

ALCOHOLIC BEVERAGES

CHAPTER 80

H. B. No. 683
(Kelsch)

REGULATION OF ALCOHOLIC BEVERAGES

AN ACT

To provide for the regulation and taxation of the sale, use and distribution of alcoholic beverages and licensing of wholesalers and retailers of such beverages and to repeal title 5 of the North Dakota Century Code, and providing a penalty.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Definitions.)** In this title,

1. "Alcoholic beverages" shall mean any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
2. "Beer" shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.
3. "Liquor" shall mean any alcoholic beverage except beer.
4. "Wine" shall mean the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.
5. "Sparkling wine" shall mean wine made effervescent with carbon dioxide.
6. "Alcohol" shall mean neutral spirits distilled at or above 190° proof, whether or not such product is subsequently reduced, for non-industrial use.
7. "Distilled spirits" shall mean any alcoholic beverage that is not beer, wine, sparkling wine or alcohol.

§ 2. **Exceptions.)** Nothing contained in this Act shall be construed to apply to the following articles, when they are unfit for beverage purposes:

1. Denatured alcohol produced and used pursuant to Acts of Congress, and the regulations thereunder;

2. Patent, proprietary, medical, pharmaceutical, antiseptic, and toilet preparations;
3. Flavoring extracts, syrups, and food products;
4. Scientific, chemical, and industrial products;

nor to the manufacture or sale of said articles containing alcohol. This Act shall not apply to wines delivered to priests, rabbis, and ministers for sacramental use.

§ 3. Penalty.) Any person distributing alcoholic beverages in this state without compliance with the provisions of this title is guilty of a misdemeanor.

§ 4. Manufacture of Alcoholic Beverages Prohibited—Exception.) Any person manufacturing alcoholic beverages within this state is guilty of a misdemeanor and property used for same is subject to disposition by the court except any person may establish a brewery for the manufacture of malt beverages within this state if he has secured a license from the state treasurer. Such license shall be issued on a calendar-year-basis with a fee of five hundred dollars. Said license shall allow sale to only licensed wholesalers.

§ 5. Public Intoxication—Penalty.) Any person intoxicated in any public place shall be guilty of a misdemeanor.

§ 6. Recovery of Damages for Illegal Sale of Liquor.) Every wife, child, parent, guardian, employer, or other person who shall be injured in person, property or means of support by any intoxicated person, or in consequence of intoxication, shall have a right of action against any person who shall have caused such intoxication by disposing, selling, bartering, or giving away alcoholic beverages contrary to statute for all damages sustained.

§ 7. Township Beer or Liquor Licenses.) No retail beer or liquor license shall be issued in any organized township without the written consent of board of township supervisors. This section shall not apply to renewals of such licenses.

§ 8. Persons Less Than Twenty-One Years Prohibited—Exception.) 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 premise where such beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, is guilty of a misdemeanor.

§ 9. Delivery to Certain Persons Unlawful.) Any person delivering alcoholic beverages to a person under twenty-one

years of age, a habitual drunkard, an incompetent, or an intoxicated person is guilty of a misdemeanor.

§ 10. Bottle Clubs Prohibited—Penalty.) Any person operating an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises is guilty of a misdemeanor.

§ 11. Unfair Competition — Penalty.) No manufacturer shall engage in any wholesale alcoholic beverage business, nor shall any manufacturer or wholesaler have any financial interest in any retail alcoholic beverage establishment nor furnish any such retailer with anything of value except wholesalers may:

1. Extend normal commercial credits to retailers for industry products sold to them. The state treasurer may determine by regulation the definition of "normal commercial credits" for each segment of the industry;
2. Furnish retailers with beer containers and also equipment for dispensing of tap beer provided the expense does not exceed twenty-five dollars per tap per calendar year;
3. Furnish outside signs to retailers if the sign cost does not exceed one hundred dollars exclusive of costs of erection and repair;
4. Furnish miscellaneous materials to retailers not to exceed twenty-five dollars per year.

Any wholesaler or manufacturer violating the provisions of this section and any retailer receiving benefits thereby, is guilty of a misdemeanor.

§ 12. Duty to Enforce.) The inspectors appointed by the attorney general shall have all the powers of peace officers anywhere in the state, and all peace officers in the state shall diligently enforce the laws set forth in this title. Any officer failing to do so shall be guilty of a misdemeanor. Said officers shall frequently visit all licensed premises to see that all such laws are strictly observed.

§ 13. State's Attorneys Inquiry.) The state's attorney may subpoena persons and take sworn testimony concerning any alleged violation of the alcoholic beverage laws and he may apply to the district court for an order compelling persons subpoenaed to appear and testify. Such witnesses shall receive the same fees and mileage as in a civil case in district court.

§ 14. State and Local Retail License Required—Exception.)

Any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and the governing body of any town, or board of county commissioners if said business is located outside the corporate limits of a town, is guilty of a misdemeanor. This section shall not apply to public carriers engaged in interstate commerce.

