



North Dakota Senate

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COMMITTEES:

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3/20/25

Good morning, Chairman Longmuir and members of the committee. For the record, Justin Gerhardt serving District 34 in Mandan.

Today you have before you SB 2334. This bill simply would include taprooms to have the ability to conduct charitable gaming. North Dakota has a Brewer Taproom License which is an annual license that allows the manufacturing and sale of beer products at a specific licensed premises. Currently, if I understand correctly, there are now seven licensed taprooms in the state, two of which are located in my district. I bring this bill forward because I believe that taprooms meet the description of an "Alcoholic beverage establishment" but have been inadvertently left out of the definition in section 53-06.1-01 of the century code, as the licensing for taprooms falls under a different chapter than typical alcoholic beverage establishments. This bill will correct that.

There are people behind me that know this issue much better than I. Thank you Chairman Longmuir and committee members. If you do have any questions for me, I'd be happy to try to answer them.

5-01-20. Direct sale by licensed wineries.

1. A licensed winery that produces no more than twenty-five thousand gallons [94635 liters] of wine per year may sell and deliver, onsite or offsite, the wine produced by the winery directly to licensed retailers. The licensed winery may sell and deliver wine onsite to a licensed retailer who presents the retailer's license or a photocopy of the license. The winery may deliver the wine offsite if the winery:
 - a. Uses the winery's equipment, trucks, and employees to deliver the wine;
 - b. Contracts with a licensed distributor to ship and deliver the wine to the retailer; or
 - c. Contracts with a common carrier to ship and deliver the wine to the retailer directly from the winery or the winery's bonded warehouse.
2. The shipments delivered by a winery's equipment, trucks, and employees in a year may not exceed four thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].
3. Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. The shipments delivered by a common carrier in a year may not exceed three thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].

5-01-21. Brewer taproom license.

1. The tax commissioner may issue multiple brewer taproom licenses to the owner or operator of a brewery producing no more than twenty-five thousand barrels of malt beverages annually. A brewer with multiple taproom licenses must produce malt beverages at each location and the total amount of malt beverages produced at all locations combined may not exceed twenty-five thousand barrels of malt beverages annually. Each brewer taproom license may be issued and renewed for an annual fee of five hundred dollars, which is in lieu of all other state license fees required by this title. All provisions of this chapter which apply to a retail license must apply to a license issued under this section unless the provision is explicitly inconsistent with this section.
2. A brewer holding a brewer taproom license may:
 - a. Manufacture on the licensed premises, store, transport, sell, and export no more than twenty-five thousand barrels of malt beverages annually.
 - b. Sell malt beverages manufactured on the licensed premises or through a contract for consumption on the premises of the brewery or a restaurant owned by the licensee and located on property contiguous to the brewery.
 - c. Sell beer manufactured on the licensed premises or through a contract for off premises consumption in brewery-sealed containers of not more than five and sixteen-hundredths gallons [19.53 liters].
 - d. Sell and deliver beer produced by the brewery to licensed beer wholesalers.
 - e. Dispense free samples of beer offered for sale. Complimentary samples of beer may not be in an amount exceeding sixteen ounces [.47 liter] per patron.
 - f. Sell and deliver beer produced by the brewery to licensed retailers within the state, but only if:
 - (1) The brewer uses the brewer's own equipment, trucks, and employees to deliver the beer;
 - (2) Individual deliveries, other than draft beer, are limited to the case equivalent of eight barrels per day to each licensed retailer;
 - (3) The total amount of beer sold or delivered directly to all retailers does not exceed ten thousand barrels per year; and
 - (4) A common carrier is not used to ship or deliver the brewery's product to the public or to licensed retailers. All other sales and deliveries of beer to licensed retailers in this state may be made only through a wholesaler licensed in this state.
 - g. Sell or direct ship beer produced by the brewery to an individual in this state for consumption in accordance with section 5-01-16.
3. The tax commissioner may issue special event permits for not more than forty events per calendar year to a brewer taproom licensee allowing the licensee, subject to local

- ordinance, to give free samples of its beer, sell its beer by the glass or in closed containers, or dispense beer manufactured by the licensee, at off-premises events.
4. For any month in which a brewery has made sales to a wholesaler licensed in this state, that brewery shall file a report with the tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after that day.
 5. A brewer taproom licensee is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all beer sold by the licensee at retail or to a retail licensee, including all beer sold directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. When the fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after that day. The report must provide the detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require the report be submitted in an electronic format approved by the tax commissioner.
 6. A brewer may have multiple taproom licenses, but may not have an ownership interest in whole or in part, or be an officer, director, agent, or employee of any other manufacturer, brewer, importer, wholesaler, or retailer, or be an affiliate thereof, whether the affiliation is corporate or by management, direction, or control. A brewer may transfer beer in bulk, as defined by section 5-01-01, manufactured by the brewer to an affiliated brewer. For the purposes of this subsection, an "affiliated brewer taproom" means a licensed brewer taproom of which at least an eighty-five percent interest is owned by the brewer taproom, measured annually and:
 - a. The brewer does not own more than three affiliated brewer taprooms;
 - b. The licensed brewer taproom receiving the beer in bulk has produced no less than five thousand gallons [18927.06 liters] of beer on the premises in the preceding calendar year. For the purpose of calculating the production requirements, the production must be prorated based on the number of days beer was produced;
 - c. The beer in bulk transferred in any calendar year constitutes no more than fifty percent of the beer being produced by the licensed brewer taproom receiving the beer; and
 - d. For purposes of determining whether the twenty-five thousand barrel production limit under subsections 1 and 2 is being exceeded, the beer being transferred is credited to the brewer that manufactured the beer.
 7. A contractee brewer may contract with a contractor brewer to produce beer for the contractee brewer to the extent allowed by federal law under the following conditions:
 - a. The contractee brewer and the contractor brewer must be licensed and owned separately;
 - b. The contractee brewer must have a proper license issued under this section and maintain a physical presence in the state;
 - c. Beer brewed for a contractee brewer counts toward the contractee brewer's annual barrels produced, and the beer does not count toward the contractor brewer's annual barrels produced;
 - d. The contractee brewer retains ownership of product produced by a contractor brewer; and
 - e. Each brewer is separately and distinctly responsible for compliance with this chapter.

5-01-22. Powdered alcohol products prohibited - Penalty - Exceptions.

1. As used in this section, "powdered alcohol product" means any alcohol prepared or sold in a powder form for either direct use or reconstitution in a liquid beverage or food.
2. A person may not sell, offer to sell, purchase, offer to purchase, possess, or consume a powdered alcohol product.