

Fifty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1260

Introduced by

Representative Keiser

Senator Krebsbach

1 A BILL for an Act to amend and reenact sections 5-04-01, 5-04-02, 5-04-04, subsection 1 of  
2 section 5-04-07, sections 5-04-08, and 5-04-13 of the North Dakota Century Code, relating to  
3 beer wholesaler and brewer relationships.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **5-04-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 8 1. "Agreement" means one or more of the following:
- 9 a. A commercial relationship between a licensed beer wholesaler and a licensed  
10 brewer of a definite or indefinite duration which is not required to be  
11 evidenced in writing.
  - 12 b. A relationship whereby the beer wholesaler is granted the right to offer and  
13 sell a brand or brands of beer offered by a brewer.
  - 14 c. A relationship whereby the beer wholesaler, as an independent business,  
15 constitutes a component of a brewer's distribution system.
  - 16 d. A relationship whereby the beer wholesaler's business is substantially  
17 associated with a brewer's brand or brands, designating the brewer.
  - 18 e. A relationship whereby the beer wholesaler's business is substantially reliant  
19 on a brewer for the continued supply of beer.
  - 20 f. A written or oral arrangement for a definite or indefinite period whereby a  
21 brewer grants a license to a beer wholesaler to use a brand, trade name,  
22 trademark, or service mark, and in which there is a community of interest in  
23 the marketing of goods or services at wholesale or retail.

- 1           2.   "Ancillary business" means a business owned by a wholesaler, a stockholder of a  
2                   wholesaler, or a partner of a wholesaler, the primary business of which is directly  
3                   related to the transporting, storing, or marketing of the brewer's products with  
4                   whom the wholesaler has an agreement.
- 5           3.   "Beer wholesaler" or "wholesaler" means any licensee, as outlined in section  
6                   5-03-01, importing or causing to be imported into this state or purchasing or  
7                   causing to be purchased within this state, any beer for sale or resale to retailers or  
8                   wholesalers licensed pursuant to chapter 5-02 or 5-03, without regard to whether  
9                   the business of the person is conducted under the terms of an agreement with a  
10                  licensed brewer.
- 11       ~~3.~~ 4.   "Brand" means any word, name, group of letters, symbol, or combination thereof,  
12                  that is adopted and used by a brewer or importer to identify a specific beer  
13                  product, and to distinguish that beer product from another beer product.
- 14       4. 5.   "Brand extension" is any brand that incorporates all or a substantial part of the  
15                  unique features of a preexisting brand of the same brewer or importer, and which  
16                  relies to a significant extent on the goodwill associated with that preexisting brand.
- 17       ~~5.~~ 6.   "Brewer" means every licensed brewer or importer of beer located within or without  
18                  this state who enters into an agreement with any beer wholesaler licensed to do  
19                  business in this state.
- 20       ~~6.~~ 7.   "Person" means a natural person, corporation, limited liability company,  
21                  partnership, trust, agency, or other entity as well as the individual officers,  
22                  directors, or other persons in active control of the activities of each such entity.  
23                  "Person" also includes heirs, assigns, personal representatives, conservators, and  
24                  guardians.
- 25       ~~7.~~ 8.   "Territory" or "sales territory" means the area of primary sales responsibility  
26                  designated by any agreement between any beer wholesaler and brewer for the  
27                  brand or brands of any brewer.

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

30           **5-04-02. Inducement or coercion prohibited.** No brewer may:

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

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

19           **5-04-04. Agreement cancellation.** Notwithstanding the terms, provisions, or  
20 conditions of any agreement, no brewer may amend, cancel, terminate, or refuse to renew any  
21 agreement, or cause a wholesaler to resign from an agreement, unless good cause exists for  
22 amendment, termination, cancellation, nonrenewal, noncontinuation, or causing a resignation.  
23 "Good cause" does not include the sale or purchase of a brewer. "Good cause" includes, but is  
24 not limited to, the following:

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

1 In any dispute over an amendment, cancellation, termination, or nonrenewal, the brewer has  
2 the burden of proving the existence of good cause. If a wholesaler initiates a civil action, the  
3 brewer bears the burden of proving the existence of good cause after a prima facie showing by  
4 the wholesaler that good cause does not exist.

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

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

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

20 **5-04-08. Judicial remedies.** If a brewer engages in conduct prohibited under this  
21 chapter, a wholesaler, with whom the brewer has an agreement pursuant to this chapter, may  
22 maintain a suit against the brewer. The venue of any legal action taken under this section, or  
23 pursuant to a dispute arising out of an agreement or breach thereof, or over the provisions of  
24 an agreement, is a court, state or federal, located in North Dakota, or where the wholesaler  
25 maintains its principal place of business in this state. The court may grant equitable relief as is  
26 necessary to remedy the effects of conduct which it finds to exist and which is prohibited under  
27 this chapter, including, but not limited to, declaratory judgment and injunctive relief. The court  
28 may award actual damages and costs. If the court finds the brewer has acted in bad faith in  
29 invoking amendment, termination, cancellation, or nonrenewal under this chapter or has  
30 unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's  
31 agreement, the court may also award reasonable attorney's fees.

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

3           **5-04-13. Waiver prohibited.** No brewer may require any wholesaler to waive  
4 compliance with any provision of this chapter. Nothing in this chapter may be construed to limit  
5 or prohibit good faith dispute settlements voluntarily entered into by the parties. However, no  
6 provision of any written agreement may require the law of any state other than North Dakota to  
7 govern the relationship of the parties.