

2023 HOUSE FINANCE AND TAXATION

HB 1303

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1303
1/18/2023

A bill relating to alcoholic beverage tax on diluted beverages.

Chairman Headland opened the hearing at 10:30AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVille and Representative Ista. Members absent: Representative Grueneich.

Discussion Topics:

- Diluted beverages
- Tax structure of alcoholic beverages

Representative Motschenbacher introduced bill in support (#14080, 14079, 14070).

John Ward, Attorney and Lobbyist representing North Dakota Wine and Liquor Wholesalers Association, testified in support (#14159, 14160).

Dwayne Kratt, Vice President of External Affairs for Johnson Brothers, verbally testified in support.

Joshua Guy, Vice President of Sales with North Dakota & South Dakota Southern Glazers Wine and Spirits, verbally answered question from the committee.

Committee discussion.

Dennis Pathroff, Attorney with the GA Group representing North Dakota Beer Distributors Association, testified in opposition (#14027, 14001).

Hunter Jerome, General Manager of Jerome Distributing and President of North Dakota Beer Distributors Association, testified in opposition (#14154).

Scott Meske, Executive Director with North Dakota Brew Guild, testified in opposition (#14149).

Additional written testimony:

Adam Smith, Distilled Spirits Council of the United States, testimony in favor #13948 and 13949.

House Finance and Taxation Committee

HB 1303

January 18, 2023

Page 2

Geralyn Lasher, Director of the Great Lakes States with The Wine Institute, testimony in opposition #14014.

Todd Kandra, ND Brewers, testimony in opposition #16415.

Meeting adjourned at 11:07AM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1303
1/18/2023

A bill relating to alcoholic beverage tax on diluted beverages.

Chairman Headland opened the meeting at 2:30PM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVille, and Representative Ista. Members absent: Representative Grueneich.

Discussion Topics:

- Proposed amendment 23.0911.01001

Representative Motschenbacher proposed an amendment 23.0911.01001 (#18602).

Representative Olson moved the amendment 23.0911.01001.

Representative Motschenbacher seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	N
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	AB
Representative Jay Fisher	Y
Representative Jim Grueneich	AB
Representative Patrick Hatlestad	N
Representative Zachary Ista	Y
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y
Representative Nathan Toman	Y

Motion carried 10-2-2

Representative Motschenbacher moved a Do Pass as Amended.

Representative Fisher seconded the motion.

Committee discussion.

Representative Motschenbacher withdrew his motion.

Chairman Headland adjourned at 2:44PM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1303
1/30/2023

A bill relating to alcoholic beverage tax on diluted beverages.

Chairman Headland opened the meeting at 11:13AM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Toman, Representative Finley-DeVilleville. **Members absent:** Representative Olson, Representative Steiner, and Representative Ista (only for the last vote).

Discussion Topics:

- Proposed amendment 23.0911.01002
- Committee vote

Representative Motschenbacher distributed a proposed amendment 23.0911.01002 (#17833).

Representative Motschenbacher moved the amendment.

Representative Anderson seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVilleville	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	AB
Representative Vicky Steiner	AB
Representative Nathan Toman	Y

Motion carried 12-0-2

Representative Dockter moved a Do Not Pass as Amended.

Representative Fisher seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	AB
Representative Mike Motschenbacher	Y
Representative Jeremy Olson	Y
Representative Vicky Steiner	AB
Representative Nathan Toman	AB

Motion carried 11-0-3

Representative D. Anderson is the bill carrier.

Chairman Headland adjourned at 11:19AM.

Mary Brucker, Committee Clerk

January 30, 2023

2/1 1-30-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1303

Page 1, line 13, overstrike "Wine" and insert immediately thereafter "Diluted beverages or wine"

Page 1, line 15, remove the overstrike over "Wine"

Page 1, line 15, remove "Diluted beverages or wine"

Page 1, line 20, after "beverages" insert "in their original, unopened container which are"

Page 1, line 20, after "of" insert "distilled"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1303: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1303 was placed on the Sixth order on the calendar.

Page 1, line 13, overstrike "Wine" and insert immediately thereafter "Diluted beverages or wine"

Page 1, line 15, remove the overstrike over "Wine"

Page 1, line 15, remove "Diluted beverages or wine"

Page 1, line 20, after "beverages" insert "in their original, unopened container which are"

Page 1, line 20, after "of" insert "distilled"

Renumber accordingly

2023 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Room JW327E, State Capitol

HB 1303
1/30/2023

A bill relating to alcoholic beverage tax on diluted beverages.

Chairman Headland opened the meeting at 2:45PM.

Members present: Chairman Headland, Vice Chairman Hagert, Representative Anderson, Representative Bosch, Representative Dockter, Representative Fisher, Representative Grueneich, Representative Hatlestad, Representative Motschenbacher, Representative Olson, Representative Steiner, Representative Toman, Representative Finley-DeVilleville, and Representative Ista. No members absent.

Discussion Topics:

- Reconsideration
- Distillers' tax concerns
- Committee vote

Representative Toman moved to reconsider our actions from this morning to have further discussion.

Representative Olson seconded the motion.

Voice vote: Motion carried.

Committee discussion.

Representative Dockter repeated the same motion as earlier today and moved a Do Not Pass as Amended (#17833 amendment testimony).

Representative Olson seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Jared Hagert	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Lisa Finley-DeVilleville	Y
Representative Jay Fisher	Y
Representative Jim Grueneich	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y

Representative Mike Motschenbacher	N
Representative Jeremy Olson	Y
Representative Vicky Steiner	Y
Representative Nathan Toman	Y

Motion carried 13-1-0

Representative D. Anderson is the bill carrier.

Chairman Headland adjourned at 2:50PM.

Mary Brucker, Committee Clerk

January 30, 2023

24 1-30-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1303

Page 1, line 13, overstrike "Wine" and insert immediately thereafter "Diluted beverages or wine"

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Page 1, line 15, remove "Diluted beverages or wine"

Page 1, line 20, after "beverages" insert "in their original, unopened container which are"

Page 1, line 20, after "of" insert "distilled"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1303: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1303 was placed on the Sixth order on the calendar.

