

2019 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2343

2019 SENATE STANDING COMMITTEE MINUTES

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

SB 2343
1/30/2019
Job #31766

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to licensing of microbrew pubs and brewer taproom licenses.

Minutes:

Att. #1

Chairman Klein: Opened the hearing on SB 2343. A quorum was present.

Chairman Klein: I'm the prime sponsor but I'll leave it up to the experts to talk about the bill.

Janet Seaworth, Executive Counsel, North Dakota Beer Distributors Association: testified in support of the bill. Before I start I want to say that the Beer distributors are neutral on this bill. But this bill represents the agreement that the association has with the brewers' guild regarding the changes to our current law and the appropriate limitations. With that I will start by telling you there's really two sections in the bill, microbrew pubs and taproom pubs. Page 2 line 3 there is new language that would allow microbrew pubs to sell a wider variety of packages. Right now a brew pub can sell packages of not less than 1 gallon and not more than 3 gallons for off sale consumptions. This change would allow them to sell a wider variety of containers like 12 ounce cans or bottles, up to a 3-gallon container. However, there is a limit on the amount of individual sales per person per day at 288 ounces. This limitation on the amount that you can sell per day per person is a limitation to discourage resale, diversion of the product from the distribution chain, and really discourages a brew pub from morphing into a production brewer. The next change on page 2 lines 7-13 has to do with special event permits. This is new language to the bill, it's not dissimilar to language we already allow for brewers with taprooms to apply and obtain special events permits to sell, sample, and dispense their product. Something new in this language that is also new for brewers and taprooms is the ability to participate in special events that involve nonprofit organizations. As long as that nonprofit organization is not affiliated with the brew pub or the brewer tap room. Finally, page 2 lines 14-30, this is the transfer language, for both brew pubs and brewers with taprooms. This would allow commonly owned brew pubs to transfer product, bulk product that they have manufactured, from one commonly owned brew pub to another. In our bill its called an affiliated brew pub. And that means a brew pub that is at least 85% owned by the brew pub so you have to have at least an 85% interest owned by the microbrew pub that would be measured annually. There are conditions, the microbrew pub cannot own more than three affiliated microbrew pubs, the microbrew licensee receiving the beer in bulk has

produced no less than 5,000 gallons of beer on the premises in the preceding year and the bulk beer transferred in the calendar year cannot constitute more than 50% of the beer produced by the microbrew pub that is receiving the beer. Finally, for purposes of determining whether the 10,000-barrel production limit is being exceeded the beer transfer is credited to the brew pub that's actually producing the beer. The intent of these restrictions are to ensure that the transfer of beer is a real transfer to another brew pub that's actually producing beer. In other words, what you don't want, is a brew pub that's simply a front, and really nothing more than a bar. All entities involved in this transaction should be producing beer on the premises. And that ensures that that is happening. These restrictions also ensure that the brew pub is not engaging in wholesaling or distribution of beer, but is simply a transfer between entities that are commonly owned. That brings us to section 2, page 3, here we are providing tweaks to our laws for brewer taprooms. The amendments start on page 4, lines 10-12, again we're dealing with special event permits for brewers with taprooms. They already have the ability to apply for and receive special event permits under our current law, but what was missing that we heard from brewers with taprooms, was that they would really like to participate in nonprofit-type events like fundraisers and etc. This language would allow that as long as the nonprofit or fundraiser is not affiliated with that brewer. On page 5, we provide the same transfer language for brewers with taprooms; so they may transfer products under the same conditions as transfers between the microbrew pubs. Again, these limits ensure that these limits aren't simply setting up a chain of sham breweries or taprooms that would really be nothing more than a bar, but that there's actually production going on. It provides minimum production at each location, and then limits the amount that can be transferred. The beer distributors worked hard with the brewer's guild, we appreciate the tax commissioners input as well. The goal is to just tweak the existing laws, but also provide some conditions and some limitations to provide fairness for all the tiers and maintain our regulatory system.

Chairman Klein: Could you give us a short description explaining the difference between microbrew pubs and taprooms?

Janet: There is a distinct difference. A brew pub is a pub, it is a retailer, they hold a retail license and they have the ability to sell all alcohol. For example, Granite City, is a brew pub. You can get a glass of wine or a Jack Daniels, but they have the special ability to brew their own beer and sell that on premise and have limited off premise sales. A brewer with a taproom, is a brewer, but they have a taproom where you can sample their product, maybe buy it. But you can't get a glass of wine or a Jack Daniels there and you can't get someone else's beer. They are not a bar.

Senator Piepkorn: We've learned there is a difference between person and individual, does person have a broader definition here?

Janet: I do not believe so. Retailers may not sell to other retailers and they may not sell for resale so the intent would be to an individual.

