

FISCAL NOTE
Requested by Legislative Council
04/03/2017

Amendment to: HB 1343

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1343 First Engrossment with Senate Amendments changes certain restrictions for domestic wineries.

- 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.*

If enacted, HB 1343 First Engrossment with Senate Amendments will change some requirements for the exemption relating to the ingredient utilization and increase the limitation on special event permits for domestic wineries. All of these may result in additional alcohol wholesale and gross receipts taxes but the amount cannot be determined.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.3228.3402

Date Prepared: 04/04/2017

FISCAL NOTE
Requested by Legislative Council
01/16/2017

Amendment to: HB 1343

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
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Revenues						
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- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1343 reduces certain restrictions for domestic wineries.

- 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.*

If enacted, HB 1343 will eliminate the ingredient utilization requirements, allow the retail sale of other alcoholic beverages, and eliminate the limitation on special event permits for domestic wineries. All of these may result in additional alcohol wholesale and gross receipts taxes but the amount cannot be determined.

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.3228.3402

Date Prepared: 01/29/2017

FISCAL NOTE
Requested by Legislative Council
01/16/2017

Bill/Resolution No.: HB 1343

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	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
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HB 1343 reduces certain restrictions for domestic wineries.

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If enacted, HB 1343 will eliminate the ingredient utilization requirements, allow the retail sale of other alcoholic beverages, and eliminate the limitation on special event permits for domestic wineries. All of these may result in additional alcohol wholesale and gross receipts taxes but the amount cannot be determined.

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.3228.3402

Date Prepared: 01/29/2017

2017 HOUSE INDUSTRY, BUSINESS AND LABOR


HB 1343

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1343
1/30/2017
27581

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Domestic winery ingredient utilization requirements and special event permits.

Minutes:

Attachment 1, 2, 3, 4

Chairman Keiser: Opens the hearing of HB 1343.

Rep Boschee: Introduces HB 1343. Trying to figure out through the 3 tier system for cider which is considered a wine. Talks about the amendments (Attachment 1).

4:30

Breez (Attachment 2).

Mark Vining~Rookery Rock Winery & Agassiz Shores Vineyard near Wheatland, ND: (Attachment 3.)

28:30

Randy Albrecht~Wolf Creek Winery: We have a hard time resourcing fruit. We do urge you to pass this bill.

Chairman Keiser: Is there anyone else here to testify in support, opposition?

Pat Ward~Representing the ND Wholesale Liquor Distributors: Attachment 4.

34:10

Rep Becker: As they have gotten a little bit more & a little bit more, how does that been a disadvantage to the citizens of ND, small business & the economy?

Ward: To this point, I don't think it has but what this bill will do is completely get away from that requirement. It opens up the grandholm scrutiny & what is left is the volume cap of the 25,000 gallons' production.

Rep Ruby: You mentioned other states, do they have the same requirement for local/instate products?

Ward: Yes, to my knowledge they do.

Rep Ruby: All 51%.

Ward: I don't know the percentage of each state.

Chairman Keiser: Anyone else here to testify in opposition, neutral position of HB 1343? What are the wishes of the committee? Closes the hearing.

Rep Ruby: Moves the amendment.

Rep Boschee: Second.

Chairman Keiser: Further discussion on the amendment.

Voice vote – Motion carried.

Chairman Keiser: We have HB 1343 before us as amended. Further discussion:

Rep Boschee: The biggest change from the originally drafted bill is moved the language from page 1 to page 2.

Rep Ruby: Moves a Do Pass as Amended.

Rep Boschee: Second.

Chairman Keiser: Further discussion?

Rep Boschee: As we saw in testimony, the success of the local winery has hampered themselves with the current regulations. By opening this up & staying within that gallon mark, will keep us still producing. I would like to see this continue to grow.

Roll call was taken on HB 1343 for a Do Pass as Amended with 13 yes, 0 no, 1 absent & Rep Beadle is the carrier.

1/30/17 DO

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1343

Page 1, line 20, remove "A domestic winery is not precluded from retailing alcoholic beverages"

Page 1, line 21, remove "regardless of source in accordance with state and local licensing requirements"

Page 1, line 21, overstrike the period

Page 2, line 12, overstrike "To participate in a pride of Dakota event sponsored by the department of"

Page 2, line 13, overstrike "agriculture, a domestic winery shall obtain a special events permit."

Page 2, line 23, overstrike "obtain a domestic winery" and insert immediately thereafter "acquire a state and local"

Page 2, line 23, overstrike "and a retailer license allowing"

Page 2, line 24, overstrike "the onpremises sales of" and insert immediately thereafter "to sell at retail other"

Page 2, line 24, overstrike "at a restaurant owned by the licensee"

Page 2, line 25, overstrike "and located on property contiguous to" and insert immediately thereafter "in addition to the wine produced at"

Renumber accordingly

Date: Jan 30, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1343

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 17.0724.02001 Title 04000

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____ Voice vote ~ Motion carried

Date: Jan 30, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1343

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made By Rep Ruby

Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	<u>Ab</u>		Rep Dobervich	X	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Beadle

REPORT OF STANDING COMMITTEE

HB 1343: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1343 was placed on the Sixth order on the calendar.

Page 1, line 20, remove "A domestic winery is not precluded from retailing alcoholic beverages"

Page 1, line 21, remove "regardless of source in accordance with state and local licensing requirements"

Page 1, line 21, overstrike the period

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Renumber accordingly

2017 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1343

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1343
3/14/2017
Job Number 29150

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to domestic winery ingredient utilization requirements and special event permits

Minutes:

6 Attachments

Chairman Klein: Called the committee back to order.

Representative Joshua A. Boschee: Introduced the bill. Written testimony, see attachment #1. (:13-3:10)

Senator Poolman: It appears to me that this bill makes these people producers, distributors and retailers. What can't they do anymore after this bill?

Representative Boschee: That is correct, it is opening it up a little bit more for the wineries but they still have the threshold that they have to stay under. Similar to what we have seen with the breweries a lot of the wineries do have some self-distribution but we also see an increase of them going through local wholesalers. As their business grows, in order to create that efficiency, they have been working with the distributors. It does allow that carve out for them to chip away at the 3 tier model, it is still within that threshold that is in the original law. We are not looking to increase production or raise that threshold it is still within that threshold.

Senator Poolman: But we are allowing them to be a full bar, right?

Representative Boschee: As long as they are following local licensing law, yes. So the local licensor would determine what type of alcohol could be provided and how that is served or with what. The biggest concern with that one again, is with the interpretation of the tax department they have to have a kitchen attached to their premise in order to have that retailers license, this cleans that up. The original intent of the authors was not to have that kitchen as part of it in order to retail other products.

Chairman Klein: Could we not have just had a carve out for cideries?

Representative Boschee: We looked at it in a variety of different ways. We created with the tax departments advice, basically a 2 tier system within the winery classification and in the

end we found there was compromise to bring it all together under this bill. The primary concerns for the cider's is that first subsection with utilization and then subsection 3 being able to market other beers at their facility. Yes, we could have gone and created a different classification and we did have a bill drafted for that but in the end all parties came together with this.

Senator Burckhard: This basically puts the 3 tier system at risk?

Representative Boschee: That would be up to the interpretation of the courts as we have seen with many of these alcohol bills. In the end this puts a winery a little bit closer to what we see with some of our brewery's and their ability to source other products. They have to work within the distribution network. We know that some wineries and some facilities are able to self-distribute but we are seeing that as production increases those wineries and breweries have decided to work with the distributors to facilitate that.

Senator Burckhard: You just mentioned the 2 tier system.

Representative Boschee: We are talking about two classifications not tiers for the domestic wineries, keeping basically the way things are and creating something specific for cidery.

Senator Casper: Will they be able to produce the wine or cider and sell it on site are they going to be able to have multiple other locations where they are selling the wine or cider that they are producing at a different site based on this?

Representative Boschee: No that is not in the current classification.

Senator Casper: So if I owned a cidery I would be able to have my cidery and I would be able to, if we passed this, I would be able to have a space on premises where I am producing the cider, where I can sell the cider I am producing and if I am licensed under a local jurisdiction I would be able to sell local craft beers that I would buy from a distributor and if I chose to sell the cider I produced, if I wanted to sell it around the region I could also sell that with a distributor under this bill?

Representative Boschee: That is correct.

Senator Poolman: I seem to remember in the last biennium that the state through the department of agriculture provided grants, do you remember how much that was, was it one hundred thousand dollars?

Representative Boschee: I don't remember the specifics but that sounds vaguely familiar and it was under the 200,000-dollar threshold through APUC, Agricultural Products Utilization Commission, in which to get the wine and grape industry growing. They will continue to work with APUC as they continue to grow.

Chairman Klein: Didn't we buy 6,000 seedlings to be grown out there?

Representative Boschee: I will refer that to the Grape and Wine Association for the specifics of that but yes. Research is happening at NDSU.

Breezee Hennings, Wild Terra Cider & Brewing: Written testimony, see attachment #2. (10:00-14:10)

Senator Poolman: I sympathize with what you are trying to do because I do think it is very similar to what our local brewers are doing but this bill seems to be much larger than what you actually need. Can you isolate which parts of this bill are most important for you in your case.

Breezee Hennings: The most important one to do what we want to do in Fargo is the touching on the restaurant portion. And that is just keeping it on the same playing field as the breweries. It's not alcohol we wouldn't get hard alcohol. It would be wine based products, so you would have our cider and other ciders, wine and mead. So that is something that is important to us, that restaurant portion and not having to have that. And second the utilization with the apple trees. It takes four to six years to get a good crop and Ethan and I have intentions of buying land but even if we planted apple trees tomorrow it would take six years to get some apple crop. We have been more hindered by the utilization law but it is cost effective to keep using North Dakota apples.

Chairman Klein: In the next six years, you are still going to be spending a lot of money for apples? What are you doing now?

Breezee Hennings: Right now we are shipping in juice from Oregon and from Michigan. Right now it is just our test batches.

Chairman Klein: So it isn't really a North Dakota cider?

Breezee Hennings: No, it is just an urban cider right now which means we are not farm based.

Chairman Klein: So it wouldn't be called a North Dakota product?

Breezee Hennings: No, there is no apple trees. When we first started we tried really hard to find farmers within the state with any type of berries. (16:40-17:27)

Mark Vining, Owner of Rookery Rock Winery and Agassiz Shores Vineyard, President of the North Dakota Grape and Wine Association: Written testimony, see attachment # 3. Also handed out testimony for Greg and Lisa Cook, 4e Winery, see attachment #4. (17:50-23:15)

Chairman Klein: What is TTB?

Mark Vining: Text Trade Bureau it is a subdivision of the alcohol, tobacco and firearms. The TTB is our regulatory agency

Chairman Klein: Should you begin using fruit from other areas but the bottles will be for sale in your shop. Isn't there going to be some confusion because some our labeled one way and others the other way? (25:15-26:17)

Mark Vining: There are already wineries within the state that are producing wine that is not sourced 75% from within the state. That cannot be labeled as North Dakota wine.

Chairman Klein: Should you know when you go into your brewing season how much you have contracted for?

Mark Vining: That is the issue, just trying to forecast. We are working with growers now, trying to get contracts put together. (31:34-32:24)

Chairman Klein: So there is no coordination?

Mark Vining: We are actually in the process of putting together a clearinghouse. (32:35-33:13)

Senator Campbell: If you had 25% minimum of outside product you can call it a North Dakota product, correct and if it is 75% of product from South Dakota or Minnesota can you keep the same label?