Page 1, line 13, overstrike "Wine" and insert immediately thereafter "Diluted beverages or wine"

Page 1, line 15, remove the overstrike over "~~Wine~~"

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Page 1, line 20, after "beverages" insert "in their original, unopened container which are"

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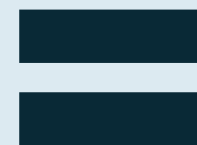
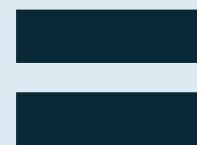
Renumber accordingly

TESTIMONY

HB 1303

ND RTD TAX RATE

At 5% ABV, the North Dakota tax rate on spirits-based RTDs is more than **15 times** the malt- and sugar-based state tax rate.



1.5 cents

1.5 cents

4.7 cents

23.4 cents



DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES



January 17, 2023

Hon. Craig Headland, Chair
Hon. Jared Hagert, Vice Chair
North Dakota House Finance and Taxation Committee
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representatives Headland and Hagert:

This letter is submitted on behalf of the Distilled Spirits Council of the United States (DISCUS), a national trade association representing producers and marketers of distilled spirits sold in the United States, in support of HB 1303 entitled "Relating to alcoholic beverage tax on diluted beverages." HB 1303 seeks to establish a lower tax rate on "diluted beverages," also known as "ready-to-drink" (RTD) spirits products, containing less than 12.5% alcohol-by-volume (ABV). Currently, these products are taxed at the spirits tax rate of \$2.50 per gallon, and HB 1303 would tax them at \$0.60 per gallon, which is the current excise tax rate for wine containing 17-24% ABV.

There has been tremendous innovation and transformation in the RTD category over the past several years originating from large and small beer, wine and spirits producers. In today's marketplace, consumers can choose from malt-based hard seltzers, wine-based flavored spritzers or canned/pre-mixed cocktails produced with distilled spirits.

In 2021, there were approximately 37 million cases of spirits-based RTDs sold in the United States. Based on the trajectory from other countries, the U.S. market is expected to grow to more than 200 million cases benefiting consumers and state coffers if there is fair and equitable taxation. The pandemic accelerated the growth of these products as adult consumers look to recreate the cocktail experience at home with convenient, pre-mixed cocktails made with premium spirits, fresh ingredients and low ABV options.

Unfortunately, North Dakota consumers are forced to pay much higher taxes for a spirits-based RTD products even if the product has the exact same or similar ABV as a malt-, sugar- or wine-based RTD. For example, at 5% ABV, the North Dakota tax rate on spirits-based RTDs is more than 15 times the malt- and sugar-based RTD state tax rate. The accompanying graphic starkly illustrates this contrast in the tax rates.

This excessive tax burden is also a steep hurdle for any North Dakota small distiller that may want to enter this growing category. In fact, according to a recent survey of small distillers, 62% of those not currently producing RTD products cited the higher tax rate as a barrier to entering the market.

During the course of your debate, you may hear “reasons” why a lower tax rate should not be granted to spirits-based RTD products, none of which hold up under scrutiny.

- 1) It is a myth that providing a fairer tax rate for spirits-based RTD products will result in negative economic impacts for North Dakota.

It is a fact that based on projected sales, our economic analysis indicates that the North Dakota Treasury would realize between \$1.1 and \$2.1 million over the next 3-5 years based on the new excise tax and North Dakota’s current sales tax rate. Equalizing the tax on low alcohol products will only increase jobs in North Dakota’s spirits industry, which today supports more than 3,300 jobs and \$79 million in wages.

- 2) It is a myth that distilled spirits are “harder” than beer or wine.

It is important to recognize that alcohol is alcohol. Drinking responsibly and in moderation depends on how much you drink, not whether that drink is made of beer (malt), sugar, wine or spirits. A malt-based RTD with 5% ABV has the exact same alcohol content as a spirits RTD with 5% ABV. There is no difference.

Research shows the effects of ethanol, the pure alcohol that is in all beverage alcohol, on the body are the same regardless of its source. There is no scientific, public safety or public policy basis to differentiate between malt-based, sugar-based, wine-based and spirits-based RTDs each containing similar ABVs.

Put very simply, there is no beverage of moderation, only the practice of moderation. To suggest by statement or policy that some forms of alcohol are “softer” than others sends a dangerous message when science has long recognized that alcohol is alcohol.

The spirits industry has been leading beverage product innovation for nearly two decades. Today, it is a major contributor to the state of North Dakota, generating nearly \$306 million in economic activity and \$50 million to the state in tax revenue. Adoption of HB 1303 will continue to support this growth and expand upon the thousands of jobs across the Peace Garden State. It is good, commonsense legislation and it supports consumers and producers alike.

In closing, we believe that HB 1303 is good tax policy. In fact, 25 other states already have a lower tax rate for lower alcohol content products and states such as Vermont, Michigan and Nebraska have enacted similar tax fairness measures in the last two years. Modernizing North Dakota’s laws to provide fair tax treatment for spirits RTDs will boost small businesses, raise

state tax revenue and support consumer choice. We urge the committee's support of the proposal.

Thank you for the opportunity to submit these comments.

Sincerely,

Adam Smith
Vice President State Public Policy

cc: Members of the North Dakota House Finance and Taxation Committee

Encl: RTD Tax Rate Graphic



January 18, 2023

Chairman Craig Headland & Members of the
Finance and Taxation Committee
North Dakota State Capitol, Room JW327E
600 East Boulevard Avenue
Bismarck, ND 58505

Chairman Headland and members of the Finance and Taxation Committee:

Today, we write to oppose HB 1303, a proposal to reclassify liquor products below 12.5% as wine. We represent brewers, beer importers, and wholesalers of all sizes in North Dakota. We produce and distribute beer products – as well as some of the country’s leading ready-to-drink liquor-based cocktails – across the state.

