

2009 SENATE JUDICIARY

SB 2439

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2439

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8636

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to the penalty for unlawful delivery of alcohol to certain persons

Senator Lindaas – Introduces the bill – See written testimony

Senator Fiebiger – Asks if he has any sense of how many people are repeat offenders, do people get convicted more than once.

Senator Lindaas – Said he can't answer that since he doesn't know what the courts are doing.

Senator Nething – Asks what the current fine is.

Senator Lindaas – He doesn't know.

Duane Peterson – See written testimony- relates how his son almost died from alcohol poisoning

Close the hearing 2439

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2439

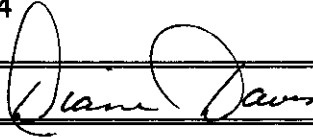
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/11/09

Recorder Job Number: 9154

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Discussion on the penalties. Senator Lyson would like to see them raised.

Senator Lyson moves for a do pass

Senator Nelson seconds

Discussion

The committee discusses how this would be for a bartender. The current law says knowingly. Senator Lyson says this bill will make them sit up and take notice. Senator Fiebiger said he is concerned if we are not limiting and tying the hands of judges. Senator Nething said under current law we are saying there what the judge has to do. What we are adding are the 2nd violation, we're changing the amount and the third violation that changes it. It must be proved that he knowingly did it or you can't hold him. The committee discusses what knowingly means.

Vote - 6-0

Senator Lyson will carry

Date: 2/11/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

2439

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Lyson Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Senator Lyson

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

REPORT OF STANDING COMMITTEE (410)
February 11, 2009 12:23 p.m.

Module No: SR-27-2369
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2439: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2439 was placed on the
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2439

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2439

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11091, 11098

Committee Clerk Signature

DeMose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2439.

Sen. Elroy Lindaas: Sponsor, support (attachment). Explained the bill.

Rep. Delmore: Are there other people besides those in the hospitality association that are buying and giving alcohol to our children. I'm talking about parents, friends, buddies, etc. that are buying this for the minors. This seems to be aimed at bar owners and others in the hospitality business. Are we addressing these other people as well?

Sen. Elroy Lindaas: Absolutely, we are targeting everyone who supplies alcohol to minors.

Rep. Delmore: I think the Hospitality Association already has a lot of policies in place; the police do checks on bars, very stiff sentencing for people who would serve them, etc. I'm just wondering as we look at this issue, and look at sentencing, etc. because you have moved up the penalties considerably, especially with jail. Is there any time constraints. What if something happens this year and there's not another violation for ten years. Is it your intent that still applies?

Sen. Elroy Lindaas: I'm not familiar with that portion of the law. We really didn't address that. But I've seen in the past where, within a year, the same person is charged with a minor in possession. I don't have that documentation with me.

Rep. Delmore: Do you think there is a bigger problem with the servers and owners, than there is with other people buying alcohol for these minors.

Sen. Elroy Lindaas: These other people, I'm not going after the industry as such. I think they are closely regulated and I don't think it happens very often that the bars or the folks in the alcohol industry are caught or connected with serving alcohol to minors. It's more those on the outside.

Rep. Boehning: What's the penalty for a minor, attempting to buy alcohol?

Sen. Elroy Lindaas: I don't really know.

Rep. Boehning: It's a class B misdemeanor. I think we need to direct the penalties to the minors. In your testimony, you stated that the Fargo Forum reported that 85 minors were convicted and 5 individuals were adults. It seems to me that the minors should be penalized more than that of the adults, they are the ones that were consuming the alcohol, and they should bear a larger portion of the penalty.

Sen. Elroy Lindaas: There's a good reason why alcohol shouldn't be served or consumed by minors. They haven't met the age of responsibility at this point. Somebody who is 25 or 30 years old, or whatever, should know better and they are contributing to the delinquency of a minor; they are contributing to the consumption of alcohol by the minors.

Rep. Boehning: I guess I understand that. I believe that there should be stiffer penalties for the minors, because they are the ones buying the alcohol from the adults. I think if they had to spend time in jail for 30 days, 60 days or 90 days that would probably make a better deterrent for them knowing that they are going to jail on the second offense for 48 hours.