§ 15. Qualifications for License.) No retail license shall be issued to any person unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

1. Applicant, other than corporate, must be a citizen of the United States and a resident of the state of North Dakota and be a person of good moral character.
2. If applicant is a corporation the manager of the licensed premises and the officers, directors and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.
3. Applicant or manager must not have been convicted of a felony.
4. Building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
5. Applicant for a state license must have first secured a local license.
6. The attorney general, or local governing body, may require applicant to set forth such other information in application as necessary to enable them to determine if a license should be granted.

§ 16. Local License Fees.) The fee for an annual local on and off sale liquor license shall be set by ordinance or resolution at not less than two hundred dollars nor more than two thousand dollars, except outside the corporate limits of a town the fee shall not exceed one thousand dollars. The fee for an annual on and off sale local beer license shall be set by ordinance or resolution at not less than fifty dollars nor more than five hundred dollars. The fee for an annual local exclusive off sale beer or off sale liquor license shall not be more than the fee charged for an on and off sale license. The local governing body may by ordinance or resolution provide for issuance of licenses for any period not to exceed one year and may allow for proration and refunds of license fees.

§ 17. State License Fee.) The fee for an annual state on and off sale beer or liquor license shall be fifty dollars each, except in towns over five hundred population at the last federal decennial census the fee shall be one hundred dollars for each license. An off sale only beer or liquor license shall be fifty dollars each. The fee for an annual state license will be charged on a calendar year basis. License fees will be prorated from the first day of the month in which license is issued up to the last day of the month in which such license expires, except that no license fee will be less than twenty-five dollars.

§ 18. Disposal Prohibited on Certain Days—Penalty.) Any licensee who disposes or permits the consumption of alcoholic beverages on the licensed premises between the hour of one o'clock a.m. and eight o'clock a.m., on Sunday, Memorial Day, Good Friday, after six o'clock p.m. on Christmas Eve, Christmas Day, or between the hours of one o'clock a.m. and eight o'clock p.m. on the day of any election held by a local political subdivision of this state is guilty of a misdemeanor.

§ 19. Persons Under Twenty-One Years Prohibited—Penalty—Exception.) Any licensee who disposes alcoholic beverages to a person under twenty-one years of age or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed is guilty of a misdemeanor. Any person under twenty-one years may remain in a restaurant where alcoholic beverages are being sold if accompanied by a parent or legal guardian.

§ 20. Sale of Other Items Restricted — Penalty.) Any licensee selling any item on the licensed premises other than alcoholic beverages, soft drinks, tobacco products, drink mixing supplies, peanuts, pretzels, potato chips and related sundries is guilty of a misdemeanor, except a licensee may sell alcoholic beverages in a restaurant separated from the room in which alcoholic beverages are opened or mixed if gross sales of food are at least equal to sales of alcoholic beverages in the dining area.

§ 21. Disorderly Conduct Prohibited—Penalty.) Any licensee permitting disorderly conduct on the premises is guilty of a misdemeanor.

§ 22. Local Regulations.) The local governing body by ordinance or resolution may regulate or restrict the operation of licensees including among other things determining number of licenses to be granted, establishing health and safety standards for licensed premises, setting of hours and prohibition of dancing or various forms of entertainment on the premises.

§ 23. Hearing on Alleged Violations.) Any person having information that a licensed retailer of alcoholic beverages has violated any provisions of this title may file with the attorney general, city attorney or state's attorney an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the city attorney or state's attorney shall set the matter for hearing not later than the next regular meeting of the governing body or forward such affidavit to the attorney general. Upon receipt of any such affidavit the attorney general shall set the matter for hearing in the local county courthouse not less than ten days after copies of the affidavit and notice of hearing have been mailed to the licensee by registered mail. If the hearing is held by the local governing body, a copy of this affidavit and notice of hearing shall be mailed the licensee by registered mail not less than five days before such hearing. A record of such hearings will be made by stenographic notes or the use of an electronic recording device.

§ 24. Suspension or Revocation of License — Appeal.) If after such hearing the attorney general or local governing body finds the violation charged in the affidavit has been proved by the evidence, an order shall be served on the licensee revoking or suspending his license for a period of time. Such action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32 of the North Dakota Century Code, except that the order revoking or suspending the license shall be inoperative while the appeal is pending.

§ 25. Witnesses—Subpoena—Fees.) The attorney general or a member of the local governing body shall have the power to administer oaths and subpoena and examine witnesses. Any witness called by the prosecution, except a peace officer while on duty, shall receive the same fees and mileage as a witness in a civil case in district court.

§ 26. State Wholesale License Required — Qualifications.) Before any person shall engage in the sale at wholesale of beer or liquor in this state he shall first procure a license from only the state treasurer. Such license shall only allow sale to licensed retailers, licensed wholesalers and regular retail outlets on federal military reservations. No such license shall be issued unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

1. Applicant, other than corporate, must be a citizen of the United States and a resident of the state of North Dakota and a person of good moral character. If applicant is a corporation the manager of the licensed premises and the officers, directors and stockholders must be citizens

of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.

