

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1190

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB1190
1/15/2019
30803

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Domestic winery licenses.

Minutes:

Attachment 1, 2, 3, 4, 5

Chairman Keiser: Opens the hearing on HB 1190.

Rep Ruby: Introduces HB 1190. Talks about the history of legislation in past years. This is a majority product requirement for making wine that needs to be erased. This is a bill that is long time coming.

9:50

Rep Richter: Why is there a limit to annual events & is the same kind of limitation for the microbreweries?

Rep Ruby: Yes, there is from other type of products. That was pushback from some distributors but I don't know why they do that.

Vice Chairman Lefor: Do you know why the tax commission department issues the event permits & has it been a big issue for the industry not approving permits?

Rep Ruby: I'll let the experts answer that.

Chairman Keiser: Explains the 3 tier system in North Dakota to the new members.

Rep Kasper: How did the North Dakota manufacturers market their product today?

Rep Ruby: They get to be known from The Pride of Dakota, the winery itself & by the product.

17:10

Jeff Peterson~Own & operate Pointe of View Winery & Souris Valley Vineyard & Research: Attachment 1.

18:36

Rep Schauer: Do we know what caused the shortage?

Jeff Peterson: There always has been a shortage. The growers are not there to meet the demand.

Rep Bosch: Is the fruit that's available of equal quality?

Jeff Peterson: The quality for the most cases have quality standards. I'm a health inspected facility. I have standards to meet.

Rep Bosch: Have you ever taken the product that you didn't want?

Jeff Peterson: Really didn't answer the question.

Rep Ruby: Can you tell us the amount & varieties you are raising?

Jeff Peterson: Explains. We planted 16 years ago & it's now mature. There is around 400 vines, harvest around 2,500 pounds, close to 300 varieties trying to develop a cold hardy variety.

23:45

Rep C Johnson: In your industry, you are at risk of mother nature for shipping in fruit? The 2nd question, is it liquid or fruit?

Jeff Peterson: It can be both ways.

Rod Ballinger~Owner of the Bear Creek Winery: Gives the background for the industry to become up & going. Attachment 2.

32:50

Rep Laning: The taxation of wine, is it taxed only on the retail sale & what amount it is?

Rod Ballinger: It's taxed at the retail side at 7.5% alcohol & also an excise tax on how many gallons of wine we sell each year. As we increase, it will increase on both of those.

Rep Ruby: The cideries, do they have the same issues?

Rod Ballinger: Yes.

Ethan Hennings~Head Cider Maker & part owner of Wild Terra Cider in Fargo:
Attachment 3.

42:50

Rep Kasper: What are the impediments from allowing you to do what you wish & how HB 1190 helps you?

Ethan Hennings: We were here last session & we saw this coming but I believe it's from the distributors. Our goal is to hand over to the distributors, but we need time to develop. They want to charge 30% of your profit margin. 30% is a huge amount for a small start business. The ability to distribute for the first few years is typically in the business model & eventually hand it over to the distributors because you don't have time to handle it anymore.

Rep P Anderson: Does Minnesota have any restrictions?

Ethan Hennings: Yes I believe they do, but I don't know them. I do know that there are 5 states that do have some sort of restrictions.

Rep P Anderson: You can't use the apples from across the river?

Ethan Hennings: By law, I can't. If the law were to change, I could.

Rep Schauer: Are you talking about growing your business by 94% in 2019?

Ethan Hennings: I have just started out, so yes I do. We are planning an expansion.

Rep Schauer: Where will you be getting your apples from?

Ethan Hennings: The process in place & we asked by social multimedia & by word of mouth to get the apples.

Chairman Keiser: Anyone here to testify in support of HB 1190, opposition?

Pat Ward~Representing ND Wholesale Liquor Distributors: Attachment 4 & 5. Attachment 5 is from Rodney Hogen-Owner of Red Trail Vineyard & Past President of NDGGA & Member of the NDGWA who was unable to attend.

59:00

Rep Adams: Is all the liquor made in ND?

Pat Ward: No, they are not but they are not occupying more than 3 tiers.

Rep Adams: If the wine making manufacturers contacted you to distribute their wine, would there be a problem?

Pat Ward: Absolutely not, we do it for some now. We want to deliver their products.

Rep Ruby: You implied that I have attempted to change things that were agreed upon. There was no agreement to any changes in the past.

Pat Ward: We did capitulate the 51% fruit requirement. We did not fight that bill once that was in. We have agreed to the process we have now.

Rep Ruby: You implied when we agreed.

Pat Ward: We have agreed through the process to not oppose the bill.

Rep Ruby: There were time it was opposed all the way until it passed. Do you know where the grape grower that sent the email, sells his grapes?

Pat Ward: Sells it to someone around Minot.

Rep D Ruby: One winery.

Pat Ward: I don't know.

Rep Ruby: One wine who takes it back & sells it in his bar.

Pat Ward: I think that's correct.

Rep Richter: You referred to novelty product, if you're restricting the amount of product they can produce, how do the winery's grow into an industry?

Pat Ward: We encourage people to plant more vines, grow more grapes. Legislature has funded the grape growing industry in ND & the research at NDSU.

Rep Kasper: Are you aware of any restriction in ND law that your distributors have followed for the percentage of products from any state or country?

Pat Ward: We don't know of any.

Rep Kasper: Any industry in ND where a competitor can limit the competitor from marketing their product?

Pat Ward: Not that I can think of.

Rep Schauer: This change in law opens the courts to the 3 tier system. Can you back that up.

Pat Ward: The Granholm situation was exactly that.

Rep C Johnson: Do you have any dollar amount & taxes generated.

Pat Ward: Bob could answer that question.

Rep P Anderson: We have distilleries; do they have the restrictions on products?

Pat Ward: I don't know the rules?

Bob Nelson~President of Johnson Wholesale Distributors & Wholesalers Association:
We need to protect the 3 tier system in ND. Our concern is the unintended consequences. What this does is open it up the opportunity for somebody to claim the commerce clause & sell directly to retail from out of state. That is not what talked about or agreed to.

This is happening in ND right now where they are selling directly to ND customers. This becomes new competitors to us. It also sets up that domestic wineries are our competitors. This is what causes the friction.

Minnesota & South Dakota has a 51% ingredients clause. There is a lot of people who say they like that. They think that it protects the domestic wineries.

1:17:00

Chairman Keiser: Anyone here to testify in opposition, neutral. Closes the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1190
1/15/2019
30849

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Domestic winery licenses.

Minutes:

Attachment

Chairman Keiser: Reopens the hearing on HB 1190. What are the wishes of the committee?

Rep Kasper: Moves a Do Pass.

Rep Richter: Second.

Rep Laning: I do think we are putting the 3 system in jeopardy.