Mark Vining: That is not correct. The face of the label cannot say North Dakota, on the face of the label it has to be very clear that it comes from the state and if it does not come from within the state it cannot say North Dakota. (34:25-35:05)

Senator Campbell: You can't say North Dakota on it, can't you just put on the back say 5% from California and 25% from North Dakota and still call it Mark's Best?

Mark Vining: I can call it anything I want as long as I indicate what is in it. He continues going over his testimony. (36:00-46:30)

Chairman Klein: Did we go over the twenty permit level?

Mark Vining: 4e winery used 17 of their permits and they actually turned down invitations because they were concerned and our question is, if it is being regulated by the state tax department than why should there be a limit to the growth of those wineries. Continues going over testimony at subsection 3. (46:36-49:01)

Chairman Klein: So this would allow you to be a bar?

Mark Vining: It would allow the winery to be a bar if they are so licensed in the jurisdiction and they would have to source their products from distributors. All this does is remove the restaurant requirement from the existing bill. (49:08-50:19)

Senator Burckhard: Should the supporters of the 3 tier system be nervous about this kind of stuff?

Mark Vining: They should be on our side. This will provide them with more potential customers. We are not breaking down the 3 tier system this in no way changes the 3 tier system. Wineries only self-distribute on a very limited basis and that was approved in a previous legislative session.

Senator Burckhard: You made a reference several times to the original intent. What do you think the original intent was?

Mark Vining: Speaking with Jack Peterson who was one of the original drafters, the original intent as I understand was that this would be alcohol a special exemption. That allowed a winery with a contiguous restaurant to automatically get a license. They were authorized by state statute to have a license. I don't know if this circumvented local licenses or if it superseded but his was really a special exemption and that was not the intent. He continues going over his testimony and ends. (51:52-56:54)

Chairman Klein: We are going to have to work on this and we are going to make sure that everybody is good and the discussion will continue here.

Randy Albrecht, Wolfcreek Winery: In support. He shared about his winery and the business. He shared that they run out of wine every year because there is a shortage of fruit. They come to his place to buy the wine or they distribute. He said that the permits will help them to grow.

Patrick Ward, North Dakota Liquor Distributors: In opposition. Written testimony, see attachment #5. (1:02-1:06:30)

Senator Casper: If you are a brewery in Fargo that has a tap room attached to your location, could they apply and get a retail license to sell other products there?

Patrick Ward: I don't think they can under the law but Janet Seaworth knows more about the brewery law.

Bob Nelson, President of Johnson Brothers of North Dakota: In opposition. Shared about his company. My biggest goal is to understand and protect the 3 tier system. I represent three domestic wineries, a meadery, and a distillery. I am personally for the development of wineries and breweries etc. in North Dakota. Where I think we get off base is as we agreed to give carve outs to the domestic winery business they are the producer, the wholesaler and self-distribution, they are the retailer and it seems to me the next step is that they want to be an importer. In other words, they can buy when from anywhere. The industry has given a lot of concessions and advantages to the domestic winery. (1:08-1:13:45)

Chairman Klein: You talked about how many people you have employed, the facilities you have and the number of trucks you have on the road. Do you have any number on the tax revenue you help support?

Bob Nelson: Excise tax wise it is almost 3 million dollars.

Senator Casper: Asked if he distributes Kirkland wine.

Bob Nelson: I don't distribute that brand but a competitor does. (1:14:40-1:15:30)

Senator Casper: Technically you have to offer that to a customer of yours who is purchasing from your distributorship?

Bob Nelson: That is part of the protection of the 3 tier system. (1:16:03-1:16:55)

Senator Casper: How many states is Johnson Brothers in and the alcohol and wine distributing business is a little bit different than the beer distribution business.

Bob Nelson: It is a consolidating business. Our company is in about twenty states now as a wholesaler and we are one of the little guys. We represent in North Dakota around 250 suppliers. (1:17:52-1:19:47)

Janet Seaworth, Executive Secretary and Legal Counsel for the North Dakota Beer Distributors Association: In opposition. Written testimony, see attachment #6. (1:20:13-1:25:30)

Chairman Klein: Asked if she recalled how they came to the restaurant issue? (1:22:35)

Janet Seaworth: Said it was her recollection that it may have been there intent or their wish to be able to have a full on retail license but the intent of the legislature is expressed in the legislation which allowed them to be able to sell other alcohol if they had a restaurant. If I recall correctly the reason for that was to help avoid some of these Granholm problems. It is more likely than that the entity that would take advantage of that would have a presence in North Dakota because they would have a restaurant in North Dakota continuous to the winery. If you remove that requirement there is nothing that would require a winery to actually locate in North Dakota in order to take advantage of those retail privileges.

Chairman Klein: When you suggested that domestic wineries are prospering. I think I heard that we are going to get some more under the current law and why do we need to change what seems to be a good thing right now.

Janet Seaworth: I think the fact that they are growing is a great thing. I think if there are some tweaks that need to be made, maybe they get so successful that they can't get enough North Dakota ingredients to satisfy the percentages. It seems like that is something a tax commissioner could look at as part as an exemption. I think if they are to remain as domestic wineries with all of the privileges and support that this state provides for them, it seems to me that they ought to be required to use some North Dakota ingredients.

Chairman Klein: We also heard that someone reached out to the distributors and obviously their communications were lost. Would you see that there is still an opportunity to work with those folks?

Janet Seaworth: I think so, certainly our preference is always to work on these issues before the legislative session and before a bill was introduced but it is not too late. We would be happy to work with them. (1:27-1:27:15)

Chairman Klein: I certainly would like to see something that is beneficial to them but still hold the line on some of these things I heard from you.

Myles Vosberg, Tax Commissioners Office: Neutral. We don't really have any testimony. We did visit with the folks with the wine industry before this bill. They brought it to our attention and let us know that they were going to introduce this bill. We didn't have concerns with the administration of it and we told them that at the time. (1:28:05-1:28:35)

Chairman Klein: The big distributors, they are under some rule that we tax their bottles of wine?

Myles Vosberg: It would be under the same tax rules because they are the manufacturer and may also sell retail, they are responsible for the tax. If you go from a manufacturer to a wholesaler and then the wholesaler sells to the retailer, the wholesaler is the one that is remitting the tax to us.

Chairman Klein: So they pay twice?

Myles Vosberg: They don't pay twice they would just pay the same tax. They would pay the retail tax and also pay the wholesale level tax.

Chairman Klein: Closed the hearing.

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

HB 1343

3/15/2017

Job Number 29211

Subcommittee

Conference Committee

Committee Clerk Signature

Eva Lebelt

Explanation or reason for introduction of bill/resolution:

Relating to domestic winery ingredient utilization requirements and special event permits

Minutes:

No Attachments

Chairman Klein: It sounds as if the wine folks, according to what I heard threw the cider people under the bus. They said this is how it is going to be and so there wasn't a whole lot of wiggle room there. I am going to continue to work on that. I don't think they should have a liquor license. Senator Casper and I have discussed that we don't allow the craft brewers to have a liquor license, they have a lot of flexibility with the restaurant license. As it relates to the amount of events, they were up to seventeen and they want no limit and I am thinking thirty. My thought was, I would like to do something to reach out to the cider business. We never thought about cider when we passed the law so I am going to work on trying to figure out a way that this fruit thing gets addressed. That is where I am at on this. I am just looking for input.

Senator Campbell: I like the bill. I know both sides well and I just think that events and promotions should be irrelevant. Who are we to say they can only have twenty or twenty-five or forty or whatever it is, who cares. These are good family people struggling, starting out and most of them aren't making any money but they are building up their business so that someday they can. As far as buying product from the outside as long as you are selling a good quality product and it is a North Dakota based company who cares where the product comes from, I could care less. It is a North Dakota company these are young families starting out. I have been in a lot of industries where you can't get your raw supply. If a customer likes the quality of the product, I don't care if it is potato chips or wine or cider, it doesn't matter and it is a North Dakota based company I am going to give them 110% of my support in business. I like this bill and I am going to support it as is. The winery guys were looking for support and everybody kind of bailed on them. To me this is just right. It is common sense helping these small companies out and that is just my opinion.

Chairman Klein: I am going to continue to work on this. I am not going to support it the way it is written. I think they are totally going against the 3 tier system. When you can produce and you can distribute and you can retail it. That is totally against what we have in the current law. This is a hobby turned into a fun thing and we gave them a ton of cash some years ago

and that kind of troubled me that we were providing money. There is a point where we have to also protect the folks that have been here who have been paying the taxes and have been following the law and who are heavily regulated. Let's just let the Johnson Brothers run without any rules too. That wouldn't be fair. There are laws because of reasons.

Senator Poolman: I think that the language at the beginning of the bill that relates to locally grown products comes because we were giving them money, because we were giving them about one hundred thousand dollars every biennium with the idea that this was going to be a value added agriculture kind of situation. Now they want to strike that after they've had between eighty and a hundred thousand dollars every biennium. I just think you can't sort of take back part of that language.

Chairman Klein: That is what happens when we try to do the right thing and then people just chip away at that.

Senator Casper: It seems to me, I won't disagree with what Senator Poolman is saying there at all but during the testimony with the gentleman from the wine association, I see from both the guys that testified that we are having great success. It would tie into the cider thing too. We will see if they have great success. Our university system is doing a fantastic job and this is just a timeline thing. To be able to produce the raw materials that we need to be able to use as a valuable agriculture in the state. That essentially the production has outpaced the development of the raw product. What I wouldn't want to do is hinder the growth of the industry in the state because the production hasn't gotten there yet with the hope that the production will get there. I couldn't believe that they are selling that much wine, that sounds awesome to me. I would guess that there is land in North Dakota that isn't good for corn or soybeans but good for grapes. If we do an amendment and have some middle ground to allow them to continue to expand their production while the development of the supply chain grows.

Chairman Klein: We need a clearing house to figure out what is going on. We have a gentleman in Fessenden that raises a ton of aronia berries. Last fall he was wondering if he could put them at the grocery store because he didn't have a place to go with them. The market he had the year before fell through. That is where I am having difficulty somehow their business plan hasn't been worked through completely. I understand that is an issue that needs to be addressed in the bill.

Senator Casper: We don't require the brewers to buy all of their product from the state. It doesn't make sense that we have that requirement of them.

Chairman Klein: Brewers are buying some local malt and they are using that as a marketing handle.

Senator Roers: I was very impressed with the amount of success, with the money we have apparently given, these people have had. We invested this money through NDSU and I never knew they were having that kind of success. He indicated that they had like twelve varieties that they were ready to start spinning out here for Northern climates. That is huge, that is a huge AG value issue. I think it worked well. I agree with you that these people have kind of gotten over the hump where I think they can see that there is money to be made in this

industry and we should encourage that. Whatever we do with this bill it gives us the control that we have in the beer industry and all of the others but yet encourages them and incentivizes them to grow the industry. Allowing them to buy product out of North Dakota, if it continues to help them to grow their business why not. They have to have 75%, so regulation is there to determine what is North Dakota grown. There it is, if they can create a good product and people will buy it that is the free market system.

Chairman Klein: Going back to the day when we provided that money the gentleman from Casselton was totally opposed to what the other grape group was doing. He said Minnesota has already done all of this research why are you spending 250,000 dollars to do research in North Dakota, why don't we piggy back on that. I think we started with 500,000 and we got it down to something that was workable. They are not always together and on the same page in some of their efforts.

Senator Campbell: These people have a huge incentive to grow their own product and it just takes time. This will help them grow their industry. It is just common sense that we have to help them. I still believe in the free enterprise system especially if you have a good quality product.

Chairman Klein: There is a few more dollars in potatoes than there is in wine.

