

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

2397

2001 SENATE POLITICAL SUBDIVISIONS

SB 2397

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2397

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 9, 2001

Tape Number	Side A	Side B	Meter #
2	x		15.3- 53.7
		x	0.4-16.4
Committee Clerk Signature <i>Mary Jo Wocken</i>			

Minutes:

The hearing was opened on SB2397, relating to direct sales of alcoholic beverages.

SENATOR KRINGSTAD, introduced SB2397 and gave a short explanation of this bill. This is a bill that will protect some of our wholesalers and retailers and its a bill that provides a penalty and fines or fees that have to be paid by the people out of state. That would be direct sellers or direct, the manufactures direct sellers, retailers and wholesalers. DAN KUNTZ: See written testimony. SENATOR COOK: One question I have on page 2, where you mention a fee of \$1000, and then you go on to explain the fees now for a wholesaler, manufacturer etc., I am assuming that for one thousand dollars an out of state shipper could do all of the things that these individuals will have to pay a license fee can do? DAN KUNTZ: Basically, what a direct shipper does, they avoid having to go through a wholesaler, so in essence there the manufacturer, the wholesaler, retailer, all at once. So that there, if a bottle of wine comes into the state through the normal channels that bottle will, the wholesalers pay the license fee, will pay a wholesale tax on

it, its then distributed and sold to a retailer, who likewise is pay the state retail fee plus those local retail fee, and then will pay the state sales tax as well as any local sales tax that might apply to that. So they all do that for the one fee, plus the payment of the taxes that would be applicable to it. SENATOR WATNE: I didn't catch one figure that you gave, and that was for the civil penalty of how many thousand dollars? DAN CHINTZ: It would be \$25,000 for the civil penalty that they would pay. As a comparison I believe that the statute provide that if a local retailer is subject to like a Class A misdemeanor, that's up to a \$ 15,000 penalty for corporations for local retailers would be subject to plus they of course lose their license, or subject to license revocation under that situation. Course these out of state shippers if there not registering they are not to concerned about losing a license. SENATOR LEE: When I want to order a case of wine from a small winery in the Sonoma Valley that I may have visited and enjoyed. It would be absolutely ridiculous to expect they are going to be paying a \$1000 and all these other fees to do that. If I ordered this jacket on the Internet, I'm not subject to the kinds of taxes there might be here which is a topic of discussion everywhere. And so its hard for me to understand why one would suggest that the same kinds or different kinds of restrictions should be placed on the actual sale of this. Never mind the coal three tiered bill. Why would we even be looking at making this so difficult for those of us who might enjoy actually buying small quantities on the Internet. I thought we had resolved this issue. DAN KUNTZ: Some of the industry people I think will address some of your concerns, but I think the overriding concern is that liquor industry is regulated in this country different than virtually every other industry that there is. And I think some of the other people will testify to the economics of selling wine. If that were the only bottle of wine that, that company was going to sell that year in North Dakota I would agree with you that they probably would not be willing to sell it and pay \$1000 fee. But at the same token, I, most of these

wineries, that are direct shipping are probably going to be selling a lot more quantity or they wouldn't even be in the direct shipment area. SENATOR COOK: Dan, is it safe to say and correct me if I am wrong, that since prohibition, the liquor industry is probably the most one industry in which the rights of a state have been acknowledged by the federal government. DAN KUNTZ: There is some litigation going on right on around the country to try to determine exactly the degree of regulatory authority that the states have under the 21st amendment, which is, your right, it has been acknowledged that the states have probably more authority in the regulation of that industry vs. any others. I mean you won't find another amendment in the constitution that gives the states specific authority to regulate an industry like the 21st amendment does with respect to liquor. There is some litigation on going in the country, where that issue is being addressed in terms of how far does it go versus the commerce clause. Most of that litigation however, has been related to situations where states have tried to prohibit direct shipments or have put restrictions on direct shipments that are much more onerous than what they require of their own industry in their own state. This bill here is simply trying to put the direct shippers more on the same regulatory requirement that our own businesses are subject to. There is a recent case out of the 7th Circuit which I think is probably most authoritative case at this point on that issue. Basically, it upheld that 21st amendments priority over the commerce clause. I believe that issue is going to the Supreme court as well. SENATOR LEE: I would like to know, how many actual owners there of, with the wholesalers in North Dakota. I don't mean the different companies, but how many actual individuals or similar groups fall in the wholesale company. DAN KUNTZ: I would prefer you direct that question to one of the individual company representatives who are prepared to testify. ROBB HANSON, Ed Phillips and Sons out of Fargo. See written testimony. The one point that I would like to make over and above my