Senator Piepkorn: Maybe we ask someone else.

Janet: I would be amenable to hearing from the tax department about that.

Chairman Klein: What we're believing here is that person, individual, its one in the same?

Janet: Yeah, I would defer to the tax commissioner because that was language that they suggested.

Senator Piepkorn: When we talk about the relationship between the nonprofit and the owner of the brewery. Unaffiliated, is that like the spouse of an owner who is employed at the YWCA then couldn't have their fundraiser at the brewery? Could you more clearly define that relationship?

Janet: My understanding of that language would be that the nonprofit organization as an organization is unaffiliated with the brewer taproom or brew pub. This is language suggested by the tax commissioner but we're comfortable with it.

Chairman Klein: In our discussions back in September the tax commissioner brought forth a number of concerns they had about providing clarity in the law and they that's why we suggested they join in so its straightened out for everyone.

Angie Pelton, President, North Dakota Brewers Guild/Owner, Six Shooters LLC, Watford City: See attachment #1 for testimony in support of the bill.

20:55Chairman Klein: Appreciate you all working together, I also have the definition here. Person means an individual, organization, government political subdivision, or government agency. That is direct from the century code.

Mike Frehlich, Laughing Sun Brewing Company/member of the Brewers' Guild: testified in support of the bill. Just anecdotally, we're selling cans of beer now at Laughing Sun. we're licensed back as a brew pub, to be able to allow the location that we're gonna open up in Mandan. We couldn't do that under the taproom license so we're back as a brew pub. With that we lost the ability to sell 12 ounce cans out the door. We've canned just over 120,000 cans so far. This is the first week we'll be selling them there. But we're taking those cans form our cooler, putting them into our cooler in the taproom. Invoicing McQuads for buying our beer back from ourselves even though they've never even touched the product, or will touch the product. So we're just trying to eliminate some of the little things that. They're on board with and they see some things as well. Serving at events, a lot of people want to talk to the brewers and stuff. We've been denied before for the Sanford Children's Hospital charitable fundraiser at the Civic Center for their NICU unit, because it wasn't considered a festival by the tax commissioner's office. We donate our beer to that event, we donate our time to pour it. We would like to be able to do those things again because that is a part of our mission, to build community.

(24:09)Chairman Klein: Are you inspected by the health department?

Mike: Yes, we've educated those guys cause they're new on board with a lot of breweries. I've done talks at Minot with the environmental health conference, talking about things that we're doing. We're trying to educate those folks too because we were the first one back brewing in the state in 2012. There were a few in the '90s. but we haven't had a lot of that lately so there's a lot of people that don't have a lot of knowledge about it. We're inspected

by the city, the health department, and then we're inspected on a number of different levels by the city sewer and water disposal people.

Chairman Klein: Do you know offhand how many breweries we have across the state?

Mike: There's like 20 across the state, over 25 in a year or so.

Chairman Klein: Is the market expanding?

Mike: In the nation we're gonna see a decrease, but statewide we've been a bit behind so I think we will continue to see the increase. There's like 1000 breweries opening every year. There are about 6500 across the country and about 1200 on a waiting list. We're on a steady incline. The beer market is pretty flat so the craft beer market within that is growing but slowing. There's room to grow in North Dakota and a lot of other industries are growing in addition. Now we have two-track malting, they've gone from a 10,000-pound batch to a 20,000-pound batch, now they're on 100,000 pound batches. They're growing rapidly and shipping malt to 17 different states. We have hop farmers that have started up.

Chairman Klein: Do you buy North Dakota products?

Mike: 99% of our malt comes from Two-Track, all of our base malt all of our Dakota Munich Malt. They don't do some of our darker crystal malts just cause they're not doing it so we source it out from Montana, North Dakota, and up into Canada. Just because if they were making those malts we'd buy from them too. We buy the hops from the farmers but they're just not their production wise yet.

Chairman Klein: We're growing hops in North Dakota?

Mike: Yeah, Ostlie's Acres has like 2 acres. They are doing the pelletizing and harvesting onsite, so they are sending it off to the lab and being a broker for other growers as well. So brewers like myself can actually use them. We need some data on that, so that's great.

Senator Piepkorn: Can I ask about the difference between breweries and distilleries?

Mike: They are totally different categories. There are a couple distilleries in the state. They use local ingredients too but otherwise the processes are different. The mash part is the same but then they're boiling it to distill off the liquor and cool that. The start of the process is the same. Our spent grains are feeding animals around the state, south of Mandan.

Nick Holwegner, Atypical Brewery in Minot: testified in support of the bill. We're a new taproom, just wanted to drive up and show my support for the bill.