The beer industry supports a tax and regulatory framework that reflects that liquor, wine, and beer be treated as clearly distinct categories. Every state and the federal government has done this since the repeal of Prohibition in 1933, and it is vital to maintain these distinct categories due to the notable differences in these products and the way they are consumed.

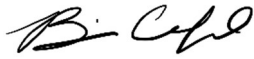
HB 1303 would take a group of liquor products and arbitrarily reclassify them as wine to reduce the tax rate. This change would blur the lines between distinctly different alcohol categories. Beer, wine, and liquor are not the same, and this legislation would send a confusing message to consumers.

It is worth noting that proposals like this were rejected in more than a dozen states during the 2021 and 2022 legislative sessions around the country. One exception to this is Nebraska, and the outcome in their state should be a warning for others.

In 2021 the Nebraska legislature passed a bill to reclassify liquor drinks below 12.5% ABV as wine for tax purposes. The fiscal note found that the cost to the state would be approximately \$1 million annually. Since the legislation passed, the state has lost money and consumers did not see a price break on these products. In fact, policy analysts at Public Sector Consultants found that the average price of ready-to-drink liquor-based cocktails went up 65 percent in Nebraska since the bill passed (from an average of \$5.83 to \$9.62), far more than the inflation rate during that time period. It is no surprise that just last week the Chair of the Revenue Committee filed a bill returning the classification of these products to spirits.

Liquor, wine, and beer are different types of alcohol, which is why we oppose HB 1303 and encourage North Dakota to maintain clear distinctions between these three categories. Thank you for the opportunity to testify today.

Sincerely,



Beer Institute
President and CEO



Brewers Association
President and CEO



National Beer Wholesalers Association
President and CEO



Geralyn Lasher
Director, Great Lakes States

January 17, 2023

Mr. Craig Headland, Chairman
Mr. Jared Hagert, Vice-Chairman
North Dakota House Finance and Taxation Committee
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representatives Headland and Hagert:

This letter is submitted on behalf of the Wine Institute, a nonprofit trade association representing over 1,000 California wineries and associate members. California wineries produce 90% of the wine manufactured in the United States and provide a significant portion of the wine sold in licensed establishments in North Dakota.

We respectfully oppose North Dakota HB 1303, which would reduce the tax on spirits-based ready-to-drink (RTD) cocktails from the current \$2.50/gallon spirits tax to only \$.60/gallon. These bills would define "diluted beverages" as those containing distilled spirits mixed with nonalcoholic beverages, they may also contain wine and contain less than 12.5% alcohol by volume (ABV). HB 1303 would reclassify these products attempting to equate them with wine.

Wineries, breweries and distilleries have introduced hundreds of creative new products that blur historical lines between wine, beer and spirits. Beer- and wine-based products generally fit into existing alcohol tax categories, but states are now being asked to set new tax rates on spirits-based products driven solely by the ABV of new products that is lower than that of distilled spirits.

Since the end of Prohibition, the federal government (and most states) have controlled and taxed wine, beer and spirits based on two factors: 1) the license of the producer and its raw material (e.g., wineries fermenting grapes, breweries brewing grains and distilleries distilling other natural products), and 2) the ABV of the finished product. The federal government continues to regulate the producer, formula, labeling and containers of all alcohol, and it continues to charge federal excise tax rates based on both factors.

The North Dakota bills propose to drop the tax rate on spirits-based RTDs by 76% based entirely on ABV, without regard to the producer and raw material used. A broader discussion regarding the appropriate ABV limit and tax treatment of all products needs to occur before North Dakota deviates from longstanding alcohol tax policy for popular products.

This change would further blur the lines between products and confuse consumers about alcohol content. While these RTDs would contain distilled spirits and be marketed as cocktails, they would be taxed at a lower rate. Wine Institute opposes all legislation lowering the tax on spirits-based RTDs to the

same or a similar tax rate as wine. If the Legislature wishes to reduce the tax on alcohol, it might instead re-evaluate one that impacts wine, beer and spirits equally.

Thank you for your consideration of our comments on this important item. On behalf of our member wineries, Wine Institute greatly appreciates the opportunity to share our perspective and work with the Committee during this process in any way we can.

Sincerely,

A handwritten signature in black ink that reads "Geralyn A. Lasher". The signature is written in a cursive style with a large initial 'G'.

Geralyn Lasher
Director, Great Lakes States
The Wine Institute
glasher@wineinstitute.org
517-898-3260

Testimony of Dennis Pathroff – HB 1303

Good morning, Chairman Headland and committee members,

My name is Dennis Pathroff. I am an attorney with the GA Group. I am here today representing the **North Dakota Beer Distributors Association**.

The members of the association are North Dakota's family-owned beer distributors. Together, our members employ 513 North Dakotans, pay \$34.6 million in wages annually, and support charities and local events in the amount of \$500,000 per year.

The beer distributors oppose HB 1303. Our opposition is based on two primary reasons.

First, hard-liquor based canned cocktails are doing just fine without the need for tax cuts. Canned cocktails sales are growing rapidly, up 59% nationwide in 2022. They are selling well with good margins for suppliers, distributors, and retailers. We don't see the need to reduce taxes when the products are selling so well.

Second, lowering the tax on canned cocktails will not benefit North Dakota's distributors or consumers. Alcohol tax reductions are not passed through in a linear fashion. A recent study shows that when Nebraska and Michigan reduced taxes on canned cocktails, the states lost significant tax revenue and consumers did not see a price break on any of these products. *See attached study.* Moreover, very little of that tax relief was passed on to the distributors. If HB 1303 passes, we are likely to see similar results in North Dakota.

I'd now like to introduce Mr. Hunter Jerome to the committee to provide some background and explain the likely consequences of this legislation. Hunter is the General Manager of Jerome Distributing and the President of the North Dakota Beer Distributors Association.

Thank you, Chairman Headland and committee members.

