

1999 SENATE TRANSPORTATION

SB 2173

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2173

Senate Transportation Committee

Conference Committee

Hearing Date January 14, 1999

Tape Number	Side A	Side B	Meter #
1	x		1-1669
2	x		3,335-4575

Committee Clerk Signature *Anni Schaeffauer - Transportation Clerk*

Minutes:

The committee clerk took roll call. Committee members present were: Sens. B.

Stenehjem-Chairman, Schobinger, Cook; Mutch, O'Connell, Thompson, and Bercier.

SENATOR STENEHJEM opened the hearing on SB 2173 relating to prohibition of advertisement of alcohol, tobacco, or gambling on government vehicles.

SENATOR SAND spoke in support of SB 2173 (see testimony).

SENATOR THOMPSON What about the tobacco portion? Is it legal to advertise tobacco products anyway on government vehicles?

SENATOR SAND I might have erred in having alcohol and tobacco included in the bill when I had it drafted.

SENATOR BERCIER How frequent is it in North Dakota to advertise those things on government vehicles?

SENATOR SAND I have no knowledge about that frequency, but if it does start it will mushroom.

SENATOR O'CONNELL I've never seen any advertising on our government vehicles.

SENATOR SAND There are advertisements on government vehicles in Grand Forks and Fargo.

If a city or school district contracts with an advertising firm and the advertisements are not described in the contract then there could be some advertisements with gambling or alcohol on those vehicles.

SENATOR O'CONNELL If the state contracts to a private firm, there is no way to control that.

SENATOR SAND That is exactly what we should do is forbid a city from doing this so a situation with those type of advertisements does not happen.

SENATOR THOMPSON If the city of Grand Forks wanted to enter an agreement with Anheiser Busch and advertise their merchandise and use the money that is generated. Would you be opposed to that if they used the money towards the flood project?

SENATOR SAND Things such as mother nature are damaging but, in this case, the end doesn't justify the means. It is wrong to advertise gambling, alcohol, and tobacco on government vehicles.

SENATOR O'CONNELL What about freedom of speech?

SENATOR SAND Many of the things I am now talking about are forbidden by federal law.

SENATOR STENEHJEM Did you think about other government property or only government vehicles when you drafted this bill?

SENATOR SAND I had no thoughts about buildings just vehicles.

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JANET SEAWORTH, EXECUTIVE DIRECTOR OF THE NORTH DAKOTA BEER
WHOLESALERS ASSOCIATION, testified in opposition to SB 2173 (see testimony).

SENATOR O'CONNELL Do you feel it would be unconstitutional?

JANET SEAWORTH Yes.

SENATOR SCHOBINGER Is it a self imposed ban or federal law on the federal level?

JANET SEAWORTH There are no bans on commercial free speech of alcoholic beverages at
this time.

TOM SMITH, ATTORNEY REPRESENTING THE NORTH DAKOTA WHOLESALE
LIQUOR DEALER'S ASSOCIATION We oppose this bill. Neither the federal government or
state government could pass legislation prohibiting advertisements or certain type of marketing.
That is something that is voluntarily agreed upon by the company.

SENATOR B. STENEHJEM closed the hearing on SB 2173.

There was committee discussion. Tape #2.

SENATOR B. STENEHJEM His real attempt was to stop gambling advertisements on
government vehicles. He asked us to propose an amendment to cancel the words "alcohol" and
"tobacco" in the bill.

SENATOR THOMPSON I know where the convictions of the sponsor of the bill are coming
from but advertising hasn't made a difference in beer consumption and it won't in gambling.

SENATOR SCHOBINGER When agreements are made in the tobacco and liquor industry, those
agreements are made because something like this won't hold up in court. I think those
companies will settle because they don't want to lose. So, on the other side of things, they'll
agree not to advertise.

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SENATOR BERCIER The thing that comes to my mind relates to the testimony from the wholesalers on commercial free speech.

SENATOR B. STENEHJEM Is anyone interested at all to amend it and make it a gaming issue?

SENATOR COOK moved to amend the bill as follows:

Page 1, line 1, remove "alcohol, tobacco, or"

Page 1, line 4, remove "alcohol, tobacco, or"

Page 1, line 7, remove "any alcoholic beverage or place that primarily sells alcoholic beverages, tobacco,"

Page 1, line 8, remove the first "or"

SENATOR MUTCH seconded that motion.

