

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2135
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact two new subsections to section 5-01-01 of the North Dakota Century Code, relating to definitions of bottle or can and in bulk for alcoholic beverage purposes; and to amend and reenact subsection 14 of section 5-01-01, sections 5-01-04, 5-01-08, and 5-01-16, subsections 2, 3, 4, and 5 of section 5-01-17, and sections 5-03-01, 5-03-07, and 5-03-09 of the North Dakota Century Code, relating to the definition of twenty-one years of age for alcoholic beverage purposes, manufacture of alcoholic beverages, use of alcoholic beverages, direct sales from out-of-state sellers, sales and tax reporting by domestic wineries, qualifications for a state wholesale license, imposition of tax on sales by domestic wineries, microbrew pubs, and direct shippers, and requirements for alcoholic beverage supplier's licenseholders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 5-01-01 of the North Dakota Century Code are created and enacted as follows:

"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.

"In bulk" means in containers having a capacity not less than one-sixth barrel for use for the sale of malt beverages at retail.

SECTION 2. AMENDMENT. Subsection 14 of section 5-01-01 of the North Dakota Century Code is amended and reenacted as follows:

14. "Twenty-one years of age" means it is after ~~three~~ eight a.m. on the date twenty-one years after a person's date of birth.

SECTION 3. AMENDMENT. Section 5-01-04 of the North Dakota Century Code is amended and reenacted as follows:

5-01-04. Manufacture of alcoholic beverages prohibited - Exceptions. A person may manufacture ~~malt alcoholic beverages and wine~~ 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 bureau of alcohol, tobacco, firearms and explosives of the United States treasury department. Any person manufacturing alcoholic beverages within this state in quantities greater than those permitted by the United States treasury department is guilty of a class 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, a winery, or a distillery or other plant for the distilling, manufacturing, or processing of ~~liquor~~ alcohol within this state if the person has secured a license from the state tax commissioner. ~~Such~~ 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 state tax commissioner. A license may not be issued for any period for a fee less than one-half of the annual license fee. ~~Said~~ This license shall allow sale to only licensed wholesalers.

SECTION 4. AMENDMENT. Section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

5-01-08. Persons 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, a person 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 person for the purchase of an alcoholic beverage.
2. A person 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 person 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 person is a law enforcement officer or other public official who enters the premises in the performance of official duty; or
 - e. If the person enters the premises for training, education, or research purposes under the supervision of a person twenty-one or more years of age with prior notification of the local licensing authority.
3. A violation of this section is a class B misdemeanor.
4. The court, under this section, may refer the person to an outpatient addiction facility licensed by the department of 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. ~~For purposes of this section, a person is not twenty one years of age until eight a.m. on that person's twenty first birthday.~~

SECTION 5. AMENDMENT. Section 5-01-16 of the North Dakota Century Code is amended and reenacted as follows:

5-01-16. Direct sale from out-of-state seller 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 wholesaler.
2. A person in the business of transporting goods may not knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
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 in which an individual twenty-one years of age or older who imports or transports into this state ~~2.38 gallons [9 liters] or less of liquor or 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 beverage~~ per month for personal use and not for resale from a person holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state. A manufacturer or retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipping permit from the state tax commissioner and pay an annual fee of fifty dollars within thirty days of making the first shipment. A direct shipper shall report and pay the wholesaler and retailer taxes to the state tax commissioner on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and ~~57-39-2-03-2~~ 57-39.6-02. ~~A direct shipper shall file reports with the state tax commissioner showing for each shipment the quantity sold, the date shipped, and the amount of tax due the state. A direct shipper is subject to section 5-03-06. The 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 state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner. The state tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this subsection and may request award of all costs and attorney's fees incurred by the state incidental to that action. Upon determination by the state tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by either a manufacturer or retailer of alcoholic beverages, the state tax commissioner may notify both the bureau of alcohol, tobacco, firearms and explosives of the United States department of the treasury and the licensing authority for the state in which the manufacturer or retailer 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.~~
6. ~~In the alternative to subsection 5 and as a means for allowing reciprocal privilege, this section does not apply to and there are not due any state taxes, fees, or other charges for a resident of this state who is at least twenty one years of age who imports or transports into this state from another state wine for personal use if the state from which the wine is sent allows a resident of that state to receive wine from this state without imposition of state taxes, fees, or other charges. A person who receives wine under this subsection may not resell the wine. For tax purposes, receipt of a shipment into this state under this subsection is not a sale in this state. A licensed winery, wholesaler, or retailer in this state may ship wine for personal use and not for resale directly to a resident of another state if the state to which the wine is sent allows residents of this state to receive wine sent from that state without payment of additional state taxes, fees, or other charges. For tax purposes, the shipment to another state under this subsection is a sale in this state. The shipping container of any wine sent into or out of this state under this subsection must be labeled to indicate clearly that the container contains alcoholic beverages and may not be delivered to an individual who is under twenty one years of age. A person in another state may not sell wine for shipment to a person in this state under this subsection in an amount in excess of 7.13 gallons [27 liters] of wine per month. Sales by a winery may include interstate sales and interstate sales through the internet. Annual shipping sales under this section made by a winery in this state are in addition to onpremises tasting room volume totals and are not part of the winery's annual onpremises total limitations.~~

SECTION 6. AMENDMENT. Subsections 2, 3, 4, and 5 of section 5-01-17 of the North Dakota Century Code are amended and reenacted as follows:

