

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1426

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1426

House Industry, Business and Labor Committee

Conference Committee

Hearing Date February 1, 1999

Tape Number	Side A	Side B	Meter #
3	x		14.3-end
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

A bill for an act to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to business agreements between a beer brewer and wholesaler.

CHAIRMAN BERG called the hearing for HB 1426 to order with all members present.

3A: 14.3 ERNIE SANDS, Anheuser-Busch, testified in support of the bill. He said that the bill offers financial help to those who want to own a wholesaler. He said that it will help the state's economic development and will keep business in the state.

3A: 23.1 REP. RAEANN KELSCH, sponsor of the bill, testified in support of it. (See attached testimony.)

3A: 25.0 CHAIRMAN BERG asked if there are guidelines as to who Anheuser-Busch can sell to. Mr. Sands said that there are no guidelines. They will sell to the person with the best potential.

3A: 27.6 REP. SEVERSON asked if this was going to help current wholesalers and/or people who want to get into the business. Mr. Sands said that the bill is written for current wholesalers.

3A: 28.1 REP. BREKKE asked how this would change the three tier system. Mr. Sands said that they are completely in support of the three tier system of the brewer, the wholesaler, and the retailer.

3A: 28.8 REP. FROSETH asked to what percent does Anheuser-Busch become involved with wholesalers without financing. Mr. Sands said that they would like to be involved 20% without financing.

3A: 29.8 MICHAEL TOWLE, Sales Manager for McQuade Distributors, testified in support of the bill. He feels very qualified to run his own wholesaler, but cannot raise the capital to do that. He said this program would allow these such programs to be available in the state. It would allow breweries to be involved at the wholesale level.

3A: 36.2 REP. SEVERSON asked if banks would not create avenues for people to finance their own wholesalerships. Mr. Towle said that the resources a brewery could provide would far exceed local financing, plus it would be able to provide people with the knowledge to guide them to the next level.

3A: 38.9 KATJA ZASTROW, State Affairs Director for Anheuser-Busch, St. Louis, answered the previous question by stating that employees may not have the credit record to obtain a bank loan.

3A: 40.5 REP. THORPE asked how many wholesalers have been terminated in North Dakota. Ms. Zastrow said that none have been terminated in this state.

3A: 41.5 REP. KEISER asked if local control has anything to do with the value of the program, because the bill has nothing to do with local control. Ms. Zastrow said that the person being financed must live in the community and be a part of it. This is an Anheuser-Busch policy.

3A: 45.0 RANDY CHRISTIANSON, beer wholesaler, testified in opposition to the bill. (See attached testimony.)

3A: 48.2 REP. STEFONOWICZ asked who determines the number of wholesalers in the state. Mr. Christianson said that it is market driven. Ten years ago there were 27, now there are 20 or 21.

3A: 49.7 REP. GLASSHEIM asked what harm there would be in passing the bill. Mr. Christianson said that the three tier system is in place to keep the criminal element out.

3A: 52.1 REP. KLEIN said that there have been at least 25 other states that have passed bills such as this one, and he asked if there have been any problems with it. Mr. Christianson said that he was not aware of any problems.

CHAIRMAN BERG adjourned the hearing on HB 1426.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1426

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-3-99

Tape Number	Side A	Side B	Meter #
2	x		51.1
Committee Clerk Signature <i>Lisa Lerner</i>			

Minutes:

HB 1426

Chairman Berg opened the meeting on the bill.

Representative Severson explained the purpose of the bill from his past research. The brewer would be willing to finance 100% for wholesaler distributor if approved by the brewer. Severson further explained that financing was not an obstacle for wholesalers. Representative Thorpe, explained if the door is left open, maybe other businesses will come in to the state in a negative manner. No person in other states said this is working but people say they are doing it.

Moved by Representative Severson for do not pass, Second by Representative Kempenich.

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House Industry, Business and Labor Committee

Bill/Resolution Number Hb 1426

Hearing Date 2-3-99

By roll vote, 10 yes, 5 no, motion carried.

Representative Severson will carry the bill.