A roll call vote was taken on the amendment (5 Yeas, 2 Nays, 0 Absent and Not Voting) The chair was in favor of the amendment.

SENATOR COOK motioned for a DO NOT PASS on SB 2173.

SENATOR SCHOBINGER seconded that motion.

A roll call vote for a DO NOT PASS AS AMENDED was taken (5 Yeas, 2 Nays, and 0 Absent and Not Voting).

Senator Thompson will carry SB 2173.

Date: January 14, 1999
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2173

Senate Transportation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt amendment

Motion Made By Sen. Cook Seconded By Sen. Mutch

Senators	Yes	No	Senators	Yes	No
Sen. B. Stenejem-Chairman	X				
Sen. R. Schobinger-V. Chair	X				
Sen. Duane Mutch	X				
Sen. Dwight Cook	X				
Sen. David O'Connell		X			
Sen. Vern Thompson	X				
Sen. Dennis Bercier		X			

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Thompson

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

Date: January 14, 1999
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2173

Senate Transportation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass as amended

Motion Made By Sen Cook Seconded By Sen. Schobinger

Senators	Yes	No	Senators	Yes	No
Sen. B. Stenehjem-Chairman	X				
Sen. R. Schobinger-V. Chair	X				
Sen. Duane Mutch		X			
Sen. Dwight Cook	X				
Sen. David O'Connell		X			
Sen. Vern Thompson	X				
Sen. Dennis Bercier	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Thompson

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

REPORT OF STANDING COMMITTEE

SB 2173: Transportation Committee (Sen. B. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2173 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "alcohol, tobacco, or"

Page 1, line 4, remove "**alcohol, tobacco, or**"

Page 1, line 7, remove "any alcoholic beverage or place that primarily sells alcoholic beverages, tobacco,"

Page 1, line 8, remove the first "or"

Renumber accordingly

1999 TESTIMONY

SB 2173

**Testimony of Janet Demarais Seaworth
Executive Director
North Dakota Beer Wholesalers Association**

**SB 2173
Senate Transportation Committee**

Mr. Chairman, members of the committee, my name is Janet Seaworth. I am the Executive Director of the North Dakota Beer Wholesalers Association. Our association is comprised of 20 family-owned and operated beer distributors in North Dakota. We oppose SB 2173 for two reasons. One, the bill raises serious concerns about commercial free speech. And two, while the bill may be well intentioned, ad bans are not effective, nor are they appropriate to combat abuse.

Ad restrictions violate the 1st Amendment protections of commercial speech.

First, and with regard to the constitutionality of the proposed ad ban, a unanimous U.S. Supreme Court in 44 Liquormart, Inc. v. Rhode Island, No. 94-1140 (May 13, 1996), reaffirmed that all truthful, non deceptive advertising about a legal product is entitled to First Amendment protection, regardless of the product. The court rejected the argument that the government had more power to regulate advertising about a so-called "vice" product, such as alcohol. Importantly, the court held that the government must *prove* that a speech ban will directly advance the state's asserted interest, and that speculation or conjecture is not enough, especially when the government bans truthful advertising for paternalistic reasons. In this case, the state could not prove that the ad ban would advance the state's interest in preventing alcohol abuse, because a ban would not impact abuse levels.

There is no scientific evidence that alcohol advertising increases consumption or causes abuse.

Ad bans are usually based on the assumption that there is a direct causal relationship between advertising and illegal consumption or abuse. But in a 1985, the Federal Trade Commission found "no reliable basis on which to conclude that alcohol advertising significantly affects alcohol abuse." (FTC news release, April 16, 1985). The FTC went on to say that "Absent such evidence, there is no basis for concluding that rules banning or otherwise limiting alcohol advertising would offer significant protection to the public." And, in 1990, former Health and Human Services Secretary Louis Sullivan stated in a report to Congress that "research has yet to document a strong relationship between alcohol advertising and alcohol consumption." Seventh Special Report to the U.S. Congress on Alcohol and Health from the Secretary of Health and Human Services (1990), page 330.

