

ALCOHOLIC BEVERAGES

CHAPTER 102

HOUSE BILL NO. 1332
(Hedstrom, Black, Martinson, Reiten, Swiontek)

MINOR'S ALCOHOL POSSESSION PENALTY

AN ACT to amend and reenact section 5-01-08 of the North Dakota Century Code, providing a minimum fine for persons under twenty-one years of age who purchase or possess alcoholic beverages or enter licensed premises where alcoholic beverages are sold or displayed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

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

5-01-08. PERSONS UNDER TWENTY-ONE YEARS OF AGE PROHIBITED FROM ENTERING LICENSED PREMISES - PENALTY - EXCEPTIONS - REFERRALS TO ADDICTION FACILITIES. Except as permitted in this section and section 5-02-06, any person under twenty-one years of age purchasing, attempting to purchase, 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 and shall, if a fine is imposed, be fined not less than three hundred dollars. The court may, under this section, refer the person to an outpatient addiction facility licensed by the department of health for evaluation and appropriate counseling or treatment.

Approved March 26, 1981

CHAPTER 103

HOUSE BILL NO. 1383
(Representative Wentz)
(Senator Sorum)

SUNDAY CONVENTION ALCOHOL PERMIT ISSUANCE

AN ACT to amend and reenact section 5-02-05.1 of the North Dakota Century Code, relating to special Sunday convention alcoholic beverage permits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-05.1 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-05.1. SPECIAL SUNDAY CONVENTION ALCOHOLIC BEVERAGE PERMIT.

1. Any city or county may issue a special Sunday convention alcoholic beverage permit to a private club, lodge, motel, or hotel, as defined under municipal city ordinances or county resolutions and licensed as a retail alcoholic beverage establishment pursuant to chapter 5-02, which serves as the headquarters for the a state, multistate, or national convention of a bona fide organization recognized by the governing body of the city or county in which the convention is held. A county may not issue a permit under this section to a private club, lodge, motel, or hotel located within the geographical boundaries of a city.
2. The authority for issuing such special permit shall rest solely with the governing body of the city or county. A special permit shall be granted only upon proper application to and approval by the governing body, and shall include payment of a fee determined by such governing body. A special permit granted by the city or county shall be effective for one Sunday only.
3. Under the special permit, alcoholic beverages may be distributed and dancing may be permitted in those rooms of the private club, lodge, motel, or hotel which have been specifically reserved for convention activities, but shall

not be permitted in bar and lounge areas containing the permanent bar fixtures and normally open to the public. A city or county may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on the specified Sunday and one a.m. on Monday. Under no circumstances shall the general public be permitted to participate in the consumption of alcoholic beverages distributed under the authority and conditions of the special permit. It shall be the duty of the private club, lodge, motel, or hotel granted the special permit to enforce the requirements of this section and the conditions established by the city or county under the permit.

4. The special Sunday convention alcoholic beverage permit shall not be granted to allow the distribution of alcoholic beverages at gatherings or meetings which, in the opinion of the governing body of the city or county, are primarily local in nature.
5. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a special permit, or who furnishes information required by this section which is false or misleading, shall be guilty of a class A misdemeanor.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 3, 1981

CHAPTER 104

HOUSE BILL NO. 1297
(R. Hausauer, Dotzenrod, Nicholas)

BEER WHOLESALER AND BREWER RELATIONSHIP

AN ACT to regulate the relationship between beer wholesalers and brewers; to prohibit inducement or coercion, dual distributorship, retaliatory action, discrimination, and waiver; and to provide for definitions, agreement cancellation, notice of intent to terminate, sale of business, reasonable compensation for wrongful cancellation, judicial remedies, product price, wholesaler management, sale of brewer, coverage of the Act, right of free association, and application of the Act when in conflict with title 51.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS. As used in this Act, 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. "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 chapter 5-03, without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewer.
 3. "Brewer" means every licensed brewer of beer located within or without this state who enters into an agreement with any beer wholesaler licensed to do business in this state.
 4. "Person" means a natural person, corporation, 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.
 5. "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. INDUCEMENT OR COERCION PROHIBITED. No brewer shall:

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

SECTION 3. DUAL DISTRIBUTORSHIP PROHIBITED. No brewer who designates a sales territory for which a wholesaler shall be primarily responsible shall enter into an additional agreement with any other beer wholesaler for its brand or brands of beer in the same territory. No wholesaler shall deliver beer to a retail account outside a sales territory designated by the brewer of a particular brand or brands.