Rep Kasper: The big box store, legislation is all over the country. Big box stores aren't doing this, it's an argument. This industry needs to get started. We have to let them compete. The three tier system is a red herring trying to stop competition. If distributors get on board & encourage this industry. There would be more product what would eventually get to selling it through the distribution system, anyway. It's time to let the industry build their industry & quite putting fences around.

Rep Ruby: Page 2, line 4, there is somewhat of a limitation. The Grand Holm was for the reciprocity of action. I don't think it's an issue. The 3 tier system is constitutional & isn't a requirement.

Chairman Keiser: I'm too, concerned about 3 tier system. There are people who spent a lot of money getting to where they are at in the 3 tier system. We need to help the industry to succeed because it's our industry. Explains history of the 3 tiers & how it affects ND I'm going to support the argument of the testimony.

12:10

Rep Kasper: The industry has less than 1% of market in ND now. As far as eating up the market, it's not going to happen.

Rep Schauer: I'll support the system. We are all in or all out, one or the other. I'm all in.

Rep Richter: There is not enough grapes & the industry grows, it will either spark the industry or won't. I'm going to support it.

Roll call was taken for a Do Pass on HB 1190 with 12 yes, 0 no, 2 absent & Rep P Anderson is the carrier.

Date: Jan 15, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1190

House _____ Industry, Business and Labor Committee _____

Subcommittee

Amendment LC# or Description: _____

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

Other Actions Reconsider _____

Motion Made by Rep Kasper Seconded By Rep Richter

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Rep O'Brien	x	
Vice Chairman Lefor	Ab		Rep Richter	x	
Rep Bosch	x		Rep Ruby	x	
Rep C Johnson	x		Rep Schauer	x	
Rep Kasper	x		Rep Adams	x	
Rep Laning	x		Rep P Anderson	x	
Rep Louser	x		Rep M Nelson	Ab	

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep Anderson

REPORT OF STANDING COMMITTEE

HB 1190: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
HB 1190 was placed on the Eleventh order on the calendar.

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1190

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1190
3/26/2019
Job #34234

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

relating to domestic winery licenses.

Minutes:

Att. #1-4

Chairman Klein: Opened the hearing on SB. All members were present.

Representative Dan Ruby, District 38: in 2011 Bill Peaches put in a farm winery bill so people could grow wine on their property. It was a value added thing. It was very limited for a typical winery to operate. A bill in 2003 changed it to a domestic winery. Set higher limits. More profitable business model. Through the years, it was brought to our attention that it was difficult for new wineries to have 51% North Dakota product. We did a step up in the first five years. That allowed them to do some out of state products and develop their relationships with product producers. One winery would make wine out of honey in order to meet that amount. So the way the current law is, people go to buy their wine, they consider it a North Dakota wine. They learn their trade that has been in existence for quite a while. It is getting to be more of a hindrance because they do look at the highest demand product which is wine made from grapes. There are people that have vines growing. NDSU is, cideries are considered wineries which take up a huge amount of apples, that has been a very difficult, it will take several years to take any products. The bill you have before you remove that majority product requirement. Former rep, we consider bobcat a North Dakota product but none of the steal comes from North Dakota. How much of all of that pride of Dakota comes right from North Dakota? But they are still considered North Dakota products. We moved event days up from 20-40. In the house side distributors did oppose the bill. I have to give credit to those that worked out an agreement. (**See attachment #1 for proposed amendments**). Anything that anybody decides to grow, that would be an easy market for any product they can grow. Those are the main reasons for that. it doesn't hurt anybody. They think that this might be opening it up and giving an unfair advantage. The basics of economics. If they can grow more, they'll sell more absolutely. This doesn't taste anything more. I know we've had this bill before. I know there was some discussion about event days. It's a different animal than spirits. It hasn't been a problem it hasn't been brought up as an issue. It's going to be difficult if there are any changes. They really are okay with this.

Chairman Klein: it's been a two faction issue before, but I think this time there are three factions.

Representative Ruby: There are a lot of wineries that are also grape growers now. Not all grape growers are against it.

Senator Burckhard: The three tiered system, the manufacturers, the retailers, the wholesalers, are all in agreement about this?

Representative Ruby: At this point yes. The wineries are the manufacturers, and there for the wholesalers worked on the amendments for this. The retailers haven't really weighed in. As we've worked through these bills in the past, the three tiered system is preferred by the tax office and he distributors. The Supreme Court has ruled that this system is constitutional but it is not a requirement. This state could go away from it if they wanted. We do have the ability to make adjustments. The key thing is the commerce clause we do have to treat fairly in state and out of state.

Senator Piepkorn: The event days seem to be a major piece of this bill. One of the major is getting rid of the required percentage of North Dakota grown product?

Representative Ruby: Yes, that is the biggest part of this. And it's what the wine makers and distributors really want. And they want to agree to limits and volume. A lot of the percentage of wine they sell already is not from North Dakota product. It can be but it doesn't have to be.

Senator Piepkorn: On page 2 line 27, the domestic winery may purchase wine in bulk, in other words a winery can grow 4000 barrels. Then what would happen to it?

Representative Ruby: This is setting that limit. They could before up to that 49%, it could be brought in. The main thing is, one winery could say they've sold bulk wine out of the state. That's why you have to have the commerce clause in and out. In the past we've had more being sold out than we have in.

Senator Roers: For clarification, the questions about the three tier system really don't fly with what you're trying to accomplish here today, this is primarily about supply and demand?

Representative Ruby: We're not changing that in any way. As far as the direct to retail, and the wholesaling. We're not messing with that in any way, this is really about supply.

Chairman Klein: But by limiting it to the 25,000, you're putting a cap on it, somebody from out of state would say well this isn't worth my troubles coming to the state and that's why those numbers keep trying to be pressed down because the wholesalers don't want somebody who can go up to 50,000 see an opportunity in the state and bypass them.

Representative Ruby: That is the focus of the whole agreement. We' always hear two names, Gallow and Walmart. This does limit it and they do understand their limits and they're okay with it. This would be simplifying it. This would be everything they need. Enabling the availability of grapes. They're fine with the levels. There have been a lot of issues with

reciprocity. And that's what can happen with this if we adopt the amendment and pass this bill.

Randy Albrecht, Owner, Wolf Creek Winery: see attachments #2-3 for testimony in support of the bill.

Chairman Klein: You've made wine for how long now?

Randy: Licensed for six years, I've been making it for 15.

Chairman Klein: You're up against that 51% and you've had a fruit issue?

Randy: That is correct.

Chairman Klein: You've applied for the exemption and they've denied you?