2. A domestic winery may sell, ~~on the winery premises,~~ 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 [94625 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 twelve noon and twelve midnight. The state tax commissioner may issue special events permits for not more than twenty days 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 a designated trade show, convention, festival, or a similar event approved by the state tax commissioner. ~~The domestic winery may sell its wine to a liquor wholesaler licensed in this state and may sell or deliver its wine to persons outside the state pursuant to the laws of the place of the sale or delivery.~~ A domestic winery may not engage in any wholesaling activities. All sales and ~~delivery~~ deliveries of wines to any other retail licensed premises in this state may be made only through a wholesale liquor license. ~~A domestic winery may obtain a domestic winery 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 winery 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 state 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 ~~shall pay to the state the wholesaler taxes and the sales taxes on all wines sold at retail by the licensee as set forth in sections 5-03-07 and 57-39.2-03.2~~ 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 is subject to section 5-03-06 and shall report quarterly or and pay annually to the state tax commissioner the total quantity of wine wholesaler taxes due on all wines sold by type and the amount of taxes due to the state in the manner and on the forms prescribed by the state tax commissioner 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 state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner.
5. ~~Except as otherwise specified in this section, all provisions of this title govern the production, sale, possession, and consumption of wine produced by a domestic winery.~~

SECTION 7. AMENDMENT. Section 5-03-01 of the North Dakota Century Code is amended and reenacted as follows:

5-03-01. State wholesale license required - Qualifications - Penalty - Exception. Before any person engages in the sale at wholesale of beer or liquor in this state, that person shall first procure a license from only the state tax commissioner. ~~A lender who acquires an inventory of beer or liquor by reason of foreclosure of a security interest in the inventory is exempt from obtaining a license before the sale of the inventory. The lender shall offer the inventory for sale first to the wholesaler. A lender~~

~~who forecloses upon a security interest in beer inventory for which the lender has a security interest shall dispose of the beer inventory within ninety days of obtaining possession of the inventory.~~ The license must only allow sale to licensed retailers, licensed wholesalers, regular retail outlets on federal military reservations, and sale for export from a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse. No license may be issued unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. If the applicant is not a corporation, the applicant must be a citizen of the United States and a resident of this state and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a resident of this state, a citizen of the United States, and a person of good moral character, 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 tax commissioner may require the applicant to set forth other information necessary to enable the state tax commissioner to determine if a license should be granted.
3. A person is not eligible for such a license unless that person has a warehouse and office in this state, in which is kept a complete set of records relative to that person's alcoholic beverage transactions in this state.
4. The applicant may not have any financial interest in any retail alcoholic beverage business.
5. The provisions of this section relating to warehousing do not apply to a wholesaler of beer located in an adjoining state that permits wholesalers licensed in North Dakota to deliver beer to retailers without warehousing in that state.

A lender who acquires an inventory of beer or liquor by reason of a foreclosure of a security interest in the inventory is exempt from the requirement to obtain a license before the sale of the inventory. The lender shall offer the inventory for sale first to the wholesaler. A lender who forecloses upon a security interest in beer inventory for which the lender has a security interest shall dispose of the beer inventory within ninety days of obtaining possession of the inventory. Any person distributing alcoholic beverages in this state without compliance with this title is guilty of a class B misdemeanor.

SECTION 8. AMENDMENT. Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

5-03-07. Imposition of tax - Rate. A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, microbrew pubs, and direct shippers for the privilege of doing business in this state. The amount of ~~such~~ this tax shall be determined by the gallonage ~~sold by wholesalers~~ according to the following schedule:

Beer in bulk containers - per wine gallon	\$.08 (.021 per liter)
Beer in bottles and cans - per wine gallon	.16 (.042 per liter)
Wine containing less than 17% alcohol by volume - per wine gallon	.50 (.132 per liter)
Wine containing 17%-24% alcohol by volume - per wine gallon	.60 (.159 per liter)
Sparkling wine - per wine gallon	1.00 (.264 per liter)
Distilled spirits - per wine gallon	2.50 (.66 per liter)
Alcohol - per wine gallon	4.05 (1.07 per liter)

SECTION 9. AMENDMENT. Section 5-03-09 of the North Dakota Century Code is amended and reenacted as follows:

5-03-09. Supplier license required - Filing requirements - Penalty.

1. Before a supplier may engage in the sale or shipment of alcoholic beverages to a licensed North Dakota wholesaler, that supplier must first procure a supplier license from the state tax commissioner.
2. For any month in which a licensed supplier has made sales to a North Dakota wholesaler, that supplier shall file a report with the state tax commissioner no later than the ~~thirtieth~~ last day of each calendar month covering alcoholic beverages sold or shipped to a North Dakota wholesaler during the preceding calendar month. When the ~~thirtieth last~~ day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day ~~after the Saturday, Sunday, or legal holiday thereafter~~. The report must provide such detail and be in a format as prescribed by the state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner.
3. If a supplier fails to file the required report as required by this section, there is imposed a penalty of twenty-five dollars per month for each calendar month or fraction of a month during which the delinquency continues beginning with the month during which the report was due.
4. A supplier in violation of this section or who furnishes information required by this section that is false or misleading is guilty of a class A misdemeanor.
5. In addition, whenever the holder of a supplier's license fails to comply with any of the provisions of this title or any rules or regulations prescribed by the state tax commissioner and adopted under this title, the state tax commissioner, upon hearing after giving ten days' notice of the time and place of the hearing to show cause why the holder's license should not be revoked, may revoke the license. The state tax commissioner also shall have the power to restore licenses after such revocation. Whenever the holder of a license has had the license revoked for failure to comply with the provisions of this title or any rules and regulations prescribed by the state tax commissioner and adopted under this title, the state tax commissioner shall charge a fee of one hundred dollars for the reissuance of the license.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2135.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 92 Nays 1 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,
at _____ o'clock _____ M.

Secretary of State