Hard Liquor–based Ready-to-drink Pricing Trends, 2017–2022

November 2, 2022





**PUBLIC SECTOR
CONSULTANTS**

Prepared by

Public Sector Consultants
www.publicsectorconsultants.com

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Executive Summary

When Nebraska and Michigan passed measures in 2021 to reduce taxes on ready-to-drink cocktails (RTDs), industry supporters of the legislation claimed consumers in Michigan would "benefit from the reduced tax rate for these popular products" (DISCUS May 24, 2021) and that Nebraska's bill was "another great benefit for adult consumers" (DISCUS May 26, 2021). Despite these claims, consumers are not benefitting from lower prices in either state since taxes were reduced on RTDs.

Public Sector Consultants examined RTD pricing before and after the tax changes, and the analysis shows dramatic price hikes for RTDs in both states: a 44 percent jump in Michigan and a 65 percent jump in Nebraska since the legislation passed. These increases far outpaced inflation and the rapid overall increase in the consumer price index.

Introduction

Ready-to-drink cocktails, also known as canned cocktails, are premade, hard liquor-based mixed alcoholic beverages purchased for immediate consumption. Taxes on these products were reduced in Michigan and Nebraska in 2021. Public Sector Consultants examined RTD pricing before and after the tax changes. This report uses retail market data to analyze trends in RTD sale prices over a five-and-a-half-year period.

Beverage Tax Reductions

In May 2021, Michigan enacted Public Act 19 of 2021, which revised the definition of and lowered the tax rate on mixed-spirits drinks, the category to which nearly all hard liquor-based RTDs belong. The new law defines "mixed spirit drinks" as drinks made of hard liquor mixed with a nonalcoholic beverage or flavoring and coloring. Michigan law allows for these drinks to be 10 percent or less alcohol by volume (ABV), or between 10 percent and 13.5 percent ABV if they are filled in a closed metal container that is the "general shape and design of a can" and do not exceed 24 ounces per unit. The law also reduced the tax on these drinks by 37.5 percent, from 48 cents per liter to 30 cents per liter (approximately \$1.82 to \$1.14 per gallon) for RTDs sold in bulk and by a proportionate amount for lesser quantities. These changes took effect August 23, 2021.

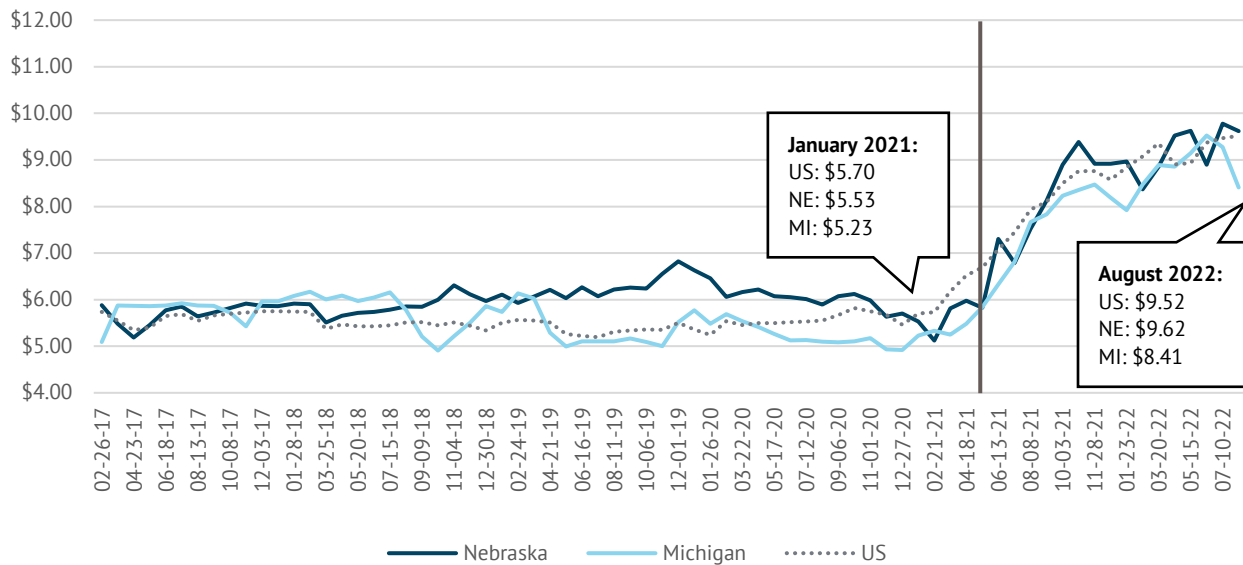
Similarly, Nebraska enacted Legislative Bill 274 in May 2021, creating a new category of hard liquor-based RTDs, which had previously been taxed at the same rate as distilled spirits like whiskey or vodka. The State of Nebraska now defines RTDs as a beverage or confection "in an original package" that contains hard liquor, and which is 12.5 percent or less ABV. The \$3.75 per gallon (approximately \$0.99 per liter) tax rate was reduced by nearly 75 percent to \$0.95 per gallon (approximately \$0.25 per liter). The change became effective July 1, 2021.

Analysis

Using retail sales data from international market research and data firm IRI, PSC analyzed price increases for RTDs in Michigan, Nebraska, and the United States. Each price point in the exhibits that follow is the four-week average price for a unit of RTDs.¹

Exhibit 1 shows that after four years of relative stability (2017–2020), the retail price of hard liquor-based RTDs began to increase in the first quarter of 2021. Despite some minor fluctuations, prices have steadily risen through August 2022, the latest available data at the time of this report. Between May 2021, when legislation to lower tax rates on hard liquor-based RTDs in these two states was signed into law (indicated by the vertical line), and August 2022, the four-week average RTD unit price grew from \$5.84 in Michigan to \$8.41 (44 percent) and from \$5.83 to \$9.62 (65 percent) in Nebraska.