Randy: I have not applied for the exemption because as its written today, it only allows for an exemption in the event of a natural hardship or disaster. Not a shortage of fruit. We've been fortunate enough to work with Mr. Hogen and we get about 1400 pounds of fruit from him but it is not enough. We need more and there is none available for sale in North Dakota. We want to be able to use North Dakota products but we also need to be able to produce 2,000 gallons of wine to sustain our business.

Senator Roers: How does the price compare when getting fruit out of state versus in?

Randy: Last year we got about 1,000 pounds of grapes from Minnesota, we paid a dollar per pound including freight. The freight is a big thing. Also the product. It's difficult to ship, and it's difficult to keep the fruit intact.

Chairman Klein: How were you able to import that?

Randy: We had our 51% from North Dakota.

Chairman Klein: 2284 allows you to import that so you don't necessarily have to get approved?

Randy: 2284 will allow us to import juice, and we were able to do that before we passed that bill.

Senator Roers: Is the cost per pound from out of state the same as in state? The price is the same it's just the shipping that creates the disparity?

Randy: The price is going to depend on supply and demand and the cost of shipping. The grapes we ship in from out of state were about the same price as we pay here.

Chairman Klein: But even before we never tried to change those exemptions, we never asked for the opportunity to get more exemptions because of the fact that you just couldn't raise enough. We never tried to change that in past legislation?

Randy: We tried to pass legislation last session.

Chairman Klein: But that was just exemption language?

Randy: That was to address ingredients.

Chairman Klein: The one that failed to pass the senate was almost exactly 2284?

Randy: Yes.

Senator Piepkorn: What does your label say now?

Randy: The label says produced and bottled in North Dakota. There is also a federal ttb requirement that says if you want to label it as North Dakota wine, there has to be 71% fruit from North Dakota. So our North Dakota wines are very proud to carry that label.

Senator Piepkorn: What does your label look like when you have to import fruit or juice?

Randy: You're required to use a region. So if we get it from California, it will say American, if we get it from Minnesota or Wisconsin, it will say American. You're able to tell by the label that it has 75% North Dakota products or not.

Chairman Klein: Is there any sort of financial line that would suggest that you could buy it cheaper from California? You must know what juice and wine is selling for in California versus North Dakota.

Randy: I haven't even looked at it. Because I'm a North Dakota winery and I don't want that. The other thing is that our price point on our wine is \$16.99. California wines are \$5-6. We don't want to be in that business.

Senator Kreun: We're looking at pride of Dakota as our main focus, are we not?

Randy: It showcases North Dakota products. We really focus a lot on farmer's markets, local events that support the community. We participate in it but that's not the only focus.

Senator Kreun: There is a lot of research that has been put into Pride of Dakota for grapes and everything and there are a lot of caveats that go along with it, you can drink on site, etc. Whereas, as you grow and you begin to use imported products, at what point won't you need those caveats anymore? Or do you think you should have those forever?

Randy: We are very small, we put the limits in those amendments to protect those things, if a winery chooses to grow outside of that. Then they simply need to apply for a commercial license and then sell commercially but you'd lose those carve outs.

Chairman Klein: If you go commercial, you can become a winery, but then you don't get the events thing and you don't get to self-distribute anymore because you are now an official licensed winery?

Senator Kreun: What limit is that, where do you see that going? Because I don't think you should have all those caveats that we start with at Pride of Dakota when you get to be a certain size. What is that, where is that limit when this no longer applies?

Randy: I believe that was set at \$25,000 gallons.

Representative Ruby: This isn't just for startup companies. There are some people that want to stay just in this start up level. If they want to do as the chairman says and be a manufacturer, then you can bring in as much out of state product as you want and make as much product as you want and then go through a wholesaler. If they felt they had something that was really popular and they felt they could sell a lot of it, then they could become licensed. But most of these want to stay at the smaller level, not just as a start-up but as a long-term ongoing business.

Senator Burckhard: If you want to make wine but not grow grapes, are you going to be able to buy enough grapes to make California growers want to do business with you?

Randy: We probably mean nothing to them at our size. I'm sure they'll sell to anybody that wants to buy from them. I don't know how to answer that question.

Senator Burckhard: Will they want to do business with you and do business with you or will that be hard to accomplish?

Randy: I don't know.

Ethan Hennings, Head cider maker, part owner, Wild Terra Cider: see attachment #4 for testimony in support of the bill.

(45:05) Chairman Klein: Are there other states that require restrictions, I thought Minnesota did?

Ethan: To my knowledge there are a few, don't know which ones, Minnesota may be one. But most of the states do not have the restriction.

Chairman Klein: But some of our neighboring states do, is my understanding?

Senator Piepkorn: How long have you been open? So that isn't that long ago. Were you aware of the North Dakota law when you started getting into this?

Ethan: We retail other brands in the bar, so we opened in 2017 but I didn't start producing until 2018. Yes, we were aware of it before I even signed my lease. It's a huge risk. We felt it was important to start creating the demand, educating people about cider by having a bar and have people come in and sample it. And hoping that along the way we can continue to change the laws as we continue to grow.

Senator Roers: Is this a primary business?

Ethan: We put everything into this.

Chairman Klein: I think the idea is as we create this value, the whole idea was to create value for North Dakota products. We've always been able to fall under the current restrictions or exemptions. Some of us are struggling a bit. You're at the 10% level. I see where you're going. This has been a long way since we first started with the camel's nose cabernet.

Ethan: As far as pricing, we get all of our apples from Washington state. We pay about \$2-3 per gallon. Its shipped in as juice as opposed to apples. I currently am paying \$5-9 for local fruit. I would be happy to never buy fruit from Washington again. It's our plan not only to grow our own apples but to continue to purchase local fruit.

Senator Roers: How big of an orchard would you have to have to satisfy just your needs and how many employees would you need? And how many people would you need to harvest and maintain those orchards?

Ethan: I'm looking at land anywhere from 10-20 acres. 1,000-2,000 trees on that land. That won't be enough to sustain our demand. It would be more specific varieties that aren't currently found in North Dakota that we would grow for making as quality cider as we can. But any apple does work. You can juice it and ferment it just the same. It will be about finding as many people as we can. There is great potential here. The more people we can get to plant apples. And it's not just myself, there is another cidery licensed and operating in North Dakota. If we do this, we could open the door for more businesses to do the same business model.

Chairman Klein: Our weather just doesn't provide for good apple growing weather. Pat, you like the amendment that Representative Ruby proposed.

Pat Ward: We've worked this out and we support the bill with amendments.

