

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2135

2007 SENATE FINANCE AND TAXATION

SB 2135

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2135

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: # 1165

Committee Clerk Signature

Sharon Ferguson

Minutes:

Sen. Urlacher called the committee to order and opened the hearing on SB 2135.

Kevin Schatz: from the Tax Dept. appeared in support of the bill with written testimony. (See attached)

Sen. Cook: on section 5, reciprocity was found to be unconstitutional, so who's collecting the tax now then? What are we changing it to?

Ann Hutchinson: Alcohol Tax Section with the Tax Dept. now the state that does the shipping will pay the tax to the state that received the wine.

Sen. Cook: so if I buy wine from CA and its shipped to me, I am going to pay ND tax to that winery in CA and they are going to collect it and submit to the state of ND.

Ann: Yes

Kevin Schatz: handed out a proposed amendment (See attached)

Sen. Oehlke: What is less than a bulk container?

Mr. Schatz: less than ¼ barrel that is involved.

Sen. Cook: Is an 8 gallon keg bulk?

Mr. Schatz: yes

Sen. Horne: on the first page, please define 21 years of age? I know there is something related to binge drinking. Help me understand that definition and why is it important.

Mr. Schatz: that was addressed in the last session, binge drinking so that a person who turns 21 could not go into a bar a midnight and conduct what they call binge drinking. It's consistent with other portions of the statute.

Sen. Cook: section 6 of your testimony, you say how a ND domestic winery was previously prohibited from direct shipping to customers in ND, so now if we change this bill, they will be able to ship to customers in ND or do they have to go through a wholesaler?

Mr. Schatz: they would be able to direct ship to consumers in ND for individual consumer's sales, if they were going to sale anything at retail location they would have to go through a ND wholesaler.

Sen. Triplett: can you just discuss the Federal Court Action that found a couple pieces of our legislation to be restraint of trade, was that a federal district court and how far was it appealed?

Dan Rouse: it's a case that actually came out of the 9th circuit in Washington State.

Janet Seaworth: of the ND Beer Wholesalers Association appeared stating this organization supports this bill.

No opposition, the hearing was closed.

Sen. Cook made a motion to MOVE THE AMENDMENTS, seconded by Sen. Oehlke. Voice vote: 7-0-0.

Sen. Tollefson made a motion to DO PASS AS AMENDED, seconded by Sen. Triplett. 7-0-0.
Sen. Tollefson will carry the bill.

FISCAL NOTE

Requested by Legislative Council

01/02/2007

Bill/Resolution No.: SB 2135

1A. 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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. 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 2135 provides technical corrections and clarifications to the wholesale alcohol tax statutes. There is no fiscal impact to SB 2135.

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.*

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.*

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
Phone Number:	328-3402	Date Prepared:	01/15/2007

PROPOSED AMENDMENTS TO SENATE BILL 2135

Page 1, line 15, after "capacity" replace "equal to or less than one wine gallon" with "less than a bulk container"

Page 1, line 17, after "capacity" replace "in excess of one wine gallon" with "not less than one-fourth barrel"

Renumber accordingly

January 16, 2007

[Handwritten signature]
1-16-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2135

Page 1, line 15, remove "equal to or" and replace "one wine gallon" with "a bulk container"

Page 1, line 17, replace "in excess of one wine gallon" with "not less than one-fourth barrel"

Renumber accordingly

Date: 1-16-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2135

Senate Finance & Tax Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Tollefson Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Anderson	✓	
Sen. Tollefson	✓		Sen. Home	✓	
Sen. Cook	✓		Sen. Triplett	✓	
Sen. Oehlke	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Tollefson

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

REPORT OF STANDING COMMITTEE

SB 2135: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2135 was placed on the Sixth order on the calendar.

Page 1, line 15, remove "equal to or" and replace "one wine gallon" with "a bulk container"

Page 1, line 17, replace "in excess of one wine gallon" with "not less than one-fourth barrel"

Renumber accordingly

2007 HOUSE FINANCE AND TAXATION

SB 2135

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2135 A/B

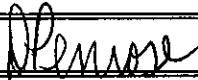
House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/12/07

Recorder Job Number: 3344, 3347

Committee Clerk Signature



Minutes:

Rep. Belter: We will open the hearing on SB 2135. Clerk read the title.