Sen. Elroy Lindaas: I can't argue that part of the law. The fact remains that those who are over the age of 21, are of an age of responsibility. If it weren't for them supplying the alcohol to minors, those minors would not be in that predicament.

Rep. Boehning: What about their refrigerator at home, they can get the alcohol right out of the home.

Sen. Elroy Lindaas: That is another area.

Rep. Griffin: When you talked about the fines that were assessed, are you disregarding the \$300 court administration fee and other costs associated with the court system.

Sen. Elroy Lindaas: I'm not aware of that.

Rep. Griffin: I just brought that up, because with a class A misdemeanor, there is a mandatory court administration fee of \$300 that has to be paid. That's why we have had a lot of problems with it.

Rep. Kretschmar: Do you think there should be a distinction between delivery by someone to someone who is over the age of 18. Should it be stiffer if you give it to a teenager, a 15 or 16 year old person. Because, at least, at age 18 in our state, people are adults other than for alcohol violations. So that is at least an adult giving to another adult, even though it is illegal under our law. If you are giving it to a younger person, I would think that should be a stiffer penalty for that.

Sen. Elroy Lindaas: The reason for my addressing that whole age group, from 12-20 years old, is that that is the same category that the Center for Disease Control addresses with their categories.

Chairman DeKrey: Thank you. Further testimony in support.

Duane Peterson, individual: Support (Sen. Lindaas read his testimony as Mr. Peterson was unable to be at the hearing.)

Rep. Delmore: How old was Logan when this happened to him.

Sen. Elroy Lindaas: Fifteen (15) years old.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Neutral testimony. We will close the hearing.

(Reopened later in the afternoon session.)

Chairman DeKrey: We will take a look at SB 2439. What are the committee's wishes in regard to SB 2439? We heard the bill this morning.

Rep. Delmore: I understand what they're trying to do.

Rep. Klemin: Didn't we pass a law that allows some immunity for some underage people who report other people so that they can get to the hospital and now we have a minimum mandatory penalty coming in here that seems to directly conflict with that.

Rep. Griffin: I think when Sen. Lindaas spoke, he talked about some of the fines that have been assessed, but there are automatic court fees that are assessed, and I can't imagine that if people continually get convicted of this, that the court wouldn't sentence them to at least what is outlined in this bill.

Rep. Koppelman: Does the current law include jail time, or strictly fines. You said that the court can currently assess higher fines.

Rep. Griffin: There is an automatic \$300 court administration fee and those are mandatory. Plus the court could go up to \$2,000 in fines plus a year in jail if they want to.

Rep. Koppelman: When Sen. Lindaas asked me to sign on to this bill with him, his concern that he expressed to me was that fines weren't necessarily deterring people and he saw the jail time issue being his major concern, that there should actually be jail time sentences hanging out there, that it might be a more effective deterrent. Clearly he is going after people that provide liquor to young people. I don't think he is aiming at all at the hospitality industry. I had a visit with some of those lobbyists very recently on this bill, and after we talked about it, I pointed out that the current language in this bill, talks about knowingly, which is obviously a

higher standard than just somebody serving in a bar, and not knowing the person is underage or not knowing the person is a habitual drunkard. I think that the idea that this is really going to entrap bartenders, I don't think that's as serious an issue as they originally thought. In talking with them, and pointing that out, I think they kind of softened their concern, and I suppose that's why they didn't testify against it.

Rep. Boehning: I'm going to resist this bill. I think we're getting pretty strict. I think the problem lies with the minors. I think the minors probably need to be spanked a little bit harder than what the adults are. I think the minors are the ones that are really going out and collecting the alcohol. If they were afraid of getting caught and tried as an adult, things could change.

Rep. Delmore: I concur with what you're saying. But we also need to keep in mind that they are minors for a reason. We are responsible for them. I don't like the fact that there isn't a time limit in here; a second or third violation in how long a period of time? Ten years, two weeks?

Rep. Koppelman: Rather than opposing the bill, if that's the concern, I would be amenable to that kind of amendment that sets out a time limit of how many violations in what period of time. I think that makes sense. But to use that as an excuse for not passing a bill, I think the bill has some merit.