Senator Burckhard: You redid a really old gas station right?

Nick: Yep the old Westlin gas station built in 1929.

Mike Philleo, Brewer, Stonehome Brewery Bismarck: testified in support of the bill. Mirror the statements made earlier. Its encouraging to see, simply wanted to voice my support.

Dee Wald, General Counsel, Tax Commissioner's Office: gave neutral testimony on the bill. The first question Senator Piepkorn had about person, we don't see that as an issue. Even if a corporation wanted to buy a few growlers, they're still limited by the amount. With respect to affiliated organization, say for instance, my husband and I own a nonprofit and I also own a brewery, that wouldn't be allowed. I think the language is pretty clear.

Chairman Klein: Back to the nonprofit discussion, that tweaking has just made it easier for you as a tax department to see the lines?

Dee: You're correct. That's been an issue that is resolved in this bill.

Chairman Klein: Closed the hearing on SB 2343

Senator Kreun: Moved a Do Pass.

Senator Piepkorn: Seconded.

A Roll Call Vote Was Taken: 5 yeas, 0 nays, 1 absent.

Motion Carried.

Chairman Klein will carry the bill.

Date: 1/30
 Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2343**

Senate 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 Kreun Seconded By Piepkorn

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers					

Total (Yes) 5 No 0

Absent 1

Floor Assignment Klein

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

REPORT OF STANDING COMMITTEE

SB 2343: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2343 was placed on the Eleventh order on the calendar.

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2343

2019 HOUSE STANDING COMMITTEE MINUTES

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

SB 2343
3/20/2019
34045

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Licensing of microbrew pubs & brewer taproom licenses.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing on SB 2343.

Mike Frohlich~Laughing Sun Brewery & ND Brewer's Guild: We represent 17 out of about 20 plus operating breweries in the state. Looking at doing charitable events that we haven't been able to do in the past. The tax commissioner has looked at it as a festival & if it wasn't labeled a festival, we can't pour our own beer. It will open this up to be able to do some of the charitable events. We can pour beer at our own events. We have to use volunteers to pouring beer as we stand next to them. That will clean up a bit of that language.

Another thing it does is it allows a transfer from tap room license to another tap room or brew club to brew club license, you can transfer up to 50% of your product from one establishment to another. You have to have common ownership of that establishment of 85%. We have a brew club license & pour at another facility. This opens up a few of our breweries that are operating multiple tap rooms where you are making beer at one place. You may not want to make the same beer in the other place but you want to be able to serve that beer. You can't do that now because you have to buy it back from the distributor. That allows the transfer of that with limitations of up to 50% of your production.

The last thing it does is it allows where we can sell 12oz containers, up to 5.6 gallon containers out the door to consumers. As a brew club we had to license as a brew club to be able to own another retail alcohol establishment in Mandan. We are not brewing at that location, so we couldn't own another retail restaurant establishment. We had to license back as a brew pub & give up our distribution rights with that. We are now partnering with 6 distributors across the state. We also had to stop selling 12oz containers & limit ourselves to 1/2 containers to 3 gallon containers. Now we can our own beer on site & have 12oz containers that we would like to sell at the pub & currently we are not allowed to do that. We can sell them in our Mandan location because it's not licensed as a tap room or brew club, it's just licensed as a class F license. It allows us to sell containers & it doesn't specify the

size the container, it just limits the volume on the brew pub side the 288oz's or the 3 gallon limit.

3:55

Rep C Johnson: What is the difference between a brew club & a tap room.

Mike Frohlich: A tap room license, allows you to do 25,000 barrels a year. You can have multiple locations, all under that same shell. You can't brew in multiple, more than 25,000 barrels a year. You have to be brewing at your site, you can only sell your product & 21 & older facility. You can't own another retail alcohol establishment, wholesale or business & you are allowed to self-distribute up to 10,000 barrels.

The brew club license has a 10,000-barrel limit. We are allowed to open another retail alcohol establishment & allowed to serve other things besides our own beer. So, we have food, beer, ciders & wine. We are allowed to have kids in there & are kid friendly until 9 pm, but we had to give up our distribution rights where we are no longer able to distribute ourselves.

Rep C Johnson: You can have 3 additional licensees for each brew pub & tap room also?

Mike Frohlich: Yes it would. It's cost prohibited. If you did small brew pubs.

Rep Richter: How does this affect out of state breweries? Do they have to get the same license permit?

Mike Frohlich: Yes, they have to get a license as a brewery in ND. They spend the \$600 a year license. They have a certain number of permits that they can apply for & it's 20 events. They have to follow the same rules.

Chairman Keiser: You have special permit, not more than 20 days per calendar year. You can have 20 special permits, one day a year?

