

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1260
(Representative Keiser)
(Senator Krebsbach)

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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1260.

House Vote: Yeas 92 Nays 0 Absent 6

Senate Vote: Yeas 48 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State