Kevin Schatz, Office of Tax Commissioner: (see attached testimony #1).

Rep. Schmidt: In Section 1, how many gallons are held in the bulk containers.

Kevin Schatz: I believe it is 7.21 gallons.

Rep. Schmidt: So it is 8 cents for bulk and 16 cents for bottles, is this a change in price of beer.

Kevin Schatz: I don't think so.

Rep. Drovdal: Under section 5, it deals with sales from out of state vendors. If an out-of-state vendor ships into ND and that state does not have a reciprocity agreement with the state, what is the filing requirement, first for that seller and second for the purchaser.

Kevin Schatz: The requirement to file by the shipper that ships into this state, isn't required to get a shipper's license in order to file a return. The shipper is required to pay taxes, the consumer does not pay the alcohol tax.

Rep. Drovdal: Under the Interstate Commerce clause, which the Quail vs. ND case, can ND require that out-of-state shipper to have a license in ND under federal law.

Kevin Schatz: I would refer that question to Dan Rouse.

Rep. Kelsch: On page 9, you have a schedule of tax rates on various things, but it's all by code wine gallon. Can you tell me what a wine gallon is.

Kevin Schatz: A wine gallon is actually used in restaurants, it's just called a wine gallon.

Rep. Weiler: Section 2 of the bill deals with the age of 21. I know this is in here, because the night before your 21st birthday, if you happen to go to the bar at midnight, legally you are 21 at 12:01 a.m. There's been a problem with binge drinking. If this says that you're not 21 until 8:00 am of the actual birth date, does this bill mean that you cannot enter the bar, or does that mean they can't serve you any alcohol.

Kevin Schatz: The reason for the change on this was to make it consistent with the AG's definition of 21 and that was made in the last legislative session and it was also listed in our statute and this one didn't get changed.

Rep. Weiler: If you could refresh my memory of two years ago, can an individual go into a bar, or is it that they just can't be served.

Kevin Schatz: You would have to ask the AG's office.

Rep. Belter: Thank you.

Dan Rouse, Legal Counsel for Tax Dept.: You are talking about the power hour which was changed last session. The problem is that there are three different places within Title V, where a definition of 21 exists, and our attempt was to bring the two that we have, unfortunately we had one that said 8:00 am and another one that was sleeping, and we detected it and it said 3:00 a.m., now it says 8:00 a.m. That coincides with the other definition within Title V that the AG had changed last session to be 8:00 a.m. It doesn't change the reality that you are 21 for a lot of different laws, I guess we could give them a biology lesson and say that you're not truly 21 until the exact moment of the 21st anniversary of your birth, but for purposes of alcohol

laws, in particular, this body has seen fit that for purposes of consumption and entry into premises, you aren't going to be considered 21 until you reach 8:00 a.m.

Rep. Weiler: You can't even go into a bar at midnight.

Dan Rouse: Yes. You recognize, of course, that this is a rather voluminous bill. The good news is that this is the only bill that you're going to see from us on alcohol this session. That is, in fact, is good news. The Commissioner also wanted me to let you know that we inherited this area of law from the Treasurer's office a number of years ago. What we tried to do over the years, is work with the system the way it is. We established a very good relationship with industry and we consult with them regularly. In fact, Kevin and I are going over to speak to the Beer Wholesalers Convention this afternoon, and no there aren't any free samples. Our attempt to work with the industry has led us to this one bill. Again, we are trying to clear up the process by which they report to us and we gather the information. There are no changes in the rates or imposition of taxes. It is a clean up bill. The point I want to make is that we have set out, over the course of the next two years, we made a promise to work with all three tiers of the alcohol industry. To invite them in and have our own, essentially Interim Session. We are going to work with those three tiers, we are going to ask for representation from the legislative assembly, as well as the manufacturers, to look at the entire application of taxes, and administration of taxes on alcohol in this state, and see if there are any areas where we can continue to refine it and continue to improve that relationship and then make the proposals, the outcome of that essentially interim committee to you all for the next legislative session. So I look forward to working with industry in that regard.