The purpose of beer advertising is to affect brand choice.

Brewers and wholesalers do not advertise for beer, they advertise specific brand products. That's because brewers and wholesalers want beer drinkers to choose and remain loyal to their own products, instead of their competitors. The data shows that that is what beer advertising does. That it affects brand choice - not consumption. For example, I have included a graph which shows that the per capita consumption of beer in the U.S. remained virtually unchanged despite a significant increase in beer advertising expenditures between 1976 and 1987. Since 1988, there has been a sharp drop in beer advertising, but again, there has been no significant change in consumption levels. That's because ads influence which brands will be consumed - not the level of consumption. Again, the FTC has found "no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse." Accordingly, banning beer ads is not going to affect consumption or abuse one way or the other. A ban will however deprive consumers of information regarding product choice, and it will deprive brewers and wholesalers of the ability to effectively compete for brand share.

In conclusion, North Dakota's beer wholesalers support real efforts to combat abuse. But we can not support efforts that may be well intentioned, but are ineffective and violate the 1st Amendment protections of commercial free speech.

Thank you.

For more information, contact the North Dakota Beer Wholesalers Association, P.O Box 7401, Bismarck, ND 58507; (701)258-8098.

Banning Beer Advertising

Misguided Policy That Should Be Rejected

Banning advertising for alcohol beverages would do nothing to limit alcohol abuse, nor would it impact alcohol consumption. Such advertising promotes specific brands and if successful, directs demand toward one brand at the expense of the competition. The vast majority of research efforts and all authoritative reviews of the literature on the relationship between alcohol advertising and overall consumption and between advertising and abuse have concluded that there is no linkage, despite conscientious efforts to find one.

A ban would seriously violate constitutionally protected free speech. The government does have an interest in preventing alcohol abuse – a potential basis for government action according to the Supreme Court in *Central Hudson*. However, banning alcohol advertising on this basis constitutionally collapses because the evidence shows a ban would not impact abuse levels, thus failing a necessary condition to override the usual constitutional protections.

No link between alcohol advertising and consumption levels could be found in representative Canadian and U.S. studies. A 1991 study found “no evidence of alcohol advertising leading to increased total alcohol sales,” when Saskatchewan lifted an advertising ban in 1983. Furthermore, when University of Oregon economists analyzed the relationship between beer advertising and overall beer sales in the U.S. for the 31 year period from 1953 to 1983, they found “no support for the hypothesis that advertising has a significant positive effect on market demand.”

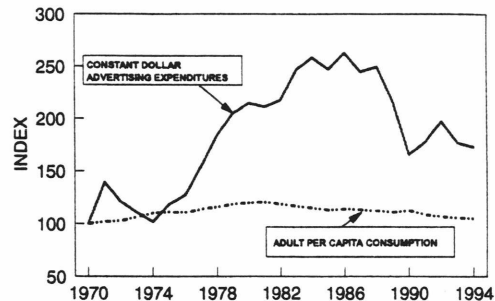
Comprehensive research surveys by U.S. and Canadian agencies also found no evidence of any tie between alcohol advertising and consumption levels. A 1988 review of existing literature conducted by the Addiction Research Foundation of Toronto concluded that “total advertising expenditures have no reliable correlation with sales of alcohol beverages.” The U.S. Federal Trade Commission found “no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse” in its 1985 survey of pertinent scientific literature, which it reaffirmed in 1989, 1990 and 1992.

Alcohol advertising does not encourage teens to consume alcohol, nor influence their attitudes about alcohol. That is the conclusion of 1993-94 Brookings Institution Fellow, John Calfee. Among youth, ages 8 to 17, parents are cited as the single most influential factor in their decision to drink or to refrain from drinking. According to the 1992 Roper Youth Poll, sixty-four percent put “parents” at the top of the list of influential factors. Alcohol ads were at the bottom of the list with only three percent of youth mentioning them as significant.