Senator Burckhard: Mark Vining made reference to the dormant commerce clause, what did he mean by that?

Senator Casper: The commerce clause in the constitution allows federal government to regulate interstate commerce. Almost 90% of the laws passed by congress are all justified that they are constitutional because they have the right to legislate with regard to anything that involves interstate commerce. So the dormant commerce clause says what we can't do is say that North Dakota companies have these rules but non North Dakota companies have a different set of rules. The opposition was that bigger companies coming into North Dakota like Galo Wines and setting up an operation and they could just ship in all of the raw products, because they don't have to buy them here, produce wines in north Bismarck and have a retail location where they could sell the wine without going through a distributor. (14:14-17:20)

Senator Burckhard: Randy Albrecht talked about a shortage of fruit but he said his production over the last three years has been, three hundred and then twelve hundred and now sixteen hundred. He actually said he could make a living at sixteen hundred. There must be some pretty good profit margarines.

Chairman Klein: Is he making a living or paying his expenses? I don't think that is his livelihood. Over the years most of the folks who have come to these doors asking for help with the wine have had another job over the years and have picked this up as being an opportunity that is fun and relaxing. You get out there you raise grapes and you meet new people. Most of these people have had another career and just moved into this. We need to continue to work on this. I am not good with the way it is but obviously there are some that are but we will keep working with this and see what we can come up with. We will stand at ease then.

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1343
3/29/2017
Job Number 29793

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to domestic winery ingredient utilization requirements and special events permits

Minutes:

4 Attachments

Chairman Klein: We will call the committee to order. We have one bill that we need to consider yet and that is before us today. There are two sets of amendments. There are amendments which I prepared and I believe there are amendments that Senator Roers has prepared. We can speak to the differences. I will go through mine so that everyone understands. I have left most of the original language in there. This is a value added agriculture we want them to maintain their revenue source from the Ag Department, we want them to work with those guys but understanding that there are times when there could be a shortage of fruit for a variety of reasons. Originally we had weather conditions, pest or plant disease epidemics or other natural causes. Understanding that there can be other concerns I have added the language after consultation with the Agriculture Commissioner and he is the holder of the purse that he should work with the Tax Commissioner. That is where on my amendments page 1, line 16 we would add, "a shortage of produce grown in this state exists for a particular crop rendering a winery unable to meet its production needs". I did chat with the commissioner and he is okay with being that authority because he goes back to the years when we got this going and there was some value added ideas involved in this. Then the other thought that came up and the discussion that came up was on the cider folks. I ran these by Representative Boschee and I will tell you where he doesn't agree with me but in general on my amendments he is in very much agreement. I am going to address the one where he doesn't agree with me and that is on page 1, lines 22-24. The words, "not juiced" are the words that we are hung up on. The concern being there that we are not just bringing in some wine from somewhere else and putting it in a bottle in North Dakota and calling it a North Dakota wine. That covers the first part. There was some discussion on the permits. The concern being that there was a shortage and you could go to the Tax Commissioner and ask for a dispensation. I asked how many times they have been asked whether or not they could buy fruit from outside, never was his comment. We haven't had an issue as far as the Tax Commissioner is concerned so it troubles me a bit that we seemed to have brought that up. The other part was on the special permits. Originally they wanted unlimited and I have gone to thirty but that does not include the special permits that they would be allowed under the Pride of Dakota programs. They would be having a total of thirty-five and then lastly the

original bill allowed them to be a bar. That they would be eligible to sell any sort of liquors and that I have had stricken and they continue to operate under the current rules that we have provided them. I have provided additional flexibility because we wanted to add value to our North Dakota produce. We wanted to go hand in hand with something that is becoming an industry plus raise that fruit here in the state. Those are my amendments. My only other thought is that the words "not juice" is the only part we will be working on when we reach conference committee. Amendments attached, see attachments #1 and #2.

Senator Burckhard: How does this accommodate the folks that were interested in apple juice?

Chairman Klein: That is where, if the exemption applies, if they cannot find or there is a shortage they can go ahead and bring that in.

Senator Casper: One of my concerns is those folks and based on this amendment the cider folks would still be able to produce cider they would just have to ship apples in. Right now they can't ship apples in. Are we drawing a line when we are saying, "not juice" or "finished wine", where is that line in between? I am guessing there is expenses dealing with shipping. Do they just have to do raw apples under this?

Chairman Klein: I have been back and forth with Breezee Hennings on this issue and I reached out to her. I know that is her biggest concern providing that fruit but I guess when she developed her business plan she understood the laws of the state of North Dakota and developed her cider under those rules. I understand she has been bringing in some juice, so there has been some flexibility there. The cider thing is probably the biggest issue.

Senator Casper: What is the difference if they have to ship raw apples. I could see that there would be an argument that it would be different then liquid juice because it has already gone through part of the processing. From everything I have heard from these folks, originally they wanted to be able to buy the raw apples from North Dakota. Under your amendment they would be able to get apples from someone in Duluth. I don't get what the deal is about not wanting to get raw apples. I don't see it as a huge burden.

Chairman Klein: That is what is going to continue the conversation because I don't think this is going to end if this passes the Senate.

Senator Roers: The transportation of the raw product. Obviously if you were to transport containers of apples and bring them to North Dakota and compress them down to a juice to make cider that is going to be a lot costlier than bringing in the juice when it is already compressed down. The volume is much, much different. On the grape side there is a shelf life concern and to prevent damage or loss during transportation they have to crush it but it is still a large volume. Why would we want to transport all of that volume, let's reduce it down to the lowest needed form and then transport it. I will hold the rest of my comments until I present my amendments.

Senator Poolman: I just want to remind the committee that the whole overarching difference between wineries and everybody else who is in the business of selling liquor is that their making liquor is that they are allowed to sell it off-sale, on-sale. They can make it and they

can sell it. They enjoy a special privilege because they are making it with North Dakota products. They are making it here in a way that is different than bigger manufacturers, so they have the privilege of selling off-sale and all sorts of things, that others who make liquor can't do. If we want to talk about letting them be juice, then I say that is great than they become a manufacturer and then we say, you are not going to sell it off-sale and then we say you don't get the same privileges. I am happy to say bring in the juice but then you are not going to be in all of these categories.

Chairman Klein: You are suggesting if they become a manufacturer they are no longer going to be a retailer?

Senator Poolman: Correct.

Chairman Klein: That is how this thing originally got going years ago.

Senator Roers: The Micro-Brewery Industry, they have a certain amount they can distribute themselves and then they start going to the distribution network. I believe the same is true with of the wine people as the micro-brew people. They are not restricted in bringing in raw product to build their product to do the very same thing.

Senator Poolman: It is my understanding that the wineries already have more privileges than the brewers.

Senator Burckhard: Are we ready for a motion.

Chairman Klein: I am not sure how we are going to do this because Senator Roers wants to present his amendment. I will give him the opportunity to present his amendment and the discussion thereof. There is one more issue that will probably be attached to my amendment. It is not on there now, if you look I am already on version eight because I keep trying to tweak this thing to get everybody in the loop. Representative Mock has an issue in Grand Forks and that being if you are a holder of a class one liquor license, in your own establishment you cannot shut your establishment down for a private party and allow people under 21 in the lounge. The amendment that Representative Mock was looking for, allows the holder of the class one liquor license to shut his facility down for a special event and then allow under 21 year olds. This is a Grand Forks issue that came to him.

Senator Poolman: If they want to do that it is a city issue. They should go to the city that has given them this license. We at the Blarney Stone had two of our sons graduate from High School at the same time and so we shut down a portion of our bar and we had to remove all of the liquor and cover all of the taps. We had a certain area that the people under 21 were allowed to be in and then we had a closed door into another bar so that people over 21 could go and get an alcoholic beverage and we did that by working with our local city and local law enforcement so everybody knew what was going on and we had to have special approval from the city. I would say if they had planned ahead in Grand Forks that they could have gone to their city to ask for a special exemption for that. I would see that as a local issue, a city issue and they could do that there.

Chairman Klein: And it doesn't belong on here?

Senator Poolman: And it probably does not belong on this bill.

Senator Casper: I think it is important that we do something. I think that the amendment that Representative Mock would like is going to complicate the issue. Dealing with alcohol issues that are regulated at the state level they are going to affect state wide. I think that is something that is going to be fettered out a little bit more than an amendment.

Chairman Klein: I thank you so much for that because version six was drafted with that on it and then after consultation and discussion I just figured it might drag the entire bill down a bit.

Senator Roers: This ingredient thing, I think maybe is becoming quiet cumbersome and complicated because this industry has grown. I know you as a legislature have planted some seed money with the wine group and have allowed tremendous amount of research to be done in the arena of creating new varieties that are North Dakota hardy and that has proven to the point where this industry is about ready to take off on its own. There are several wineries that have the capacity to do way more than what the North Dakota products can produce for them. They have asked to have the ingredient piece removed from this bill so they can go out and buy juices from other suppliers across the United States and increase their production to the point that this business would thrive in North Dakota. Obviously having North Dakota wine is important to them but in order for them to produce enough product and sell it on the retail market and again they are not trying to eliminate the distribution network and if we need to study how much that can be, that is another question. I did not look into how much they can sell across the counter or through the distribution network. Our bill does ask for the ingredient piece to be removed. The second portion of our bill on line 9, page 2, asks for events to be moved from 20 to 35 events a year. The slight difference between this amendment and the one of Chairman Klein is that they are asking for 35 plus the 5 that come with the Pride of Dakota events. The third thing that was requested was to do away with the requirement to be attached to a restaurant to sell multiple types of liquor. They have taken that requirement off the table and they are willing to live with the language as it previously was stated. That in essence is the majority of our amendment. It is really a matter of allowing this industry to go out and move to the next level of its development and as it relates to juices and transportation, I think we have already expressed our concerns there. Amendments attached, #3 and #4.

Senator Casper: When all of these laws were put in place and the winery guys, I got the call that they have worked on this for six years and got a talking to about this, was this subject thoroughly studied were there a lot of studies during the interim period? Looking at both of these amendments I think that is the only thing I thought would be worth adding. **(23:32-25:57)**

Chairman Klein: The wine issue has been debated as long as I have been here and we have been careful to craft legislation that stays within the perimeters of the law and which seems to have provided certainly an opportunity for the wineries to grow because they have grown so large and so fast that they are running out of North Dakota fruit. I am questioning where we are hindering them. I don't know the answer to that and what the other states are doing. This isn't the first time we have asked the wine folks to sit down with the wholesale

distributors and the beer folks and try to put together a program where everybody feels comfortable where we aren't going beyond the system and isn't going to conflict with the commerce clause. We are on that fine line here I believe maintaining that particular sort of rulemaking because I suppose the distributors have more money than the wine guys. Is it worthy of a study, I don't know? I can't answer that.