Rep. Headland: I realize that this is probably current law, but I am curious and I wanted to follow up on Rep. Schmidt's comments. Why the two different rates on beer.

Dan Rouse: The two different rates relate to the fact that you are buying smaller volume, in the prepacked 6 or 12 packs, or the case of small bottle size. This body has seen fit, in the past, to apply a different tax rate to that, than to bulk distributors of kegs, etc.

Rep. Headland: Can you give me an example of another product that we have two different tax rates on. I'm just trying to find out why I am being overtaxed when I buy a bottle of beer.

Rep. Drovdal: My question has to do with taxing out-of-state sellers that are selling into the state of ND. ND cannot require an out-of-state business to collect our taxes submitted in the state, if they don't have a nexus here. This seems to say that a seller out-of-state is able to collect and report it. You can require them to collect and report a tax in ND. Why is there a conflict there.

Dan Rouse: The fact that these changes goes back to two federal district court cases. One was Granhome, which was a US Supreme Court case and the other one was Costco's case. There were some predatory practices occurring throughout the country where large entities were trying to come into other states, and the states were putting up barriers for them coming in and selling their products in the state. The long and short of it, is the US Supreme Court and the federal courts have held that reciprocity is not a prerequisite to allowing out-of-state entities from shipping product into the state. But it is not unreasonable for the states to impose reasonable registration and reporting requirements. But if I understand correctly, let's say a Washington entity ships a product into ND, they are applying Washington state tax and reporting that to their Tax Commission, whereas an entity like Maple River Winery, if they have the ability to ship out-of-state, they are going to be reporting and collecting ND tax. You're right, you're referencing Quill vs. ND case from back in the early '90s. That did put some pretty clear restrictions on what out-of-state entities can and can't do. One thing that that case

pretty clearly stood for, was that if you didn't have a physical presence in the state, you did not have a requirement to collect the state taxes. You're correct.

Rep. Grande: I'm kind of lost on this section 5, where we are changing all of the way the wine is being able to be sold and distributed. We've eliminated the section here because it defies federal.

Dan Rouse: Correct.

Rep. Grande: Then when we're correcting it here, what we're saying is, independent wine seller now has to get a special wholesaler's license.

Dan Rouse: It's a direct shipper's license in that section.

Rep. Grande: So I, as an independent wine dealer, have a client in MN who wishes to buy six bottles of my wine, do I have to go through a wholesaler to ship to that person.

Dan Rouse: Now you're switching to talking about domestic wineries. They have a separate set of requirements that relates to them.

Rep. Grande: This does not affect them.

Dan Rouse: No.

Rep. Belter: Thank you. Further testimony in support. Testimony in opposition, neutral. We will close the hearing.

(Reopened later in the same day.)

Rep. Belter: We will take a look at the bill.

Rep. Wrangham: I would appreciate a little time to look through the bill.

Rep. Headland: We have an unfair tax structure here in this state, and I think we have an opportunity to correct the problem.

Rep. Belter: We will take this up later.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2135 C

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/21/07

Recorder Job Number: 3519

Committee Clerk Signature

J. Penrose

Minutes:

Rep. Belter: We will open an additional hearing on SB 2135. Clerk take attendance. We heard this originally last week, and we were going to look at some amendments. I am going to hold the bill because one of the Senators stopped me this morning, because they had some other concerns.

Dan Rouse, Legal Counsel to the State Tax Commissioner's Office: This is, of course, SB 2135. We've already heard it and we had some good discussion and comments. However, since that hearing and since our office attended the ND Beer Wholesaler's Association Conference that was held in town, we learned that there has been a slight bit of confusion about what constitutes bulk. Building on the energy and enthusiasm that Rep. Headland had expressed over this issue, we wrapped our brains around it and we wanted to make sure that we fully and accurately were reporting what is and isn't involved. The confusion regards 1/6 over 1/4 barrels. We've been accepting as bulk, reports dealing with beer producing 1/6 of a barrel container. To put it in perspective, when you go to a ball game and you see a Pepsi or the Coke stands, and those little silver canisters, those are about 1/6 of a barrel. That is what the beer industry has been reporting as bulk. Frankly, we think they're right and we wanted to catch this while we still had the opportunity to change the law to replace on page 1, line 17 the

phrase "one-fourth" with "one-sixth". The industry is here, Janet Seeworth from the ND Beer Wholesalers Association if there are any questions. We think it is appropriate and it goes along with reality and we would ask that you pass this amendment.

