TITLE 5
ALCOHOLIC BEVERAGES

CHAPTER 5-01
GENERAL PROVISIONS

5-01-01. Definitions.

In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume and includes an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses, which has not undergone distillation.
4. "Bottle or can" means any container, regardless of the material from which made, having a capacity less than a bulk container for use for the sale of malt beverages at retail.
5. "Direct shipper" means a person that is licensed by the commissioner and ships or causes to be shipped alcoholic beverages directly into this state to a consumer for the consumer's personal use and not for resale.
6. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
7. "Domestic distillery" means a distillery that produces twenty-five thousand gallons [94635 liters] or fewer of distilled spirits per year.
8. "In bulk" means in containers having a capacity not less than one-sixth barrel for use for the sale of malt beverages at retail.
9. "Licensed alcohol carrier" means a person licensed to transport or deliver alcoholic beverages to a consumer without first having the alcoholic beverage delivered through a wholesaler licensed in this state.
10. "Licensed logistics shipper" means a person that provides fulfillment house services, including warehousing, packaging, distribution, order processing, or shipment of alcoholic beverages on behalf of a licensed direct shipper and by way of a licensed alcohol carrier.
11. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
12. "Liquor" means any alcoholic beverage except beer.
13. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
14. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
15. "Manufacturing distillery" means a distillery that produces forty thousand gallons [151416 liters] or fewer of distilled spirits per year.
16. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises or serves beer produced or manufactured on the premises for purposes of sampling the beer.
17. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
18. "Satellite location" means an offsite location owned or leased by a manufacturing distillery to conduct retail operations.
19. "Sparkling wine" means wine made effervescent with carbon dioxide.

20. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or wholesaler selling alcoholic beverages to a wholesaler licensed in this state for purposes of resale.
21. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.
22. "Twenty-one years of age" means it is after eight a.m. on the date twenty-one years after a person's date of birth.
23. "Wine" means 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.

5-01-02. Exceptions.

Nothing contained in this title may 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; or
4. Scientific, chemical, and industrial products;

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

5-01-03. Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

5-01-04. Manufacture of alcoholic beverages prohibited - Exceptions.

A person may manufacture alcoholic beverages for personal or family use, and not for sale, without securing a license if the amount manufactured is within quantities allowed by the alcohol and tobacco tax and trade bureau of the United States treasury department. Any person manufacturing alcoholic beverages within this state in quantities greater than those permitted by the alcohol and tobacco tax and trade bureau of the United States treasury department is guilty of a class A misdemeanor and property used for the same is subject to disposition by the court except any person may establish a brewery for the manufacture of malt beverages, a winery, or a distillery or other plant for the distilling, manufacturing, or processing of alcohol within this state if the person has secured a license from the tax commissioner. This license must be issued on a calendar-year basis with a fee of five hundred dollars. A first-time license fee may be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the tax commissioner. A license may not be issued for any period for a fee less than one-half of the annual license fee. This license shall allow sale to only licensed wholesalers.

5-01-05. Public intoxication - Penalty.

Repealed by S.L. 1969, ch. 91, § 5.

5-01-05.1. Public intoxication - Assistance - Medical care.

1. As used in this section "intoxicated" means a state in which an individual is under the influence of alcoholic beverages, drugs, or controlled substances, or a combination of alcoholic beverages, drugs, and controlled substances.
2. A peace officer may take any apparently intoxicated individual to the individual's home, to a local hospital, to a detoxification center, or, whenever that individual constitutes a danger to that individual or others, to a jail. A tier 1b mental health professional, as defined under section 25-01-01, of a local hospital may hold that individual for treatment up to seventy-two hours.

3. An intoxicated individual may not be held in jail because of intoxication more than twenty-four hours. An intoxicated individual may not be placed in a jail unless a jailer is constantly monitoring the individual and medical services are provided if the need is indicated.
4. Upon placing that individual in jail, or if the individual is admitted to a hospital or detoxification center, upon admission, the peace officer shall make a reasonable effort to notify the intoxicated individual's family as soon as possible.
5. Any additional costs incurred by the city, county, ambulance service, or medical service provider on account of an intoxicated individual are recoverable from that individual.

5-01-05.2. No prosecution for intoxication.

No person may be prosecuted in any court solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication.

5-01-05.3. Disturbing the peace - Disorderly conduct - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

5-01-05.4. Informational, counseling, and referral centers for alcoholism.