Rodney Hogen, Red Trail Vineyard: testified in opposition. I'm her in support of the wineries. The things I don't understand. The letter that was signed by Scott Ballinger. I don't understand why the wholesalers have anything to do with how many times we can go off site to any event. I see no reason why it should matter to me. Why is this a mutual agreement. I don't see why the wholesalers have anything to do with this. The problem happening in North Dakota, is the cart before the horse. We've got too many wineries; they are increasing faster than we can produce. The shortage is one thing that is in bill 2284, a way to take care of all this. It protects the growers. When the majority of growers in North Dakota, the ones I've talked to do not support this. The ones they were referring to already have wineries. The issue of growing grapes here in North Dakota, our grapes come from Minnesota, that's why it's important to keep the majority clause in, that way if you are short you just write a letter to the ag Dept and you get an exemption. Iowa, doesn't need this law because of their growing season. The grapes we grow right now, is like growing 110-day corn. We need new grapes. Right now there are over 12 new varieties at NDSU. I hope their funding from the state continues. What incentive to a perspective grower have if there won't be places we are sure we can get rid of our product. We need more product and more research. 1190 isn't all bad, the events are where the majority of the wineries make more money.

Chairman Klein: Full disclosure, we got together during the interim in the hopes of keeping the industry going and that is where 2284 came from. Mr. Hogan worked with me and he said this is an important bill. That's why I had some involvement in that bill there was a lot of thumbs up at least one meeting.

Senator Burckhard: How many varieties of grapes did you say NDSU is working on?

Rodney: 12,000, it's called microbenification. We get to taste a tiny little bit of wine and if it's not a good taste it isn't used.

Chairman Klein: Do you have a little winter kill?

Rodney: That could be a problem, we don't know yet. To give you an insight, Jeff Peterson is the first wine maker in North Dakota. Randy is our wine maker, it's not as far to go to coal harbor. They are getting better and better. At our grape growers meeting,

Senator Piepkorn: I wish there was somebody here from NDSU ag research that could talk about how this could affect grape research. I think its thanks to NDSU and their grape research that we're here discussing this bill at all. If this bill passes eliminating minimum percentages how is that going to affect our research university?

Rodney: That is a very good question. We need it as grape growers. Commissioner Goehring has also said that we don't know if the funds allocated for the grape growers is going to continue or not. I don't want to lose that research.

Chairman Klein: Those dollars are spread out among research and marketing?

Rodney: Yes, I shouldn't say that comes through the North Dakota grape and wine association. Part of that does for marketing but most of it is research.

Chairman Klein: And we're still practicing beneficiation?

Rodney: Yes.

Senator Kreun: If the research is that important, would there be the ability for check offs so some of that would go back into research?

Rodney: That's been brought up before, that's how it is with the corn growers and soybean growers.

Senator Kreun: The state and its citizens right now are funding that research so as we grow and some of the benefits that we reap from it, can go back into the economy.

Rodney: We're a vineyard, we bring that down to our tasting room.

Chairman Klein: That tasting room is where?

Rodney: Buffalo, North Dakota. We open May 1st.

Chairman Klein: Closed the hearing on 1190.

Senator Piepkorn: Before everybody disperses I heard the name of a fruit that is new to North Dakota, haskap berry? It's very hearty and apparently makes very good wine.

Chairman Klein: There's research being done on the outside similar to what Monsanto does for the other commodities.

Senator Piepkorn: The discrepancy between an event and event days?

Chairman Klein: It's up for discussion when we meet on this next. In this case its event because its lower on alcohol and rather than have 40 event days, as we had done with distilleries on the first bill.

Chairman Klein: Adjourned the hearing.

2019 SENATE STANDING COMMITTEE MINUTES

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

HB 1190
3/27/2019
Job #34275

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

relating to domestic winery licenses.

Minutes:

None.

Chairman Klein: Opened the committee work session on HB 1190.

Chairman Klein: Representative Ruby was here and presented amendments. Somebody had mentioned event days and it wasn't the same as distilleries.

Senator Piepkorn: Some people have to keep track of that, it isn't me.

Chairman Klein: It says they may issue event permits for more than 40 events. Events could be any number of days. I don't think anyone asked if they've been bumping up against that. Pride of Dakota is important but not as important as the farmer's markets.

Vice Chairman Vedaa: I believe the last bill, when you went to pride of Dakota that counted as your event day. But this one does not.

Chairman Klein: The amendments get it where the distributors want it to be.

Senator Roers: Moved to Adopt Amendment.

Senator Burckhard: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion carried.

Senator Burckhard: Moved a Do Pass As Amended.

Senator Roers: Seconded.

Senator Piepkorn: I think it goes against the grain of the intent of the whole program to encourage grape growing in North Dakota. I'm just not for changing the requirements for the wineries.

Chairman Klein: I would only echo that I'm troubled that they are allowed to bring in wine to rebottle.

Senator Roers: I think this program has outgrown the restrictions that were put on it. We don't do this to any other industry in this state. I think this could be hugely impactful to the wine industry. If I really thought we were hurting the growers in the state, but I don't think we need to protect them. I think restricting the produce brought into the state is limiting the industry.

Chairman Klein: I think we got caught up on grapes. There's a lot of fruit wines made in the state. It's been difficult for me. I'm trying to balance this thing.

Senator Roers: The other thing I failed to mention, the apple cider people are really going to be in a bind if they can't bring produce in from out of the state, because you just can't get apples here in that quantity. I think people want apple cider and we're just a year or two behind having a real headlock on that industry too by not allowing them to go out of the state.

Chairman Klein: I would argue that 2284 would allow them to go outside of the parameters. We've forgotten that we had another bill that already allowed them to bring in produce from outside the state if they need it. For whatever they needed to step outside the bounds. It provides an extra step because they would have to talk with the tax commissioner.

Senator Kreun: My question still is why haven't there been any variances requested. Are we putting the cart in front of the horse? Now? These people will not reach these quantities in ten years. Even the apple guy can ask for a variance. He's not really stuck.

Chairman Klein: We asked the tax department there have been no variances requested.

Senator Burckhard: The wholesale liquor distributors said they were not against the bill. And the only opposition was Mr. Hogen, but I didn't know what his argument was.

Chairman Klein: His testimony was clear that he's concerned as we allow fruit to be imported from out of state, and I bet it would be expensive from he's fruit. I received two additional emails from two other growers that were also opposed.

Senator Roers: The variance exclusion was for some catastrophic event. Maybe it's a clarification we could look into.

Chairman Klein: I believe 2284 made the conditions wide open and I believe that's why the ag commissioner testified in support of the bill.

A Roll Call Vote Was Taken: 3 yeas, 3 nays, 0 absent.

Motion Fails.

Senator Piepkorn: Moved a Do Not Pass As Amended.

Senator Kreun: Seconded.

A Roll Call Vote Was Taken: 3 yeas, 3 nays, 0 absent.

Motion Failed.

Vice Chairman Vedaa: Moved Without Committee Recommendation, As Amended.

Senator Kreun: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Roers will carry the bill.