2. The state treasurer may require applicant to set forth such other information as is necessary to enable him to determine if a license should be granted.
3. No person shall be eligible for such a license unless he has a warehouse and office in this state in which is kept a complete set of records relative to his alcoholic beverage transactions in North Dakota.

§ 27. Fees.) The fee for an annual wholesale liquor license shall be one thousand dollars. The fee for an annual wholesale beer license shall be two hundred dollars.

§ 28. Bond Required.) Each wholesale beer or liquor dealer shall file with the state treasurer a bond in such amount and form as the state treasurer may require, to be conditioned upon compliance with all the provisions of this chapter, not to exceed fifty thousand dollars for any licensee.

§ 29. Collection of Taxes.) The taxes imposed by this chapter shall be paid by wholesalers to the state treasurer on or before the fifteenth day of each month. Liquor wholesalers shall make such payments based on the total gallonage sold the preceding calendar month. Beer wholesalers shall make such payments based on the total gallonage purchased from brewers the preceding calendar month. Sales of beer and liquor to instrumentalities of the federal government on military reservations shall be tax exempt. Upon satisfactory proof a tax credit shall be allowed beer wholesalers for beer purchased, but which cannot be sold in North Dakota. A tax credit shall be allowed wholesalers on bad accounts which are charged off for income tax purposes, but a pro rata tax shall again be paid on any accounts subsequently collected. If any wholesaler makes an overpayment of taxes due, the state treasurer shall issue a credit applicable to future obligations or certify such amount to the department of accounts and purchases for a refund. Any remittance within one dollar of the correct amount due may be accepted by the state treasurer as the correct amount due.

§ 30. Treasurer to Enact Regulations—Appeal.) The state treasurer, pursuant to the Administrative Agencies Practice Act, shall adopt rules and regulations governing retailers, wholesalers and manufacturers to insure efficient collection of beer and liquor taxes. Such regulations will have the force of law thirty days after the date of mailing to the persons affected by such regulations. All decisions of the state treasurer shall be subject to court review.

§ 31. Examination by Treasurer—Penalty for Improper Returns.) The state treasurer may at any reasonable time make an examination of the books and premises of any wholesaler to determine if such wholesaler has fully complied with all statutes and regulations pertaining to his wholesale business. If any wholesaler liable for any taxes imposed by this chapter shall fail to pay such tax on the date payment is due, there shall be added to the tax five percent per month of the total amount of the tax unpaid from the due date of payment until paid. Any wholesaler failing to furnish reports when required shall be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state treasurer may forgive all or part of any penalty for good cause shown. If any wholesaler shall file a fraudulent return, there shall be added to the tax an amount equal to the tax evaded or attempted to be evaded and such wholesaler shall also be guilty of a felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state shall enjoin the collection of any such tax or civil penalty. No wholesaler shall purchase alcoholic beverages from a manufacturer after notice from the state treasurer that such manufacturer has failed to file required reports with his office. Any wholesaler may have his license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

§ 32. Imposition of Tax—Rate.) A tax is hereby imposed upon all sales of alcoholic beverages by wholesalers according to the following schedule:

Beer in bulk containers—per wine gallon.....	\$.08
Beer in bottles and cans—per wine gallon.....	.16
Wine containing less than 17% alcohol by volume—per wine gallon.....	.50
Wine containing 17%—24% alcohol by volume—per wine gallon.....	.60
Sparkling wine—per wine gallon.....	1.00
Distilled spirits—per wine gallon.....	2.50
Alcohol—per wine gallon.....	4.05

***§ 33. Repeal.)** Title 5 of the North Dakota Century Code is hereby repealed and shall be replaced by the provisions of this Act.

Approved March 14, 1967.

***Note:** Section 1 of chapter 81, 1967 S.L., also repealed section 5-03-26 of the North Dakota Century Code. Section 2 of chapter 158, 1967 S.L., amended section 5-01-13 of the North Dakota Century Code. Sections 12 through 20 of chapter 323, 1967 S.L., amended sections 5-01-13, 5-01-17, 5-02-07, 5-02-08, 5-03-03, 5-03-04, 5-03-20, 5-05-02, and 5-05-03 of the North Dakota Century Code. Since the repeal of these sections by chapter 80, 1967 S.L., governs any amendments, the amendments have in effect been nullified.

CHAPTER 81

S. B. No. 330
(Nething, Decker)

REPEAL OF NONALCOHOLIC DRINK EXCISE TAX

AN ACT

To repeal section 5-03-26 of the 1963 Supplement to the North Dakota Century Code, providing for an excise tax on nonalcoholic commodities suitable for use in mixed drinks.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

***§ 1. Repeal.)** Section 5-03-26 of the 1963 Supplement to the North Dakota Century Code is hereby repealed.

Approved February 27, 1967.

***Note:** This section was also repealed by chapter 80, 1967 S.L.