

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1260

Page 1, line 1, after "sections" insert "5-04-01,"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Section 5-04-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**5-04-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Agreement" means one or more of the following:
  - a. A commercial relationship between a licensed beer wholesaler and a licensed brewer of a definite or indefinite duration which is not required to be evidenced in writing.
  - b. A relationship whereby the beer wholesaler is granted the right to offer and sell a brand or brands of beer offered by a brewer.
  - c. A relationship whereby the beer wholesaler, as an independent business, constitutes a component of a brewer's distribution system.
  - d. A relationship whereby the beer wholesaler's business is substantially associated with a brewer's brand or brands, designating the brewer.
  - e. A relationship whereby the beer wholesaler's business is substantially reliant on a brewer for the continued supply of beer.
  - f. A written or oral arrangement for a definite or indefinite period whereby a brewer grants a license to a beer wholesaler to use a brand, trade name, trademark, or service mark, and in which there is a community of interest in the marketing of goods or services at wholesale or retail.
2. "Ancillary business" means a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler, the primary business of which is directly related to the transporting, storing, or marketing of the brewer's products with whom the wholesaler has an agreement.
3. "Beer wholesaler" or "wholesaler" means any licensee, as outlined in section 5-03-01, importing or causing to be imported into this state or purchasing or causing to be purchased within this state, any beer for sale or resale to retailers or wholesalers licensed pursuant to chapter 5-02 or 5-03, without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewer.
- ~~3.~~ 4. "Brand" means any word, name, group of letters, symbol, or combination thereof, that is adopted and used by a brewer or importer to identify a specific beer product, and to distinguish that beer product from another beer product.

- 4- 5. "Brand extension" is any brand that incorporates all or a substantial part of the unique features of a preexisting brand of the same brewer or importer, and which relies to a significant extent on the goodwill associated with that preexisting brand.
- 5- 6. "Brewer" means every licensed brewer or importer of beer located within or without this state who enters into an agreement with any beer wholesaler licensed to do business in this state.
- 6- 7. "Person" means a natural person, corporation, limited liability company, partnership, trust, agency, or other entity as well as the individual officers, directors, or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives, conservators, and guardians.
- 7- 8. "Territory" or "sales territory" means the area of primary sales responsibility designated by any agreement between any beer wholesaler and brewer for the brand or brands of any brewer."

Page 1, line 11, remove "enter into"

Page 1, line 12, remove "any agreement or" and overstrike "do any illegal act" and insert immediately thereafter "enter any agreement or take any action that would violate any law or rule of this state"

Page 1, line 19, after "specific" insert ", confidential"

Page 2, line 5, remove the overstrike over "~~, but is~~"

Page 2, line 6, remove the overstrike over "~~not limited to,~~"

Page 2, line 15, after the underscored period insert "If a wholesaler initiates a civil action, the brewer bears the burden of proving the existence of good cause after a prima facie showing by the wholesaler that good cause does not exist."

Page 2, line 24, remove the overstrike over "~~, but is not limited to,~~"

Page 2, line 25, replace "any and all assets" with "the wholesaler's business with respect to the terminated brand or brands", after "including" insert "the value of any", replace "businesses" with "business", and remove "used in"

Page 2, line 26, remove "distributing the brewers' products" and after "business" insert "or ancillary business. The value of the wholesaler's business may not exceed the wholesaler's actual damages"

Renumber accordingly