

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2329

2007 SENATE TRANSPORTATION

SB 2329

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2329

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2329

Committee Clerk Signature *Jody Houser*

Minutes:

Senator Gary Lee opened the hearing on SB 2329 relating to the sentence for the person under twenty-one years of age using alcoholic beverages.

There were five committee members present and one absent.

Senator Heckaman introduced the bill. The hospitality organization approached her to put this bill forward. She stated that this bill is an opportunity for education. This bill is for minors that are using alcohol and punishes the minor instead of putting all the responsibility on the Hospitality Organization. She stated that this is an opportunity to put eight hours of alcohol and drug education into the sentence for those that do end up in a sentencing situation.

Senator Nething asked who would do this education.

Senator Heckaman said that in their area there are many drug and alcohol programs.

Robert Harms representing the ND Hospitality Association testified in favor of SB 2329. His written testimony is attached. They feel that if a minor insists upon entering a bar, which jeopardizes the business owner, his employees and his very business, perhaps spending time acquiring additional knowledge regarding alcohol and drug education might be the best consequence of breaking North Dakota law in this circumstance.

Senator Fiebiger asked what happens now when there is a violation.

Mr. Harms answered that typically the licensee usually gets a large fine and the minor gets a fine the fraction of what the business owner gets. It is a slap on the wrist for the minor.

Senator Fiebiger asked if there was no education required of the minor at this time.

Mr. Harm answered none. To his knowledge it is rare that a minor is referred for alcohol treatment and education.

Senator Bakke repeats the scenario that a minor goes into an establishment, knowing they are underage, and are served alcohol unbeknown to the owner of the establishment and the owners get criminal action against them and the minor gets nothing.

Mr. Harms replied that her scenario isn't quite correct but close. The business owner gets a more severe penalty than the minor. Generally, they will get a fraction of what the business owner gets.

Senator Bakke asked if there were any experiences where the minor has produced a fake ID and does the court still go after the business owner.

Mr. Harms said there is a statute that if the business owner goes through steps carefully, there is a statute that presumes him to be innocent if he sells. The presentation of a false ID is a class B misdemeanor to the minor, serving of alcohol to a minor is a class A misdemeanor to a business owner. They believe this bill with its eight hours of education will help decrease more violations.

Senator Lee asked if this statute, that he represents, just includes the on premise purchase by a minor.

Mr. Harms answered, "That is correct."

Senator Lee asked how many violations we are talking about when we consider the services needed.

Mr. Harms said we have no figures. He said it was certainly less of a problem than minor in possession in an automobile.

Senator Lee asked if there were services available to do this education.

Mr. Harms replied yes. Through out the state whether it is the regional human service centers or private addiction centers or law enforcement there are facilities through out the state. Even in small town North Dakota.

Senator Fiebiger asked how they arrived at 8 hours of education.

Mr. Harms said they were thinking about more but 8 hours can probably be done in two days.

Senator Fiebiger asked if there were education programs out there that are within that period of time and if it was modeled after one.

Mr. Harms said that typically the programs to restore points on your driver license will run 3 to 4 hours and he had used that as a measuring stick.

Senator Nething asked if there was any reason we limited this to premises. This education would be good in other sections were there are minor violations.

Mr. Harms said that there are more statues of law that it could be added too but they are most interested in Chapter 501. Also if you added other areas you would be looking at a bigger fiscal note.

Senator Bakke asked if minors could be fined.

Mr. Harms said minors can be fined for presentation of a false ID up to \$500.

Senator Bakke expressed her concern that the owner of the establishment is getting a steeper fine than the person who intentionally broke the law. She thinks the fines should be more stringent.

Senator Lee asked what the typical cost would be for this 8 hour of education.

Mr. Harms thought about \$300.

Allan Leier, owner and manager of a bar in Bismarck testified in support of SB 2329. He told a personal story that affected him and his business. They served a minor not knowingly but they were considered guilty. It was the third offense for the nineteen year old minor and she got a two hundred dollar fine. The server got a two hundred dollar fine and the owner got a three hundred dollar fine for his first offense and he had been in the bar for fourteen years. It was the minor's third offense and she got a two hundred dollar fine. The owner did not break the law knowingly and if he would have had three offenses they would have taken his license away or close his doors. He doesn't believe this eight hours is enough; he thinks they should also have 40 hours of community service.

There was no opposing testimony.

Senator Nething moved a Do Pass on SB 2329

Senator Bakke seconded the motion.