Why Brewers Advertise

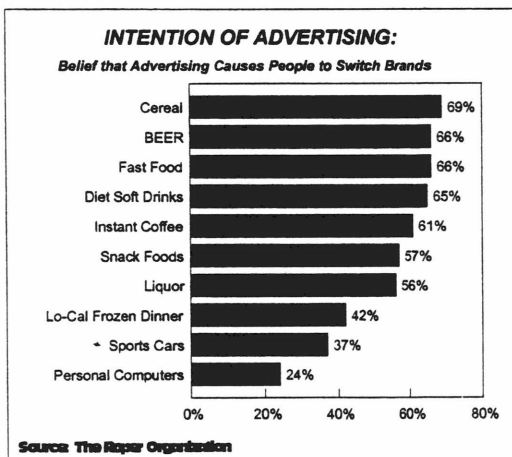
Brewers do not advertise for beer, but rather for specific branded products. Brewers want beer drinkers to choose and remain loyal to their own products, instead of their competitors. The data show that that is what beer advertisements accomplish and that they do not effect industry-wide consumption. Per capita consumption of beer in the U.S. remained virtually unchanged despite more than a 150 percent increase in beer advertising expenditures between 1976 and 1987 – a period marked by significant changes in brewer market shares. There has been a sharp drop in beer advertising expenditures since 1988, but again there has been no significant change in consumption levels.

BEER ADVERTISING EXPENDITURES AND ADULT PER CAPITA CONSUMPTION, 1970-1994



Source: Leading National Advertisers and Broadcast Advertisers Reports, Radio Expenditure Reports and R.S. Weinberg and Associates

Because the beer market is mature and not growing, brewers must either advertise to increase their own sales or concede the market to the competition. Nationally, each market share point equates to approximately \$500 million in retail sales. Makers of other mature products like Ivory soap, Chevrolet cars and Exxon gasoline extensively use advertising too. Soap advertising doesn't lead to more baths any more than beer advertising leads to more drinking. As 1993-1994 Brookings Institution Fellow, John Calfee, explains, "The logic is the same as when basketball fans are trying to get a better view during the final minutes of a close game. Each fan knows he or she can see better by standing up, but it does not follow that everyone will see better if everyone stands up."



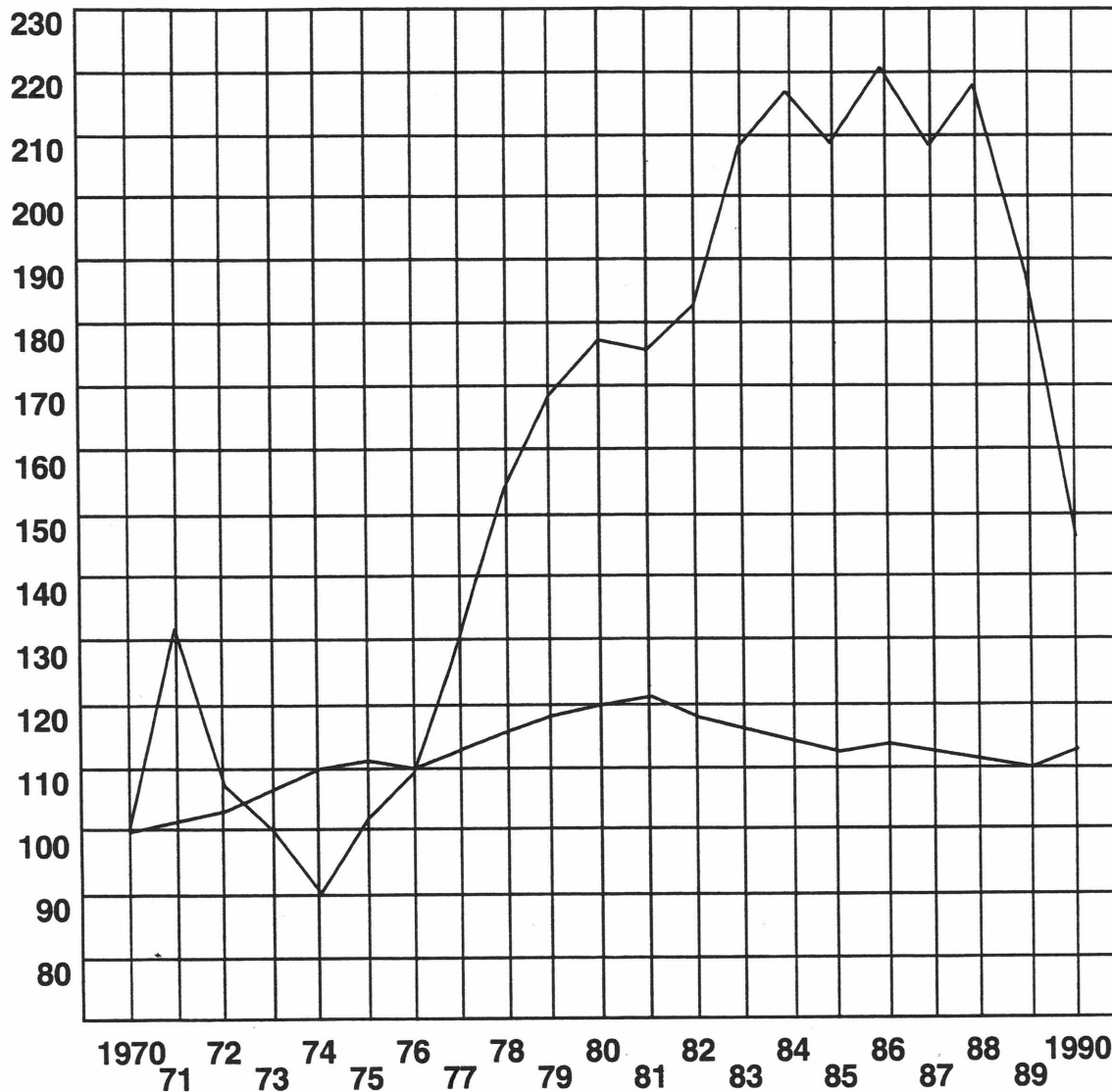
The public understands that brewers advertise to influence brand choice, not to persuade non-drinkers to drink. That's what two-thirds (66%) of those surveyed in 1993 by Roper said when they were asked if advertising for 10 different products was intended to encourage product sampling or brand switching.

