

# ALCOHOLIC BEVERAGES

## CHAPTER 73

### HOUSE BILL NO. 1159

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

## ALCOHOL LICENSING, AUDITS, AND REGISTRATION

AN ACT to create and enact a new section to chapter 5-03 of the North Dakota Century Code, relating to alcoholic beverage supplier licensing requirements; to amend and reenact sections 5-01-01, 5-01-11, and 5-03-06 of the North Dakota Century Code, relating to definitions, goods and services provided by alcohol wholesalers to retailers, and the authority of the tax commissioner to audit records of alcoholic beverage entities; to repeal section 5-03-01.2 of the North Dakota Century Code, relating to brand registration of alcoholic beverages; and to provide a penalty.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>47</sup> **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.

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<sup>47</sup> Section 5-01-01 was also amended by section 1 of House Bill No. 1383, chapter 74.

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.
10. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
11. "Sparkling wine" means wine made effervescent with carbon dioxide.
12. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or wholesaler selling alcoholic beverages to a wholesaler licensed in this state for purposes of resale.
13. "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.
- 43- 14. "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 5-01-11 of the North Dakota Century Code is amended and reenacted as follows:

**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 ~~one~~ 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 ~~two hundred fifty~~ five hundred dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers. ~~The state tax commissioner may, to keep current with market conditions, adjust the limitation amount for the point-of-sale items on an annual basis upon consultation with representatives of the alcohol beverage industry.~~

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 coownership of a manufacturer's license and a retail license for the purpose of a microbrew pub.

**SECTION 3. AMENDMENT.** Section 5-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-06. Examination by tax commissioner - Penalty for improper returns.** The state tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, domestic winery, microbrew pub, or other person to determine if such person has fully complied with all statutes and rules pertaining to the person's business. If any wholesaler, domestic winery, or microbrew pub liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax a penalty of five percent of the total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of the total amount of the tax unpaid from the due date of payment until paid delay, except the first month after the return or tax became due. Any wholesaler, domestic winery, or microbrew pub failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state tax commissioner may forgive all or part of any penalty for good cause shown. The tax commissioner shall give notice of the determination to the person liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever is later. If it is determined upon audit by the tax commissioner that the tax due was twenty-five percent or more above the amount reported on the return, notice of determination of tax due must be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever was later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return, but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation provided in this section for giving notice of the determination of tax due does not apply. If any wholesaler, domestic winery, or microbrew pub files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such wholesaler, domestic winery, or microbrew pub is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the state tax commissioner that such manufacturer has failed to file required reports with the tax commissioner's office. Any wholesaler, domestic winery, or microbrew pub may have its license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

**SECTION 4.** A new section to chapter 5-03 of the North Dakota Century Code is created and enacted as follows:

**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 tax commissioner no later than the thirtieth day of each calendar month covering alcoholic beverages sold or shipped to a North Dakota wholesaler during the preceding calendar month. When the thirtieth 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. 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.
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.

**SECTION 5. REPEAL.** Section 5-03-01.2 of the North Dakota Century Code is repealed.

Approved March 21, 2005  
Filed March 22, 2005

## CHAPTER 74

### HOUSE BILL NO. 1383

(Representatives Berg, Boucher, Iverson)  
(Senators Hacker, Heitkamp, Stenehjem)

## ALCOHOLIC BEVERAGE SALE AND CONSUMPTION

AN ACT to create and enact a new subsection to section 5-01-01 of the North Dakota Century Code, relating to definitions for the purpose of sale and consumption of alcoholic beverages; and to amend and reenact sections 5-02-05 and 5-02-09 of the North Dakota Century Code, relating to the sale and consumption of alcoholic beverages.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>48</sup> **SECTION 1.** A new subsection to section 5-01-01 of the North Dakota Century Code is created and enacted as follows:

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

<sup>49</sup> **SECTION 2. AMENDMENT.** Section 5-02-05 of the North Dakota Century Code is amended and reenacted as follows:

**5-02-05. Dispensing prohibited on certain days - Penalty.** Any person who dispenses or permits the consumption of alcoholic beverages on licensed premises ~~after one~~ between two a.m. ~~on Sundays, before and~~ and twelve noon on Sundays, ~~or between the hours of one two~~ a.m. and eight a.m. on all other days of the week, or ~~who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises~~ on Christmas Day, after ~~one~~ two a.m. on Thanksgiving Day, or after six p.m. on Christmas Eve is guilty of a class A misdemeanor.

**SECTION 3. AMENDMENT.** Section 5-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**5-02-09. Local regulations.** The local governing body by ordinance or resolution may regulate or restrict the operation of licensees including among other things determining the number of licenses to be granted, establishing health and safety standards for licensed premises, setting of hours ~~and~~ regulation of open door policies by fraternal organizations or private clubs, and regulation of dancing or various forms of entertainment on the premises.

Approved March 25, 2005  
Filed March 25, 2005

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<sup>48</sup> Section 5-01-01 was also amended by section 1 of House Bill No. 1159, chapter 73.

<sup>49</sup> Section 5-02-05 was also amended by section 1 of Senate Bill No. 2234, chapter 79.