Rep. Belter: Thank you. Further testimony in support.

Janet Seeworth, Executive Director of the ND Beer Wholesalers Association: We do support the amendment. The one-sixth barrel is a draft container and is used throughout, because there is relatively small volume in this state. But it is specifically designed to let tavern owners and retailers that have limited space still be able to offer a draft beer product. It has been taxed at the bulk rate; we think that is correct. We want to make sure that there isn't a conflict between the administrative rights which currently allow that and with the statute as it is drafted in the bill. We certainly urge your adoption of the amendment attached to the bill.

Rep. Kelsch: Can you tell me what size is a quarter barrel.

Janet Seeworth: A quarter barrel would be 8 gallons, a standard 8 gallons. The one-sixth barrel is just a little over 5.16 gallons.

Rep. Belter: Thank you. Further testimony in support. Testimony in opposition or neutral. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2135D

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 3991

Committee Clerk Signature

A. Penrose

Minutes:

Rep. Belter: We will take a look at SB 2135. We were waiting for amendments. We've got the amendment .101, were there any other amendments.

Rep. Headland: There was a proposed amendment to change line 17, page 1, I move the amendment.

Rep. Belter: I need to hold this bill a while yet.

Rep. Headland: I withdraw my motion.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2135E

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 3/6/07

Recorder Job Number: 4406

Committee Clerk Signature

R. Penrose

Minutes:

Rep. Belter: Clerk read roll. We will take a look at SB 2135. What are the committee's wishes. Is the only amendment changing it from 1/4 to 1/6.

Rep. Grande: Yes, did we move those amendments.

Rep. Belter: No, we did not.

Rep. Grande: I move the amendments.

Rep. Owens: Second.

Rep. Drovdal: Are you referring to .0101?

Rep. Belter: I don't have a number. Any discussion.

Rep. Wrangham: Was .0101 the ones that were put on already.

Rep. Grande: They were put on already on the Senate side.

Rep. Belter: Voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Headland: I move a Do Pass as amended.

Rep. Brandenburg: Second.

Rep. Wrangham: Are there are fee increases in this bill.

Rep. Belter: No. Clerk will call the roll.

14 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Kelsch

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL 2135
February 21, 2007

Page 1, line 17, replace "one-fourth" with "one-sixth"

Renumber accordingly

78197.0201
Title.0300

Adopted by the Finance and Taxation
Committee

March 6, 2007

**House Amendments to Engrossed SB 2135 (78197.0201) - Finance and Taxation
Committee 03/06/2007**

Page 1, line 17, replace "one-fourth" with "one-sixth"

Renumber accordingly

Date: 3-6-07
Roll Call Vote #: 2135

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House _____ Finance & Tax _____ Committee

Check here for Conference Committee

Legislative Council Amendment
Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Headland Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich	✓	
Vice Chairman Drovdal	✓		Rep. Kelsh	✓	
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande	✓		Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler	✓				
Rep. Wrangham	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Kelsh

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

REPORT OF STANDING COMMITTEE

SB 2135, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2135 was placed on the Sixth order on the calendar.

Page 1, line 17, replace "one-fourth" with "one-sixth"

Renumber accordingly

2007 TESTIMONY

SB 2135

TESTIMONY BEFORE THE SENATE
FINANCE AND TAXATION COMMITTEE
SB2135
KEVIN SCHATZ
JANUARY 16, 2007

Chairman Urlacher, members of the Committee, my name is Kevin Schatz, I am here on behalf of the Office of State Tax Commissioner to testify with respect to SB2135.

The Tax Commissioner proposes changes to Section 5-01 and 5-03 of the Century Code as they relate to alcoholic beverages.

