

ALCOHOLIC BEVERAGES

CHAPTER 74

SENATE BILL NO. 2246

(Senators J. Lee, D. Larson)
(Representatives M. Johnson, Longmuir)

AN ACT to amend and reenact section 5-01-05.1 of the North Dakota Century Code, relating to public intoxication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-05.1 of the North Dakota Century Code is amended and reenacted as follows:

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. ~~That~~
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.

Approved March 14, 2019

Filed March 14, 2019

CHAPTER 75

SENATE BILL NO. 2114

(Judiciary Committee)

(At the request of the Department of Human Services)

AN ACT to amend and reenact section 5-01-08 of the North Dakota Century Code, relating to the penalty for individuals under twenty-one years of age using alcoholic beverages or entering licensed premises; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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. A violation of this section is a class B misdemeanor. For a 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 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 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 that may be immune for any one occurrence is five individuals.

Approved April 24, 2019

Filed April 24, 2019

CHAPTER 76

SENATE BILL NO. 2343

(Senators Klein, Meyer, Poolman)
(Representatives Beadle, Howe, Mock)

AN ACT to amend and reenact sections 5-01-14 and 5-01-21 of the North Dakota Century Code, relating to licensing of microbrew pubs and brewer taproom licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-14 of the North Dakota Century Code is amended and reenacted as follows:

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; and sell alcoholic beverages regardless of source to consumers for consumption on the microbrew pub's licensed premises. A microbrew pub may not engage in any wholesaling activities. All 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. Licenses under this section entitle the microbrew pub to sell beer manufactured on the premises for off-premises consumption, in brewery-sealed containers of not less than one-half gallon [1.89 liters] and not more than three gallons [11.36 liters]. A licensee may not sell to any person for off-premises consumption more than two hundred eighty-eight ounces [8.51 liters] of beer per day, in any size brewery-sealed container of not more than three gallons [11.36 liters]. 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 twenty days per calendar year to a microbrew licensee which allows the licensee 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 a designated trade show, convention, festival, fundraiser, or other related special event hosted by a nonprofit organization

unaffiliated with the licensee, or a similar event approved by the tax commissioner. This subsection is subject to local ordinances.

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.

SECTION 2. AMENDMENT. Section 5-01-21 of the North Dakota Century Code is amended and reenacted as follows:

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 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 for off premises consumption in brewery-sealed containers of not less than twelve ounces [.36 liters] and not more than 5.16 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.
3. The tax commissioner may issue special event permits for not more than twenty days per calendar year to a brewer taproom licensee allowing the licensee, subject to local ordinance, to give free samples of its beer ~~and to~~ sell its beer by the glass or in closed containers, or dispense beer manufactured by the licensee at a designated trade show, convention, festival, fundraiser or other related special event hosted by a nonprofit organization unaffiliated with the brewer taproom licensee, or a similar event approved by the tax commissioner.
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.

Approved April 4, 2019

Filed April 5, 2019

CHAPTER 77

HOUSE BILL NO. 1190

(Representatives D. Ruby, Becker, Boschee, Johnston, Kasper)
(Senators Heckaman, Hogue, Krebsbach, J. Roers)

AN ACT to amend and reenact sections 5-01-17 and 5-01-20 of the North Dakota Century Code, relating to domestic winery licenses and direct sales by licensed wineries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

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. ~~The percentage of ingredients by volume, excluding water, of wine produced by a domestic winery which must be grown and produced in this state must be at least ten percent in the second year of licensure, twenty percent in the third year of licensure, thirty percent in the fourth year of licensure, forty percent in the fifth year of licensure, and fifty one percent in the sixth and subsequent years of licensure. Domestic wineries may be granted an exemption from the ingredient utilization requirement whenever the state tax commissioner determines, upon the commissioner's own motion or at the request of a domestic winery, that weather conditions, pest infestations, plant disease epidemics, or other natural causes have reduced the quantity or quality of produce grown in this state to an extent that renders compliance with the ingredient utilization requirement infeasible. The exemption is effective for one year unless the tax commissioner issues a new exemption. A domestic winery may purchase, at wholesale or retail, brandy for use of onpremise 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 twelve noon and twelve midnight. The tax commissioner may issue special events permits for not more than ~~twenty~~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-premise events. ~~To participate in a pride of Dakota event sponsored by the department of agriculture, a domestic winery shall obtain a special events permit. Participation by a domestic winery in a pride of Dakota~~

~~event sponsored by the department of agriculture does not count against the twenty special events limitation.~~ 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.

SECTION 2. AMENDMENT. Section 5-01-20 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A licensed winery that produces no more than ~~forty-two-thousand~~ fifty-two-thousand gallons [~~18927194635~~ 194635 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 ~~four~~three thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 78

HOUSE BILL NO. 1502

(Representatives Mock, Becker, Blum, J. Nelson, D. Ruby)
(Senators Klein, Poolman)

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to the direct sale of liquor by a domestic distillery to licensed retailers; to amend and reenact section 5-01-19 of the North Dakota Century Code, relating to domestic distilleries; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-19 of the North Dakota Century Code is amended and reenacted as follows:

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 which uses a majority of North Dakota farm products to manufacture and sell spirits produced on the premises. 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 twelve noon 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~~event permits for not more than ~~twenty~~forty event ~~event~~days 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. ~~To participate in a pride of Dakota event sponsored by the department of agriculture, a domestic distillery shall obtain a special events permit from the tax commissioner. Participation by a domestic distillery in a pride of Dakota event sponsored by the department of agriculture does not count against the twenty special events limitation. A~~

domestic distillery may not engage in any wholesaling activities. All except as provided by section 2 of this Act, 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.

SECTION 2. A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

Direct sale by domestic distilleries.

1. A domestic distillery that produces no more than twelve thousand proof gallons [42000 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 [3.78 liters] of liquid at sixty degrees Fahrenheit [15.5 degrees Celsius] which contains fifty percent ethyl alcohol by volume or its equivalent.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 23, 2019

Filed April 24, 2019

CHAPTER 79

HOUSE BILL NO. 1344

(Representatives Kasper, Becker, Heinert, Johnston, Lefor, Louser, D. Ruby, Steiner)
(Senators Bekkedahl, Hogue, Klein, J. Roers)

AN ACT to amend and reenact section 5-02-13 of the North Dakota Century Code, relating to the removal of an unfinished bottle of wine from a restaurant.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-13 of the North Dakota Century Code is amended and reenacted as follows:

5-02-13. Removal of wine from restaurant.

If a full bottle of wine has been opened and the contents partially consumed, a retail alcoholic beverage licensee whose gross sales of food are at least thirty percent of the gross sales of alcoholic beverages ~~that are consumed on the premises~~ may permit an individual purchasing the bottle ~~in conjunction with the purchase of a meal~~ to remove the bottle ~~on~~when leaving the licensed premises if the licensee ~~recorks~~reseals the bottle, ~~seals the bottle~~ with a seal that must be made conspicuously inoperative to reopen the bottle, and places a receipt of sale with the bottle. The removal of the bottle under these conditions is not an off sale of wine and is permitted without an additional license.

Approved March 8, 2019

Filed March 8, 2019