

ALCOHOLIC BEVERAGES

CHAPTER 65

HOUSE BILL NO. 1437

(Representatives Boe, Froelich)
(Senator Bercier)

ALCOHOL RETAIL LICENSING AUTHORITY

AN ACT to amend and reenact sections 5-01-01, 5-02-01, 5-02-01.1, 5-02-05.1, and 5-02-10 of the North Dakota Century Code, relating to retail licenses to sell alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "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.
6. "Liquor" means any alcoholic beverage except beer.
7. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
8. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
9. "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.

- 8- 10. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
- 9- 11. "Sparkling wine" means wine made effervescent with carbon dioxide.
12. "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.
- 40- 13. "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.

SECTION 2. AMENDMENT. Section 5-02-01 of the North Dakota Century Code is amended and reenacted as follows:

5-02-01. State and local retail license required - Exception. Except as otherwise provided in section 5-02-01.1, any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and a local license from the governing body of any city, or ~~board of county commissioners~~ if said business is located outside the corporate limits of a city, the board of county commissioners or the governing body of an Indian tribe, as the location requires, is guilty of a class A misdemeanor. This section does not apply to public carriers engaged in interstate commerce.

SECTION 3. AMENDMENT. Section 5-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

5-02-01.1. Event permit authorized - Penalty.

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid such tax and who continues to pay any such tax imposed by the city or a licensee in a county ~~or~~, a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993, or a tribal licensee. A fee for the local permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days, and may include Sundays. The local governing body may establish rules to regulate and restrict the operation of an event permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor.
2. The local governing body may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:

- a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
- b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;
- c. Subject to section 5-02-06, the area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and
- d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

SECTION 4. AMENDMENT. Section 5-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

5-02-05.1. Sunday alcoholic beverage permit - Penalty.

1. Any ~~city or county~~ local governing body may issue a Sunday alcoholic beverage permit to a qualified alcoholic beverage licensee licensed under this chapter or to a publicly owned or operated facility. For purposes of this section, "qualified alcoholic beverage licensee" has the same meaning as in section 5-02-01.1. A county may not issue a permit under this section to a retail alcoholic beverage establishment located within the geographical boundaries of a city.
2. The authority for issuing the permit rests solely with the local governing body ~~of the city or county~~. A permit may be granted only upon proper application to and approval by the governing body, and must include payment of a fee determined by the governing body. A permit granted by the ~~city or county~~ local governing body may be effective for more than one Sunday.
3. Under the permit, alcoholic beverages may be distributed and dancing may be permitted in the establishment or facility. A ~~city or county~~ local governing body may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on Sunday and one a.m. on Monday. The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority of the permit. The establishment or facility granted the permit shall enforce the requirements of this section.
4. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section, or who furnishes information required by this section which is false or misleading, is guilty of a class A misdemeanor.

SECTION 5. AMENDMENT. Section 5-02-10 of the North Dakota Century Code is amended and reenacted as follows:

5-02-10. Hearing on alleged violations. Any person having information that a licensed retailer of alcoholic beverages has violated any provisions of this title may file with the attorney general, city attorney, or state's attorney an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the city attorney or state's attorney shall set the matter for hearing not later than the next regular meeting of the local governing body or forward such affidavit to the attorney general. Upon receipt of any such affidavit the attorney general shall set the matter for hearing in the local county courthouse not less than ten days after copies of the affidavit and notice of hearing have been mailed to the licensee by registered mail. If the hearing is held by the local governing body, a copy of this affidavit and notice of hearing must be mailed the licensee by registered mail not less than five days before such hearing. A record of such hearings will be made by stenographic notes or the use of an electronic recording device.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 66**SENATE BILL NO. 2190**

(Senators Klein, Lyson)
(Representatives Clark, Severson)

MINORS IN ALCOHOL PREMISES

AN ACT to amend and reenact sections 5-01-08 and 5-02-06 of the North Dakota Century Code, relating to persons under twenty-one years of age and licensed premises where alcohol beverages are sold.