Any county or city within the state at the discretion of their governing bodies, either individually or jointly, may establish or provide office space, including personnel, for informational, counseling, and referral services for alcoholics and their families.

5-01-06. Recovery of damages resulting from intoxication.

Repealed by S.L. 1987, ch. 95, § 5; S.L. 1987, ch. 99, § 2.

5-01-06.1. Claim for relief for fault resulting from intoxication.

1. Every spouse, child, parent, guardian, employer, or other individual who is injured by any obviously intoxicated individual has a claim for relief for fault under section 32-03.2-02 against any person who knowingly disposes, sells, barters, or gives away alcoholic beverages to an individual under twenty-one years of age or to an incompetent or an obviously intoxicated individual, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. If a retail licensee is found liable under this section and exemplary damages are sought, the finder of fact may consider as a mitigating factor that the licensee provided to an employee alcohol server training that addressed intoxication, drunk driving, and underage drinking.
2. If a retail licensee provided to an employee alcohol server training that addresses intoxication, drunk driving, and underage drinking, a person with a claim for relief under this section may not use the fact that the retail licensee provided this training to prove culpability.
3. A claim for relief under this section may not be had on behalf of the intoxicated individual nor on behalf of the intoxicated individual's estate or personal representatives, nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated individual or on behalf of the passenger's estate or personal representatives.

5-01-07. Township beer or liquor licenses.

No retail beer or liquor license may be issued in any organized township without the written consent of the board of township supervisors.

5-01-08. Individuals under twenty-one years of age prohibited from using alcoholic beverages or entering licensed premises - Penalty.

1. Except as permitted in this section and section 5-02-06, an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or

attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.

2. An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
   a. A restaurant if accompanied by a parent or legal guardian;
   b. In accordance with section 5-02-06;
   c. If the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
   d. If the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or
   e. If the individual enters the premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
3. An individual who violates this section is guilty of an infraction. For a violation of subsection 1 or 2, the court also may sentence a violator to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44. For a second or subsequent violation of subsection 1 or 2, the court also shall sentence a violator to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44.
4. The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of health and human services for evaluation and appropriate counseling or treatment.
5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
6. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals who may be immune for any one occurrence is five individuals.

5-01-08.1. Misrepresentation of age - Penalty - Licensee may keep book.

Any person who misrepresents or misstates that person's age or the age of any other person or who misrepresents that person's age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of a class B misdemeanor. Any licensee may keep a book and may require anyone who has shown documentary proof of that person's age, which substantiates that person's age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature.

5-01-08.2. Presumption of licensee's innocence when certain facts established.

The establishment of the following facts by a person making a sale of alcoholic beverages to a person not of legal age constitutes prima facie evidence of innocence and a defense to any prosecution therefor:

1. That the purchaser falsely represented and supported with other documentary proof that the purchaser was of legal age to purchase alcoholic beverages.
2. That the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages.

3. That the sale was made in good faith and in reliance upon the representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase alcoholic beverages.

5-01-08.3. Proof of age - Seizure of false identification.

1. A licensed retailer of alcoholic beverages or an employee of a licensed retailer may determine proof of age for purchasing or consuming an alcoholic beverage solely by inspection of one of the following:
   a. A valid driver's license or identification card issued by this state, another state, or a province of Canada which includes the photograph and date of birth of the licensed individual;
   b. A valid military identification card issued by the United States department of defense; or
   c. A valid passport issued or recognized by the United States.
2. A licensed retailer or an employee of a licensed retailer may seize a form of identification displayed as proof of age if the licensed retailer or an employee of a licensed retailer has a reasonable belief that the form of identification has been altered, falsified, or is being used to unlawfully obtain alcoholic beverages.
3. Within twenty-four hours of seizing a form of identification as allowed under this section, a licensed retailer or an employee of a licensed retailer shall notify a law enforcement agency of the seizure and the law enforcement agency shall take possession of the identification within twenty-four hours after receipt of the notice.

5-01-09. Delivery to certain persons unlawful.

1. Any individual knowingly delivering alcoholic beverages to an individual under twenty-one years of age, except as allowed under section 5-02-06, or to an incompetent or an obviously intoxicated individual is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene and cooperated with medical assistance and law enforcement personnel on the scene, or was the individual in need of medical assistance. The maximum number of individuals that may be immune for any one occurrence is five individuals.
3. If an individual is convicted of this section for delivering alcoholic beverages to an individual under twenty-one years of age, the court shall consider the following in mitigation:
   a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
   b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

5-01-10. 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 class B misdemeanor.