Senator Nething said the education will be good for them and it should also make them more responsible. He could see it going broader but this will be a beginning point.

Senator Bakke liked the idea of the addition of 40 hours of community service.

Senator Nething said we would need an additional hearing to add this because of the fiscal note and the other departments it would affect.

Senator Fiebiger struggled with this bill because of the mandatory. He said that is why we have courts and judges. He struggled with this bill only because of the word "shall". He was also surprised there was not education requirement in existence.

Senator Potter said he was going to vote no because of Judicial discretion.

Senator Nething said if it's good public policy we have to make these violating minors responsible.

Senator Potter said that he believes the judge made an error in Mr. Leier's situation. He also believes parents should take responsibility to further punish and educate the minor. He has a problem with legislating remedies for every problem.

Senator Fiebiger is going to vote for this because of the education piece. He thinks this is good public policy.

Senator Nething replied that many of these minors would not be living at home because they are probably nineteen and twenty year olds. Their parents probably never find out about it.

Senator Lee asked the clerk to call the roll for a Do Pass motion. 4-1-1

Senator Bakke will carry the bill.

REPORT OF STANDING COMMITTEE

SB 2329: Transportation Committee (Sen. G. Lee, Chairman) recommends DO PASS
(4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2329 was placed on the
Eleventh order on the calendar.

2007 HOUSE TRANSPORTATION

HB 2329

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2329

House Transportation Committee

Check here for Conference Committee

Hearing Date: 03-02-2007

Recorder Job Number: 4280/4282

Committee Clerk Signature

Jim M Thomas

Minutes:

Chairman Weisz opened the hearing on SB 2329. SB 2329 relates to the sentence for the person under twenty-one years of age using alcoholic beverages.

Senator Joan Heckaman introduced the bill.

Sen. Heckaman: This bill would add eight hours of alcohol and drug education in the sentence of under age alcohol users. The hospitality industry does not condone under age drinking and usually bares the brunt of any kind of action right now. While we don't condone it, there should be some additional consequences to these people. Under age drinkers should bare some of the responsibility for their actions and I feel this is an opportunity to educate.

Rep. Delmore: This will mandate that all courts mandate this?

Sen. Heckaman: They can apply this sentence, but it is not mandatory.

Rep. Gruchalla: Section 50108 is minor in possession and consumption of alcohol, correct? So you want this, even if they haven't been drinking, you would still want them to take eight hours of alcohol classes?

Rep. Thorpe: Who would be doing the instruction?

Sen. Heckaman: I think that the hospitality association would have some suggestions.

Rep. Ruby: Is that paid for by the offender or by the courts?

Sen. Heckaman: It is my understanding that the offender would be responsible for that.

Robert Harms, ND Hospitality Association, spoke in support of the bill. See written testimony.

Rep. Weisz: So Bob, if I'm in a rural area vs. in Bismarck, so now that person is going to be forced to travel to Bismarck to get their eight hours of education and the person in Bismarck doesn't have to go anywhere. So now we are determining that sentences are a much greater burden on someone who may be one hundred and twenty miles away and have to go and try to get eight hours of education vs. someone who is in town here.

Harms: That may very well be the case and we feel that the eighteen and nineteen and twenty year old who is coming into the bar, if he has to go through the inconvenience of having to go to a larger community that has the program available, that may be enough consequence that he is not going to come into our bars again.

Rep. Weisz: This isn't about inconvenience, this is about equity in sentence. Are you going to make a person in Bismarck travel one hundred and twenty miles to go to Fargo to make sure they all have the same sentence?

Harms: We have ordinances that apply to ND citizens and if that is a difference we have across the state. That is the reality of we can't do much about it.

Rep. Weisz: If John goes with his buddies and they enter the bar, he isn't drinking, but you are requiring alcohol education for someone who is breaking a different law. The penalty has nothing to do with what someone on the premises tried to drink, so we are adding a penalty for a different law. The sentence doesn't jive with the offense. I understand your concern that you guys are getting penalized and you didn't ask them to come.

Harms: I understand the distinction you are making and with that it's just if he's not drinking and he's convicted and is coming into our bar, he puts our business in jeopardy he puts the employees and owner at risk for fines, if he is engaged in that kind of activity, even if he is

drinking diet coke, he can still benefit from eight hours in a classroom having to go through the tedious process of learning about drugs and alcohol.

