

HOUSE BILL NO. 1260

Introduced by

Representative Keiser

Senator Krebsbach

1 A BILL for an Act to amend and reenact sections 5-04-02, 5-04-04, subsection 1 of section
2 5-04-07, sections 5-04-08, and 5-04-13 of the North Dakota Century Code, relating to beer
3 wholesaler and brewer relationships.

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

5 **SECTION 1. AMENDMENT.** Section 5-04-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **5-04-02. Inducement or coercion prohibited.** No brewer may:

- 8 1. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept
9 delivery of any alcoholic beverage or any other commodity which has not been
10 ordered by the beer wholesaler.
- 11 2. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to enter into
12 any agreement or do any illegal act by threatening to amend, cancel, terminate, or
13 refuse to renew any agreement existing between a brewer and a beer wholesaler.
- 14 3. Require a wholesaler to assent to any condition, stipulation, or provision limiting
15 the wholesaler's right to sell any other brewer's product anywhere in this state,
16 provided the sale of another brewer's product does not materially impair the quality
17 of service or quantity of sales of the existing brand or brands of the brewer seeking
18 to impose the condition, stipulation, or provision.
- 19 4. Require a wholesaler to submit specific information regarding competitive brands,
20 as a condition of renewal or continuation of an agreement.
- 21 5. Fail to provide each wholesaler of its brands with a written contract which conforms
22 to this chapter and embodies the brewer's agreement with each wholesaler.

23 **SECTION 2. AMENDMENT.** Section 5-04-04 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **5-04-04. Agreement cancellation.** Notwithstanding the terms, provisions, or
2 conditions of any agreement, no brewer may amend, cancel, terminate, or refuse to renew any
3 agreement, or cause a wholesaler to resign from an agreement, unless good cause exists for
4 amendment, termination, cancellation, nonrenewal, noncontinuation, or causing a resignation.
5 "Good cause" does not include the sale or purchase of a brewer. "Good cause" includes, ~~but is~~
6 ~~not limited to~~, the following:

- 7 1. Revocation of the wholesaler's license to do business in this state.
- 8 2. The wholesaler's bankruptcy or insolvency.
- 9 3. Assignment for the benefit of creditors or similar disposition of the wholesaler's
10 assets.
- 11 4. The wholesaler's failure to comply, without reasonable excuse or justification, with
12 any reasonable and material requirement imposed upon ~~him~~ the wholesaler by the
13 brewer.

14 In any dispute over an amendment, cancellation, termination, or nonrenewal, the brewer has
15 the burden of proving the existence of good cause.

16 **SECTION 3. AMENDMENT.** Subsection 1 of section 5-04-07 of the 1997 Supplement
17 to the North Dakota Century Code is amended and reenacted as follows:

- 18 1. Any brewer which amends, cancels, terminates, or refuses to renew any beer
19 agreement, or causes a wholesaler to resign from an agreement, unless for "good
20 cause" as defined by section 5-04-04, or which unreasonably withholds consent to
21 any assignment, transfer, or sale of a wholesaler's business, shall pay the
22 wholesaler reasonable compensation for the value of the wholesaler's business
23 with relationship to the terminated brand or brands. The value of the wholesaler's
24 business includes, ~~but is not limited to, its goodwill, if any~~ the fair market value of
25 any and all assets, including ancillary businesses of the wholesaler used in
26 distributing the brewers' products and the goodwill of the business.

27 **SECTION 4. AMENDMENT.** Section 5-04-08 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **5-04-08. Judicial remedies.** If a brewer engages in conduct prohibited under this
30 chapter, a wholesaler, with whom the brewer has an agreement pursuant to this chapter, may
31 maintain a suit against the brewer. The venue of any legal action taken under this section, or

1 pursuant to a dispute arising out of an agreement or breach thereof, or over the provisions of an
2 agreement, is a court, state or federal, located in North Dakota, or where the wholesaler
3 maintains its principal place of business in this state. The court may grant equitable relief as is
4 necessary to remedy the effects of conduct which it finds to exist and which is prohibited under
5 this chapter, including, but not limited to, declaratory judgment and injunctive relief. The court
6 may award actual damages and costs. If the court finds the brewer has acted in bad faith in
7 invoking amendment, termination, cancellation, or nonrenewal under this chapter or has
8 unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's
9 agreement, the court may also award reasonable attorney's fees.

10 **SECTION 5. AMENDMENT.** Section 5-04-13 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **5-04-13. Waiver prohibited.** No brewer may require any wholesaler to waive
13 compliance with any provision of this chapter. Nothing in this chapter may be construed to limit
14 or prohibit good faith dispute settlements voluntarily entered into by the parties. However, no
15 provision of any written agreement may require the law of any state other than North Dakota to
16 govern the relationship of the parties.