Date: 2-3-99
Roll Call Vote #: _____

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1426

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do not pass

Motion Made By Severson Seconded By Kempnich

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe	/	
Vice Chair - Kempnich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser		/			
Rep. Klein		/			
Rep. Koppang		/			
Rep. Lemieux	/				
Rep. Martinson		/			
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 10 No 5

Absent 0

Floor Assignment Severson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 3, 1999 4:05 p.m.

Module No: HR-22-1826
Carrier: Keiser
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1426: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO NOT PASS** (10 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1426 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

HB 1426

HB 1426 A Bill to create a new section to chapter 5-01 of the North Dakota Century Code, relating to business agreements between a beer brewer and wholesaler.

I am Randy Christianson, a beer wholesaler opposed to HB 1426.

The State has an interest in maintaining a strong wholesale tier. A strong wholesale tier is key to the viability of the three-tier system of alcohol distribution, which was put into place after the repeal of prohibition. The three-tier system requires that the activities of suppliers, wholesalers, and retailers are kept separate. One key law – the franchise law – supports the three-tier system. Allowing a brewer to become an owner of a wholesaler through the use of a limited partnership is contrary to the three-tier system. Personally, I have gone through three purchases and a merger of shareholder interests. There are many conventional means available to accomplish purchases of wholesalers without the use of a brewers limited partnership ownership interest.

Currently, the domestic beer market share of the three largest brewers is approximately 75%. Smaller brewers, along with their wholesalers, may be put at an economic disadvantage because they cannot offer similar limited partnership arrangements for financial reasons. Some brewers offer financial incentives for brand exclusivity, thereby reducing the number of wholesalers available to carry and distribute a companion brand of a competitive brewer.

Thank you for your time and consideration.

Mike Toll

HB 1426

Background of Progressive Partnership Program

- Established in 1984 to help qualified people develop equity in beer distributorships.
- There have been 28 partnerships. 19 have been successfully sold and are now independent businesses.
- The brewery takes the part of limited partner with the local owner being the managing general partner.
- Most industries, such as automobile and food service, routinely rely on limited partnerships of this type.
- 30 states permit this type of progressive equity development.

Benefits of Program to Community and State

- Develops strong, local businesses, which insure continuation and expansion of jobs, and the community contributions they make.
- Local investment is promoted maintaining or increasing the asset and tax bases.
- Strong businesses are a major asset to any community or state.

Benefits to Wholesalers Who Are Local Businesspeople

- The pool of potential buyers for his or her business is increased to include capable individuals who otherwise would not have sufficient funding.
- The selling wholesaler is relieved of the potential burden of financing the sale of the business.
- All of the businesses in the state benefit when the strongest possible person takes over one of their peers.
- Short-term (8 to 10 years) can be available to heirs or chosen successors. Even when the business is being sold to a son or daughter, a relative or the trusted general manager, the successor can receive the full benefit of a limited partnership – financing, counseling and information. The successor ultimately owns the business and is in the best possible position to operate it successfully for himself, his employees and the community.

Memorandum

To: House Industry, Business and Labor
From: Rep. RaeAnn Kelsch
Date: Monday, February 1, 1999
Subject: HB1426

Mr. Chairman, members of the Industry, Business and Labor Committee, for the record, my name is RaeAnn Kelsch, Representative from District 34, Mandan.

HB1426 would allow limited partnerships and loans between brewers and beer wholesalers.

I submitted HB1426 on behalf of Sam McQuade and McQuade Distributing. HB1426 provides an alternative funding mechanism, not now available due to existing law, whereby a beer wholesaler can sell his/her business to a daughter, son, or approved employee(s), who otherwise might not have or be able to secure the necessary financial resources or backing for such a transaction.

There are other present that will testify to the specifics of the bill and to give you further explanation as to why this bill would be of benefit.

Thank you Mr. Chairman and committee members.

