

ALCOHOLIC BEVERAGES

CHAPTER 67

SENATE BILL NO. 2240

(Senators Lee, B. Stenehjem, DeMers)
(Representatives Carlson, Poolman)

PUBLIC INTOXICATION

AN ACT to amend and reenact section 5-01-05.1 of the North Dakota Century Code, relating to public intoxication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-05.1. Public intoxication - Assistance - Medical care. A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to that person or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital or a licensed addiction counselor of a detoxification center has authority to hold that person for treatment up to seventy-two hours. That intoxicated person ~~must~~ may not be held in jail because of intoxication more than twenty-four hours. An intoxicated person may not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing that person in a hospital, detoxification center, or jail, the peace officer shall make a reasonable effort to notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city or county on account of an intoxicated person shall be recoverable from that person.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 68

HOUSE BILL NO. 1295

(Representatives Rose, Cleary, Jensen, N. Johnson)

ALCOHOL CONSUMPTION AND CHEMICAL INHALATION PENALTIES

AN ACT to amend and reenact sections 5-01-08, 12.1-36-06, and subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to consumption of alcohol, inhalation of volatile chemicals, and to arrest without a warrant; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-08. Persons under twenty-one years of age prohibited from manufacturing, purchasing, consuming, or possessing alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities - Jurisdiction. Except as permitted in this section and section 5-02-06, any person under twenty-one years of age manufacturing or attempting to manufacture alcoholic beverages, purchasing or attempting to purchase alcoholic beverages, consuming or having recently consumed alcoholic beverages other than during a religious service, being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.

SECTION 2. AMENDMENT. Section 12.1-31-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-06. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty. A person is guilty of a class B misdemeanor if that person intentionally inhales the vapors of a volatile chemical in a manner designed to affect the person's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or change the person's eyesight, thinking processes, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in chapter 19-03.1. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers:

1. Acetone.
2. Aliphatic hydrocarbons.

3. Amyl nitrite.
4. Butane.
5. Butyl nitrite.
- ~~5.~~ 6. Carbon tetrachloride.
- ~~6.~~ 7. Chlorinated hydrocarbons.
- ~~7.~~ 8. Chlorofluorocarbons.
- ~~8.~~ 9. Chloroform.
- ~~9.~~ 10. Cyclohexane.
- ~~10.~~ 11. Diethyl ether.
- ~~11.~~ 12. Ethyl acetate.
13. Fluorocarbon.
- ~~12.~~ 14. Glycol ether inter solvent.
- ~~13.~~ 15. Glycol ether solvent.
- ~~14.~~ 16. Hexane.
- ~~15.~~ 17. Ketone solvent.
- ~~16.~~ 18. Methanol.
- ~~17.~~ 19. Methyl cellosolve acetate.
- ~~18.~~ 20. Methyl ethyl ketone.
- ~~19.~~ 21. Methyl isobutyl ketone.
- ~~20.~~ 22. Nitrous oxide.
23. Petroleum distillate.
- ~~21.~~ 24. Toluene.
- ~~22.~~ 25. Trichloroethane.
- ~~23.~~ 26. Trichloroethylene.
- ~~24.~~ 27. Xylol or xylene.

SECTION 3. AMENDMENT. Subsection 1 of section 29-06-15 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A law enforcement officer, without a warrant, may arrest a person:

- a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision, a crime must be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
- b. When the person arrested has committed a felony, although not in the officer's presence.
- c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
- d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
- e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
- f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
- g. For the offense of violating a protection order under section 14-07.1-06, an order prohibiting contact under section 14-07.1-13, or for an assault involving domestic violence under section 14-07.1-11.
- h. On a charge, made upon reasonable cause, of being under the influence of volatile chemical vapors in violation of section 12.1-31-06.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 69

SENATE BILL NO. 2216

(Senators Thompson, T. Mathern)

(Representatives Delmore, Rose, Thorpe, Stefonowicz)

ALCOHOLIC BEVERAGE SHIPMENT

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to the shipment of alcoholic beverages; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

Direct sale from out-of-state seller to consumer - Penalty.