5-01-11. Unfair competition - Penalty.

A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any such retailer with anything of value. A

retailer may not have any financial interest in any manufacturer, supplier, or wholesaler. A wholesaler may:

1. Extend normal commercial credits to retailers for industry products sold to them. The state tax commissioner may determine by rule the definition of "normal commercial credits" for each segment of the industry.
2. Furnish retailers with beer containers and equipment for dispensing of tap beer if the expense to the wholesaler associated with the furnishing of containers, equipment, and tap or coil cleaning service does not exceed one hundred fifty dollars per tap per calendar year.
3. Furnish outside signs to retailers if the sign cost does not exceed four hundred dollars exclusive of costs of erection and repair.
4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per year. "Miscellaneous materials" not subject to this limitation include any indoor point-of-sale items for retail placement. Point-of-sale items include back bar signs, pool table lights, neon window signs, and items of a similar nature. The point-of-sale items must be limited to five hundred dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers.

Any wholesaler, retailer, or manufacturer violating this section, or any rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty of a class A misdemeanor. A microbrew pub is exempt from the provisions of this section to the extent that this section restricts the co-ownership of a manufacturer's license and a retail license for the purpose of a microbrew pub.

5-01-12. Duty to enforce.

Repealed by S.L. 1975, ch. 106, § 673.

5-01-13. State's attorney's inquiry.

The state's attorney may subpoena persons and take sworn testimony concerning any alleged violation of the alcoholic beverage laws and 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.

5-01-14. Microbrew pubs - Licensing - Taxes.

1. A microbrew pub shall obtain a brewer license and a retailer license as required under this title. A microbrew pub may manufacture on the licensed premises, store, transport, sell to wholesale malt beverage licensees, and export no more than ten thousand barrels of malt beverages annually; sell malt beverages manufactured on the licensed premises; sell alcoholic beverages regardless of source to consumers for consumption on the microbrew pub's licensed premises; and sell or direct ship malt beverages manufactured on the licensed premises to an individual in this state for consumption in accordance with section 5-01-16. A microbrew pub may not engage in any wholesaling activities. Except as provided in subsection 3, all sales and delivery of malt beverages to any other retail licensed premises may be made only through a wholesale malt beverage licensee. Beer manufactured on the licensed premises and sold by a microbrew pub directly to the consumer for consumption on or off the premises is subject to the taxes imposed pursuant to section 5-03-07, in addition to any other taxes imposed on brewers and retailers. A microbrew pub is required to file a monthly sales report with the tax commissioner by the fifteenth day of the month following the month in which the sales are made. The report must be prepared and submitted in a form and manner as prescribed by the tax commissioner. A microbrew pub is not precluded from retailing beer it purchases from a wholesaler. Complimentary samples of beer may not be in an amount exceeding sixteen ounces [.47 liter] per patron. A licensee may sell beer to any person for off-premises consumption if sold in a brewery-sealed container and the total amount sold to each person does not exceed

five and sixteen-hundredths gallons [19.53 liters] per day. This section may not be superseded under chapters 11-09.1 and 40-05.1.

2. The tax commissioner may issue a special event permit for not more than forty events per calendar year to a microbrew licensee allowing the licensee, subject to local ordinance, to give free samples of beer manufactured by the licensee, sell beer manufactured by the glass or in closed containers, or dispense beer manufactured by the licensee, at off-premises events.
3. A microbrew pub may transfer beer in bulk, as defined by section 5-01-01, manufactured by the microbrew pub to an affiliated microbrew pub licensee. For purposes of this subsection, "affiliated microbrew pub licensee" means a microbrew pub of which at least an eighty-five percent interest is owned by the microbrew pub measured annually and:
   a. The microbrew pub does not own more than three affiliated microbrew pub licensees;
   b. The microbrew pub licensee 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 microbrew pub licensee receiving the beer; and
   d. For purposes of determining whether the ten thousand barrel production limit under subsection 1 is being exceeded, the beer being transferred is credited to the microbrew pub that manufactured the beer.
4. 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 brewing 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 the product; and
   e. Each brewer is separately and distinctly responsible for compliance with this chapter.

5-01-15. Penalty.

Any person who violates any provision of this title, or any rule adopted to implement this title, is guilty of a class B misdemeanor, unless the penalty is provided for elsewhere.

5-01-16. Direct sale from out-of-state person to consumer - Penalty.