SK
3/27
187

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1190

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "5-01-17" insert "and 5-01-20"

Page 1, line 2, after "licenses" insert "and direct sales by licensed wineries"

Page 2, line 9, remove the overstrike over "special events"

Page 2, line 9, remove "event"

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

Page 2, line 13, overstrike "department of agriculture, a domestic winery shall obtain"

Page 2, line 13, remove "an event"

Page 2, overstrike line 14

Page 2, line 15, overstrike "department of agriculture does not count against the"

Page 2, line 15, remove "forty"

Page 2, line 15, overstrike "events"

Page 2, line 16, overstrike "limitation."

Page 2, line 27, after "4." insert "A domestic winery may purchase wine in bulk from within and outside the state, excluding label approved containers and not to exceed four thousand gallons [15142 liters] per calendar year.

5."

Page 3, after line 4, insert:

"SECTION 2. AMENDMENT. Section 5-01-20 of the North Dakota Century Code is amended and reenacted as follows:

5-01-20. Direct sale by licensed wineries.

1. A licensed winery that produces no more than fiftytwenty-five thousand gallons [~~18927194635~~ liters] of wine per year may sell and deliver, onsite or offsite, the wine produced by the winery directly to licensed retailers. The licensed winery may sell and deliver wine onsite to a licensed retailer who presents the retailer's license or a photocopy of the license. The winery may deliver the wine offsite if the winery:
 - a. Uses the winery's equipment, trucks, and employees to deliver the wine;
 - b. Contracts with a licensed distributor to ship and deliver the wine to the retailer; or

- c. Contracts with a common carrier to ship and deliver the wine to the retailer directly from the winery or the winery's bonded warehouse.
2. The shipments delivered by a winery's equipment, trucks, and employees in a year may not exceed four thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].
3. Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. The shipments delivered by a common carrier in a year may not exceed fourthree thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters]."

Renumber accordingly

Date: 3/27
Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1190**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 19.05210.01002

Recommendation:	<input checked="" type="checkbox"/> Adopt Amendment	<input type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input type="checkbox"/> As Amended	<input type="checkbox"/> Rerefer to Appropriations	
	<input type="checkbox"/> Place on Consent Calendar		
Other Actions:	<input type="checkbox"/> Reconsider	<input type="checkbox"/>	

Other Actions: Reconsider

Motion Made By Nevis Seconded By Burkhardt

Total (Yes) 10 No 0

Absent

Floor Assignment

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

Date: 3/27
Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1190**

Senate Industry, Business and Labor **Committee**

Subcommittee

Amendment LC# or Description:

Recommendation:	<input type="checkbox"/> Adopt Amendment	<input checked="" type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input checked="" type="checkbox"/> As Amended	<input type="checkbox"/> Rerefer to Appropriations	
	<input type="checkbox"/> Place on Consent Calendar	<input type="checkbox"/> Reconsider	<input type="checkbox"/>

Other Actions: Reconsider _____

Motion Made By Burchard Seconded By Kloers

Total (Yes) 3 No 3

Absent

Floor Assignment

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

Date: 3/27
Roll Call Vote #: 3

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1190**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description:

Recommendation:	<input type="checkbox"/> Adopt Amendment	<input type="checkbox"/> Do Pass <input checked="" type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input checked="" type="checkbox"/> As Amended	<input type="checkbox"/> Rerefer to Appropriations	
	<input type="checkbox"/> Place on Consent Calendar		
	<input type="checkbox"/> Reconsider	<input type="checkbox"/>	

Other Actions: Reconsider

Motion Made By Yiephorn Seconded By Kneun

Total (Yes) 3 No 3

Absent 0

Floor Assignment

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

Date: 3/27
Roll Call Vote #: 4

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1190**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description:

Recommendation:	<input type="checkbox"/> Adopt Amendment	<input type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass	<input checked="" type="checkbox"/> Without Committee Recommendation
	<input checked="" type="checkbox"/> As Amended	<input type="checkbox"/> Rerefer to Appropriations	
	<input type="checkbox"/> Place on Consent Calendar		
	<input type="checkbox"/> Reconsider	<input type="checkbox"/>	

Other Actions: Reconsider _____

Motion Made By Vedaa Seconded By Kwun

Total (Yes) 6 No 8

Absent O

Floor Assignment Koers

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

REPORT OF STANDING COMMITTEE

HB 1190: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1190 was placed on the Sixth order on the calendar.

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 - b. Contracts with a licensed distributor to ship and deliver the wine to the retailer; or
 - c. Contracts with a common carrier to ship and deliver the wine to the retailer directly from the winery or the winery's bonded warehouse.

2. The shipments delivered by a winery's equipment, trucks, and employees in a year may not exceed four thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].
3. Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. The shipments delivered by a common carrier in a year may not exceed ~~four~~three thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters]."

Renumber accordingly

2019 TESTIMONY

HB 1190

Attachment 1
Page 1

HB 1190

Industry, Business and Labor

Mr. Chairman, Members of the Committee,

01/15/2019

My name is Jeff Peterson and I own and operate Pointe of View Winery and Souris Valley Vineyard and Research Center. I'm here to ask for your support of HB 1190.

The major component of the bill is the removal of the majority ingredient requirement. Myself and others have had to cease wine production due to an extreme shortage of fruit in the state. Randy Albrecht, Chairman of the Grape and Wine Association and owner of Wolf Creek Winery recently compiled fruit poundage shortages for all wineries using a two thousand gallon per winery average and the results showed close to two hundred thousand pounds of shortage. Any new licensing will put further stress on the industry.

The brewery industry in North Dakota has over doubled the amount of licenses and achieved that success in half the time it took the wineries. Their growth success is due to the fact that they are not required to operate under a majority clause. We need that same opportunity to make this industry realize its full potential.

Please vote yes for HB 1190. Thank you for your time!

Chairman Keiser and Members of the IBL committee,

My name is Rod Ballinger owner of the Bear Creek Winery in Fargo. I am here this morning to ask for your support on HB1190. This bill would amend the domestic wine law in two ways. First, it would allow domestic wineries to hold an additional 20 event days per year. Second, it would remove the “majority ingredients clause” that requires at least 51 percent of ingredients for wine production to be sourced from North Dakota. Both provisions will help our grow our industry and offer an incentive for new wineries to open.

I was Chairman of the original *Grape and Wine Program Committee* with a legislative mandate to jumpstart the wine industry through research, promotion, education and marketing. Later, I was asked to chair another mandated committee, the *Grape and Wine Advisory Committee (GWAC)*. We advised on budgetary and technical issues for the industry. I have been actively involved from its outset.

