace “five” with “ten”

Renumber accordingly

Date: 2-2-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1400

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do not pass

Motion Made By Severson Seconded By Kempnich

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe	/	
Vice Chair - Kempnich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 15 No 0

Absent

Floor Assignment Severson

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

REPORT OF STANDING COMMITTEE (410)
February 2, 1999 4:35 p.m.

Module No: HR-21-1722
Carrier: Severson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1400: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO NOT PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1400 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

HB 1400

Thomas O. Smith on behalf
of the Wholesale Liquor Dealers Association

TESTIMONY BEFORE THE HOUSE
INDUSTRY, BUSINESS & LABOR COMMITTEE
HOUSE BILL 1400
JANUARY 27, 1999

House Bill 1400 creates a liquor wholesaler's lien. "Liquor" is already defined in Title 5, § 5-01-01(6), N.D.C.C., as "any alcoholic beverage, except beer."

Section 1 of the act provides that a wholesaler who furnishes liquor to a retailer is entitled to a lien upon all of the liquor inventory of the retailer. Any lien filed in accordance with the act is effective from the date the liquor is furnished to the retailer.

Section 2 of the bill sets forth the procedure to obtain a liquor wholesaler's lien. This section provides (page 1, lines 21-23) that before a liquor wholesaler lien can be filed, a billing statement furnished to the retailer must include a notice that if the amount due to the wholesaler is not satisfied, a lien may be filed against the entire liquor inventory of the retailer.

The form used to file the lien is prescribed by the Secretary of State. The form to obtain the lien must be filed within a 60-day period after the liquor is furnished to the retailer, must be notarized by the wholesaler, filed either with the register of deeds or the Secretary of State, and provide the required information. The form must also disclose the name and address of the retailer to whom the liquor was furnished, the name and address of the liquor wholesaler, a description and value of the liquor and the first date furnished,

and the social security number or, if the retailer is not an individual, the Internal Revenue Service taxpayer identification number of the retailer.

The significance of this lien is set forth in Section 4 (page 2, lines 7-8). This section provides that the lien obtained under the act has priority, as to the liquor inventory of the retailer, over all other liens or encumbrances.

Section 3 of the bill deals with amendments of the lien; Section 5 authorizes the Secretary of State to remove and destroy liens filed with that office in the manner consistent with existing law; and Section 6 establishes the fees for filing the lien, which are \$5 and \$5 for a termination statement with both these being paid at the same time. Section 6 also requires that the lienholder file a termination statement within 60 days after the lien has been satisfied.

There is precedence in the law for the type of lien authorized by this act. The act is based upon the existing "agricultural supplier's lien" established by N.D.C.C. Chapter 35-31. We hope the House Industry, Business & Labor Committee will give this bill a favorable "do pass" recommendation.

ED. PHILLIPS & SONS

The Beverage Professionals

January 27, 1999

Industry Business and Labor Committee
56th Legislative Assembly of ND

Subject: House Bill #1400

Honorable Representative Berg and Committee Members

House Bill #1400 provides for a liquor wholesaler's lien.

There are increasing concerns with new as well as current retailers; many of whom have been good customers for many years. Business is a problem, therefore, credit is a problem as well.

Wine and spirits wholesalers currently extend credit on wine and spirits inventory only. This credit is not secured by any other asset of the retailer.

Banks extend credit on assets such as real estate, fixtures, cash, good will, etc., but they do not lend money on wine and spirits inventory. As such, why should they be allowed to claim the wine and spirits inventory to apply against an outstanding debt on other assets?

The lien only applies to the product sold to that retailer by the filing wholesaler.

I appreciate your consideration and request your support for HB #1400.

Sincerely,

Robert L. Hansen
President

Liquor Wholesaler's Lien

HB 1400

Thank you chairman and committee members. For the record my name is Jared Anderson, operations manager of Congress Inc.

I am here today to speak in favor of House Bill #1400. The purpose of this bill is to give us some protection on the unpaid portion of our inventory. We have over 1,200 active customers. At the current time we have very little protection on any inventory we sell to our customers. The insolvent customer can take unpaid inventory and sell it to the next person coming into the business. This is a double hit to us, first we don't get paid for the first sale, then the new customer doesn't need to buy from us for a while because he has an opening inventory. The insolvent customer sells our product with no little or no recourse for us under the current rules. All we are looking for is satisfaction on the current amount that customer owes us. We had protection in the past with the bulk sales law, but that was repealed in past sessions. We look at this bill as a way for us to keep the insolvent customer from selling unpaid inventory. Thank you for your attention on this bill.