Senator Roers: It does seem to me that we do need to define that triggering event that gets you from a small producer to having to distribute through the 3 Tier system. I know the wine producers are fully supportive of the 3 Tier system and they are not trying to circumvent anything in that relationship and I don't have the answer to where that triggering event is but we need to do that research. We need to look at this industry as a growing industry much like the micro-brewery industry. Today they are hugely successful and they are not restricted from bringing product from outside the state. Why are we so worried about that, let that market correct itself? If there is a market for North Dakota wine it will be on the shelf with a North Dakota label but if they can produce wine from South Dakota or anywhere else and market it as North Dakota and make a profit out of it why would we hinder that from happening? **(27:52-29:27)**

Senator Poolman: That is why I like the Chairman's amendment because it does give them the exemption. If there is a shortage you can call up the Tax Commissioner and have them talk to the Ag Commissioner and if there is a shortage by all means ship in your apples, ship in your grapes. I feel that this is the perfect compromise to give them the ability to have those exemptions to get it now while they are still building the crops so eventually the crops will catch up with the demand. **(29:33-30:40)**

Senator Campbell: I like Senator Roers amendment better because your shipping in raw product a lot of times the freight rate can be more than the product itself. Why wouldn't we want to help an industry because that can be the difference from being profitable or not. I think it is a case of over regulating. **(30:45-32:28)**

Senator Roers: I do agree with a lot of what you said Senator Poolman with one exception and that is the juice piece. I really think that adds a huge burden on the industry to transport that product. What you said about the other stuff, the regulation and the Tax Commissioner and the Agricultural people weighing in. I don't oppose that but the other thing the research piece. I am really excited about the fact that NDSU was able to take this money and the majority of the money has gone to research and a small amount has gone to marketing, and take this and immediately turn it into twelve varieties. It is just more proof that our research people are getting it done. **(32:31-33:44)**

Senator Casper moved for a do pass on amendment 17.0724.04008.

Senator Burckhard seconded the motion.

Roll Call Vote: Yes-4 No-3 Absent-0

Senator Casper moved a do pass as amended.

Senator Poolman seconded the motion.

Senate Industry, Business and Labor Committee
HB 1343
March 29, 2017
Page 6

Roll Call Vote: Yes-5 No-2 Absent-0

Senator Poolman will carry the bill.

March 29, 2017

CL
3/29/17
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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1343

- Page 1, line 8, remove the overstrike over "~~The percentage of ingredients by~~"
- Page 1, remove the overstrike over lines 9 through 14
- Page 1, line 15, remove the overstrike over "~~determines, upon the commissioner's own motion~~" and insert immediately thereafter "after consultation with the agriculture commissioner"
- Page 1, line 15, remove the overstrike over "~~or at the request of a domestic~~"
- Page 1, line 16, remove the overstrike over "~~winery, that~~" and insert immediately thereafter "a shortage of produce grown in this state exists for a particular crop rendering a winery unable to meet its production needs; or"
- Page 1, line 16, remove the overstrike over "~~weather conditions, pest infestations, plant disease epidemics, or other~~"
- Page 1, remove the overstrike over lines 17 through 19
- Page 1, line 20, remove the overstrike over "~~exemption.~~" and insert immediately thereafter "The exemption applies only to the use of out-of-state produce, not juice or finished wine. All produce must be fermented and bottled in this state."
- Page 2, line 9, remove the overstrike over "~~for not more than~~"
- Page 2, line 9, after "~~twenty~~" insert "thirty"
- Page 2, line 9, remove the overstrike over "~~events per calendar year~~"
- Page 2, line 12, remove the overstrike over "~~To participate in a pride of Dakota even sponsored by the department of~~"
- Page 2, remove the overstrike over lines 13 and 14
- Page 2, line 15, remove the overstrike over "~~does not count against the~~"
- Page 2, line 15, after "~~twenty~~" insert "thirty"
- Page 2, line 15, remove the overstrike over "~~special events limitation.~~"
- Page 2, line 23, remove the overstrike over "~~obtain a domestic winery~~"
- Page 2, line 23, remove "acquire a state and local"
- Page 2, line 23, remove the overstrike over "and"
- Page 2, line 24, remove the overstrike over "~~a retailer license allowing the onpremises sales of~~"
- Page 2, line 24, remove "to sell at retail other"
- Page 2, line 25, remove the overstrike over "~~at a restaurant owned by the licensee and located on property contiguous~~"
- Page 2, line 26, remove the overstrike over "te"
- Page 2, line 26, remove "in addition to the wine produced at"

Renumber accordingly

CA
3/29/17
2 of 2

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1343**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.0724.04008 – Klein’s Amendments

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Casper Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais		x
Vice Chairman Campbell		x			
Senator Roers		x			
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 4 No 3

Absent 0

Floor Assignment _____

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

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1343**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.0724.04008

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Casper Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell		x			
Senator Roers		x			
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Poolman

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

REPORT OF STANDING COMMITTEE

HB 1343, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1343 was placed on the Sixth order on the calendar.

Page 1, line 8, remove the overstrike over "~~The percentage of ingredients by~~"

Page 1, remove the overstrike over lines 9 through 14

Page 1, line 15, remove the overstrike over "~~determines, upon the commissioner's own motion~~" and insert immediately thereafter "after consultation with the agriculture commissioner"

Page 1, line 15, remove the overstrike over "~~or at the request of a domestic~~"

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Page 2, line 25, remove the overstrike over "~~at a restaurant owned by the licensee and located on property contiguous~~"

Page 2, line 26, remove the overstrike over "~~to~~"

Page 2, line 26, remove "in addition to the wine produced at"

Renumber accordingly

2017 TESTIMONY

HB 1343

Jan 30, 2017

17.0724.02001
Title.

Prepared by the Legislative Council staff for
Representative Boschee
January 25, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1343

Page 1, line 20, remove "A domestic winery is not precluded from retailing alcoholic beverages"

Page 1, line 21, remove "regardless of source in accordance with state and local licensing requirements"

Page 1, line 21, overstrike the period

Page 2, line 12, overstrike "To participate in a pride of Dakota event sponsored by the department of"

Page 2, line 13, overstrike "agriculture, a domestic winery shall obtain a special events permit."

Page 2, line 23, overstrike "obtain a domestic winery" and insert immediately thereafter "acquire a state and local"

Page 2, line 23, overstrike "and a retailer license allowing"

Page 2, line 24, overstrike "the onpremises sales of" and insert immediately thereafter "to sell at retail other"

Page 2, line 24, overstrike "at a restaurant owned by the licensee"

Page 2, line 25, overstrike "and located on property contiguous to" and insert immediately thereafter "in addition to the wine produced at"

Renumber accordingly

Jan 30, 2017

HB 1343

2

My husband and I are starting a business that would produce hard cider in Fargo ND with a taproom that will feature other local/regional hard cider and wine products.

When we first started working on this idea in early 2016, of having a family business we thought the most difficult part would be financing. That was quickly shifted to legislation being our struggle. I started first with reading multiple times over, the North Dakota century code and the city of Fargo ordinances, which as an ordinary citizen was daunting. Next I contacted someone on the liquor board for clarification. His first answer was wrong and I had to educate him on what hard cider is as his answer to me was in the understanding that beer and cider were classed the same. They are not, federally hard cider falls under the legislation of wine as it is an agricultural based product and not malt based like beer. After I brought this to his attention it was apparent local laws had to be changed as the only ones who were able to thrive under our intended business model were breweries.

However in our effort to amend local ordinances we found there was a conflict as the North Dakota Domestic Winery license as it is now allows for retail sale of other alcoholic beverages only if you run a restaurant on site. This seems wholly unfair as breweries do not have this hindrance.

This did not deter us though, as we are passionate and committed to this project. Months of effort have paid off as they approved at the last liquor board meeting, to amend a license that was overly regulated and cumbersome at best, which was clearly shown as no business in Fargo had applied for it. This newly amended license (Class W,) closely copied an "on sale" beer license (Class C). This license not only will benefit our business but more clearly defines what businesses are allowed to sell or not sell as the Fargo liquor board's understanding has become more refined.

We ask you now please, to approve HB1343.

This bill allows us to fully manifest our vision of creating a cider scene in North Dakota. The path to creating excitement and commerce is options. Options push our economy forward. This would enable our business to sell North Dakota produced hard cider but also other local and regional ciders giving our customers options to create passion and enthusiasm.

Approving this bill would not only add to the diversification this state has to offer economically but also agriculturally. Demand for local cider creates demand for local apples.

We have so much farmland that could be used to grow apples commercially to be pressed for cider but also to have local apples available in our grocery stores and farmers markets. There is great potential.

The passing of this bill would help small business owner's positively impact their local communities by adding to the diversification their city and state has to offer, thus retaining citizens. I was born in Fargo and lived there until I was 18 and then quickly moved to Oregon thinking how greatly I never wanted to come back to North Dakota. But once my husband and I had our two babies, we reluctantly moved back to be closer to family. Now, being in North Dakota feels different, it's exciting. Surprisingly North Dakota as a whole has become a state of innovators and entrepreneurs adding to our long standing quality of a great work ethic. This type of atmosphere adds to the already great reasons to live in this state. I hope that you will seriously consider the positive reasons to pass this bill so that we can further add to why this is a great state to live and have a business in.

January 30, 2017

Re: HB1343

Chairman Keiser and Committee Members,

My name is Mark Vining. I am the owner of Rookery Rock Winery and Agassiz Shores Vineyard located near Wheatland, ND. The 12 acre orchard and vineyard was founded in 2009. The winery began operations the fall of 2016 and will open for retail sales this spring.

I am also the current president of the North Dakota Grape and Wine Association.

I request your support of HB1343 both as a winery owner and as the President of the NDGWA, which represents the majority of wineries in ND.

HB1343 has three major components that amend Chapter 5-01-17.

Sub 1.

The percentage of ingredients to be sourced from North Dakota presents an impediment to the growth of the wine industry. Presently there are 15 domestic wineries licensed in ND. 13 of those wineries were operational in 2015 with sales totaling 11,586.15 gallons. 14 wineries were open for sales in 2016 with total sales estimated at 13,500 gallons. One more winery that became operational in 2016 will open for sales in 2017 and there are at least 3 more wineries in the start up phase. 16 wineries producing an average of 1,000 gallons each would require approximately 180,000 lbs. of fruit, grapes, and other ingredients. Wineries are already finding it difficult to source all, or most, of their ingredients from ND producers. As the number of wineries increases and the average production per winery increases there will soon be a shortage of North Dakota produced ingredients to meet the increasing demand.

A few legitimate questions to the elimination of the ingredient requirement are:

“What prevents a winery from sourcing all of its ingredients from outside ND if there is no restriction?”

1. Wineries prefer to source their ingredients as close to the winery as possible to reduce transportation costs and to insure fresh and sound product.
2. Most wineries in the State use the fact that theirs is North Dakota wine as a marketing strategy. Due, in part, to the size of the domestic wineries the \$4 per bottle wines produced in large volumes by large wineries is not viable for the domestic wineries. A significant part of ND wineries marketing strategy is to promote local wine made with local ingredients coupled with the experience of discovering those wines at the local wineries. It is that marketing strategy that allows domestic wineries to sell their products in the \$10 - \$16 per bottle range. It is that price range that allows a domestic winery to realize a reasonable profit and return on investment.
3. The TTB label requirements dictate that wine labeled as “North Dakota” wine must have a minimum of 75% of the ingredients sourced from North Dakota.

“What prevents a large Out Of State winery from building a winery in ND and shipping in all of its ingredients?”

1. The 25,000 gallon limit on domestic wineries makes the required capital investment to build and fit up a winery unattractive to a large out of state winery.
2. Large out of State wineries for the most part do not have the desire to produce fruit wine or wine from cold hardy grapes.
3. The cost to ship ingredients to ND from California, Washington, Oregon, Chile, etc. makes locating a winery in ND less financially feasible. It is generally accepted that it is more economical to ship finished product from a manufacturing facility than it is to ship raw product to the manufacturing facility. Examples of such business models include Ethanol Plants and Sugar Beet Processing Plants.

The continued growth of this emerging industry will present opportunities and incentives for prospective fruit and grape growers. Due to the large capital investment required and the 3 – 5 years before a crop is harvested a prospective grower must have some reasonable expectation that the will

sufficient demand for their product. The elimination of the ingredient requirement should be viewed as an opportunity to future vineyards and orchards to be planted in ND.