In 2011, the GWPC hosted a strategic planning and facilitation meeting with members from the Governors’ office, the Agriculture and Commerce Commissioners, NDSU, SBARE, State Agriculture Extensions, fruit growers, winery owners, APUC, Grape and Wine Association, and many other stakeholders interested in the industry. The event was represented statewide. We developed a strategic plan with lofty goals for the industry by 2017. We surpassed our goals, including through the establishment of 18 operating wineries, an extensive grape research program at NDSU and an enological evaluation program. We now have 12,000 new grape experimental varieties throughout North Dakota and are constantly evaluating new cold weather grape varietal selections.

All of these efforts were put in place to grow the industry and we are very proud of our accomplishments. One important aspect of the strategic plan was our approach to public policy. Page two of the 2011 Strategic Summary plan directed the industry to “Streamline North Dakota laws, including direct-to-retail, that allow North Dakota wineries to thrive.” In the sixty second legislative session, we secured the right to sell “direct to retail” in the domestic wine law by a unanimous vote in the House and all but one vote in the Senate. Following the passage of the bill, we immediately saw positive results.

The industry has grown faster than anyone expected and more event days and the demand for fruit has increased every year as a result. Some of our wineries have

even run out of their products for sale as early as September because they could not get as much fruit as they needed, as defined by the current law.

So, why are our wineries the only agricultural commodity, manufacturing, energy, and construction group that has restrictions on the importation of raw materials or ingredients to our state. Why would we want to choke out this industry, jobs for the state, and entrepreneurship? Here are a few cases in point:

- Dakota Pasta of Carrington imports much of its durum wheat internationally from Canada with no restrictions.
- North Dakota livestock feed lots brings in much of its stock to finish from out of state.
- Cass Clay Creamery in Fargo gets most of its milk from outside of ND for its local dairy products.
- Bobcat Corporation sources most of its raw materials for production from the steel mills on the East Coast.
- Residential and commercial construction companies purchase the majority of their building materials from out of state and internationally.
- The apiary (honey) industry has no limits on where they buy their honey, except for our meaderies. Even our bees know no borders!
- The North Dakota breweries get their barley and wheat malt, yeast, and hops from out of state. The only ingredient used from North Dakota is the water.
- Will we require our wind farms to get at least 51 percent of their wind from North Dakota as well?

The lists goes on!

Our main opposition, Johnson Brothers Distributors have set up a ND corporation that is owned by a conglomerate based in Minnesota that imports thousands of gallons a month of spirits, beer, and wine. Johnson Brothers has no majority clause requiring them to purchase at least 51 percent of these products from producers here in our state. Yet, they oppose our farm wineries of doing exactly what they are doing and limiting us by the majority clause blocking our industry from markets with unfair business and anti-competitive practices.

The grape and wine industry has done well since its emergence but much more is needed. We have promoted wine trails along our by-ways and interstate system from the southeast of our state to Fargo and west to Casselton, north to Carrington,

further west to Bismarck and then north and west to Minot and Dickinson. We are also trying to establish a presence in the Grand Forks, Valley City, Devil's Lake, Williston, and anywhere else someone wants to open up a winery, a cider or a meadery. We need this legislation to connect the dots and grow our respectable grape and wine industry.

So, I urge the wholesalers in North Dakota to embrace this change so that we all have equal opportunity to flourish like they have the past few decades. As our industry grows, everyone will gain. The wholesalers gain by getting more of our product to their distribution lines. The fruit growers gain as we grow through the demand for more fruit, placing a huge incentive for expanded vineyards, orchards and honey production. The economy gains by creating more jobs in the wine industry but also in other economic sectors that support our industry. The growth of this industry will broaden the state's tax revenue base and diversify our economy. Most of the money generated from the production of the wineries in North Dakota, stays in North Dakota. The industry provides an opportunity for our children to stay here as well in North Dakota by taking over the family farm wineries like all of our commodity brothers and sisters. Lastly, and most importantly, North Dakotans benefit from vibrant agri-tourism and an opportunity to visit our wineries and vineyards and hold family events such as weddings, rehearsal dinners, anniversaries, tastings and many other outings in a unique, beautiful setting. It's really a win-win for all!

Thank you very much for your time and I look forward to answering your questions.

HB1190

Wild Terra Cider

Attachment 3

Page 1

Jan 15, 2019

My name is Ethan Hennings, I am the head cider maker and part owner of Wild Terra Cider in Fargo. We produce and serve hard cider on location of our cider bar and taproom, retail other brands of cider, wine, mead and beer as well as prepare and serve food.

The mission of our company is to educate consumers of what cider is and offer them a relaxed setting to taste, enjoy and learn about the diversity that cider as a beverage category truly is. Until we opened our doors in December of 2017 North Dakota consumers had very little options of seeking out and understanding this wonderful beverage that has rich and extensive history in the US and the world.

In our first year of business we sold about 600gl of cider we made with a total of 4200gl combined from other regional and international brands. We plan on selling our cider not only out of our taproom but all over the state and eventually selling regionally in other neighboring states. So the market is definitely there and the potential is as high and as far as we want to take it. Nationally the sales trends show each year cider sales are growing at an exponential rate.

Cider is classified federally as a wine, but it's production, consumption and culture is much more similar to beer and beer breweries. We keg it and serve it on draught and plan on canning it in 16oz cans and distributing to liquor stores, restaurants and bars. Anyone from 21 to 91 can enjoy a cider but much of our consumer demographic are younger people. This culture once created will help attract and retain citizens to study at our universities, to live and work in our cities.

Our business has been featured in online articles in CNN, the Washington Post and other reputable national platforms that shines a light on both cider and North Dakota. Along with the revival of cider and wine making locally presents large agro-tourism opportunities that benefit our great state. We've experienced travelers from all over the US stopping in downtown Fargo to visit our taproom.

Unfortunately, there currently are no commercial apple orchards in the state of North Dakota that one can purchase any large quantity of apples from for making cider on a large scale. We knew this going into starting our business as well as being aware of the current restrictions in the Domestic Winery Law.

However, my wife and I recognized the lack of options and education in the state regarding cider and took it upon ourselves as a company to raise awareness and continue to push education of the beverage. By doing this we help further advance the opportunities for either cider makers or fruit growers to make a living in diversifying our state's agricultural industry.

As a company we plan on purchasing land and planting an orchard of our own. Also as we did this past harvest season and will continue to do each year, we collected apples by either going out into our local community or traveling as far as central ND to pick apples. As well as

HB 1190

exchanged gift cards for apples donated by local patrons of our business. Some people travelled as far as Kenmare, ND some 320 miles from Fargo to deliver us their apples.

In 2018 we collected about 20,000 lbs of apples donated by people from trees in their own backyards. This number may sound high, and if you see that many apples at once it is impressive and smells fantastic, however the issue we as a company see is that this is nowhere near the amount needed for us to sustain or grow our business. With these apples we were able to press around 1,200 gl of juice. This number was only a portion of cider we produced in 2018 and is only about 6% of what we plan on producing in 2019.

