

Representative Mary Adams

My name is Randy Kieffer, president of Dakota Sales Co., a beer and beverage wholesaler located in Grand Forks. I am writing you to ask that you Do Not Pass HB 1265.

The North Dakota Beer Distributors Association opposes ND 1265 bill as unnecessary and ill-advised exception to the three-tier system. HB 1265 would allow expanded retail and distribution privileges that are beyond what is intended for brew pubs. Three-tier-exemptions, like retail privileges, were intended to help start-up businesses, not disrupt on-premise bars, restaurants and taverns. These additional privileges for brew pubs create an unfair playing field for other retailers—our customers. We are also concerned that the key provisions of the bill may be challenged by global brewers who may want the same privileges.

Brew pubs are specialty retailers and are already accorded privileges that no other industry members enjoy. Brew pubs hold retail licenses and are accorded the special privilege of brewing their own beer on the premises. They are not production brewers. They are retailers—also selling all other alcohol direct to the public. These are privileges that no other industry members enjoy. Large brewers are prohibited from holding a wholesale or retail license; Manufacture (large brewers) must sell to distributors; ND distributors may only distribute beer to retail; and retailers may only sell to the public.

Current law allows microbrew pubs to sell beer manufactured on the premises for off-premise consumption in containers up to three gallons and not more than 288oz of beer per day per person. That's already generous. MN and MT only allow the sale of growlers for off-premise consumption. These limitations help ensure that the retailer does not turn into a production brewer. A brew pub is not a brewer, it is a retailer, with the special privilege of brewing its own beer. HB 1265 removes the limitation on the amount that can be sold per person and increases the container size to 5 16/100. In other words, the pub could sell packages up to 5 gallons. That hardly follows the original intent to allow a pub to manufacture its own in-house product for the enjoyment on the premise. If brew pubs were allowed to operate as production brewers, bottling and selling all packages while holding a retail license, that would just turn that retailer into a brewer and create a commerce clause issue because large out-of-state breweries are prohibited from holding a retail license. Further, allowing brew pubs to sell direct to retail would allow them to operate in all three tiers.

Some find it hard to understand the difference between brew pubs and small brewers. The focus should be on the tier, Pubs are retailers and brewers are manufactures. They must stay in their lane. In addition to the fairness of permitting a few brew pubs further privileges not enjoyed by the thousands of other industry members in North Dakota, including ND's 1600 retailers, we oppose the bill, most importantly, because it exposes our laws to serious legal challenges by out-of-state breweries that are prohibited from holding a retail license.

I urge you to vote No for HB 1265

Randy Kieffer