Rep. Ruby: I am going to take a different angle on it. Let's say somebody is here in town and they have to go, is this much of a penalty? Is this perceived by people under twenty-one to be that onerous?

Harms: We talked about that within the association and generally speaking, we are not supportive of mandatory jail sentences and fines and those kinds of things and we don't know that is the appropriate approach when you've got a nineteen or twenty year old. We could say that they are going to have to spend ten days in jail. We looked at different ways two years ago in driver's license. We thought that the nineteen or twenty year old kid that we all know, probably the two or three most precious things to them is their driver's license and perhaps their spare time and we thought this might be a way to use the spare time to learn something.

Rep. Ruby: Do you know what the cost is?

Harms: The cost is fifty dollars at the juvenile house. I should also let you know that the police youth bureau class is a four hour class.

Rep. Weisz: Currently, your penalty is a Class A misdemeanor?

Harms: Correct.

Rep. Gruchalla: This is already in law. It is a Class B misdemeanor to attempt to purchase liquor or go in. Also, under this section of law it does say that under this section that the court may refer the person to an outpatient addiction facility. They already have that authority. You just want to add the eight hours to someone who tries to purchase it.

Harms: That is correct. I thought that what Rep. Gruchalla was saying was under the larger statute the court has the ability to refer them to an alcohol addiction program under current law. What we are interested in doing is applying the mandatory eight hours.

Rep. Weisz: Do you have any idea how many this year have been convicted of this section now?

Harms: I don't know.

Don Wright, Dept. of Human Services, spoke to the committee.

Wright: I just have some brief testimony in support of the education piece of this. We interpreted the bill more broadly. We also see the mandatory education as an opportunity rather than consequence. I don't know that we could make the program tedious enough. With that said, the division of mental health and substance abuse services is in support of the concept of mandatory education for minors in possession of alcohol, however we believe the development of the appropriate curriculum, hours of education and development of the systems requires state oversight and regulation. The division of mental health and substance abuse services is interested in being involved in this initiative. The division recommends further study to explore oversight options, program developing and program provider infrastructure.

Rep. Gruchalla: When you were looking at this law, your intent to include minor in possession and consumption and the eight mandatory hours of education?

Wright: It is our understanding that it would include ALL minor possession offenses.

Rep. Gruchalla: Right now some judges are ordering an evaluation in some courts, is that true?

Wright: That could be possible. If a judge had seen the individual before and had some knowledge and information, he could be moved on from an addiction issue.

Rep. Gruchalla: Part of this, a young person goes in and goes through the evaluation and the judge sentences him to do what?

Wright: I don't understand and am not familiar with any minor laws to know if they are approved for an evaluation.

Nikki Weismann, NDHA, spoke in support of the bill.

Weismann: Our purpose is educating our members in the industry of bars and restaurants hotels and motels. We see 2329 as a education program that the foundation could help implement. There is something practically that we would like to look into how we could implement this all across the state. I am working with the ND DOT on some other things that the foundation is working through like server training and that but that is on the bar side of it. It isn't the minor in possession. So if there is an opportunity here that we can work to get some classes or whatever we would like to look at that and see what we can do with that to help the bar owners to keep the minor out of the establishment.

Rep. Dosch: Since this specifies eight hours and there is some concern as to whether the program is available, do you have any problems if it was just indicated that the court shall sentence the violator to alcohol and drug education classes, without specifying the specific hours?

Weismann: We just chose eight hours. Now that we have visited with other people, eight hours isn't a magical number.

There was no further questions. There was no further support for the bill. There was no opposition to the bill.

Later that day, Chairman Weisz allowed committee discussion on the bill.

Rep. Owens: From what I heard in testimony, it sounded like to me that the situation is that the employer and the employee can be fined but it's a no lose scenario for the underage person to attempt to go in and drink, in other words, he's got everything to gain if he wins and gets to drink, and there is no real penalty.

Rep. Weisz: It's a Class B misdemeanor.

Rep. Owens: I realize but.....

Rep. Price: If you look in the report in the newspapers, they don't get much.

Rep. Weisz: That was my question to Mr. Harms was are we convicting anybody now?

Rep. Gruchalla: I would like to make a few calls too and see.

Rep. Dosch: That is part of the frustration of the industry is that the kid is getting their hand slapped and most cases, it's a start. They are drinking now and getting into the establishments and if that works, I don't think there is anything wrong with requiring some education. I think we can take out that eight hours, I don't think we have to be specific there so that if different parts of the state have different programs. I think requiring them to get some education is too important of a subject just to say here is a fifty dollar fine and go try it again.