1. A person in the business of selling alcoholic beverages may not knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a licensed wholesaler in this state.
2. A person in the business of transporting goods may not knowingly or intentionally transport, or cause to be transported, any alcoholic beverage directly to a person in this state who is not a licensed wholesaler in this state.
3. For a first violation of subsection 1 or 2, the tax commissioner shall notify, by certified mail, the person and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2 and shall assess a civil penalty of one hundred dollars for each illegal shipment. For a second violation of subsection 1 or 2, the tax commissioner shall assess a civil penalty of two hundred dollars for each illegal shipment. For any subsequent violation of subsection 1 or 2, the tax commissioner shall assess a civil penalty of five hundred dollars for each illegal shipment.

4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.
5. This section does not apply to a transaction by a person holding a valid manufacturer's or retailer's license issued by the state of its domicile and if the person obtains a direct shipping license from and on a form prescribed by the tax commissioner before making a shipment. The annual fee for a direct shipping license is fifty dollars. Licensed direct shippers may sell and ship to an individual twenty-one years of age or older 7.13 gallons [27 liters] or less of wine, two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other alcoholic beverages per month for personal use and not for resale.
   a. A direct shipper shall ship all containers of alcoholic beverages shipped directly to a resident of this state using a licensed alcohol carrier and may cause the alcoholic beverages to be shipped by a licensed logistics company.
   b. A direct shipper shall label all containers of alcoholic beverages shipped directly to an individual in this state with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".
   c. A licensed direct shipper shall report and pay the wholesaler excise tax and retailer sales taxes to the tax commissioner on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and 57-39.6-02. The excise tax reports are due January fifteenth of the year following the year sales and shipments were made. When the fifteenth day of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in format as prescribed by the tax commissioner and include the identification of any logistics or fulfillment houses the licensee used for such shipments. The sales and use tax reports are due as set forth in chapter 57-39.6. The sales and use tax reports must be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
   d. All alcoholic beverages that are shipped directly to a resident of this state must be properly registered with the federal alcohol and tobacco tax and trade bureau and must be owned by the licensed direct shipper.
6. A licensed alcohol carrier may ship alcoholic beverages into, out of, or within this state. A licensed alcohol carrier shall pay an annual fee of one hundred dollars and obtain a license on an application form provided by the tax commissioner and subject to any requirements determined by the tax commissioner.
   a. A licensed alcohol carrier shall ensure all containers of alcoholic beverages shipped directly to an individual in this state are labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A licensed alcohol carrier may not deliver alcoholic beverages to a person under twenty-one years of age, or to a person who is or appears to be in an intoxicated state or condition. A licensed alcohol carrier shall obtain valid proof of identity and age before delivery and shall obtain the signature of an adult as a condition of delivery.
   b. A licensed alcohol carrier shall maintain records of alcoholic beverages shipped into, out of, or within this state which include the name of the licensed direct shipper, the name of any licensed logistics shipper, the date of each shipment, the recipient's name and address, and an electronic or paper form of signature from the recipient of the alcoholic beverages. A licensed alcohol carrier shall submit a report to the tax commissioner on a monthly basis in the form and format prescribed by the tax commissioner. The report is due on the last day of the month following the month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the due date. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
   c. If the tax commissioner has provided notice to a licensed alcohol carrier that a direct shipper is not licensed, the licensed alcohol carrier must notify the direct

shipper that the direct shipper must obtain a direct shipper permit before tendering packages to the licensed alcohol carrier for delivery. Any assessed penalty may be waived by the tax commissioner for good cause upon request by the licensed alcohol carrier.

7. Licensed logistics shippers must obtain a logistics shipping license from the tax commissioner and shall pay an annual fee of one hundred dollars before making or causing a shipment.
   a. A licensed logistics shipper shall ensure all containers of alcoholic beverages shipped directly to an individual in this state are labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".
   b. All containers of alcoholic beverage shipped directly to a resident of this state must be shipped using a licensed alcohol carrier as provided in subsection 6.
   c. A licensed logistics shipper shall maintain records of alcoholic beverages shipped which include the license number and name of the licensed direct shipper, the license number and name of the licensed common carrier, the date of each shipment, the quantity and kind of alcohol shipped, and the recipient's name and address for each shipment. A licensed logistics shipper shall submit a report to the tax commissioner on a monthly basis in the form and format prescribed by the tax commissioner. The report is due on the last day of the month following the month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the due date. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
   d. Licensed logistics shippers may not ship alcoholic beverages from unlicensed direct shippers or through unlicensed carriers. For a violation, a licensed logistics shipper is subject to the penalties in subsection 3.
8. The tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this section and may request award of all costs and attorney's fees incurred by the state incidental to that action. Upon determination by the tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by any person, the tax commissioner may notify both the alcohol and tobacco tax and trade bureau of the United States department of the treasury and the licensing authority for the state in which the person is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

5-01-17. Domestic winery license.