PROGRESSIVE PARTNERSHIPS:

**Brewery Financing and Limited Partnerships Offer a Tool to
Solve a Modern Community Problem By Strengthening the
Wholesale Tier.**

January 1, 1999

**A briefing document
for legislative officials**

Progressive Partnerships

Executive Summary

In a number of states, laws dating from prohibition do not permit brewery financing and investments in beer wholesalers. In contrast, all states allow such arrangements in other industries. Allowing such relationships in the beer industry is one way to help solve a modern community problem.

The problem? How do you protect jobs, businesses and the tax base in a community? By assuring that the strongest possible companies survive and compete efficiently, therefore insuring continuation of the jobs and community contributions they provide. When brewer participation is the solution, it provides benefits to all concerned - brewer, wholesaler, retailer, consumer and the local community.

The following pages show how such financing and equity relationships are in the best interest of all the citizens and businesses of your state.

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Progressive Partnerships:

Brewery financing and limited partnerships offer tools to solve a modern community problem by strengthening the wholesaler tier.

Setting the Stage

One of America's oldest industries, the beer industry, continues to meet the challenges of today's changing economy. From the computerization of distribution systems to the construction of high-tech breweries, today's larger brewers compete by operating complicated businesses.

Anheuser-Busch is no exception. In fact, Anheuser-Busch has often led the way by creating innovative programs and systems to insure that it provides the highest quality products to consumers for fair value. One vital ingredient to the success of Anheuser-Busch has been its network of approximately 800 independent wholesalers throughout America. Anheuser-Busch is committed to help keep its wholesaler family strong and healthy. The wholesaler is the front line in providing local sales and service to the retail community.

The Problem

The transition of ownership of a beer distribution operation presents one of the most critical challenges that brewers, wholesalers and the community must address. The successful transition of these individual or family-owned wholesalerships is important in insuring the continuation of these businesses and the jobs of the people they employ.

The high capital investment required for these businesses often makes it impossible for the most qualified individuals - often the businesses' own employees or others experienced in the industry - to purchase the wholesalership. One option is to permit the brewer to set up financing, or limited partnerships or purchases by well qualified individuals who otherwise lack the capital to become independent wholesalers. These individual owners will run the business day to day. That option is available to the beer industry in 30 of the 50 states and is available to other American industries in every state.

Facts to Consider

- Limited partnerships are a common form of doing business, as are corporations, partnerships, sub-chapter S corporations, limited liability companies, etc.
- The general partners run the business. The limited partners or financiers do not participate in the day-to-day management of the business. They participate only in critical capital and investment decisions.

- Other major industries, such as automobile manufacturers, snack foods, and soft drink producers, can and do use limited partnerships to support their distribution systems.
- Permitting brewery participation expands the pool of potential buyers of a wholesaler, especially the most desirable buyers, those with experience in the industry and the commitment to day-to-day involvement. With limited partnerships or brewery financing, business ownership becomes possible for those who otherwise would not have such an opportunity.
- Successful changes in ownership promote investment and protect jobs in local communities.
- Beer wholesalers have remained strong and largely independent of brewer ownership in the 30 states that permit brewery participation in the distribution system. With a 14-year track record, no negative impact to the three-tier distribution system has appeared.
- Wholesalers, through their equity agreements, retain strong legal protections that can not be overturned without cause.
- General partners to Anheuser-Busch limited partnerships must live in, and become active members of, the local community.
- Brewery financing helps insure the economic vitality of a local distributorship and reinvestment that benefits retailers, employees and the community.

The Bottom Line

Brewer financing and limited partnerships are two solutions to a modern community problem: How do you keep the wholesaler tier of the beer industry as strong as possible in a time of rapid change and thereby protect jobs and local tax bases?

Beer distributors, who were once mainly deliverymen, have become highly involved marketers, and brewers have a vital interest in seeing that distributors are well equipped to meet the challenge.

Brewer financing and limited partnerships provide options for those who wish to sell-

- Protecting local jobs.
- Promoting local investment.
- Maintaining the local tax base

The Beer Industry Today

Beer is distributed by a three-tier system:

1. The Brewer brews and packages the beer and sells it, in bulk, to the wholesaler.
2. The wholesaler warehouses the beer, markets, sells and distributes it to retailers.
3. The retailer markets and sells it to the consumer.