Sub 2.

The 20 event permit limit may limit a winery's ability to market its product and grow its sales. As wineries increasingly participate in weekend farmer markets, civic celebrations, street fairs, fairs and carnivals, etc. they are forced to choose which events they must forego. Two wineries were nearly at their 20 event limit in 2016. This proposed amendment does not change the requirement of wineries to obtain permits from the Tax Commissioner. It also does not eliminate the requirement that a permit application be submitted to the Tax commissioner for each specific event. It further does not eliminate the requirement that the winery must comply with all of the local licensing authority requirements. This amendment will not allow a winery to obtain a permit to operate an off site location on a continuous basis. This amendment will not allow a domestic winery to own and operate an offsite permanent bar or other retail facility. This amendment retains the three tier system.

Sub 3.

Presently the interpretation of the existing statute by the State licensing authority is that a winery may only obtain a retail license for a restaurant that is contiguous to the winery. The intent of the original legislation was to make such a license available to a winery without need of another separate retail license. It was not intended to make such a license the only license for which a winery may apply. The amendment to Sub 3 in this bill changes the language to meet the original intent. Under the amendment a domestic winery may apply for a retail license that may be issued by the state and local licensing authorities without the requirement of a restaurant. It retains the requirements that a winery must apply for, qualify for, and obtain a retail license to sell alcoholic beverages, at retail, other than those produced by the winery. None of the existing statutes regarding the three tiered system are changed by this amendment.

In 2011 a Strategic Plan was developed by the ND Grape and Wine Advisory Committee. In 2015 a similar plan was reaffirmed by the North Dakota Grape and Wine Association. The Plans include an increase of Domestic Wineries to 20 -25 by the year 2025. With 16 licensed wineries as of 2016 and 3 more in the star up phase the industry is well on its way t meet or exceed that plan. As the number of wineries increase and the number of acres of vineyards and orchards increase the economic impact to the State increases. Based on a study completed a couple of years back for the state of Minnesota the forecast economic contribution of 17 wineries producing 1,000 gallons each would be nearly \$3 million. The number of domestic wineries has doubled from 8 in 2011 to 16 in 2016. The total gallons of wine produced by domestic wineries are forecast to nearly double in that same time frame from 8.5 thousand gallons to nearly 17 thousand gallons.

This bill does not break down the 3 tier system. It does not adversely affect impact distributors, wholesalers, or retailers. It does not impact the State to require a Fiscal Note. It does not, as a practical matter, open the door to “big box retailers”, large out of state wineries, out of state distributors, out of state manufacturers.

This bill does allow the continued growth of an emerging industry in North Dakota. This bill does provide for the continuation of the growth of the economic impact to the state of North Dakota. This bill does provide an avenue for diversification of crops, business, and agri-tourism in North Dakota.

On behalf of myself as a winery and vineyard owner and as the President of the North Dakota Grape and Wine Association I ask for your support and a Do Pass vote on HB 1343.

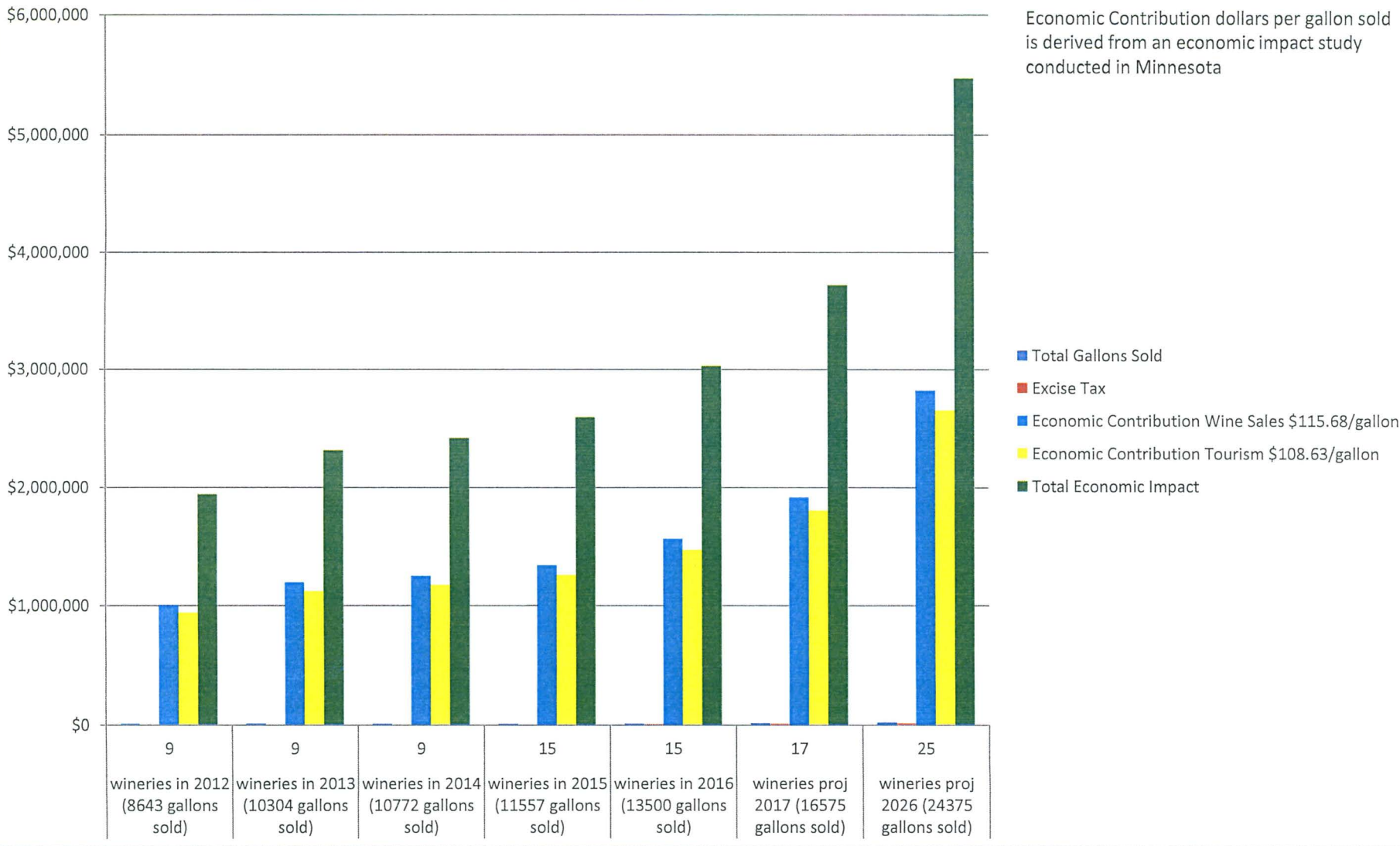
Respectfully Submitted,



Mark L. Vining

Projected Economic Contribution of Wineries in ND

975 gallons per winery annual sales (3,800 was the avg per winery in MN)



pg 5

4e winery

January 29, 2017

To: ND Legislative Committee
From: Greg and Lisa Cook, 4e Winery
Re: HB 1343

Dear Committee,

Thank you for your consideration of HB 1343. I am writing to you today to express my support for the positive changes this bill will make to the grape and wine industry in North Dakota and to share my experiences with the limitations imposed under the current regulations. This bill seeks to loosen two aspects of winery operations that are currently inhibiting growth of the industry in our state - the limitation on ingredients, and the limitation on special event permits. I would like to address each of these points separately and share with you the negative impacts these will have on my business next year.

Ingredient Limitations

My wife and I began our dream of building a North Dakota winery in 2012 when we purchased our historic farmstead just south of Casselton. After three years of working toward that dream, we opened our doors in the summer of 2015 with a small quantity of our first wines made from local fruits. We are passionate about making North Dakota wine and expressing the flavors of our local fruits and grapes. We absolutely want to put North Dakota on the front of our label. We have refused to ship in any grapes from the west coast as we are 100% dedicated to promoting our cold climate varieties and expressing the terroir of the region. Thus, our first year open to the public we did not have any wines made from grapes. In 2016 we increased our production and offered a selection of grape wines from grapes grown just across the border in Minnesota along with our portfolio of local fruits. For 2017 we increased our production to our capacity at the winery of close to 2000 gallons and are at our limit for the foreseeable future. To date we have been unsuccessful in sourcing grapes from North Dakota as there just aren't enough commercial vineyards selling grapes. Our grape wine production from ND grapes amounts to less than 1%. Believe me, we would buy them if they were available. That said, our grapes are very local and come to us from less than 100 miles away. They just happen to be grown in Erskine, MN. We are able to produce some products from North Dakota fruits (rhubarb, plums, aronia, etc.) but the volume of wine that can be made from those fruits is limited as well. For context, I have detailed our yearly approximate production of wine since we opened.

Wines released for sale

Year 1:	2015	~220 gallons	all non-grape fruits	59% North Dakota products
Year 2:	2016	~820 gallons	grapes and non-grapes	40% North Dakota products
Year 3:	2017	~1850 gallons	grapes and non-grapes	30% North Dakota Products

As you can see, we have steadily built our business up to capacity with the increase in production resulting largely from the production of grape wines added to our portfolio. As a result of added production of wine from MN grown grapes, our percentage of ND product utilization has subsequently decreased. We are currently within our ND regulations for product utilization with 30% product in year three. However, we are now faced with a problem going forward. We will have to **reduce production of grape wines by 1/3** for year 4 in order to comply with the product utilization limits. And in year 5 that production will have to be decreased again.

Realistically, we are a couple of decades away from sustainable grape production in North Dakota to produce enough fruit for current wineries. And with several new wineries about to open, the need will be greater. While fruit wines make up a portion of our portfolio, the market is looking for grape wines and we want to be able to provide them. We have a small vineyard of our own. However, it will never be large enough to produce the amount of grapes we will need. And after four years of struggling with yearly herbicide drift from neighboring soybean and wheat fields, and several harsh winters, it does not appear to be a viable vineyard.

The bottom line is that the product utilization limitation is inhibiting the growth of the North Dakota grape and wine industry.

Special Event Permit Limitation

Our first priority for our business is to provide a farm-wine experience at the winery. We love that visitors to our winery enjoy our land and continue to promote and grow ND agritourism. To that end, we are restoring our land to natural prairie and are providing a welcoming setting to sample ND wines. We also get many calls to participate in special events. We feel that the 20-permit limit inhibits our ability to help other organizations in the state. In 2016 we participated in the Red River Farmers Market in downtown Fargo. Each individual visit to the market requires a special permit. In order to participate in the one farmers market for the season, it required us to use nearly all of our allowed events (17 Saturdays during the summer). In anticipation of running out of event permits, we had to turn down many invitations from non-profit organizations and community organizers that were looking for a winery to participate. It is not just a benefit for us to participate, but our participation helps out those organizations as well by drawing more people to their holiday bazaars and community celebrations.

A 20 event limit seems to be an arbitrary limitation that serves only to inhibit small business and partnerships with community organizations. I do not see how this limitation has any positive benefits. I realize that there is a fear that if it is removed there would be abuse of special events. I would like to point out that removing the limit does not remove the requirement for the State Tax Department to authorize each and every event. A permit still needs to be requested and provided. Thus, the Tax Department would retain full control of regulating the industry. These are special events, not permanent off-site stores.

In summary, the limitations imposed in current regulations are having a negative affect on the growth of the ND grape and wine industry. We see only a win-win in the modifications of the limitations contained in HB 1343.

Thank you for your time and your kind consideration.