Rep. Griffin: One thing with these minimum mandatory sentences. First, I think we're setting the bench for delivering to minors as a really light sentence. What happens a lot of times when you have these, it becomes a new mandatory sentence. Now you've got the second, and that's what happens with DUI, it doesn't help that. The sentence with the DUI is all mandatory.

So we would ask what the sentencing recommendation is, the standard sentence for this

violation, well it's four days, fine. I don't think we are really going to accomplish what the sponsor is hoping for.

Rep. Boehning: I move a Do Not Pass.

Rep. Dahl: Second.

Rep. Koppelman: The bill says at least 48 hours, it doesn't say 48 hours and if the courts and/or prosecutors are not reading that, they should. I think the concern that Sen. Lindaas has, and I don't have the anecdotal evidence that he has, but indicated that what is happening is that they aren't being sentenced at all and the idea is "oh well" and is being overlooked in our society. I think it's a problem.

Rep. Delmore: I think he put it in the wrong place in code, because I know kids are buying for other kids. I think as far as the hospitality industry is concerned, I think we have a good handle on that, they are regulated. If this is meant to be carried out for other individuals, including parents, because we know there are parents that know their kids are drinking and are fine with it. I think it should be listed in another part of the code, and then I would probably be better able to go along with it.

Rep. Koppelman: I understand your point; however, I don't know that we can pass laws that say this only applies to parents of kids, or adults that aren't bartenders or whatever. I think the point is that, that's not who this is targeting and the idea of someone in that kind of a capacity, who knowingly modifies this, if they aren't doing their job, then maybe they are susceptible, but if they are doing their job, the kid has a fake ID, and they sell him liquor, they aren't guilty of anything. Yet how many parents, if every kid in the neighborhood knows the guy on the block

who will buy liquor for them, that person is knowingly doing it. I think some penalty is appropriate.

Chairman DeKrey: Clerk will call the roll on a Do Not Pass on SB 2439.

12 YES 1 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Kretschmar

Date: 3/17/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2439

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee LC Amendment # _____

Action: DP DP / As Amended & Rerefer to Approp.
 DNP DNP / As Amended

Motion Made By Rep. Boehning Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				

Total (Yes) 12 (No) 1 (Absent) 0

Floor Carrier: Rep. Kretschmar

Vote is amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 17, 2009 11:35 a.m.

Module No: HR-48-5081
Carrier: Kretschmar
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2439: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2439 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2439

Mr. Chairman and Committee members, My name is Elroy Lindaas and I represent District 20 in the North Dakota Senate. District 20 is comprised of all of Traill county and parts of Steele, Cass and Barnes counties.

I appear before you today as prime sponsor of SB ²⁴³⁹~~2349~~. This bill would require that anyone over 21 years of age who delivers alcohol to a minor on a second offense would face a mandatory fine of at least 250 dollars plus at least 48 consecutive hours imprisonment. On a third offense the penalty would be a fine of at least 500 dollars and at least 10 days confinement in a minimum security facility.

I have observed, over the years that these individuals receive what I would classify a slap on the wrist, a very light penalty and many treat it as a joke. It is my observation that the supplier of the alcohol initiates the crime. While the people under the age of 21 are charged with minor is possession or minor consuming alcohol is serious, it is secondary to someone supplying them with the alcohol. Simply put, they would not be in that predicament .

According to an article in the Fargo Forum, dated November 27, 2008, North Dakota has the worst record for drunken driving. It states that 47.7 percent of traffic fatalities in 2007 were caused by drunken drivers.

Some of you may have heard me mention that a few years ago, I lost a niece and a nephew due to drunken drivers. These were two separate accidents, just a couple of years apart and both of them were just beginning their college years. The driver that killed my nephew was only thirteen years old and drunk accompanied by a person over 21 years of age. Both my niece and nephew were deprived of a life, beyond 19 years.