The law currently as written will demand that we use 10% of North Dakota ingredients to make our cider for 2019 and 51% by 2023. This is a possibility for 2019, with the momentum we created in our community gleaning and foraging last year we may come up with more apples this year. However, there is no guarantee that everyone that brought us their apples last year will do so this year.

Also 2018 was a bumper crop year of apple production that usually fluctuates from year to year.

If we purchase land this year and plant trees in 2020 they won't even produce their first year of apples until 2024 at the earliest. It takes about 4-6 years for apple trees to produce fruit.

It is unreasonable and completely unrealistic to think that we can find enough apples within our state lines to make the cider Wild Terra plans on producing even by 2020 without the leniency of supplementing from other state's apple production.

We believe in North Dakota to provide quality apples for cider that will come from numerous sources. The community's backyards, our future orchard, and other fruit growers looking to diversify their crops will all play a part in bringing cider back to its esteemed glory.

But we need help to achieve this. This vision will only be accomplished if we as an industry are allowed to grow our businesses. Currently we are being held back and smothered by a restrictive law that does not benefit anyone, not the producers, not the distributors, and certainly not the state. By making the necessary amendment to this law it will create more jobs, more tax revenue and diversify North Dakota's agricultural landscape. We want to make cider from North Dakota apples, but there just simply isn't enough of them yet.

- There is no state money funding any apple research or development so we are taking on all of the risk as a few small businesses to develop this market with proven sales potential.
- No other agricultural industry in ND is restricted for their raw product they use.
- Other states without ingredient restrictions are flourishing and the distributors are benefitting from that as well.

We ask that you please vote in favor of HB1190 to help us to continue to grow our small, family owned businesses and provide North Dakota consumers quality locally, crafted products.

Testimony of Pat Ward in Opposition to HB 1190
S-IBL – January 15, 2019 – 10:00 a.m.

My name is Patrick Ward. I represent the ND Wholesale Liquor Distributors in opposition to HB 1190. 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. The original intent of this bill was to encourage value added agriculture and to create farm wineries where grapes would be grown. It also allowed new wineries to gradually build up their vineyards by using less North Dakota fruit at the beginning.

The legislation was crafted to ensure the use of North Dakota produce, thus creating a niche for North Dakota farmers and to allow time for those vines to be developed. It is hard to argue with this! Now a few domestic wineries want to do away with this system. 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 situations where there may be shortages, p. 1, lines 8-20, they remove it for ALL wineries.

This will now allow a domestic winery to ship imported wine, must 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 or a wine manufacturer, like any other winery in the world, and not a farm or domestic winery. It would not even have to have a single vine on the premises.

Each session the wineries come in and ask for more changes in this law. This bill is similar in many ways to HB 1343 from the 2017 session that was killed in the Senate. I believe that some of the non-winery grape growers have concerns about this bill.

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, the fact that it is here grown in ND, but which is already more expensive than a lot of very good wines.

2. Cap on Events

Another big change is to double the number of special events from 20 to 40, p. 2, lines 9 and 15. This has serious consequences as a domestic winery could sell

wine not made with ND fruit at locations others cannot. The special advantage of the event permits was to give them more markets for their value-added product.

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 last session. It would be much more prudent to simply raise the cap to say 25 events per year.

Also, it seems inconsistent to say they cannot grow or buy enough ND grapes to meet the current percentage requirements but at the same time be asking for more events.

3. This change in law opens up court challenges to the 3 Tier System

Anyone who can import juice and bottle wine becomes a "domestic winery." No farm or vines required. ND currently has a wine manufacturer license, but that licensee cannot occupy all 3 tiers of wholesale, manufacture and retail. If they manufacture, they must sell through a wholesaler.

Why then couldn't a large retailer, like Sam's, assert its right under the commerce clause to manufacture and sell its own beer and wine? There have already been federal cases challenging the purpose and intent of volume caps. Would the 25,000 gallon cap, p. 2, line 4, hold up in court or would it be seen as protectionist legislation that violates the commerce clause.

HB 1190 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, like event permits and direct delivery, to help them succeed. At this point they provide little tax revenue compared to current wholesalers and retailers, less than 1%. These advantages should not be allowed if they do not use ND produce.

North Dakota should continue to require their use of North Dakota fruit at the winery to be authentically "domestic."

We urge a Do Not Pass on HB 1190.

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

----- Forwarded Message -----

From: Rodney Hogen <rehogen@yahoo.com>
To: "gkeiser@nd.gov" <gkeiser@nd.gov>
Sent: Monday, January 14, 2019 11:32 PM
Subject: HB-1190

HB 1190

Attachment 5
Jan 15, 2019
Page 1

Representative Keiser

On January 15th HB-1190 will be introduced to the IBL committee . The bill will be introduced by Rep. Dan Ruby on behalf of a few wineries in the state. NOT ALL THE WINERIES (like they will tell you). This bill will change the current ingredients law which states " to be a domestic winery 51% of your produce (grapes or fruit) must come from North Dakota. HB-1190 will change the ingredients to 0%, which means Wineries would be able to purchase grapes out of state, like California, Oregon, and Washington. This bill could also interest big wineries from the western states to move into North Dakota setup as a domestic winery and bring in their own produce and sell their wine at \$5.00 a bottle. This would hurt the whole Industry in North Dakota, not just the wineries but also all the fruit and grape growers.

003 I was one of the first to start planting a grape vineyard and now the Red Trail Vineyard, at Buffalo, ND is one of the oldest and largest in the state. At about that same time a few wineries were starting and many were using fruit that was abundant , like rhubarb, plums, chokecherry and also honey.

The North Dakota Legislator appropriated funds to our Ag College to start a research program to help new grape and fruit growers. That research continues and today NDSU has over 12,000 new grape varieties in different locations throughout the state. NDSU has also started a vinification process where these new varieties can be tested for quality of the grape vine (as in winter hardy) and also the quality of the taste of wine.

At Red Trail Vineyard the grape varieties that we currently grow come from the University of Minnesota. These varieties are from their research that was done in the southern part of Minnesota and not meant to be planted in our northern region. As an example for you farmers, it's like planting 110 day corn in Buffalo, ND. We have been fortunate to have a fairly good survival rate on these varieties, but have pulled 4 varieties. Others in the region haven't been so lucky and have lost entire varieties. The continuation of the research at NDSU is very critical to the grape and wine industry and my concern along with others is that the funding for these projects could be suspended. Why fund a project to produce new varieties when wineries will be able to go out of state to purchase their grapes.

As you might be aware, these few wineries have a (Back up Plan) if your committee (Doesn't Get It !) they have threaten to propose an initiative ballot measure and let the people of ND decide. Another BAD idea!