Yours sincerely,



Greg Cook
Owner and Winemaker

Testimony of Pat Ward in Opposition to HB 1343
H-IBL – January 30, 2017 – 9:00 a.m.

My name is Patrick Ward. I represent the ND Wholesale Liquor Distributors in opposition to HB 1343. Here are a few concerns.

This domestic winery legislation was originally crafted with some concessions from the wholesale industry even though we saw this as another exception to the laws and spirit of the three tier system. My clients represent successful domestic (ND) wineries, 1 meadery and 1 distillery. The intent of this was value added agriculture.

The legislation was crafted to ensure the use of North Dakota produce, thus creating a niche for North Dakota farmers. It is hard to argue with this!

We object to this bill. First, the guidelines to use North Dakota fruit are removed. This would allow a domestic winery to ship imported wine, mush or grapes into the State (from Chile for example) to bottle, vinify or crush and ferment, then finish. This would be the definition of a “commercial” winery, like any other winery in the world, and not a farm or domestic winery. This definition would subject our farm winery statute to even greater Granholm scrutiny. Large operations could buy wine or grapes and have considerable advantages in the market that may change the balance of today’s system.

Another big change is the elimination of a cap on special events. This has serious consequences as a domestic winery could sell wine anywhere and everywhere 365 days a year to consumers. While this would be subject to the Tax Department’s discretion to issue a permit, it is narrowly defined. Currently domestic wineries sell directly to the public at “Pride of Dakota” events and do quite well, selling up to 100 cases a day I have been told.

Also, the new legislation proposed allows a domestic winery to buy beverage alcohol, grow wholesale and compete directly with the Retail industry. It puts us in a position where our supplier becomes our competitor. Interestingly, the domestic winery’s retail customer also becomes their competitor.

HB 1343 is a special interest bill that changes the equitable, fair distribution of alcohol in North Dakota and risks putting retailers and wholesalers (large and small) at risk.

We urge a Do Not Pass on HB 1343.



North Dakota House of Representatives

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Representative

Joshua A. Boschee
District 44
517 First Street North
Fargo, ND 58102-4540

701-367-3513
jboschee@nd.gov

Committees:

Industry, Business and Labor
Agriculture

March 14, 2017

Good Morning Chairman Klein and members of the Senate Judiciary Committee.

House Bill 1343 is a bill that was initially introduced to assist a constituent with their ability to open a cidery in Fargo. You may or may not know, but hard cider, made from apples or pears is defined as a wine, not a beer as many in the public tend to think as ciders are typically marketed with beer. Those who wish to open and own a cidery prefer to operate it like brewery.

After several conversations with my constituents, the ND Grape and Wine Association and the Tax Department, we have House Bill 1343 in front of us. The legislation has three main components:

- 1) Page 1, lines 8-20 removes the percentage of local, meaning produced in North Dakota, ingredients required for a Domestic Winery License. As the ND Grape and Wine Association will attest, many of our state's local wineries have taken off in terms of business, meaning they are producing more wine than they anticipated. With this growth, the sourcing of local product has been challenging at time with a couple wineries having to stop production in late fall of the year to comply with the ingredient utilization requirement. It is still preferred by local wineries to use as much local product as possible, as that is the only way they can market their wine as North Dakota wine. Additionally, for a cidery who depends on apples primarily, there is currently not enough apple orchards in the state available to produce the quantity of cider that fits with their business model.
- 2) Page 2, lines 9 and lines 12-15 removes the threshold of 20 special event permits afforded to Domestic Wineries to provide tastings and sell their product off premise. Again, due to the success of many of the local wineries, several have had to limit the number of community events, county fairs and other events in the state to stay within their 20-permit threshold. The wineries will still be required to receive permits from the Tax Department, who will have the final authority of whether the event fits the intended purpose of statute.
- 3) Page 2, lines 23-26 provided clarification that a domestic winery does not need to have an on premise kitchen in order to retail other alcoholic beverages. Currently, the tax department interprets statute as such and the wineries contest that was not the intent of the original legislation. Clarifying this in statute also helps a cidery, who will not only market it's hard cider, but also other local and regional beers as part of its business model. Wineries will still be required to source the alcohol through the appropriate distribution sources. We have seen that as our local breweries grow in their production, most of them have worked with distributors to help market their product well before their statute requires of them.

Chairman Klein, members of the committee I would appreciate your support of HB 1343 with a Do Pass recommendation. I will stand for any questions and look forward to you hearing from the ND Grape and Wine Association and Breezee Hennings, a Fargo entrepreneur who is looking to open a cidery with her husband.

Breezee Hennings

Fargo ND in Support of HB1343

My husband and I are starting a business that would produce hard cider in Fargo ND with a taproom that will feature other local/regional hard cider and wine products.

When we first started working on this idea in early 2016, of having a family business we thought the most difficult part would be financing. That was quickly shifted to legislation being our struggle. I started first with reading multiple times over, the North Dakota century code and the city of Fargo ordinances, which as an ordinary citizen was daunting. Next I contacted someone on the liquor board for clarification. His first answer was wrong and I had to educate him on what hard cider is as his answer to me was in the understanding that beer and cider were classed the same. They are not, federally hard cider falls under the legislation of wine as it is an agricultural based product and not malt based like beer. After I brought this to his attention it was apparent local laws had to be changed as the only ones who were able to thrive under our intended business model were breweries.

However in our effort to try to amend local ordinances we found there was a conflict as the North Dakota Domestic Winery license as it is now allows for retail sale of other alcoholic beverages only if you a run restaurant on site. This seems wholly unfair as currently breweries do not have this hindrance.

This did not deter us though, as we are passionate and committed to this project. Months of effort have paid off as they approved at the last liquor board meeting to amend a license that was overly regulated and cumbersome at best, which was clearly shown as no business in Fargo had applied for it. This newly amended license (Class W,) closely copied an "on sale" beer license (Class C). This license not only will benefit our business but more clearly defines what businesses are allowed to sell or not sell as the Fargo liquor board's understanding has become more refined.

We ask you now to please to approve HB1343.

This bill allows us to fully manifest our vision of creating a cider scene in North Dakota. The path to creating excitement and commerce is options. Options push our economy forward. It would enable our business to sell North Dakota produced hard cider but also other local and regional ciders giving our customers options to create passion and enthusiasm.

Approving this bill would add to the diversification this state has to offer agriculturally. Demand for local cider creates demand for local apples.

We have so much farm land that could be used to grow apples commercially to be pressed for cider but also to have local apples available in our grocery stores and farmers markets. There is great potential. We have already reached out to over 30 berry and specialty crop farmers to discuss planting apple trees and advising them of federal grants that would assist in the planting of apple crops.

The idea that changing the utilization law is going to open up our state to BIG BOX wineries is in opposition to basic business sense. For example, we at Wild Terra would love to have 100% ND apples

but because there is no current demand, there is no crop. So we have to ship in our juice which is, depending on the time of year sometimes 3 fold what just the apple juice costs. Our hope is that as our customer base grows and there is demand of large quantities of apple juice farmers will see the potential in planting apple crop. Thus benefiting our state by adding to our agricultural diversity and us personally on reducing our costs in shipping and helping our bottom line.

Additionally, it positively impacts this state economically. First it allows businesses to grow not just the wineries but also the distributors. As we at Wild Terra expand, we will not have the time or capability to be able to self-distribute which is where the distributions are needed. Secondly for us personally we will be using the distributors right away to get regional ciders, wine and mead to have available in our tap room.

The passing of this bill would help small business owner's positively impact their local communities by adding to the diversification their city and state has to offer, thus retaining citizens. North Dakota as a whole has become a state of innovators and entrepreneurs adding to our long standing quality of a great work ethic. This type of atmosphere adds to the already great reasons to live in this state. I hope that you will seriously consider the positive reasons to pass this bill so that we can further add to why this is a great state to live in and grow a business.

March 14, 2017

Re: HB1343

Chairman Klein and Committee Members,

My name is Mark Vining. I am the owner of Rookery Rock Winery and Agassiz Shores Vineyard located near Wheatland, ND. The 12 acre orchard and vineyard was founded in 2009. The winery began operations the fall of 2016 and will open for retail sales this spring.

I am also currently the president of the North Dakota Grape and Wine Association.

I request your support of HB1343 both as a winery owner and as the President of the NDGWA, which represents the majority of wineries in ND.

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The percentage of ingredients to be sourced from North Dakota presents an impediment to the growth of the wine industry. Presently there are 15 domestic wineries licensed in ND. 13 of those wineries were operational in 2015 with sales totaling 11,586.15 gallons. 14 wineries were open for sales in 2016 with total sales estimated at 13,500 gallons. One more winery that became operational in 2016 will open for sales in 2017 and there are at least 3 more wineries in the start up phase. 16 wineries producing an average of 1,000 gallons each would require approximately 180,000 lbs. of fruit, grapes, and other ingredients. Wineries are already finding it difficult to source all, or most, of their ingredients from ND producers. As the number of wineries increases and the average gallons produced per winery increases there will soon be a shortage of North Dakota produced ingredients to meet the increasing demand.

A recent survey of ND wineries was conducted by R Kilen Consulting for the Rural Economic Area Partnership Investment Fund, Inc. The primary purpose of the survey was to determine current and future demand for

ingredients for wine production in North Dakota. The 13 wineries responding reported a 182% increase in production from 2014 to 2016. They also forecast an additional 164% production growth for the period from 2016 through 2019.

A few legitimate questions to the elimination of the ingredient requirement are:

“What prevents a winery from sourcing all of its ingredients from outside ND if there is no restriction?”

1. Wineries prefer to source their ingredients as close to the winery as possible to reduce transportation costs and to insure fresh and sound product.
2. Most wineries in the State use the fact that theirs is North Dakota wine as a marketing strategy. Due, in part, to the size of the domestic wineries the \$4 per bottle wines produced in large volumes by large wineries is not viable for the domestic wineries. A significant part of ND wineries marketing strategy is to promote local wine made with local ingredients coupled with the experience of discovering those wines at the local wineries. It is that marketing strategy that allows domestic wineries to sell their products in the \$10 - \$16 per bottle range. It is that price range that allows a domestic winery to realize a reasonable profit and return on investment.
3. The TTB label requirements dictate that wine labeled as “North Dakota” wine must have a minimum of 75% of the ingredients sourced from North Dakota.

“What prevents a large Out Of State winery from building a winery in ND and shipping in all of its ingredients?”

1. The 25,000 gallon limit on domestic wineries makes the required capital investment to build and fit up a winery unattractive to a large out of state winery.
2. Large out of State wineries for the most part do not have the desire to produce fruit wine or wine from cold hardy grapes.
3. The cost to ship ingredients to ND from California, Washington, Oregon, Chile, etc. makes locating a winery in ND less financially feasible. It is generally accepted that it is more economical to ship finished product **from** a manufacturing facility than it is to ship raw product **to** the manufacturing facility. Examples of such business models include Ethanol Plants and Sugar Beet Processing Plants.

Presently the States of Maine, Wisconsin, Montana, and Iowa have no ingredient requirements of the domestic wineries. I was not able to find any wineries in any of these states that are not a domestic winery.

The continued growth of this emerging industry will present opportunities and incentives for prospective fruit and grape growers. Due to the large capital investment required and the 3 – 5 years before a crop is harvested a prospective grower must have some reasonable expectation that there will sufficient demand for their product. The elimination of the ingredient requirement should be viewed as an opportunity for future vineyards and orchards to be planted in ND.