EXHIBIT 1. Hard liquor-based Ready-to-drink Four-week per Unit Prices, 2017–2022

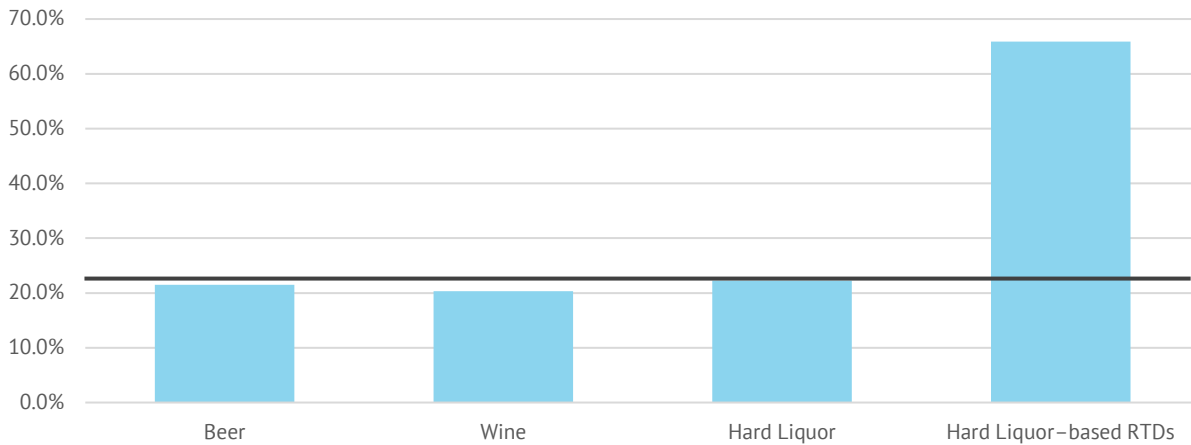


Source: IRI Multi-Outlet (MULO) and PSC analysis

Exhibit 2 compares RTD pricing with prices in other alcoholic beverage categories. While hard liquor-based RTD retail prices in the United States increased 65.9 percent from February 2017 to August 2022, the retail price of beer rose by just 21.5 percent, wine by 20.3 percent, and spirits by 22.3 percent. The horizontal line marks the level of inflation (22 percent) over this period.

¹ An RTD unit is defined by IRI as four 0.355-liter containers (48 ounces total). The exact characteristics that qualify a product as an RTD, such as maximum ABV, vary by state.

EXHIBIT 2. Percentage Change in per Unit Pricing from February 2017 to August 2022, United States



Source: IRI Multi-Outlet (MULO) and PSC analysis

Conclusions

PSC's findings show that hard liquor-based RTDs retail sales prices began to increase dramatically and consistently in both Michigan and Nebraska since spring 2021 and continued after legislation was passed that lowered the tax rate on hard liquor-based RTDs. These price hikes reflect pricing trends for hard liquor-based RTDs in other states across the U.S during the same time, while prices for products in other categories—beer and wine—tracked in line with inflation figures.

While supporters of tax reduction legislation claimed consumers would benefit from the rate changes, consumers are not seeing lower prices in Michigan and Nebraska since the tax rate was lowered on hard liquor-based RTDs. In fact, retail sales prices in August 2022 remained substantially higher than those in the three-year period prior to the tax reductions.

References

Distilled Spirits Council of the United States (DISCUS). May 24, 2021. "Governor Signs Ready-to-Drink Cocktail Expansion in Michigan." *Distilled Spirits Council of the United States*. Accessed October 26, 2022.

<https://www.distilledspirits.org/news/governor-signs-ready-to-drink-cocktail-expansion-in-michigan/#:~:text=Today%2C%20Governor%20Gretchen%20Whitmer%20signed,on%20these%20spirits-based%20products>

— — —. May 26, 2021. "Nebraska Governor Signs Bill That Makes Cocktails To-Go Permanent and Reduces Tax Rate on Spirits-Based RTDs." *Distilled Spirits Council of the United States*. Accessed October 26, 2022.

<https://www.distilledspirits.org/news/nebraska-governor-signs-bill-that-makes-cocktails-to-go-permanent-and-reduces-tax-rate-on-spirits-based-rtlds/>

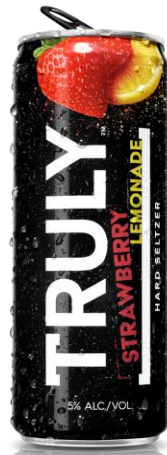
Appendix: Data Methodology

This report uses data collected by IRI, an international market research firm. IRI Multi-Outlet (MULO/MULC) data provides pricing data based on the aggregation of retail sales information from over 100 different retailers and over 80,000 individual stores. These stores include grocery, drug, and liquor outlets. IRI collects sales data via point-of-sale scans during the customer checkout process. PSC utilized sales data from February 2017 to August 2022.



**PUBLIC SECTOR
CONSULTANTS**

230 N. Washington Square
Suite 300
Lansing, MI 48933



23.0911.01001

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1303

Introduced by

Representatives Motschenbacher, Beltz, Cory, Dockter, Fisher, Grueneich, Heinert, Klemin,
Louser, Marschall

Senator K. Roers

1 A BILL for an Act to amend and reenact section 5-03-07 of the North Dakota Century Code,
2 relating to alcoholic beverage tax on diluted beverages.

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

4 **SECTION 1. AMENDMENT.** Section 5-03-07 of the North Dakota Century Code is amended
5 and reenacted as follows:

6 **5-03-07. Imposition of tax - Rate.**

7 1. A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries,
8 domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers
9 for the privilege of doing business in this state. The amount of this tax shall be
10 determined by the gallonage according to the following schedule:

11	Beer in bulk containers - per wine gallon	\$.08 (.021 per liter)
12	Beer in bottles and cans - per wine gallon	.16 (.042 per liter)

13	Wine <u>Diluted beverages or wine</u> , including sparkling wine, containing less than 17% alcohol by	.50
14	(.132 per liter)	

15	volume - per wine gallon	
16	Wine <u>Diluted beverages or wine</u> containing 17%-24% alcohol by	.60 (.159 per liter)
17	volume - per wine gallon	

18	Distilled spirits - per wine gallon	2.50 (.66 per liter)
19	Alcohol - per wine gallon	4.05 (1.07 per liter)

20 2. As used in this section:

21 a. "Diluted beverages" means alcoholic beverages prepared from the admixture of
 22 distilled spirits or wine with water, dairy products, fruit juices, or vegetable juices,
 23 to which natural flavors, artificial flavors, sweetening agents, or food additives

- 1 may be added to produce a beverage distinct from the spirits or wine. The term
2 does not include beverages containing twelve and one-half percent or more of
3 alcohol by volume.
- 4 b. Notwithstanding section 5-01-01, "distilled spirits" has the same meaning as in
5 section 5-01-01, except the term does not include diluted beverages as defined in
6 subdivision a.