SECTION 4. AGREEMENT CANCELLATION. Notwithstanding the terms, provisions, or conditions of any agreement, no brewer shall 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" shall 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 by the brewer.

SECTION 5. NOTICE OF INTENT TO TERMINATE. Except as otherwise provided in this section, a brewer shall provide a wholesaler with at least ninety days prior written notice of any intent to amend, terminate, cancel, or not renew any agreement. The notice shall state all the reasons for the intended amendment, termination, cancellation, or nonrenewal. The wholesaler shall have ninety days after receiving notice in which to rectify any claimed deficiency. If the deficiency is rectified within ninety days of notice, the proposed amendment, termination, cancellation, or nonrenewal is void. The notice provisions of this section shall not apply if the reason for the termination, cancellation, or nonrenewal is:

1. The wholesaler's bankruptcy or insolvency.
2. An assignment for the benefit of creditors or similar disposition of the business assets.
3. Revocation of the wholesaler's license.

4. Conviction or a plea of guilty or no contest to a charge of violating a law relating to the business that materially affects the wholesaler's ability to remain in business.

SECTION 6. ASSIGNMENT, TRANSFER, OR SALE OF BUSINESS. No brewer shall unreasonably withhold consent to any assignment, transfer, or sale of the wholesaler's business whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of the brewer's wholesalers.

No brewer shall unreasonably refuse, withhold, or unduly delay its approval of the issuance, sale, or transfer by a corporate beer wholesaler of its capital stock or any other corporate equity or debt security.

SECTION 7. REASONABLE COMPENSATION FOR WRONGFUL CANCELLATION.

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 4, 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 shall include, but not be limited to, its goodwill, if any.
2. If the brewer and the beer wholesaler are unable to mutually agree on reasonable compensation for the value of the wholesaler's business, the matter shall be submitted to a neutral arbitrator to be selected by the parties or, if they cannot agree, by the presiding district judge of the district in which the wholesaler's main office is located. All arbitration costs shall be divided equally between the wholesaler and the brewer. The award of the neutral arbitrator shall be final and binding on the parties.

SECTION 8. JUDICIAL REMEDIES. If a brewer engages in conduct prohibited under this Act, a wholesaler, with whom the brewer has an agreement pursuant to this Act, may maintain a suit against the brewer. 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 Act, 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 Act 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 9. PRODUCT PRICE. No brewer, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the price at which the wholesaler shall sell any alcoholic beverage.

SECTION 10. RETALIATORY ACTION PROHIBITED. A brewer shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewer with the appropriate state or federal regulatory authority. "Retaliatory action" includes, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement.

SECTION 11. WHOLESALER MANAGEMENT. No brewer shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet essential, reasonable, and nondiscriminatory requirements.

SECTION 12. DISCRIMINATION PROHIBITED. No brewer shall discriminate among its North Dakota wholesalers in the price of beer sold to the North Dakota wholesalers or in price promotions. No wholesaler shall refuse to sell to any licensed alcoholic beverage retailer in its sales territory. No wholesaler shall discriminate among the licensed alcoholic beverage retailers in its sales territory in the price of beer sold to the retailers or in price promotions.

SECTION 13. WAIVER PROHIBITED. No brewer shall require any wholesaler to waive compliance with any provision of this Act. Nothing in this Act shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

SECTION 14. SALE OF BREWER. Except for good cause, as defined by section 4, the purchase of a brewer, where the purchaser continues in business as a brewer, shall obligate the new brewer to all terms and conditions of the agreement in effect on the date of purchase. "Purchase", for the purposes of this Act, includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer, or consolidation.

SECTION 15. ACT COVERAGE. The provisions of this Act shall cover agreements in existence on the effective date of this Act, as well as agreements entered into after the effective date of this Act.

SECTION 16. RIGHT OF FREE ASSOCIATION. No brewer or wholesaler shall restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

SECTION 17. ACT TO APPLY WHERE CONFLICT WITH TITLE 51. The provisions of this Act shall apply in any instances where the provisions of this Act conflict with the unfair practice provisions of title 51.

Approved March 26, 1981