written testimony, is that we are not looking at this as a protectionist thing, we are not looking at this as a isolationist thing, we are not trying to build a fence around the state of North Dakota, but what we're trying to do is have the out of state interests who have no investment in the state of North Dakota; they pay no taxes, they pay no license fees, they don't employ anybody and yet they can do business in the state of North Dakota. All we're trying to do is level the playing field. Everyone here that is in this industry has a lot of money invested in this industry. Not only originally, but on a ongoing basis. I think that this bill is fair, requires them to be licensed, requires them to report as everyone else does and pays state taxes, and pay the local taxes. I think they pay 7% state tax, which is 1% more than there is on any other product. They also pay a 1% sales tax for Fargo then they have .5% sales tax on top of that, but that's for West Fargo. There is a lot of taxes and a lot of reporting, when they say reporting load for this small winery or out of state businesses would be prohibitive I don't know I do it every month. Its not that prohibitive, I've got a lot of customers. SENATOR COOK: Does this bill require them to pay the local taxes too? The city taxes? ROBB HANSEN: It does not. That has not been determined. That is not written in the bill yet. JARED ANDERSON, Congress Incorporated. See written testimony.

The issue was brought up earlier on the 21st amendment and how that's alcohol expressly has the right to be controlled by the states. North Dakota has a place in history in defense of that. North Dakota took it to the Supreme Court against the Department of Defense for military shipments in the state of North Dakota, and we won. A lot of the national information that comes out, that case is cited in the Supreme Court defending the 21st. Amendment. I would just like to address the same point that alcohol is different, its not treated the same, its highly taxed, highly regulated on the federal and the state level. That is a issue that changes the whole playing field. The bill that we are proposing has been agreed to by the wine institute in other states, in Louisiana in

particular they have agreed to this law. Something that has had a total industry agreement in other states. I did, on the second page, I put some economic information, this is strictly for wholesaling and it talks about the jobs direct and indirect using a statistical model for the trickle down affect that you can see there is over 140 people directly employed in the wine and spirits wholesaling group. SENATOR COOK: How many wholesalers are in the state? Do you know? JARED ANDERSON: Currently there are 2 more shippers in the state right now. SENATOR MATHERN: When I got involved in this I was told that occasionally you brought samples to the committee, I was wondering if you have any. JARED ANDERSON: Not today, it was so cold. BILL SHALHOOB: Spoke in support of SB2397. North Dakota Hospitality Association. See written testimony. TODD JACOBSON: General Manager of the Happy Harry's in Grand Forks and Fargo. I would like to address Senator Lee's question about the small wineries in ordering one case at a time and how that's going to affect this bill. My answer to that is right now, I can go to California, on wine buying trips and a lot of places won't even talk to us anymore because they realize the profit levels they are able to do by direct shipping in the state is so much greater than if they do for me. So in that question, I am already at a disadvantage just from that. They do not have to pay the license fees, they don't have to pay the sales tax, they are realizing much higher profits than what we are able to do. We work on a really thin margins an for my end of it, and looking at the protections kind of thing, maybe that is so. But I would hope that you guys would support, the bill and try and keep this thing on a level playing field. TOM MILLER: Owner of Captain Jacks' Liquor, in the Bismarck, Mandan area. There's been a lot of things that have been passed around and I did bring some samples, but I drank them. Two years ago during the 1999 legislative session, North Dakotan's were concerned about the legal aspect of bringing alcohol over state lines. At that particular time, SB2216 was amended to allow individuals to

order up to 5 bottles of wine or a case of beer a month by way of Internet. This basically was designed for the hard to get product. Our company although realized that it would probably cut into us a little bit as far as what we did in retail, we supported it because we just can't get everything. It will get harder and harder for us as the Internet keeps shipping. Each year, our company which we have four stores in the Bismarek and Mandan area, we have an average of \$2800 a year license fee just to be able to open our doors. On top of that we collect, all of the state sales tax, city sales tax, property taxes, we employ up to 35 employees, we donate dozens of items, money to nonprofit organizations, college, charities etc. We take pride in our community, and I want people to understand that we also follow the law. We also take a very proud and happy position to card minors. So far the Internet shippers do none of this. I would say at this particular point that our corporation, bill number 2397 is a very, very fair bill compared to what its happened in other states. I been in the business, 18 years, I've been in retail clothing business for 10 years before that, I have never seen an industry so controlled by a law. And I think we went way out our way two years ago to say, yes, we do allow Internet shipping to North Dakota, for the hard to get stuff. I would love to be able to take the stuff the other states can't get and ship it to them. We play by the rules. JANET SEAWORTH: Executive Director of the North Dakota Beer Wholesalers Association. See written testimony. Supports SB2397. SENATOR MATHERN: More on the technical level. If Senator Lee did order a case of wine from a small winery, how does anybody know? She might be able to make a phone call, I mean is there any way they can tract that. JANET SEAWORTH: That is the question. I have spoken with the regulatory authorities in Louisiana who really are the ones th it have experience now because their statutes are very similar to what is being proposed here. They acknowledge that there is some difficulty in determining who is actually registering and whether there are many parties