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state treasurer shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.

This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person as described under subsection 1 or 2. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 70

SENATE BILL NO. 2405

(Senators Grindberg, St. Aubyn)

ALCOHOLIC BEVERAGE SALE

AN ACT to amend and reenact sections 5-02-01.1 and 5-02-06 of the North Dakota Century Code, relating to the sale of alcoholic beverages; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-01.1. Event permit authorized - Penalty.

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid such tax and who continues to pay any such tax imposed by the city or a licensee in a county or a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993. A fee for the local permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days, and may include Sundays. The local governing body may establish rules to regulate and restrict the operation of an event permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor.
2. The local governing body may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:

 - a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
 - b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;
 - c. Subject to section 5-02-06, the area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and

- d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

SECTION 2. AMENDMENT. Section 5-02-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-06. Prohibitions as to persons under twenty-one years of age - Penalty -

Exceptions. Except as permitted in this section, any licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, if the person is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages, or if the person is a law enforcement officer entering the premises in the performance of official duty. Any person under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person twenty-one or more years of age.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 71

HOUSE BILL NO. 1260

(Representative Keiser)
(Senator Krebsbach)

BEER WHOLESALER AND BREWER RELATIONSHIPS

AN ACT to amend and reenact sections 5-04-01, 5-04-02, 5-04-04, subsection 1 of section 5-04-07, sections 5-04-08, and 5-04-13 of the North Dakota Century Code, relating to beer wholesaler and brewer relationships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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.

SECTION 2. AMENDMENT. Section 5-04-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept delivery of any alcoholic beverage or any other commodity which has not been ordered by the beer wholesaler.
2. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to ~~do any illegal act~~ enter any agreement or take any action that would violate any law or rule of this state by threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a brewer and a beer wholesaler.
3. Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell any other brewer's product anywhere in this state, provided the sale of another brewer's product does not materially impair the quality of service or quantity of sales of the existing brand or brands of the brewer seeking to impose the condition, stipulation, or provision.
4. Require a wholesaler to submit specific, confidential information regarding competitive brands, as a condition of renewal or continuation of an agreement.

5. Fail to provide each wholesaler of its brands with a written contract which conforms to this chapter and embodies the brewer's agreement with each wholesaler.

SECTION 3. AMENDMENT. Section 5-04-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 4. AMENDMENT. Subsection 1 of section 5-04-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any brewer which amends, cancels, terminates, or refuses to renew any beer agreement, or causes a wholesaler to resign from an agreement, unless for "good cause" as defined by section 5-04-04, or which unreasonably withholds consent to any assignment, transfer, or sale of a wholesaler's business, shall pay the wholesaler reasonable compensation for the value of the wholesaler's business with relationship to the terminated brand or brands. The value of the wholesaler's business includes, but is not limited to, its goodwill, if any the fair market value of the wholesaler's business with respect to the terminated brand or brands, including the value of any ancillary business of the wholesaler and the goodwill of the business or ancillary business. The value of the wholesaler's business may not exceed the wholesaler's actual damages.

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

5-04-08. Judicial remedies. If a brewer engages in conduct prohibited under this chapter, a wholesaler, with whom the brewer has an agreement pursuant to this chapter, may maintain a suit against the brewer. The venue of any legal action taken under this section, or pursuant to a dispute arising out of an agreement or breach thereof, or over the provisions of an agreement, is a court, state or federal, located in North Dakota, or where the wholesaler maintains its principal place of

business in this state. The court may grant equitable relief as is necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief. The court may award actual damages and costs. If the court finds the brewer has acted in bad faith in invoking amendment, termination, cancellation, or nonrenewal under this chapter or has unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's agreement, the court may also award reasonable attorney's fees.

SECTION 6. AMENDMENT. Section 5-04-13 of the North Dakota Century Code is amended and reenacted as follows:

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

Approved March 26, 1999
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