Jared Anderson V.P. Administration Congress Inc.
39th St N Fargo ND 58102
701-282-0985

House Industry, Business & Labor Committee

HB 1400

Comments of Jim Schlosser, North Dakota Bankers Association

The Legislative Committee and Board of Directors of the North Dakota Bankers Association voted unanimously on Jan. 21 to oppose HB 1400 which allows a "super priority" liquor wholesaler lien on the inventory of a retailer. At this meeting, approximately 50 percent of the 30 banks represented said they had loans with retail liquor establishments.

Bankers indicated they were in opposition to the legislation for the following reasons:

- Lenders provide initial funds for the purchase of a retail bar or off-sale or for the development and construction of such a business. A portion of the loan may be for inventory and the value of the inventory is an important consideration in arriving at the terms of a loan.
- Passage of this bill would greatly impact the financing of retail liquor establishments. Owners of retail establishments will be less likely to obtain a loan or the terms of a loan would be influenced (i.e. only a 50% loan-to-value loan would be available rather a 75% loan-to-value loan).
- This legislation is not prospective, that is, it applies to existing loans to retail liquor establishments. The "rules of the game" would be changed for lenders who believe they had a first lien on the inventory, but may find that a wholesaler has the first lien, unless the bill is amended to give the wholesaler priority only to those loans made after the enactment of the legislation.
- An off-sale with a \$200,000 inventory receiving \$20,000 of liquor from a wholesaler could have a liquor wholesaler's lien filed on the entire inventory any time within 60 days after the liquor is furnished to the retailer. The wholesaler who has a lien could select any of the inventory in order to satisfy the lien.
- In 1993, the Legislature amended state law to eliminate the requirement that a lender, who obtains and sells liquor inventory pursuant to a foreclosed security interest, first obtain a wholesale liquor license. The State Treasurer earlier had an administrative regulation that a wholesale liquor license was required for the lenders and the Small Business Administration threatened legal action.
- NDBA has been informed by SBA (see attached memo) that passage of this legislation could substantially curtail, if not eliminate, financing for retail liquor establishments in the state of North Dakota.

The passage of this legislation would be beneficial for a handful of liquor wholesalers in the state and would dramatically impact the ability of hundreds and hundreds of business retailers in the state to obtain financing. The North Dakota Bankers Association urges your defeat of HB 1400.



U.S. SMALL BUSINESS ADMINISTRATION

P.O. BOX 3086, ROOM 218
FEDERAL BUILDING, U.S. POST OFFICE
657 SECOND AVENUE NORTH
FARGO, NORTH DAKOTA 58108-3086

TELEPHONE: (701) 239-5131
FACSIMILE: (701) 239-5645

Date: Tuesday, January 26, 1999

To: Members of the North Dakota House Committee on Industry, Business, and Labor.

Thru: Mr. James Schlosser, Executive Vice President, North Dakota Bankers Association. Fax No. (701) 258-0218.

Re: Proposed legislation regarding super priority lien in favor of liquor vendors.

The purpose of this memorandum is to inform you of the U.S. Small Business Administration's (SBA) position on the above-proposed legislation. The SBA feels that this legislation would have the impact of preventing SBA lending assistance to new or existing business that have liquor inventory as a portion of its business collateral.

The Agency always considers, as part of its collateral analysis, the value of liquor inventory when it makes a direct loan or loan guaranty. If the legislation in question were to allow a super priority in that inventory, the collateral value would be removed from the credit analysis. This would have the effect of denying financing to many new or existing businesses that would otherwise qualify. It is interesting to also note that this bill would deny financing to the same businesses the industry seeks to sell their product to.

There is also a deep concern regarding the legislation's necessity. Sufficient protection of the liquor vendors' commercial rights already exists under the N.D. Uniform Commercial Code. These laws are the same commercial laws that every other business entity must follow to be on a level playing field with one and another.

In conclusion, the SBA feels that this legislation would have the adverse impact of substantially curtailing, if not eliminating, financing for an important segment of the North Dakota economy.

By: Jack Duis
District Counsel
U.S. Small Business Administration