7 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
8 June 30, 2023.

Good morning Chairman Headland and members of the committee. For the record, my name is Mike Motschenbacher, Representative from District 47 in NW Bismarck.

Today you have before you HB 1303. You also have an amendment to this bill which would move the words "Diluted beverages" to line 13 and to add the word "distilled" to line 21 of the original bill, or line 22 of the amended bill, in front of the word spirits. It also defines "Diluted beverages" starting on line 20 of the original bill, or line 21 of the amended bill. Diluted beverages are simply beverages where the alcohol content is diluted with other products like water, dairy products, fruit juices, and so on as you can see in the definition. I've also included some pictures of some sample diluted beverages.

The purpose of this bill is to properly tax diluted beverages to a rate which is consistent with other beverages of a similar alcohol content.

All diluted beverages have an alcohol content less than 17%, nearly all of which actually contain less than 12%, which puts them in the same category as most wines which are taxed at \$0.50 per wine gallon. This bill simply would put these diluted beverages into that same category. Diluted beverages are currently taxed at the same rate as distilled spirits under line 17 at \$2.50 per wine gallon of the original bill, or line 18 of the amended bill. These spirits have alcohol content from 24% to 95%.

It's fairly plain to see this is a fairness issue and these diluted beverages should be treated and taxed like wine and other drinks that have similar alcohol content.

I'd ask for a do pass recommendation from the committee and would stand for any questions.

Mike Motschenbacher

701 471 9014



January 18, 2023

Testimony in OPPOSITION to House Bill 1303

I'm Scott Meske, representing the North Dakota Brewers Guild, the 23 brewpubs and taprooms licensed in North Dakota to make beer. I stand in opposition to House Bill 1303.

This proposal is an attempt of liquor producers to receive a tax break by creating a new category of alcohol produce for the purposes of defining a tax level different from the liquor tax. This is a Trojan horse effort to gain market share by disturbing longstanding and successful policies **differentiating beer and wine from liquor.**

Making liquor based RTD products is a choice, presumably made because their producers want to market and sell liquor or because they seek to expand branding occasions for their full-strength products. These massive corporations are also seeking taxation changes across the country – attempting to bring their **liquor-based cocktails to a lower tax rate like beer or wine has had for decades** – skirting the rules to bump up their market share and get an undeserved tax break from states. It seems they want the marketing halo of a “premium” product using real liquor but don't want to pay the “premium” tax.

Common sense recognizes that alcohol policy should not ignore the real differences between beer and liquor. While some RTDs may have modest alcohol strength and a few beers may approximate the strength of wine, those are the exceptions that prove the rule: The average liquor product sold in the U.S. today contains 37% alcohol by volume (74 degrees proof). In contrast, the average beer product sold in the U.S. contains approximately 4.5% alcohol by volume.

Bottom line, states across the country are saying no to tax breaks for these beverages. Those massive companies that are manufacturing RTDs are doing fine without additional subsidies.

Liquor products should be taxed at liquor rates, not at a lower rate.

The North Dakota Brewers Guild respectfully requests this Committee issue a DO NOT PASS recommendation on House Bill 1303.

Testimony in Opposition to HB1303

1. Who am I?
 - a. Hunter Jerome
 - i. 5th generation family member in the beverage and alcohol industry
 - b. General Manager of Jerome Distributing Inc
 - c. We employ 55 people in Bismarck and Dickinson.
2. **Please feel free to jump in and ask any questions as I go along.**
3. Introduction and overview of the 3-tier system
 - a. Beer, wine, and liquor are 3 distinctly different alcohol bases and have consistently been taxed to reflect those differences.
4. Explanation of who collects the state excise tax.
 - a. 16 ND family-owned beer distributors
 - b. 3 liquor distributors
5. Scenario of how this would play out based on what I have seen in other states around the country.
 - a. Tax is changed.
 - b. Supplier raises distributors cost to roughly the same amount of what the tax went down
 - c. The distributors' margin stays the same.
 - d. Nothing changes for the retail customer or the consumer in regards to pricing.
 - e. The supplier is the one who makes the most money.
 - f. The state of ND collects less tax revenue.
6. Federal excise tax relief that was passed in 20?? Was not passed on to the distributors which was not then in turn passed on to the consumer
7. RTDs are growing within the current structure already across the country and the state.
8. Beer distributors contributed
 - a. \$34.6 million in wages and salaries
 - b. \$104.3 million in economic impact
 - c. \$8.1 million in capital expenditures
 - d. \$125.7 million in federal, state, and local taxes
9. Conclusion:
 - a. This would not help the distributors.
 - b. This would not help the ND consumer.
 - c. The state would collect less tax revenue.

January 18, 2023

John Ward, North Dakota Wine and Liquor Wholesalers Association

Testimony in support of HB 1303 (Alcoholic Beverage Tax — Diluted Beverages)

Good morning Chairman Headland and Members of the Committee:

My name is John Ward. I am a local Bismarck attorney and lobbyist. I am here representing the ND Wine and Liquor Wholesalers Association. The North Dakota Wine and Liquor Wholesalers association is made up of Johnson Brothers, Republic National Distributing Company, and Southern Glazers Wine and Spirits.

I have with me today Joshua Guy, who is the Vice President of Sales for Southern Glazers Wine & Spirits and Dwayne Kratt, who is the Vice President of External Affairs for Johnson Brothers.