In a number of industries, the wholesale tier is under assault because of factors including the rise of huge warehouses, chain stores and computerization that allow retailers to order direct from manufacturers. These huge regional warehouses remove business from your community to a centralized location which may be in another state.

In the beer industry, the role of the wholesaler is critical. They add value in many ways and they are the front line in marketing and promotion. With a perishable product that has such a short shelf-life, focused, local management is critical. Brewers are committed to preserving a strong wholesale tier. In most states, they possess valuable tools for doing so -- financing and limited partnerships. These can bolster the local business by aiding transitions and providing investment capital for expansions and modernization. Only a minority of states have laws that prevent making such investment and financing available to beer wholesalers.

The Beer Industry of Yesteryear

Before Prohibition, most breweries operated only in local regions and often competed fiercely with others in the same territory. The wholesale tier was not yet fully developed. Frequently, American brewers followed the British pattern of owning their own taverns called "tied houses" which sold their brews exclusively. To attract customers, such brewer-owned taverns sometimes offered promotions and cut prices to the point that it was seen as fostering abusive consumption.

After the repeal of Prohibition in 1933, states sought to control such practices by barring brewers from ownership in retail outlets. Wholesalers were a logical buffer. Some laws have been interpreted to also bar investments, financing and limited partnerships by brewers in wholesalers.

The Beer Industry of Tomorrow

The conditions those laws sought to correct are long gone. Major brewers spend millions of dollars annually to combat alcohol abuse and it is steadily declining.

The states that have allowed brewer-wholesaler financing and limited partnerships have realized that the goal of tied-house laws was to separate brewers and retailers. The financial and equity relationships between brewers and wholesalers in no way affect retail practices.

Further, marketing abuses have not recurred in the 30 states that allow brewer participation in wholesalers. Nor have such relationships damaged the three-tier system in those states. Bans on brewer financing and limited partnerships have outlived their intended purpose. In fact, laws that block brewer participation are counter to the best interests of brewers, wholesalers and ultimately the public because some highly qualified candidates may be unable to secure financing. These may be the very people needed to insure a strong, viable business for the future. And such businesses benefit retailers, employees and the local community.

Conclusion

Given the highly competitive and increasingly sophisticated beer business, it is desirable to have the option of brewery financing or limited partnerships. These help ensure not only that the best qualified candidate is available to own a wholesaler but also that he or she has the best training, advice and incentives to create a successful business.

Frequently Asked Questions

Q: Aren't limited partnerships a vehicle to give brewers more control over distributors?

A: No. Limited partnership law limits the actual influence and control the limited partner may have over a general partner. Even during the transition period, limited partnerships give day-to-day control for operations to the general partner. They are designed to give the general partner the experience to operate successfully after achieving full ownership. As limited partner, the brewer is barred from participating in daily decisions such as pricing, hiring and firing but retains control over specific large financial decisions during the term of the partnership. The program will produce strong, independent wholesalers who will be able to provide local jobs and tax bases.

Q: How frequently has the concept been used?

A: With over 800 wholesalerships throughout the country, Anheuser-Busch has had a total of twenty-eight partnerships over the fourteen year life of the program. Of these, 19 have completed the program and now operate as independent businesses owned by the former general partner. The rest will be sold when the limited partnership agreement expires.

Q: Is the WEDCO program of limited partnerships a vehicle by which Anheuser-Busch converts independent wholesalerships to brewery-owned wholesalerships?

A: No. In fact, four partnerships were spun off from brewery-owned branches. Two are now operating independently and two still retain A-B participation.

Q: Is the WEDCO program designed to increase minority participation in the wholesaler family?

A: It is not; although it can offer excellent opportunities for minorities who might not be able to finance a business themselves. Nine of the partners who have participated in the program since 1984 are minorities.

Q: Can brewers force independent wholesalers to enter into limited partnerships?

A: No wholesaler can be forced to sell his business or enter into a limited partnership as long as the business meets standards set out in the existing contract between the brewer and the wholesaler.