

Sixty-first  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1249

Introduced by

Representatives Ruby, Bellew, Headland, Kasper

Senators Hogue, Miller

1 A BILL for an Act to create and enact a new section to chapter 5-01 of the North Dakota  
2 Century Code, relating to a domestic distillery license; and to amend and reenact sections  
3 5-03-06 and 5-03-07 of the North Dakota Century Code, relating to examination by and reports  
4 to the tax commissioner and the imposition of tax on alcoholic beverages sold in this state.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 5-01 of the North Dakota Century Code is  
7 created and enacted as follows:

8 **Domestic distillery.**

- 9 1. The state tax commissioner may issue a domestic distillery license to the owner or  
10 operator of a distillery that is located within this state which uses a majority of  
11 North Dakota farm products to manufacture and sell spirits produced on the  
12 premises. A domestic distillery license may be issued and renewed for an annual  
13 fee of one hundred dollars. This fee is in lieu of all other license fees required by  
14 this title. The state tax commissioner may not issue the domestic distillery license  
15 until the applicant has established that the applicant has applied for and obtained  
16 the necessary federal registrations and permits, as required under the Internal  
17 Revenue Code of 1986 [26 U.S.C. 51] and the federal Alcohol Administration Act  
18 [27 U.S.C. 203], for the operation of a distilled spirits plant.
- 19 2. A domestic distillery may sell spirits produced by that distillery at on sale or off  
20 sale, in retail lots, and not for resale, and may sell or direct ship its spirits to  
21 persons inside or outside the state in a manner consistent with the laws of the  
22 place of the sale or delivery in total quantities not in excess of twenty-five thousand  
23 gallons [94625 liters] in a calendar year. Direct sales within this state are limited to  
24 two and thirty-eight hundredths gallons [9 liters] or less per month for personal use

1           and not for resale. The packaging must conform with the labeling requirements in  
2           section 5-01-16. A licensee may dispense free samples of the spirits offered for  
3           sale. Subject to local ordinance, sales at on sale and off sale may be made on  
4           Sundays between twelve noon and twelve midnight. A domestic distillery may hold  
5           events inside and outside its premises, but only on contiguous property under  
6           common ownership, allowing free samples of its spirits and to sell its spirits by the  
7           glass or in closed containers. The state tax commissioner may issue special  
8           events permits for not more than twenty days per calendar year to a domestic  
9           distillery allowing the domestic distillery, subject to local ordinance, to give free  
10           samples of its product by the glass or enclosed containers, at a designated trade  
11           show, convention, festival, or similar event approved by the state tax  
12           commissioner. A domestic distillery may not engage in any wholesaling activities.  
13           All sales and deliveries of spirits to any other retail licensed premises in this state  
14           may be made only through a licensed North Dakota wholesaler. However, a  
15           domestic distillery may sell distilled spirits to a domestic winery if the distilled spirits  
16           were produced from products provided to the domestic distillery by the domestic  
17           winery. No later than the last business day of a calendar month, a farm distillery  
18           that has made sales to a North Dakota wholesaler during the preceding calendar  
19           month shall file a report with the tax commissioner reporting those sales.  
20           3. A domestic distillery may obtain a domestic distillery license and a retailer license  
21           allowing the onpremises sale of alcoholic beverages at a restaurant owned by the  
22           licensee and located on property contiguous to the domestic distillery. A domestic  
23           distillery also may own or operate a winery.  
24           4. A domestic distillery is subject to section 5-03-06 and shall report and pay annually  
25           to the tax commissioner the wholesaler taxes due on all spirits sold by the licensee  
26           at retail, including all spirits shipped directly to consumers as set forth in sections  
27           5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January  
28           fifteenth of the year following the year sales were made. The report must provide  
29           the detail and be in a format as prescribed by the tax commissioner. The tax  
30           commissioner may require that the report be submitted in an electronic format  
31           approved by the tax commissioner.

1           **SECTION 2. AMENDMENT.** Section 5-03-06 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **5-03-06. Examination by tax commissioner - Penalty for improper returns.** The  
4 state tax commissioner may at any reasonable time make an examination of the books and  
5 premises of any retailer, wholesaler, manufacturer, domestic winery, domestic distillery,  
6 microbrew pub, or other person to determine if such person has fully complied with all statutes  
7 and rules pertaining to the person's business. If any wholesaler, domestic winery, domestic  
8 distillery, or microbrew pub liable for any taxes imposed by this chapter fails to pay such tax on  
9 the date payment is due, there must be added to the tax a penalty of five percent of the total  
10 amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per  
11 month or fraction of a month of delay, except the first month after the return or tax became due.  
12 Any wholesaler, domestic winery, domestic distillery, or microbrew pub failing to furnish reports  
13 when required must be assessed a penalty of one hundred dollars for each day such reports  
14 are delinquent. The state tax commissioner may forgive all or part of any penalty for good  
15 cause shown. The tax commissioner shall give notice of the determination to the person liable  
16 for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a  
17 taxpayer, notice of the determination must be given not later than three years after the last day  
18 on which the return was due or three years after the return was filed, whichever is later. If it is  
19 determined upon audit by the tax commissioner that the tax due was twenty-five percent or  
20 more above the amount reported on the return, notice of determination of tax due must be  
21 given not later than six years after the last day on which the return was due or six years after  
22 the return was filed, whichever was later. Notice of determination of tax due for any reporting  
23 period for which a taxpayer failed to file a return must be given not later than six years after the  
24 due date of the return, but if fraudulent information is given in a return or the failure to file a  
25 return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade  
26 the tax, the time limitation provided in this section for giving notice of the determination of tax  
27 due does not apply. If any wholesaler, domestic winery, domestic distillery, or microbrew pub  
28 files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or  
29 attempted to be evaded and such wholesaler, domestic winery, domestic distillery, or  
30 microbrew pub is also guilty of a class C felony. All such taxes and civil penalties may be  
31 collected by assessment or distraint, and no court of this state may enjoin the collection of any

1 such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a  
2 manufacturer after notice from the state tax commissioner that such manufacturer has failed to  
3 file required reports with the tax commissioner's office. Any wholesaler, domestic winery,  
4 domestic distillery, or microbrew pub may have its license suspended or revoked for violation of  
5 any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

6 **SECTION 3. AMENDMENT.** Section 5-03-07 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **5-03-07. Imposition of tax - Rate.** A tax is hereby imposed upon all alcoholic  
9 beverage wholesalers, domestic wineries, domestic distilleries, microbrew pubs, and direct  
10 shippers for the privilege of doing business in this state. The amount of this tax shall be  
11 determined by the gallonage according to the following schedule:

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