I am here today in support of amended HB1303 which would reform the tax rate on low-proof spirit-based alcohol beverages or “diluted beverages” so that the tax rate is fairer and more equitable when compared to like products with similar levels of alcohol.

Currently, spirits based low-proof, ready-to-drink beverages are taxed at a rate of \$2.50 per gallon or more than 15 times higher than malt beverages with similar alcohol by volume or ABV. Malt beverages are currently taxed at 16 cents per gallon.

This dramatic tax difference on products with roughly the same amount of alcohol by volume creates an unfair marketplace especially when these products generally compete against malt or sugar-based seltzers that are taxed at the much lower beer or malt beverage rate (16 cents/gallon).

In response, this legislation creates a new “diluted beverage” category for alcohol beverages containing distilled spirits of less than 12.5% ABV or less. The tax rate for these products will be .50 cents per gallon for products containing 12.5% ABV or less. The new tax rate for these products will still be significantly higher than malt or sugar-based alcohol beverages –more than 3 times higher – but it does provide these products with a “fairer opportunity” to compete.

Do we believe this legislation will cost ND tax revenue?

No, we don't. The reason is that these products which compete against lower taxed seltzers will still be taxed higher than beer and they will still be sold at a premium price to these seltzers. The result is that we believe the state may gain revenue via increased excise and sales taxes, although not a significant amount.

Is this proposal outside the norm of what other states are doing?

The answer to this question is also no. In 25 states, these low alcohol spirit-based products are taxed a lower rate than compared to what I will call “full proof spirits” which are generally 40% ABV. We are also seeing several states contemplate similar legislation to this bill.

Bottom line is alcohol is alcohol — it doesn't matter if the alcohol is derived from brewing, fermentation, or distilling.

The common metric here is the alcohol by volume. When the ABV is roughly the same, it doesn't matter if the product is a beer, a wine, or a spirit. Anyone who suggests otherwise is incorrect. In conclusion, we are simply asking for more equitable treatment for similar products.

Thank you for your consideration,

John Ward

25 States Have Low-Spirit Tax Rates

These Lower Rates Create a Fairer Competitive Landscape for Spirits RTDs

LICENSE STATE EXCISE TAXES (Dollars Per Gallon)					
	Beer	Wine	Low Spirit	"Full" Spirit	Legal Citation
Alaska	\$1.07	\$2.50	\$2.50 (ABV<=21%)	\$12.80	Alaska Stat.43.60.010
Arkansas	\$0.23	\$0.75	\$1.00 (5%<ABW<21%) \$0.50 (ABW<=5%)	\$2.50	Ark. Code § 3-7-104
Connecticut	\$0.23	\$0.79	\$2.71 (ABV<=7%)	\$5.94	Conn. Gen. Stat. § 12-435
Delaware	\$0.26	\$1.63	\$3.00 (ABV<=25%)	\$4.50	Del. Code tit. 4, § 581
Florida	\$0.48	\$2.25	\$2.25 (ABV<17.259%)	\$6.50	Fla. Stat. §§ 565.12 & 564.06(1)
Illinois	\$0.23	\$1.39	\$1.39 (ABV<20%)	\$8.55	235 ILCS 5/8-1; Department of Revenue Excise Tax Rates
Indiana	\$0.12	\$0.47	\$0.47 (ABV<=15%)	\$2.68	IC §§ 7.1-4-4-1 & 7.1-4-4-2
Kentucky	\$0.08	\$0.50	\$0.25 (ABV<=6%)	\$1.92	Ky. Rev. Stat. § 243.720(a) & (b)
Louisiana	\$0.40	\$0.76	\$0.40 (ABV<=6%)	\$3.03	La. Rev. Stat. §§ 26-341, 26-342, 25-345, 26-354(D), & 26-241(1)
Massachusetts	\$0.11	\$0.55	\$1.10 (ABV<=15%)	\$4.05	Mass. Gen. L. Ch. 138, § 21
Nebraska	\$0.31	\$0.95	\$0.95 (ABV<=12.5%)	\$3.75	Neb. Rev. Stat. 53-160 & L.B. 274 (2021)
Nevada	\$0.16	\$0.70	\$1.30 (14%<ABV<=22%) \$0.70 (ABV<=14%)	\$3.60	NRS 369.330
New York	\$0.14	\$0.30	\$2.54 (ABV<=24%)	\$6.44	N.Y. [Tax] Law § 424
Rhode Island	\$0.11	\$1.40	\$1.10 (ABV<=15%)	\$5.40	R.I. Gen. Laws § 3-10-1
South Dakota	\$0.27	\$0.93	\$0.93 (ABV<12%)	\$3.93	S.D. code § 35-5-3
Tennessee	\$1.29	\$1.21	\$1.10 (ABV<=7%)	\$4.40	Tenn. Code §§ 57-3-302(b) & 57-3-303(l)

CONTROL STATE EXCISE TAXES (Dollars Per Gallon)					
	Beer	Wine	Low Spirit	"Full" Spirit*	Legal Citation
Idaho	\$0.15	\$0.45	\$0.45 (ABV<=14%)	\$10.90	Idaho Code §§ 23-1303(1)(i) & 23-1319); & Idaho Admin. Code 35.01.09.11
Iowa	\$0.19	\$1.75	\$0.19 (ABV<=15%)**	\$13.02	Iowa Code §§ 123.3(7) & (11) & 123.136; & ABD website at Canned Cocktails
Maine	\$0.35	\$0.60	\$1.24 (ABV<=8%)	\$11.96	28-A M.R.S.A. §§ 2(16-A) & (31), 13 & 1652
Michigan	\$0.20	\$0.51	\$1.14 (ABV<=13.5%)***	\$11.94	Mich. Code §§ 436.1109(7) & 436.1301(4)
Mississippi	\$0.43	n.a.	\$0.43 (ABW<=6%)	\$8.10	H.B.1091 (2021) (at Miss. Code §§ 27-71-307, 67-1-5 & 67-3-3)
New Hampshire	\$0.30	n.a.	\$0.30 (ABV<=6%)****	n.a.	N.H. Rev. Stat. §§ 175:1 & 178:26
Ohio	\$0.18	\$0.32	\$1.20 (ABV<=21%)	\$9.83	Ohio Rev. Code §§ 4301.01(B)(4) & (5) & 4301.43(C)
Vermont	\$0.27	\$0.55	\$1.10 (ABV<=12%)*****	\$7.68	Act No. 177 (H.730)
Virginia	\$0.26	\$1.51	\$1.51 (ABV<=7.5%)	\$19.89	Va. Code §§ 4.1-100 & 4.1-234(A)

*For control states, which do not have traditional spirits excise taxes, the Distilled Spirits Council of the United States approximates "implied excise tax" by comparing a state's revenue from spirits sales to typical revenue for wholesalers and/or retailers in license states.