On November 21st, 2008 the Fargo Forum Listed 85 Minors who were convicted of Minors in possession of alcohol. In the same article they listed 5 individuals convicted of selling Alcohol to minors. I am not suggesting that these 5 individuals supplied the alcohol to these 85 but it may be more than a coincidence. On December 14th the Fargo Forum published another article where the Center for disease control stated that youths between 12 to 20 years old consume 11

percent of all alcohol consumed in the United States. No wonder the hospitality industry wants the issue to be business as usual. The same article states that in 2005, there were 145 thousand emergency room visits by youths 12 to 20 for injuries and other conditions linked to alcohol.

I have been told before by a person that represents the alcohol industry that this is not a rational proposal. I think we need to take decisive action to try turn these frightening numbers around.

Mr. Chairman, I would welcome any questions you might have.

SB 2439

Chairman Nething and committee members, my name is: Duane Peterson, 15 1st St SE, Gwinner, North Dakota. Two years ago in March, my wife, Trudy, and I stood over the limp body of our first born son Logan, while we waited his fate in an emergency room in Lisbon, North Dakota. The doctors told us if we would've brought him in 20 minutes later he would have died from alcohol poisoning. I've seen first hand what alcohol can do to a young person.

My wife woke me up at 2:30 that morning to tell me that friends brought Logan home in an intoxicated state. They couldn't get him out of the car. I quickly got dressed and hurried outside. Logan was lying in the back seat motionless. When I grabbed his arm it was if, he was dead. I shouted at him, I shook him and grabbed him under his arms to drag him out of the car. Half way to the house we decided to take him to the hospital. I knew his condition was way beyond anything I've ever seen before. We were getting scared. While loading Logan into our van I told his friends to come with us because I wanted answers. I drove as Trudy held Logan's lifeless body in her arms as she was screaming for him to wake up. I drove as fast as our vehicle could go for the 15 mile trip to Lisbon from Gwinner. Even though it went very quickly, it felt like it took an hour. During the drive, we called 9-1-1 and told them we were coming, they asked questions like, Is he breathing? Is he moving? Does he have a pulse? How shallow are his breaths?

The hospital staff was waiting for us when we arrived. They rushed Logan into the emergency room, cut off his clothes, pushed us out and closed the door behind us, leaving Trudy and I holding each other, praying Logan would live. Fortunately, Logan is still with us today and is presently a young, strong, tall, handsome young man whom we love dearly. Interestingly enough, Logan works for the Wilkin County Sheriffs office in Breckenridge, Minnesota as a jailer and is pursuing a career in law enforcement.

After talking with Logan and his friends about that night, I found out how easy it was for Logan to get alcohol and how easy it was for him to nearly die from it. All it took was a phone call to a friend and he had the booze. It was too easy. I felt I failed as a father that night. How could I have prevented this from happening? Why didn't I ask where he was going? Why didn't I go look for him? While in high school Logan was always involved in sports, and we never had any problems with him drinking. My wife and I drank very little and we kept very little in the house.

What we experienced, I wouldn't wish on anyone. I'm here because people don't understand that supplying alcohol to kids under 21 is illegal. I'm here to show support for this bill, but most of all I'm here to save lives.

I would like to thank you for the opportunity to meet with you and I will answer any questions you may have. Thank you.

Mr. Chairman and Committee members, My name is Elroy Lindaas and I represent District 20 in the North Dakota Senate. District 20 is comprised of all of Traill county and parts of Steele, Cass and Barnes counties.

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On November 21st, 2008 the Fargo Forum Listed 85 Minors who were convicted of Minors in possession of alcohol. In the same article they listed 5 individuals convicted of selling Alcohol to minors. I am not suggesting that these 5 individuals supplied the alcohol to these 85 but it may be more than a coincidence. More recently, on March 6th, The Forum listed 48 convictions of Minors in possession and 2 convictions for delivery of alcohol to minors. Once again, one individual had

a fine of 350 dollars with 200 dollars conditionally suspended. The other incurred a fine of 100 dollars, conditionally suspended. Hardly, even a slap on the wrist.

On December 14th, 2008, the Fargo Forum published another article where the Center for disease control stated that youths between 12 to 20 years old consume 11 percent of all alcohol consumed in the United States. No wonder the hospitality industry wants the issue to be business as usual. The same article states that in 2005, there were 145 thousand emergency room visits by youths 12 to 20 for injuries and other conditions linked to alcohol.

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