## CHAPTER 75

### HOUSE BILL NO. 1413

(Representatives Wrangham, Headland, S. Kelsh, Norland)  
(Senator Traynor)

## ALCOHOL ESTABLISHMENT CONSTRUCTION WORK

AN ACT to amend and reenact sections 5-01-08 and 5-02-06 of the North Dakota Century Code, relating to an underage person in a licensed alcohol establishment.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>50</sup> **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.**

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; ~~or~~.
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 ~~when~~ if accompanied by a parent or legal guardian; ~~or~~
  - b. In accordance with section 5-02-06; ~~or~~ if;
  - 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~~ if
  - e. If the person enters the premises for training, education, or research purposes under the supervision of a person twenty-one or

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<sup>50</sup> Section 5-01-08 was also amended by section 1 of Senate Bill No. 2067, chapter 76.

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 ~~may~~, under this section, may refer the person to an outpatient addiction facility licensed by the state 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.

<sup>51</sup> **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~~ for persons under twenty-one years of age - Penalty - Exceptions.**

1. 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~~
2. A 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.
3. A person under twenty-one years of age may enter and remain on the licensed premises 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; if the person is a law enforcement officer or other public official 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.
4. 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.

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<sup>51</sup> Section 5-02-06 was also amended by section 2 of Senate Bill No. 2067, chapter 76.

5. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by ~~the~~ a restaurant as provided in subsection 2 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.
6. 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 March 25, 2005

Filed March 25, 2005

## CHAPTER 76

## SENATE BILL NO. 2067

(Senators Heitkamp, Nething, Espeland, J. Lee)  
(Representatives Gullekson, R. Kelsch)

## ALCOHOL USE BY PERSON UNDER TWENTY-ONE

AN ACT to amend and reenact sections 5-01-08 and 5-02-06 of the North Dakota Century Code, relating to the use of alcohol by a person under twenty-one years of age; and to declare an emergency.

## BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>52</sup> **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 using alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities - Jurisdiction.**

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; ~~or~~.
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 ~~when~~ if accompanied by a parent or legal guardian; ~~or~~
  - b. In accordance with section 5-02-06; ~~or~~ if
  - c. If the person is a law enforcement officer or other public official who enters the premises in the performance of official duty; ~~or~~ if
  - d. 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.

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<sup>52</sup> Section 5-01-08 was also amended by section 1 of House Bill No. 1413, chapter 75.

4. 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.
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.

<sup>53</sup> **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.**

1. Except as permitted in this section, ~~any~~ a licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits ~~such~~ a person under twenty-one years of age 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.
2. ~~Any~~ A person under twenty-one years of age may not remain in a restaurant where alcoholic beverages are being sold except 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.
3. A person may enter and remain on the licensed premises if the person is a law enforcement officer or other public official 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~~
4. A 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~~
5. A person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant as provided in subsection 2 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

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<sup>53</sup> Section 5-02-06 was also amended by section 2 of House Bill No. 1413, chapter 75.

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.

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

Approved April 7, 2005

Filed April 12, 2005

## CHAPTER 77

### HOUSE BILL NO. 1325

(Representatives Ruby, Kasper, L. Meier)  
(Senators O'Connell, Tollefson)

### INTERSTATE WINE SALES

AN ACT to amend and reenact section 5-01-16 of the North Dakota Century Code, relating to interstate sales of wine.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. 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. ~~No~~ 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. ~~No~~ 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 two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer 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 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. 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 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 tax, 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 tax, 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 tax, 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 on-premise tasting room volume totals and are not part of the winery's annual on-premise total limitations.

Approved April 11, 2005  
Filed April 12, 2005

## CHAPTER 78

### SENATE BILL NO. 2179

(Senators Espegard, J. Lee)  
(Representative Potter)

### DOMESTIC WINERY WINE SALES

AN ACT to amend and reenact section 5-01-17 of the North Dakota Century Code, relating to domestic winery wine sales and special events; and to declare an emergency.

#### 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 state tax commissioner may issue a domestic winery license to the owner or operator of a winery located within this state to produce wine. ~~A majority of the~~ 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 ~~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 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 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, in total quantities not in excess of ~~ten~~ twenty-five thousand gallons [94625 liters] in a calendar year; glassware; wine literature and accessories; 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 ~~five~~ 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 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. 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.
4. 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 wine produced by a domestic winery.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 18, 2005  
Filed April 20, 2005

## CHAPTER 79

### SENATE BILL NO. 2234

(Senators Kringstad, Hacker)  
(Representatives S. Meyer, Weiler)

### THANKSGIVING ALCOHOL SALES

AN ACT to amend and reenact section 5-02-05 of the North Dakota Century Code, relating to the dispensing of alcoholic beverages on certain days.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>54</sup> **SECTION 1. AMENDMENT.** Section 5-02-05 of the North Dakota Century Code is amended and reenacted as follows:

**5-02-05. Dispensing prohibited on certain days - Penalty.** ~~Any A person who dispenses may not dispense or permits permit~~ the consumption of alcoholic beverages on a licensed premises after between one a.m. on Sundays, before and twelve noon on Sundays, ~~or~~ between the hours of one a.m. and eight a.m. on all other days of the week, or ~~who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Christmas Day, after one a.m. on Thanksgiving Day, or after six p.m. on Christmas Eve. In addition, a person may not provide off-sale after one a.m. on Thanksgiving Day. A person that violates this section is guilty of a class A misdemeanor.~~

Approved March 16, 2005

Filed March 17, 2005

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<sup>54</sup> Section 5-02-05 was also amended by section 2 of House Bill No. 1383, chapter 74.