1. The tax commissioner may issue a domestic winery license to the owner or operator of a winery located within this state to produce wine. A domestic winery may purchase, at wholesale or retail, brandy for use of onpremises fortification. A domestic winery license may be issued and renewed for an annual fee of one hundred dollars, which is in lieu of all other license fees required by this title.
2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its wine to persons inside or outside of the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94635 liters] in a calendar year; glassware; wine literature and accessories; and cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between eight a.m. and twelve midnight. The tax commissioner may issue special events permits for not more than forty events per calendar year to a domestic winery allowing the winery, subject to local ordinance, to give free samples of its wine and to sell its wine by the glass or in closed containers, at off-premises events. A domestic winery may not engage in any wholesaling activities. All sales and deliveries of wines to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. For any month in which a domestic

winery has made sales to a North Dakota wholesaler, that domestic winery 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 thereafter.

3. A domestic winery may obtain a domestic winery license and a retailer license allowing the onpremises sales of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.
4. A domestic winery may purchase wine in bulk from within and outside the state, excluding label approved containers and not to exceed four thousand gallons [15142 liters] per calendar year.
5. A domestic winery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all wines sold by the licensee at retail, including all wines shipped 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 thereafter. The report must provide such detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.

5-01-18. Alcohol without liquid devices prohibited - Definition - Penalty.

1. A person may not sell, offer to sell, purchase, possess, use, or if that person is a retail alcoholic beverage licensee, have on the premises an alcohol without liquid device. In this section, an "alcohol without liquid device" means an apparatus that is advertised, designed, or used to vaporize an alcoholic beverage to produce a vapor that may be inhaled by an individual. The term does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended specifically for medical purposes to dispense prescribed or over-the-counter medications or water.
2. This section does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.
3. A violation of this section is a class B misdemeanor.

5-01-19. Domestic distillery.

1. The tax commissioner may issue a domestic distillery license to the owner or operator of a distillery that is located within this state. A domestic distillery license may be issued and renewed for an annual fee of one hundred dollars. This fee is in lieu of all other license fees required by this title. The tax commissioner may not issue the domestic distillery license until the applicant has established that the applicant has applied for and obtained the necessary federal registrations and permits, as required under the Internal Revenue Code of 1986 [26 U.S.C. 5001 et seq.] and the federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits plant.
2. A domestic distillery may sell spirits produced by that distillery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or outside the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94635 liters] in a calendar year. Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month per person for personal use and not for resale. The packaging must conform with the labeling requirements in section 5-01-16. A licensee may dispense free samples of the spirits offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between eight a.m. and twelve midnight. A domestic distillery may hold events inside and outside its premises, but only on contiguous property under common ownership, allowing free samples of its spirits and to sell its spirits by the glass or in closed containers. The tax

commissioner may issue special event permits for not more than forty events per calendar year to a domestic distillery allowing the domestic distillery, subject to local ordinance, to give free samples of its product and to sell its product by the glass or in closed containers, at off-premises events. A domestic distillery may not engage in any wholesaling activities. Except as provided by section 5-01-19.1, all sales and deliveries of spirits to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. However, a domestic distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the domestic distillery by the domestic winery. No later than the last business day of a calendar month, a farm distillery that has made sales to a North Dakota wholesaler during the preceding calendar month shall file a report with the tax commissioner reporting those sales.

3. A domestic distillery may obtain a domestic distillery license and a retailer license allowing the onpremises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the domestic distillery. A domestic distillery also may own or operate a winery.
4. A domestic distillery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all spirits sold by the licensee at retail or to a retail licensee, including all spirits shipped 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. The report must provide the detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.

5-01-19.1. Direct sale by domestic distilleries.