Rep. Gruchalla: What I don't like about the bill is that they are putting only the eight hours of education on the person who attempts to purchase and not on the person who has been drinking but is not legally intoxicated or he has beer in the car. Which in many cases, the kid that is in the bar drinking coke with other kids is going to the education. Where the person who stops and is drinking in a car is going to be held at a lesser standard.

Rep. Dosch: I asked why not any violation? There concern was that because there are a pretty substantial number that the system would be overwhelmed that maybe this is at least one place to start. They were just concerned that all of the sudden there is three thousand kids that they don't have the infrastructure in place to handle that big of a hit right away.

Rep. Weisz: Can we get stats on how many were at least charged under that section?

Rep. Thorpe: Did we really establish with the minor in possession or minor attempting to purchase or is the strictly.....

Rep. Weisz: Minor in the premises, that is all it has to be.

Rep. Myxter: My question is, how many, if a nineteen year old goes into a bar and attempts to purchase and they catch him, in most cases, they just throw him out. I don't know how many

people and bars actually call the police and arrest them. My son was one of those the the hospitality people hate, he worked for the police in Fargo when he was underage and went into buy and see if they would sell and he they just told him to get out.

Rep. Weisz: My question was how they can mandate a program that is not available in most areas of the state.

Rep. Gruchalla: I keep going back to that Mr. Schmidt. If they are picked up for minor in possession of consumption which is under the same section, in most cases, all of the judges I worked with the last several years sentence them to minor in possession classes and have to go in for evaluation and the court has some counseling for the minor and that is what she is after. However, to single out just that part of it, for attempting to purchase and make that a mandatory eight hours. I think it is more severe for them to be driving or just drinking than attempting to buy. It's all the same thing really. I would rather see them put the mandatory eight hours for everything.

Rep. Delmore: You already said that most of the time the judge will do it and the judge can do it right now and this mandates that the first one may be considered and I think the point was made when you said that most of the time the judges already do it, if you are in possession or whatever. I don't think that is going to make a huge difference.

Rep. Weisz: There are issues here and we will take it up next Thursday for people who want to look up some more information.

The discussion ended and there was no action at this time.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2329

House Transportation Committee

Check here for Conference Committee

Hearing Date: 03-08-2007

Recorder Job Number: 4736

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Weisz allowed committee discussion on SB 2329. . SB 2329 relates to the sentence for the persons under twenty-one years of age using alcoholic beverages.

Rep. Gruchalla: I have got some hand outs here. *See attached information.* This is some information I received from some of the other courts.

Rep. Delmore: Do we have an amendment on here?

Rep. Weisz: No, we talked about some things and I didn't get any amendments but if someone has them, we can sure address the.

Rep. Gruchalla: I did a little research on what is going on in the field of this minor in possession and consumption and attempting to purchase, which is all the same violation. As you can see the one from Sue Thompson here the Bismarck youth area, they are already getting the first offense they are getting an MIP seminar and the second offense a drug intervention program for six weeks of educational training, third offense thirty days of community service. Then I got some information here about how many actual violations there are for this section, misrepresentation of age. They don't keep real good stats in that one, but as you can see there are very few violations of that misrepresentation. Some people did say

they probably don't even keep track of them. The bottom line here is, the eight hours just for the misrepresentation it is actually more extreme than these other ones.

Rep. Delmore: I would prefer that we amend this bill to sentence a violator to alcohol and drug education, that way, the judge himself can determine a program which fits into the community and I think it's a valuable component. **I would move that amendment.**

Rep. Dosch seconded the amendment.

Rep. Weisz: So the bill will basically say the same thing except we are just wiping out the eight hours. They will say they shall sentence the violator to alcohol and drug education.

Rep. Delmore: I just think the more generic approach gives the locality that can provide it a chance to do what is there otherwise we are going to have somebody coming back and saying they can only do four hours whatever, let them do the best that they can provide as an education component that should be valuable under the circumstances.

Rep. Gruchalla: Could we, wouldn't we want to have that to read for all the subsections?

Rep. Weisz: Subsection four is the court may refer the person, so that has nothing to do with the type of offense.

Rep. Delmore: I also think we should address it one part at a time. We can address this, see how it goes and if it's successful. Sometimes when we try to make one size fits all; we get ourselves into some trouble.