out there that are not bothering to contact the state. They acknowledge that is a problem and it may be an ongoing problem. However, they have told me that for the most part there legislation is a step in the right direction. Their ability to actually regulate have been to with the fact that they do not have adequate staffing to do so. It is not a defect in the law, as much as simply they do not have the staff. SENATOR COOK: Senator Materna, I do believe that the legislation we passed two years had in it a rather large club, for out of state wineries etc. that would really make them think twice about jeopardizing, and I forget exactly what that club was, but I am sure we could do some research and find out. BRIAN HILL: Owner and operator of Polar Package Place in Bismarck. I retail wine and spirits store here in North Dakota. See written testimony. I do oppose this bill. SENATOR FLAKOLL: Would you think it would be appropriate if we changed it from a \$1000 fee up front to a larger tax or fee, when it is sold? BRIAN HILL: When we introduced this bill two years ago and the fighting in-between and back and forth, we offered the ability for this at that time. That they could collect sales tax. In fact we're a laughing stock in the Internet industry cause we're the only state that does not collect sales tax. Sales tax is a simple thing for these people to sell the wine into the state of North Dakota. To collect and to send that money into the state. But as far as the fee goes, \$1000 is absolutely ridiculous. I think we tried to negotiate with the other side, to make a fee that would be fair, you know for somebody, \$ 50 or something. We're talking small quantities of items here that are coming into the state. \$1000 is absolutely totally out of line. And \$25,000 fine is ridiculous too. STACY STAIGER: Spoke on behalf of her mother Bonnie Staiger. See written testimony. She is opposed to SB2397. BOB HANSEN: Spoke on behalf of former Senator Vern Thompson. See written testimony. Opposed to SB2397.

SENATOR COOK: Bob, just one clarification. Your number 5 there where you say no other seller of product who does not records in our state must pay our state sales taxes. I believe what you meant to say is that collect and remit our state sales taxes. They do not pay it? BOB

HANSON: Yes, I am sorry Mr. Chairman. They don't have to collect and remit those sales taxes on purchases that are made in another state and possession has taken as it. SENATOR

COOK: Further off, as far as where possession is taken, I believe that then that then they are FOB to the destination, possession and handled at the destination. Possession does not occur in any other state. The freight is charged, possession is at the residence where it is received. BOB

HANSON: Your correct on that. What I am getting at here is though is lets say that any of us would go out to California, we want to pick up. We go to a winery, we happen to visit, we like a wine there we buy it just one bottle, take it back with us. Then the possession has taken place there. We have in this bill, that winery is responsible for the state tax, our state liquor tax and is subject to a \$25000 if they don't report it in the current bill. That is the change we'll look at.

Hearing closed on SB2397.

February 15, 2001 Tape 2, Side A , Meter # 30.9- 54.6, Side B 0.1-6.8)

The Senate Political Subdivisions Committee met to discuss SB2397. After lengthy discussion with legal consultation with our intern Mark Monasky it was decided by the Committee to vote on the proposed amendments.

Senator Lee made a motion to move amendments as corrected, amendments number 18337.0104..

Senator Polovitz- 2nd

Roll call vote: 6 Yeas, 2 No 0 Absent

Senator Lee made a motion as Do Pass as Amended on SB2397.

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Senate Political Subdivisions Committee
Bill/Resolution Number SB2397
Date: February 9, 2001

Senator Flakoll 2nd

Roll call vote: 8 Yeas, 0 No 0 Absent Carrier: Senator Cook

February 16, 2001 (Tape 1, Side A, Meter #0.0-16.5)

The Senate Political Subdivisions Committee was called to order. All present in attendance.

Senator Cook asked the committee to review the amendments.

Committee discussion followed.

Senator Lee moved the amendments; file reports with the State Tax Commissioner

Senator Polovitz 2nd

Roll Call Vote: 6 yes 2 no 0ab

Senator Lee move a do pass as amended

2nd Sen Polovitz

7 yes 1 no 0 ab

Carrier: Senator Cook