Mike Frohlich: One day each, 20 a year. So a weekly event, you could exhaust your permit because you are only limited to 20 days.

Chairman Keiser: Has that been a problem?

Mike Frohlich: Not for us, but some have.

Rep Kasper: Why should there be any limit? Where is the issue of running the events?

Mike Frohlich: It came from the wholesalers & they were thinking that we were creating events to sell.

Rep Richter: Are you allowed to go to Sydney?

Mike Frohlich: We are allowed but we have to register with the state. You have to register & follow everybody's state laws like they have to follow ours.

Rep Richter: Can you have a festival in ND?

Mike Frohlich: Yes.

Chairman Keiser: Do you have contracts with wholesalers?

Mike Frohlich: Yes, we have 6 different contracts.

Chairman Keiser: What part of your business is wholesale?

Mike Frohlich: About 85% of our product is going out the door via wholesale. On the retail side, revenue, about 1/3 of our business.

Scott Meske-Representing the ND Brewer's Guild: Attachment 1.

Chairman Keiser: Anyone else here to testify on SB 2343 in support, opposition, neutral position?

Rep P Anderson: Would there be any opposition to move from 20 to 40 events?

Chairman Keiser: We will reopen the hearing on SB 2343.

Janet Seaworth~Executive Secretary of the ND Beer Distributor's Association: There has been some intense negotiation between the guild & distributors. We are very comfortable with the language in the bill. With regard to the special event, that is an ongoing negotiation. I'm with the retailers as well. What can happen without a limit the entity will take out multiple special permits for every weekend in a special location. It turns into popup retailers. It's a concern that has been expressed by retailers. Brew pubs & tap rooms have special privileges that other entities don't have. If they are allowed to take those privileges on the road for extended period of time, it's an unfair playing field. I don't have the authority to agree with the amendment.

Chairman Keiser: Closes the hearing.

Rep Laning: Moves a Do Pass.

Rep D Ruby: Second.

Chairman Keiser: Further discussion?

Roll call was taken on SB 2343 for a Do Pass with 13 yes, 0 no, 1 absent & Rep D Ruby is the carrier.

Date: Mar 20, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2343

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

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

Other Actions

- Reconsider
- _____

Motion Made by Rep Laning Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Rep O'Brien	Ab	
Vice Chairman Lefor	x		Rep Richter	x	
Rep Bosch	x		Rep D 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	x	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Ruby

REPORT OF STANDING COMMITTEE

SB 2343: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
SB 2343 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2343



Testimony in Support of Senate Bill 2343

Senate Industry Labor and Business Committee

January 30, 2019

Chairman Klein and Members of the Committee:

On behalf of the 27 brewpubs and taprooms that make up the North Dakota Brewers Guild, we appreciate the opportunity to speak in support of Senate Bill 2343, relating to brewpubs and taproom licenses.

This bill does three things currently not contained in Chapter 5-01-14 or 5-01-21. First, it allows brewpubs to sell their product in any size container up to three gallons. Cans, bottles, whatever brewery sealed type container. The limit however is 288 fluid ounces per day per person.

The second item the bill allows is for the brewpubs and taprooms to include nonprofit community events in their twenty-event limit each year. Additionally, it allows brewers to serve or sell their products at these events and donate proceeds to a community organization if they so choose.

Third, the bill contains the ability for brewpubs and taprooms to transfer product from one commonly owned facility to another with some strict stipulations, however. Transfer of product can only occur between like licenses, e.g., brewpub to brewpub; taproom to taproom - as long as the previous twelve months of production is 5000 gallons or more at the second location.

Our Members vary in size and production and they are all in various stages of development. We recognize that the carve outs for craft brewers in the Century Code are a result of the growing interest in craft brewing in North Dakota. We are proud to use North Dakota grains and barley whenever practical for our recipes. We are excited about the increasing interest in craft breweries as a form of tourism and the economic impact we bring to communities across the state.

This bill helps the craft beer industry and we are very grateful to have been able to work with the Distributors Association on developing language we all can support. We look forward to continuing to work with their association and the Tax Department to address other items which will make the craft beer industry stronger in North Dakota.

We respectfully ask the Committee to vote DO PASS on Senate Bill 2343. Thank you.



Testimony in Support of Senate Bill 2343

House Industry Labor and Business Committee

March 20, 2019

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This bill helps the craft beer industry and we are very grateful to have been able to work with the Distributors Association on developing language we all can support. We look forward to continuing to work with their association and the Tax Department to address other items which will make the craft beer industry stronger in North Dakota.

The bill received a unanimous vote by the Senate, and we respectfully ask the Committee to vote DO PASS on Senate Bill 2343. Thank you.