Rep. Weisz: The only thing would be subsection one. In subsection one, it does say a person under twenty-one years of age cannot manufacture or attempt to manufacture, purchase or attempt to purchase consume or have recently consumed other than a religious service, be under the influence, be in possession of, or furnish money to any person for the purchase of an alcoholic beverage. We could make it apply to that subsection. If you read the amendment properly, that is already in there because if it's a violation of this section which is 5-01-08. With

that whole section this is defined to. I wasn't looking at it right because subsection three, the violation of the whole section which is 5-01-08. Both subsections one and two are covered under this. The language would be, if you take out subsection two, it will apply to the whole section, then you can just leave that out, if you want to leave it in, then it narrows it down strictly to on the premises.

Rep. Delmore: So it is best to just leave the amendment as I moved it initially?

Rep. Weisz: That is your call.

Rep. Dosch: I agree with Rep. Delmore that we can start here and see how it works; I don't know that we want to overload the system or do something that the system can't handle.

Rep. Weisz: So right now, this deals only with a person on premises.

Rep. Gruchalla: So we are not going to be mandating education for the..none of that?

Rep. Delmore: I believe that A was the original intent of this bill. And B, I think some of that other education component is available to judges already for the other offenses, so that is why I offered this amendment.

Rep. Ruby: If you look under the handout from Sue Thompson, standard sentencing for minor in possession or consuming alcohol, first offense, one hundred and fifty dollars, twenty-five dollar fee, sixteen hours of community service work, bail and must attend an MIP seminar. That is the training now, so that is apparently the standard at this time, so I don't want to reduce it.

Rep. Gruchalla: The only thing is that is just the way Bismarck does it. Each jurisdiction does it a little differently.

Rep. Delmore called for the question.

Voice Vote: Unanimous. Rep. Kelsch and Rep. Vigesaa absent.

Rep. Delmore moved a DO PASS AS AMENDED. Rep. Price seconded.

Roll Call Vote: 10 yes. 1 no. 2 absent.

Carrier: Rep. Myxter.

Date: 3-8-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES 2329
BILL/RESOLUTION NO. _____

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend Strike "8 hours" Voice Vote

Motion Made By Delmore Seconded By Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. Delmore		
Vice Chairman Ruby			Rep. Gruchalla		
Rep. Dosch			Rep. Myxter		
Rep. Kelsch	absent		Rep. Schmidt		
Rep. Owens			Rep. Thorpe		
Rep. Price					
Rep. Sukut					
Rep. Vigesaa	absent				

Total Yes Unanimous No 0

Absent 2 Motion Carried

Floor Assignment _____

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

Date: 3-8-09
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2329

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Delmore Seconded By Price

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Delmore	✓	
Vice Chairman Ruby	✓		Rep. Gruchalla	✓	
Rep. Dosch	✓		Rep. Myxter	✓	
Rep. Kelsch	A		Rep. Schmidt	✓	
Rep. Owens	✓		Rep. Thorpe		✓
Rep. Price	✓				
Rep. Sukut	✓				
Rep. Vigesaa	A				

Total Yes 10 No 1

Absent 2

Floor Assignment Myxter

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

REPORT OF STANDING COMMITTEE

SB 2329: Transportation Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). SB 2329 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "eight hours of"

Renumber accordingly

2007 TESTIMONY

SB 2329



*ND's Restaurant, Lodging &
Beverage Association*



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Senate Transportation Committee
North Dakota Senate
February 2, 2007

SB 2329 (minor mandatory 8 hour education)

Chairman Lee and members of the Committee, my name is Robert Harms and I am a lobbyist for the North Dakota Hospitality Association, which has over 350 members in North Dakota who are engaged in all aspects of the hospitality industry including the state's bars and restaurants.

The North Dakota Hospitality Association **supports SB 2329** and sought its introduction to further discourage minors from entering a licensed premises where alcohol is being sold. At times a licensee may be charged with selling to a minor (both he and his employee can face as much as 1 year in jail and \$2,000 in fines). A violation also puts at risk the operators license under local ordinances and threatens the very continuation of the business. These are high stakes for a business owner, who sells alcohol to a minor who intentionally violates the law by entering the business to purchase alcohol. There are some safeguards for the owner such as:

Training of employees; use of a book to write down age under NDCC 5-01-08.1

Presumption of innocence statutes like NDCC 5-01-8.2

And yet we still have minors who will enter a bar, with apparently little or no fear.