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Presently the interpretation of the existing statute by the State licensing authority is that a winery may only obtain a retail license for a restaurant that is contiguous to the winery. The intent of the original legislation was to make such a license available to a winery without need of another separate retail license. It was not intended to make such a license the only license for which a winery may apply. The amendment to Sub 3 in this bill changes the language to meet the original intent. Under the amendment a domestic winery may apply for a retail license that may be issued by the state and

local licensing authorities without the requirement of a restaurant. It retains the requirements that a winery must apply for, qualify for, and obtain a retail license to sell alcoholic beverages, at retail, other than those produced by the winery. ***None of the existing statutes regarding the three tiered system are changed by this amendment.***

In 2011 a Strategic Plan was developed by the ND Grape and Wine Advisory Committee. In 2015 a similar plan was reaffirmed by the North Dakota Grape and Wine Association. The Plans include an increase of Domestic Wineries to 20 -25 by the year 2025. With 16 licensed wineries as of 2016 and 3 more in the star up phase the industry is well on its way to meet or exceed that plan. As the number of wineries increase and the number of acres of vineyards and orchards increase the economic impact to the State increases. Based on a study completed a couple of years back for the state of Minnesota the forecast economic contribution of 17 wineries producing 1,000 gallons each would be nearly \$3 million. The number of domestic wineries has nearly doubled from 8 in 2011 to 16 in 2016. The total gallons of wine produced by domestic wineries are forecast to nearly double in that same time frame from 8.5 thousand gallons to approximately 17 thousand gallons.

What this bill does not do:

- This bill does not break down the 3 tier system.
- It does not adversely affect impact distributors, wholesalers, or retailers.
- It does not impact the State to require a Fiscal Note.
- It does not, as a practical matter, open the door to “big box retailers”, large out of state wineries, out of state distributors, out of state manufacturers.
- It does no create issues with the Dormant Commerce Clause. The DCC concerns expressed by Distributors in previous testimony are based primarily on the 2005 U.S. Supreme Court case *Granholm v Heald*. The *Granholm* case dealt with disparate treatment of in state wineries vs out-of-state wineries with regard to shipping and distribution of wine. This bill proposes NO CHANGES to the existing shipping and distribution clauses of the State statute. As such Dormant Commerce Clause is a non-issue.

What this bill does:

- This bill does allow the continued growth of an emerging industry in North Dakota.
- This bill does provide for the continued increase in the positive economic impact to the state of North Dakota.
- This bill does provide an avenue for diversification of crops, business, and agri-tourism in North Dakota.

On behalf of myself as a winery and vineyard owner and as the President of the North Dakota Grape and Wine Association I ask for your support and a Do Pass vote on HB 1343.

Respectfully Submitted,



Mark L. Vining

4e winery

March 14, 2017

To: Senator Jerry Klein, Chairman, Industry, Business and Labor Committee
 From: Greg and Lisa Cook, 4e Winery
 Re: HB 1343

Dear Chairman Klein and Committee Members,

Thank you for your consideration of HB 1343. I am writing to you today to express our support for the positive changes this bill will make to the grape and wine industry in North Dakota and to share my experiences with the limitations imposed under the current regulations. This bill seeks to loosen two aspects of winery operations of concern to us that are currently inhibiting growth of the industry in our state - the limitation on ingredients, and the limitation on special event permits. I would like to address each of these points separately and share with you the negative impacts these will have on my business next year if the reasonable changes in this bill are not adopted.

Ingredient Limitations

My wife and I began our dream of building a North Dakota winery in 2012 when we purchased our historic farmstead just south of Casselton. After three years of working toward that dream, we opened our doors in the summer of 2015 with a small quantity of our first wines made from local fruits. We are passionate about making North Dakota wine and expressing the flavors of our local fruits and grapes. We absolutely want to put North Dakota on the front of our label. We have refused to ship in any grapes from the west coast as we are 100% dedicated to promoting our cold climate varieties and expressing the terroir of the region. Thus, our first year open to the public we did not have any wines made from grapes. In 2016 we increased our production and offered a selection of grape wines from grapes grown just across the border in Minnesota along with our portfolio of local fruits. For 2017 we increased our production my more than two fold to nearly 2000 gallons. To date we have been unsuccessful in sourcing grapes from North Dakota as there just aren't enough commercial vineyards in production selling grapes. Our grape wine production from ND grapes amounts to less than 1%. Believe me, we would buy them if they were available. That said, our grapes are very local and come to us from less than 100 miles away. They just happen to be grown in Erskine, MN. We are able to produce some products from North Dakota fruits (rhubarb, plums, aronia, etc.) but the volume of wine that can be made from those fruits is limited as well. For context, I have detailed our yearly approximate production of wine since we opened.

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Year 2:	2016	~820 gallons	grapes and non-grapes	40% North Dakota products
Year 3:	2017	~1850 gallons	grapes and non-grapes	30% North Dakota Products

As you can see, we have steadily built our business building momentum with the increase in production resulting largely from the production of grape wines added to our portfolio. As a result of added production of wine from MN grown grapes, our percentage of ND product utilization has subsequently decreased. We are currently within our ND regulations for product utilization with 30% product in year three. However, we are now faced with a problem going forward. We will have to **reduce production of grape wines by 1/3** for year 4 in order to comply with the product utilization limits. And in year 5 that production will have to be decreased again.

Realistically, we are a couple of decades away from sustainable grape production in North Dakota to produce enough fruit for current wineries. And with several new wineries about to open, the need will be greater. While fruit wines make up a portion of our portfolio, the market is looking for grape wines and we want to be able to provide them. We have a small vineyard of our own. However, it will never be large enough to produce the amount of grapes we will need. And after four years of struggling with yearly herbicide drift from neighboring soybean and wheat fields, and several harsh winters, it does not appear to be a viable vineyard.

The bottom line is that the product utilization limitation is inhibiting the growth of the North Dakota grape and wine industry and could limit potential cooperative growth of vineyards in the state.

Special Event Permit Limitation

Our first priority for our business is to provide a farm-wine experience at the winery. We love that visitors to our winery enjoy our land and we continue to promote and grow ND agritourism. To that end, we are restoring our land to natural prairie and are providing a welcoming setting to sample ND wines. We also get many calls to participate in special events. We feel that the 20-permit limit inhibits our ability to help other organizations in the state. In 2016 we participated in the Red River Farmers Market in downtown Fargo. Each individual visit to the market required a separate special permit. In order to participate in this one farmers market for the season, it required us to use nearly all of our allowed events (17 Saturdays during the summer). In anticipation of running out of event permits, we had to turn down many invitations from non-profit organizations and community organizers that were looking for a winery to participate in their activities. It is not just a benefit for us to participate, but our participation helps out those organizations as well by drawing more people to their holiday bazaars and community celebrations.

A 20 event limit seems to be an arbitrary limitation that serves only to inhibit small business and partnerships with community organizations. I do not see how this limitation has any positive benefits. I realize that there is a fear that if it is removed there would be abuse of special events. I would like to point out that removing the limit does not remove the requirement for the State Tax Department to authorize each and every event. A permit still needs to be requested and provided. Thus, the Tax Department would retain full control of regulating the industry. These are special events, not permanent off-site stores.

In summary, the limitations imposed in current regulations are having a negative affect on the growth of the ND grape and wine industry. We see only a win-win in the modifications of the limitations contained in HB 1343.

Thank you for your time and your kind consideration.

Yours sincerely,



Greg Cook
Owner and Winemaker

Testimony of Pat Ward in Opposition to Engrossed HB 1343
S-IBL – March 14, 2017 – 10:00 a.m.

My name is Patrick Ward. I represent the ND Wholesale Liquor Distributors in opposition to Engrossed HB 1343. We have three major issues with this bill.

1. North Dakota Fruit

This domestic winery legislation was originally crafted with some concessions from the wholesale industry even though we saw this as another exception to the laws and spirit of the three tier system. Wholesalers represent successful domestic (ND) wineries, 1 meadery and 1 distillery. The original intent of this was value added agriculture.

The legislation was crafted to ensure the use of North Dakota produce, thus creating a niche for North Dakota farmers. It is hard to argue with this! Now they want to do away with this. It also allowed new wineries to gradually build up their vineyards by using less North Dakota fruit at the beginning.

We object to this bill. First, the requirement to use North Dakota fruit is completely removed. Instead of creating an exception to the ingredient requirement for hard cider, p. 1, lines 8-20, they remove it for ALL wineries. This will now allow a domestic winery to ship imported wine, mush or grapes into the State (from California or Chile for example) to bottle, vinify or crush and ferment, then finish. This would be the definition of a "commercial" winery, like any other winery in the world, and not a farm or domestic winery. This definition would subject our farm winery statute to even greater Granholm scrutiny regardless of what the proponents believe. Large operations could buy wine or grapes and have considerable advantages in the market that may change the balance of today's system. It will not help them sell their novelty product which is already more expensive than a lot of very good wines.

2. Unlimited Cap on Events

Another big change is the elimination of a cap on special events, p. 2, lines 12-15. This has serious consequences as a domestic winery could sell wine anywhere and everywhere 365 days a year to consumers. While this would be subject to the Tax Department's discretion to issue a permit, that discretion is narrowly defined. Currently domestic wineries sell directly to the public at "Pride of Dakota" events and do quite well, selling up to 100 cases a day I have been told. The problem is one or two wineries nearing 20 events, 17 I believe they said. It would be much more prudent to simply raise the cap to say 25 events per year.

3. Liquor License Violates 3 Tier System

Also, the bill proposed allows a domestic winery to buy and sell beverage alcohol and compete directly with the Retail industry. It puts us in a position where our

supplier becomes our competitor. Interestingly, the domestic winery's retail customer also becomes their competitor. The bill takes away their requirement to have a restaurant at the winery, p. 2, lines 23-26, and would essentially allow them to have a bar at the winery. Why then couldn't a large retailer, like Sam's, manufacture and sell its own beer and wine? There have already been federal cases challenging the purpose and intent of volume caps.

HB 1343 is a special interest bill that changes the equitable, fair distribution of alcohol in North Dakota and risks putting retailers and wholesalers (large and small) at risk. It opens the entire system to the "unintended" consequence of large scale dismantling.

Domestic wineries already receive state funds for their association and statutory advantages to help them succeed. At this point they provide little tax revenue compared to current wholesalers and retailers. North Dakota should continue to require their use of North Dakota fruit at the winery to be authentic.

We urge a Do Not Pass on HB 1343.

P:\PWARD\Legislative 2017\Testimony - HB 1343.Senate.doc

Engrossed HB 1343

Testimony before the Senate Industry Business and Labor Committee

March 14, 2017

Janet Demarais Seaworth

Executive Secretary and Legal Counsel

North Dakota Beer Distributors Association

My name is Janet Seaworth, I am Executive Secretary and Legal Counsel for the North Dakota Beer Distributors Association. We have 22 beer distributors in North Dakota paying \$36M in wages and salaries and \$3.2M in excise taxes every year. Most, if not all, of our beer distributors also distribute wine, including wine made in North Dakota. We have some concerns about HB 1343.

The native ingredient requirement should be retained. HB 1343 would remove the requirement that a domestic winery use ingredients grown and produced in North Dakota. The statutes allowing domestic wineries are premised on the use of native fruit as value added agriculture. If wineries find it difficult to obtain the needed North Dakota ingredients, current law already allows them to request an exemption from the Tax Commissioner. Perhaps a better solution is to amend the percentages required or expand the circumstances for which an exemption may be granted.