**In Iowa, to benefit from the low-spirit rate, products over 6.25% ABV must be sold in metal cans.

***In Michigan, to benefit from the low-spirit rate, products over 10% ABV must be sold in non-reclosable metal cans no larger than 24 ounces.

****In New Hampshire, products with ABV between 6% and 8% in containers no larger than 16 ounces may be eligible for a reduced tax rate of 5% of the wholesale price.

*****In Vermont, to benefit from the low-spirit rate, products must be sold in containers no larger than 24 ounces.



January 23, 2023

Chairman Craig Headland & Members of
the Finance and Taxation Committee
North Dakota State Capitol, Room JW327E
600 East Boulevard Avenue
Bismarck, ND 58505

Chairman Headland and members of the Finance and Taxation Committee:

Today, we write to oppose House Bill 1303, a proposal to lower the tax rates of canned cocktails made with hard liquor. We represent brewers of all sizes doing business in North Dakota.

The proposal lowers the excise tax rate for hard liquor-based canned cocktails in North Dakota from \$0.66 per liter to \$0.159 per liter, a 76 percent decrease, and will result in significant losses to the state treasury. Current alcohol industry data contradicts the liquor industry's claims that they will make up for lost tax revenue and bring in new revenue by taking market share from beer and hard seltzer.

As the North Dakota hospitality industry continues to recover from the COVID-19 pandemic, it is questionable how a deep tax cut to out-of-state liquor companies benefits the consumers or small businesses of the state. North Dakota small businesses and workers need all the help they can get as they struggle to recover from the pandemic, especially in the face of seven percent inflation. Will out-of-state liquor companies lower their prices to help consumers? Not likely.

Public Sector Consultants conducted a recent study (attached) that discovered prices for canned cocktail products increased in Michigan and Nebraska, two states that passed similar tax legislation. In Nebraska, consumers saw a 65 percent price surge, while Michigan consumers saw a 44 percent jump, with more money going into the pockets of out-of-state liquor companies. The liquor industry recorded a massive \$3.8 billion in revenue last year, while inflation in 2022 was over seven percent for North Dakotans. These numbers make it clear the liquor industry does not need a tax cut.

According to IWSR, ready-to-drink alcohol products, including hard liquor-based canned cocktail products, are growing faster than any other major drink category since 2018 and are projected to reach an eight percent total

global share by 2025. The hard liquor canned cocktail sub-category is projected to grow by almost nine percent CAGR 2020-2025.¹ Out-of-state hard liquor companies claim they are at a disadvantage in the marketplace versus beer and wine. In addition, data from industry analysts show that canned cocktails retail at a nearly 90 percent premium to seltzer and a more than 150 percent premium to beer,² more than enough to offset any excise difference.

Additionally, this legislation undermines the public safety risks associated with liquor and. Beer has long been recognized as the beverage of moderation, and policymakers and the public understand that beer and liquor are very different products. The liquor industry says it is for responsible drinking, but its 40-year campaign to put beer and liquor on the same shelf would suggest otherwise. Consumers know a vodka martini is different than a beer. The average alcohol content of a beer is just below five percent. The average alcohol content of a liquor drink is more than 36 percent. Liquor companies are using canned cocktails to blur the lines and push for a tax rate that significantly downplays the differences between beer and liquor, directly undermining the responsible drinking campaigns that hard liquor claims to support.

Lastly, and very importantly, because of the significant differences in production, it makes sense for beer to be taxed at a different rate than hard liquor. Beer and liquor are produced and brought to market in very different ways. Per liter of pure alcohol, beer costs 2.5 times more than liquor to make.³ Beer also has higher distribution costs than liquor. The brewing process and the quality of the ingredients that go into the process are critical to the finished product. Brewing is a more intense and time-consuming process than distilling. Similarly, beer is bulky, heavy, perishable, and fragile and needs protection from light, heat, and oxygen, making it more costly to store and distribute.

We urge the Legislature to oppose HB 1303. Hard-earned North Dakota taxpayer dollars could be spent on more critical issues facing the state rather than giving a handout.

Thank you for the opportunity to express our collective opinion on HB 1303.

Respectfully submitted on behalf of:

Anheuser-Busch
Boston Beer Company
Constellation Brands Beer Division
HEINEKEN USA
Mark Anthony Brands, Inc.
Molson Coors Beverage Company
North Dakota Brewers Guild

¹ <https://www.theiwsr.com/driven-by-consumer-demand-rtd-volume-share-expected-to-double-in-next-five-years-in-top-markets/>

² NielsenIQ

³ John Dunham and Associates

23.0911.01002
Title.

Prepared by the Legislative Council staff for
Representative Motschenbacher
January 24, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1303

Page 1, line 20, after "beverages" insert "in their original, unopened container which are"

Renumber accordingly

23.0911.01001
Title.

Prepared by the Legislative Council staff for
Representative Motschenbacher
January 17, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1303

Page 1, line 13, overstrike "Wine" and insert immediately thereafter "Diluted beverages or wine"

Page 1, line 15, remove the overstrike over "Wine"

Page 1, line 15, remove "Diluted beverages or wine"

Page 1, line 20, after "of" insert "distilled"

Renumber accordingly