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. Persons under twenty-one years of age prohibited from manufacturing, purchasing, consuming, or possessing alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities - Jurisdiction. Except as permitted in this section and section 5-02-06, ~~any a~~ a person under twenty-one years of age ~~manufacturing may not manufacture or attempting attempt~~ may not manufacture or attempt to manufacture alcoholic beverages, purchasing purchase or attempting attempt to purchase alcoholic beverages, ~~consuming consume or having have~~ recently consumed alcoholic beverages other than during a religious service, being be under the influence of alcoholic beverages, ~~or being be~~ in possession of alcoholic beverages, or furnishing furnish money to any person for ~~such the~~ the purchase; or entering of an alcoholic beverage, or enter any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer or other public official ~~entering who enters~~ the premises in the performance of official duty, or 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. A violation of this section is guilty of a class B misdemeanor. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.

SECTION 2. AMENDMENT. Section 5-02-06 of the North Dakota Century Code is amended and reenacted as follows:

5-02-06. Prohibitions as to persons under twenty-one years of age - Penalty - Exceptions. Except as permitted in this section, any licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the person is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages; ~~or if.~~ A person may enter and remain on the licensed premises if the person is a law enforcement officer or other public official entering who enters the premises in the performance of official duty; or if the person enters the licensed 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. Any person under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person twenty-one or more years of age.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 67

HOUSE BILL NO. 1298

(Representatives Ruby, Dosch, Ekstrom, Kasper, Meier)
(Senator Tollefson)

DOMESTIC WINERY LICENSES

AN ACT to amend and reenact section 5-01-17 of the North Dakota Century Code, relating to domestic winery licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³² **SECTION 1. AMENDMENT.** Section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

5-01-17. ~~Farm~~ Domestic winery license.

1. The state tax commissioner may issue a ~~farm~~ domestic winery license to the owner or operator of a ~~farm~~ winery located within this state to produce ~~table or sparkling wines~~ wine. A ~~farm winery must be operated by the owner of a North Dakota farm and produce table or sparkling wines from grapes, grape juice, other fruit bases, or honey with a majority of the ingredients by volume, excluding water, grown and produced in this state by the farm winery~~ majority of the ingredients by volume, excluding water, of wine produced by a domestic winery, must be grown and produced in this state. Licenses Domestic wineries may be granted an exemption from the majority 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 majority ingredient utilization requirement infeasible. The exemption is effective for one year unless the state tax commissioner issues a new exemption. A domestic winery may purchase, at wholesale or retail, brandy for use of on-premises fortification. A domestic winery license may be issued and renewed for an annual fee of ~~fifty~~ one hundred dollars, which is in lieu of all other license fees required by this title.
2. Before a domestic winery sells any wine, the licensee must register with the state tax commissioner, without a fee, the labels for each type or brand of wine produced. A license authorizes the sale domestic winery may sell, on the farm winery premises, of table or sparkling wines wine produced by that farm winery at on-sale or off-sale, in retail lots, and not for resale, in total quantities not in excess of one ten thousand gallons in a calendar year; glassware; wine literature and accessories; cheese, cheese spreads, and other snack food items; and the dispensing of. A

³² Section 5-01-17 was also amended by section 1 of Senate Bill No. 2159, chapter 524.

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. Labels for each type or brand produced must be registered with the state treasurer, without fee before sale. The state tax commissioner may issue special events permits for not more than five 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 farm domestic winery may not engage in any wholesaling activities. All sales and delivery 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 on-premises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.

3. ~~The farm~~ A domestic winery shall pay to the state the wholesaler taxes and the sales taxes on all wines sold at retail by the farm winery licensee as set forth in sections 5-03-07 and 57-39.2-03.2.
4. ~~The farm~~ A domestic winery shall report quarterly or annually to the state tax commissioner the total quantity of wine 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.
5. Except as otherwise specified in this section, all provisions of this title govern the production, sale, possession, and consumption of ~~table or sparkling wines~~ wine produced by a farm domestic winery.

Approved April 14, 2003
Filed April 14, 2003