Domestic wineries should not be allowed to operate as retailers. HB 1343 would allow a domestic winery to obtain a retail license to sell any alcohol regardless of source. Domestic wineries may already manufacture, distribute to retailers pursuant to N.D.C.C. 5-01-20, and sell their own product on sale or off sale. Allowing wine manufacturers to also operate as a retailer would result in a complete vertical integration and collapse of the three tier system, as they would be fully operating in all three tiers. It would also create commerce clause constitutional issues under Granholm v. Heald, 544 U.S. 460 (2005) because we don't allow out-of-state manufacturers to hold retail licenses.

Domestic wineries should not be allowed to have unlimited special event permits. HB 1343 would allow unlimited special event permits for domestic wineries. That has the potential to turn a winery into a retailer, operating any number of days as a "pop up" winery. If additional permits are needed, it would be appropriate to increase the number allowed, rather than to allow unlimited permits.

It appears that North Dakota's domestic wineries are prospering while operating within the current system. We would certainly urge your careful consideration of this bill. Expanded three-tier exemptions, like retail privileges, are not without risk to distributors and retailers. Whenever three-tier exemptions are allowed for in-state small manufacturers, there is always the chance that out-of-state manufacturers will want to sell outside the system. We would urge you to vote No on HB 1343.

17.0724.04008

FIRST ENGROSSMENT

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1343

Introduced by

Representatives Boschee, Beadle, Dobervich, Kasper, D. Ruby, Sukut

Senators Burckhard, Casper, Heckaman, Marcellais, Roers

1 A BILL for an Act to amend and reenact section 5-01-17 of the North Dakota Century Code,
2 relating to domestic winery ingredient utilization requirements and special event permits.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 5-01-17 of the North Dakota Century Code is amended
5 and reenacted as follows:

6 **5-01-17. Domestic winery license.**

7 1. The tax commissioner may issue a domestic winery license to the owner or operator of
8 a winery located within this state to produce wine. The percentage of ingredients by
9 volume, excluding water, of wine produced by a domestic winery which must be grown
10 and produced in this state must be at least ten percent in the second year of licensure,
11 twenty percent in the third year of licensure, thirty percent in the fourth year of
12 licensure, forty percent in the fifth year of licensure, and fifty-one percent in the sixth
13 and subsequent years of licensure. Domestic wineries may be granted an exemption
14 from the ingredient utilization requirement whenever the state tax commissioner
15 determines, upon the commissioner's own motion after consultation with the
16 agriculture commissioner or at the request of a domestic winery, that a shortage of
17 produce grown in this state exists for a particular crop rendering a winery unable to
18 meet its production needs; or weather conditions, pest infestations, plant disease
19 epidemics, or other natural causes have reduced the quantity or quality of produce
20 grown in this state to an extent that renders compliance with the ingredient utilization
21 requirement infeasible. The exemption is effective for one year unless the tax
22 commissioner issues a new exemption. The exemption applies only to the use of
23 out-of-state produce, not juice or finished wine. All produce must be fermented and
24 bottled in this state. A domestic winery may purchase, at wholesale or retail, brandy for

Sixty-fifth
Legislative Assembly

- 1 use of onpremises fortification. A domestic winery license may be issued and renewed
2 for an annual fee of one hundred dollars, which is in lieu of all other license fees
3 required by this title.
- 4 2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail
5 lots, and not for resale, and may sell or direct ship its wine to persons inside or outside
6 of the state in a manner consistent with the laws of the place of the sale or delivery in
7 total quantities not in excess of twenty-five thousand gallons [94625 liters] in a
8 calendar year; glassware; wine literature and accessories; and cheese, cheese
9 spreads, and other snack food items. A licensee may dispense free samples of the
10 wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be
11 made on Sundays between twelve noon and twelve midnight. The tax commissioner
12 may issue special events permits ~~for not more than twenty~~ thirty events per calendar
13 year to a domestic winery allowing the winery, subject to local ordinance, to give free
14 samples of its wine and to sell its wine by the glass or in closed containers, at off-
15 premises events. To participate in a pride of Dakota event sponsored by the
16 department of agriculture, a domestic winery shall obtain a special events permit.
17 Participation by a domestic winery in a pride of Dakota event sponsored by the
18 department of agriculture does not count against the ~~twenty~~ thirty special events
19 limitation. A domestic winery may not engage in any wholesaling activities. All sales
20 and deliveries of wines to any other retail licensed premises in this state may be made
21 only through a licensed North Dakota liquor wholesaler. For any month in which a
22 domestic winery has made sales to a North Dakota wholesaler, that domestic winery
23 shall file a report with the tax commissioner no later than the last day of each calendar
24 month reporting sales made during the preceding calendar month. When the last day
25 of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the
26 first working day thereafter.
- 27 3. A domestic winery may obtain a domestic winery ~~acquire a state and local~~ license and
28 a retailer license allowing the onpremises sales of ~~to sell at retail other~~ alcoholic
29 beverages at a restaurant owned by the licensee and located on property contiguous
30 to ~~in addition to the wine produced at~~ the winery.

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1 4. A domestic winery is subject to section 5-03-06 and shall report and pay annually to
2 the tax commissioner the wholesaler taxes due on all wines sold by the licensee at
3 retail, including all wines shipped directly to consumers as set forth in sections 5-03-07
4 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the
5 year following the year sales were made. When the fifteenth of January falls on a
6 Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The
7 report must provide such detail and be in a format as prescribed by the tax
8 commissioner. The tax commissioner may require that the report be submitted in an
9 electronic format approved by the tax commissioner.

17.0724.04008
Title.

Prepared by the Legislative Council staff for
Senator Klein

March 28, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1343

Page 1, line 8, remove the overstrike over "The percentage of ingredients by"

Page 1, remove the overstrike over lines 9 through 14

Page 1, line 15, remove the overstrike over "determines, upon the commissioner's own motion"
and insert immediately thereafter "after consultation with the agriculture commissioner"

Page 1, line 15, remove the overstrike over "or at the request of a domestic"

Page 1, line 16, remove the overstrike over "winery, that" and insert immediately thereafter "a shortage of produce grown in this state exists for a particular crop rendering a winery unable to meet its production needs; or"

Page 1, line 16, remove the overstrike over "weather conditions, pest infestations, plant disease epidemics, or other"

Page 1, remove the overstrike over lines 17 through 19

Page 1, line 20, remove the overstrike over "exemption." and insert immediately thereafter "The exemption applies only to the use of out-of-state produce, not juice or finished wine. All produce must be fermented and bottled in this state."

Page 2, line 9, remove the overstrike over "for not more than"

Page 2, line 9, after "twenty" insert "thirty"

Page 2, line 9, remove the overstrike over "events per calendar year"

Page 2, line 12, remove the overstrike over "To participate in a pride of Dakota even sponsored by the department of"

Page 2, remove the overstrike over lines 13 and 14

Page 2, line 15, remove the overstrike over "does not count against the"

Page 2, line 15, after "twenty" insert "thirty"

Page 2, line 15, remove the overstrike over "special events limitation."

Page 2, line 23, remove the overstrike over "obtain a domestic winery"

Page 2, line 23, remove "acquire a state and local"

Page 2, line 23, remove the overstrike over "and"

Page 2, line 24, remove the overstrike over "a retailer license allowing the onpremises sales of"

Page 2, line 24, remove "to sell at retail other"

Page 2, line 25, remove the overstrike over "at a restaurant owned by the licensee and located on property contiguous"

Page 2, line 26, remove the overstrike over "to"

Page 2, line 26, remove "in addition to the wine produced at"

Renumber accordingly

17.0724.04005

FIRST ENGROSSMENT

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1343

Introduced by

Representatives Boschee, Beadle, Dobervich, Kasper, D. Ruby, Sukut

Senators Burckhard, Casper, Heckaman, Marcellais, Roers

1 A BILL for an Act to amend and reenact section 5-01-17 of the North Dakota Century Code,
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8 a winery located within this state to produce wine. ~~The percentage of ingredients by~~
9 ~~volume, excluding water, of wine produced by a domestic winery which must be grown~~
10 ~~and produced in this state must be at least ten percent in the second year of licensure,~~
11 ~~twenty percent in the third year of licensure, thirty percent in the fourth year of~~
12 ~~licensure, forty percent in the fifth year of licensure, and fifty one percent in the sixth~~
13 ~~and subsequent years of licensure. Domestic wineries may be granted an exemption~~
14 ~~from the ingredient utilization requirement whenever the state tax commissioner~~
15 ~~determines, upon the commissioner's own motion or at the request of a domestic~~
16 ~~winery, that weather conditions, pest infestations, plant disease epidemics, or other~~
17 ~~natural causes have reduced the quantity or quality of produce grown in this state to~~
18 ~~an extent that renders compliance with the ingredient utilization requirement infeasible.~~
19 ~~The exemption is effective for one year unless the tax commissioner issues a new~~
20 ~~exemption.~~ A domestic winery may purchase, at wholesale or retail, brandy for use of
21 onpremises fortification. A domestic winery license may be issued and renewed for an
22 annual fee of one hundred dollars, which is in lieu of all other license fees required by
23 this title.

Sixty-fifth
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- 1 2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail
2 lots, and not for resale, and may sell or direct ship its wine to persons inside or outside
3 of the state in a manner consistent with the laws of the place of the sale or delivery in
4 total quantities not in excess of twenty-five thousand gallons [94625 liters] in a
5 calendar year; glassware; wine literature and accessories; and cheese, cheese
6 spreads, and other snack food items. A licensee may dispense free samples of the
7 wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be
8 made on Sundays between twelve noon and twelve midnight. The tax commissioner
9 may issue special events permits ~~for not more than twenty~~ thirty-five events per
10 calendar year to a domestic winery allowing the winery, subject to local ordinance, to
11 give free samples of its wine and to sell its wine by the glass or in closed containers, at
12 off-premises events. To participate in a pride of Dakota event sponsored by the
13 department of agriculture, a domestic winery shall obtain a special events permit.
14 Participation by a domestic winery in a pride of Dakota event sponsored by the
15 department of agriculture does not count against the ~~twenty~~ thirty-five special events
16 limitation. A domestic winery may not engage in any wholesaling activities. All sales
17 and deliveries of wines to any other retail licensed premises in this state may be made
18 only through a licensed North Dakota liquor wholesaler. For any month in which a
19 domestic winery has made sales to a North Dakota wholesaler, that domestic winery
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23 first working day thereafter.
- 24 3. A domestic winery may obtain a domestic winery ~~acquire a state and local~~ license and
25 a retailer license allowing the onpremises sales of ~~to sell at retail other~~ alcoholic
26 beverages at a restaurant owned by the licensee and located on property contiguous
27 to ~~in addition to the wine produced at~~ the winery.
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30 retail, including all wines shipped directly to consumers as set forth in sections 5-03-07
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Legislative Assembly

1 year following the year sales were made. When the fifteenth of January falls on a
2 Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The
3 report must provide such detail and be in a format as prescribed by the tax
4 commissioner. The tax commissioner may require that the report be submitted in an
5 electronic format approved by the tax commissioner.

17.0724.04005
Title.

Prepared by the Legislative Council staff for
Senator Roers

March 24, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1343

Page 2, line 9, remove the overstrike over "~~for not more than~~"

Page 2, line 9, after "~~twenty~~" insert "thirty-five"

Page 2, line 9, remove the overstrike over "~~events per calendar year~~"

Page 2, line 12, remove the overstrike over "~~To participate in a pride of Dakota event sponsored by the department of~~"

Page 2, remove the overstrike over lines 13 and 14

Page 2, line 15, remove the overstrike over "~~does not count against the~~"

Page 2, line 15, after "~~twenty~~" insert "thirty-five"

Page 2, line 15, remove the overstrike over "~~special events limitation.~~"

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Renumber accordingly