Brewers strive to concentrate the exposure of their advertising to people who are already likely to be beer drinkers, consistent with their desire to influence brand choice. That's why the majority of beer advertising is placed in programming such as sports events. Based on statistics

from A. C. Nielsen, 83 percent of those viewing sports events sponsored by Anheuser-Busch are 21 or older, and half the audience is above 39 years old. According to Calfee, "one of the oldest truisms in the marketing profession is that consumers who pay the most attention to ads for a product are the ones who already use it."

code and abide by that code. Advertising which is aimed at people under the legal drinking age, is too sexually suggestive or shows people engaged in dangerous activities should not be practiced.

1970-1990 Per Capita Beer Consumption (21 and Over) and Beer Advertising Dollar Expenditures (Inflation Adjusted)



Source: *Beer Sales and Population, 1970-1990: State reports compiled by Beer Institute and U.S. Department of Commerce, Bureau of Census; Beer Inflation Adjusted Advertising Expenditures 1970-1990: Leading National Advertisers and Broadcast Advertisers Reports, Radio Expenditure Reports and R.S. Weinberg & Associates, Advertising Cost Index.*

Beer Advertising —

Per Capita Beer Consumption —

SB2173

Advertising is a part of our society that has made free enterprise the success it has become in America. Advertisers have found that the surest way to influence people is to appeal to their emotions

A good advertisement gets attention; creates interest, desire, and belief, and initiates motivation.

Advertisers study their market and try to spend their money where the people they want to reach are.

Different means of advertising have different lengths of time or numbers of people who will be exposed to it.

Outdoor advertising usually has a very short message since we are only usually exposed to billboards for about five seconds. Bus passengers' exposure time is much greater.

Repetition is very important to advertisers. They know that the mind actually records many impressions that the eyes and ears do not see or hear.

You know that all these routes have been used to promote gambling of every type in the state of North Dakota.

North Dakota gets millions of dollars from charitable

gambling. WE ARE NOW HOOKED!

The use of alcohol, cigarettes, or gambling should not be promoted by tax money or on government vehicles by permitting such advertisements. A government vehicle is one which operates with tax exemptions.

There are advertisements on city buses. In Denver even school buses are used for advertising.

This bill would prevent any cities, school districts, and other governmental agencies in North Dakota from permitting such advertising.