Speaking to others in the Industry I am confidant that HB-1190 will NOT be supported by the North Dakota Grape and Wine Association and it's members and also the Agriculture and Tax Commissioners.

I have other appointments in Fargo so I won't be able to testify before your committee, but if you have any questions or concerns please reply to this email.

Thank You for your time:

HB1196

Attachment 5
Jan 15, 2019
Page 2

Sincerely

Rodney Hogen

Owner, Red Trail Vineyard

Past President : NDGGA Board member NDGWA

19.0526.01002
Title.

Prepared by the Legislative Council staff for
Representative D. Ruby
February 20, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1190

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HB1190 3/26/19 Att# 1

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Renumber accordingly

HB1190 JOINT LETTER OF SUPPORT

After extensive consultation and extended negotiations between our respective industries, HB1190 is a bill written and amended for both the benefit of the wine and wholesaling industries. Both groups worked from different perspectives to find common ground intended to ease the legislative process. Each recognized the value in understanding and respecting the other's business model. We worked together to come up with a cooperative bill. We are both confident that HB1190, with the proposed Senate amendments, is an equitable compromise that we can support.

This bill with the proposed Senate Amendments will allow the wineries to reach their full potential while still respecting the long established wholesaling distribution system. We are proud to offer this compromise to our legislators for their consideration. The original bill was introduced and passed in the House. Since then, mutually agreeable productive discussions ensued. Amendments by both parties were crafted to enhance the bill.

We respectfully ask that you adopt these proposed Senate Amendments to HB1190 and forward the marked up bill to the floor for a supportive vote in the 6th and 11th order. Jointly, we fully support HB1190 with these Senate amendments.

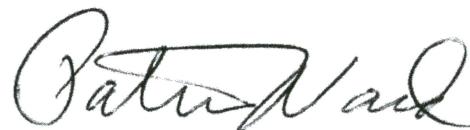
Thank you for your time and effort in this matter to create a positive economic environment for all businesses to thrive. We ask for your support to adopt our proposed consensus amendments and vote YES on the marked up HB1190 bill as amended.

Thank you for your service to North Dakota.

Sincerely,



Rod Ballinger, Representative
North Dakota Domestic Wineries



Patrick Ward, Lobbyist
ND Liquor Wholesales Assn.

HB1190 3/26/19 Att#3

Chairman Klein, Members of the Senate I.B.L. committee,

I want to follow up on the letter you received from Rod Ballinger regarding support for HB-1190 with Amendments supported by the ND Liquor Wholesale Association, the ND Domestic Wineries, and a majority of the ND Commercial Growers. Please support HB 1190, which eliminates the ingredient requirement and adds 20 additional event days. Additional points I would like to bring to your attention are as follows:

- This bill is supported by a majority of the growers who sell grapes and fruit Commercially. I personally have verified 14 support this bill.
- This bill is supported by all but 1 ND Winery.
- The ND Wineries are unable to sustain, let alone expand, without more fruit. New wineries will be unable to open without fruit to make wine. ND Commercial Wineries need to produce at least 2,000 gallons of wine to sustain their business viability. As an example, if only 10 of the 18 existing wineries were sustaining viability with ND grapes, we are already short a minimum of 32,000 vines, or 224,000 pounds of grapes.
- The wineries are the only ND industry that has a majority clause that limits them for production. Free markets with fair competition are needed.
- Most of the ND Vineyards are owned by ND wineries. The wineries have been forced to plant more grapes because of the increased demand for fruit, as existing wineries have grown and new Wineries have opened. Wineries want to make wine, not grow grapes.
- HB 1190 was passed by the House I.B.L. committee unanimously and the Full House by a 82 to 3 vote.

HB1190 fixes many problems for ND Growers, Wineries, and Wholesalers. It minimizes government regulations, and allows for free market growth for the Local Wine Industry. The Stakeholders which include the North Dakota Wineries, Growers, and Wholesalers respectfully ask for your support in passing this Bill.

Thank you,

Randy Albrecht
Wolf Creek Winery
3631 Wolf Creek Road
Coleharbor, ND 58531

HB1190 3/26/19 Alt#4 p.1

My name is Ethan Hennings, I am the head cider maker and part owner of Wild Terra Cider in Fargo. We produce and serve hard cider on location of our cider bar and taproom, retail other brands of cider, wine, mead and beer as well as prepare and serve food.

Cider is classified federally as a wine, so I am here today along with fellow wineries in support of HB1190.

Unfortunately, there currently are no commercial apple orchards in the state of North Dakota that one can purchase any large quantity of apples from for making cider on a large scale. We knew this going into starting our business as well as being aware of the current restrictions in the Domestic Winery Law.

However, my wife and I recognized the lack of options and education in the state regarding cider and took it upon ourselves as a company to raise awareness and continue to push education of the beverage. By doing this we help further advance the opportunities for either cider makers or fruit growers to make a living in diversifying our state's agricultural industry.

We cannot expect anyone to plant orchards of apples if there are no commercial cider makers to make the cider or if consumers aren't drinking the beverage. A market needed to be made. And in the last year of business we have seen that the demand is there for local cider.

In 2018 we collected about 20,000 lbs of apples donated by people from trees in their own backyards. This however, is nowhere near the amount needed for us to sustain or grow our business. With these apples we were able to press around 1,200 gl of juice. This number was only a portion of cider we produced in 2018 and is only about 6% of what we plan on producing in 2019.

The law currently as written will demand that we use 10% of North Dakota ingredients to make our cider for 2019 and 51% by 2023. If we purchase land this year and plant trees in 2020 they won't even produce their first year of apples until 2024 at the earliest. It takes about 4-6 years for apple trees to produce fruit.

It is unreasonable and completely unrealistic to think that we can find enough apples within our state lines to make the cider Wild Terra plans on producing even by 2020 without the leniency of supplementing from other states' apple production.

With the extensive time table of growing a new crop and our continuing growth of our business at the same time, we will without a doubt be in short supply of North Dakota apples for many years to come.

HB1190 3/26/19 Att#4 p.2

We believe in North Dakota soils to produce quality cider fruit, but we need help to achieve this. This vision will only be accomplished if we as an industry are allowed to grow our businesses. Currently we are being held back and smothered by a restrictive law that does not benefit anyone, not the producers, not the distributors, and certainly not the state. By making the necessary amendment to this law it will create more jobs, more tax revenue and diversify North Dakota's agricultural landscape.

- No other industry in ND is restricted for their raw product they use. So why is wine?
- Other states without ingredient restrictions are flourishing along with the distributors and fruit growers.

We ask that you please vote in favor of HB1190 to help us to continue to grow our small, family owned businesses and provide North Dakota consumers quality locally, crafted products.