1. A domestic distillery that produces no more than twelve thousand proof gallons [45425 liters] of spirits per year may sell and deliver, onsite or offsite, the spirits produced by the distillery directly to licensed retailers. The distillery may sell and deliver spirits onsite to a licensed retailer that presents the retailer's license or a photocopy of the license. The distillery may deliver the spirits offsite if the distillery:
   a. Uses the distillery's equipment, trucks, and employees to deliver the spirits;
   b. Contracts with a licensed distributor to ship and deliver the spirits to the retailer; or
   c. Contracts with a common carrier to ship and deliver the spirits to the retailer directly from the distillery or the distillery's warehouse.
2. The total amount of spirits each domestic distillery may sell or deliver directly to all licensed retailers may not exceed two hundred cases per year. Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. A case may not exceed two and thirty-eight hundredths gallons [9 liters].
3. As used in this section, "proof gallon" means a gallon [3.79 liters] of liquid at sixty degrees Fahrenheit [15.5 degrees Celsius] which contains fifty percent ethyl alcohol by volume or its equivalent.

5-01-19.2. Manufacturing distillery - Satellite locations.

1. The tax commissioner may issue a manufacturing distillery license to the owner or operator of a distillery located within this state which uses a majority of North Dakota farm products to manufacture and sell spirits produced on the premises. A manufacturing distillery license may be issued and renewed for an annual fee of one hundred dollars. This fee is in lieu of all other license fees required by this title. The tax commissioner may not issue the manufacturing distillery license until the applicant has established the applicant has applied for and obtained the necessary federal registrations and permits, as required under the Internal Revenue Code of 1986 [26 U.S.C. 5001 et seq.] and the federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits plant.

2. A manufacturing distillery may sell spirits produced by that distillery at off sale, in retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or outside the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of forty thousand gallons [151416 liters] in a calendar year.
   a. Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month per person for personal use and not for resale. The packaging must conform with the labeling requirements in section 5-01-16. A licensee may dispense free samples of the spirits offered for sale. Subject to local ordinance, sales at off sale may be made on Sundays between twelve noon and twelve midnight.
   b. A manufacturing distillery may hold events inside its premises and at its satellite location. The tax commissioner may issue event permits for not more than forty event days per calendar year to a manufacturing distillery to allow the manufacturing distillery, subject to local ordinance, to give free samples of its product and to sell its product by the glass or in closed containers at events on the premises, off the premises, and at its satellite location.
   c. A manufacturing distillery may not engage in any wholesaling activities. Except as provided by section 5-01-19.1, all sales and deliveries of spirits to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. However, a manufacturing distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the manufacturing distillery by the domestic winery.
3. a. As used in this subsection, "samples" means the serving of free tastings of a manufacturing distillery's products not to exceed six ounces [0.18 liter] of spirits per individual per day.
   b. A manufacturing distillery may operate one satellite location in addition to its licensed premises for the purpose of providing samples and on sale or off sale retail sales.
      (1) The spirits sampled or sold at the satellite location must be produced by the manufacturing distillery.
      (2) A manufacturing distillery may not produce any spirits at the satellite location.
      (3) An event permit issued to a manufacturing distillery in accordance with subsection 2 for an indoor or outdoor event held at its satellite location does not count towards the forty event days per calendar year allowed under subsection 2. The manufacturing distillery may offer free samples of its spirits and may sell its spirits by the glass or in closed containers at the event held at the satellite location.
      (4) The satellite location must be owned or leased by the manufacturing distillery licensee.
      (5) A manufacturing distillery may not engage in wholesaling activities at its satellite location.
   c. A manufacturing distillery shall obtain a satellite location license from the tax commissioner before operating a satellite location. The tax commissioner may issue and renew a satellite location license for an annual fee of one hundred dollars. This fee is in addition to all other license fees required by this title.
   d. A manufacturing distillery is liable for any violation of alcohol or licensing requirements committed on the premises of its satellite location.
4. A person may not hold a manufacturing distillery license and a domestic distillery license.
5. A manufacturing distillery may obtain a manufacturing distillery license and a retailer license allowing the on-premises sale of alcoholic beverages at a restaurant owned by the licensee and located at the manufacturing distillery's satellite location.
6. A manufacturing distillery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all spirits sold by the

licensee at retail or to a retail licensee, including all spirits shipped 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. The report must provide the detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require the report to be submitted in an electronic format approved by the tax commissioner.

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.
3. A violation of this section is a class B misdemeanor.
4. This section does not apply to the use of powdered alcohol products for research by a:
   a. Health care provider that operates primarily for the purpose of conducting scientific research;
   b. State institution;
   c. Private college or university; or
   d. Pharmaceutical or biotechnology company.