Section 1: The Tax Commissioner proposes two new subsections to define “bottle or can” and “bulk”. Because of the multiple container sizes available for the packaging and sale of beer there is confusion about the differential between bottle or can and bulk. When beer is sold in a bottle or can the product is subject to tax at the rate of \$.16 per gallon; when sold in bulk the product is subject to tax at the rate of \$.08 per gallon. This would clarify which tax rate the product would be subject to.

Section 2: The Tax Commissioner proposes to change subsection 14 of Section 5-01-01 to define “Twenty-one years of age” to mean it is after eight a.m. on the date twenty-one years after a person’s date of birth. This change makes the definition consistent with the meaning of twenty-one stated in 5-01-08.6 of this Section and in Section 5-02-06.6, which addresses retail licensing.

Section 3: The Tax Commissioner proposes to amend Section 5-01-04 to clarify that a license is required for the manufacture of all alcoholic beverages. Alcoholic beverage means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume; this includes beer, wine, or liquor.

Section 4: The Tax Commissioner proposes to remove subsection 6 of Section 5-01-08 because twenty-one is defined in 5-01-01.

Section 5: The Tax Commissioner proposes to remove subsection 6 of Section 5-01-16 which provided a reciprocal privilege for tax purposes with regard to direct shipments of wine for personal use. A shipment of wine sent to a resident of North Dakota from a state that recognized reciprocity was taxed in the state of origin. A shipment of wine sent by a winery, wholesaler, or retailer from North Dakota to a resident of another state that recognized reciprocity was taxed in North Dakota. This practice has been determined by a federal court to be a restraint on trade in violation of the provisions of the federal Sherman Act and Interstate Commerce Clause of the U.S. Constitution.

The Tax Commissioner proposes to amend subsection 5 to include the allowable volume of product that can be direct shipped that was previously provided in subsection 6. This subsection also provides a due date that a direct shipper must file a report with their payment of tax and that the Tax Commissioner can require the report to be submitted electronically.

Section 6: The Tax Commissioner proposes to amend subsection 2 of Section 5-01-17 to allow a domestic winery to sell or direct ship wine to consumers inside or outside of North Dakota. A North Dakota domestic winery was previously prohibited from direct shipping to consumers in state as compared to an out of state winery which was allowed to direct ship to a North Dakota consumer. This practice has been determined by a federal court to be a restraint on trade in violation of the provisions of the federal Sherman Act and Interstate Commerce Clause of the U.S. Constitution. This subsection provides that any domestic winery wholesale activity in this state must be conducted through a licensed North Dakota wholesaler and that a report must be filed with the Tax Commissioner in any month wholesale activity has taken place.

The Tax Commissioner is proposing to strike the language in subsection 3 referring to payment of taxes as the reporting requirements for wholesale activity are addressed in subsection 2 and for direct shipping and consumer sales activity in subsection 4. To provide clarity, the language allowing both a domestic winery license and retail license for on premises sales was moved from subsection 2 to subsection 3.

Proposed changes to subsection 4 provide for the annual reporting requirements for a domestic winery's sales at retail and direct shipment sales to consumers. This subsection provides a due

date that a domestic winery must file a report with their payment of tax and that the Tax Commissioner can require the report to be submitted electronically.

Section 7: The Tax Commissioner proposes to amend Section 5-03-01 to alleviate confusion by addressing the requirements for a state wholesale license and moving the language regarding an exception to this requirement to the end of the section.

Section 8: The Tax Commissioner proposes to amend Section 5-03-07 to include all parties subject to the imposition of tax. In addition to alcoholic beverage wholesalers, domestic wineries, brew pubs, and direct shippers are required to report and pay tax.

Section 9: The Tax Commissioner proposes to amend subsection 2 of Section 5-03-09 to provide that a licensed supplier that sells product to a North Dakota wholesaler is required to submit a report by the last day of the month following the month of activity. This subsection previously stated the due date was the thirtieth day of the month.

The Tax Commissioner proposes the addition of subsection 5 to Section 05-03-09 to provide recourse for noncompliance of the reporting requirement by a supplier.

2-12-07 AM
#1 SB2135 A

TESTIMONY BEFORE THE SENATE
FINANCE AND TAXATION COMMITTEE
SB2135
KEVIN SCHATZ
FEBRUARY 12, 2007

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