

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1087
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact sections 5-01-04 and 5-01-14 and subsection 5 of section 5-01-16 of the North Dakota Century Code, relating to obsolete references to the federal bureau of alcohol, tobacco, firearms and explosives for alcoholic beverage regulation purposes and monthly sales report filing requirements for microbrew pubs; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 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 alcohol and tobacco tax and trade 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 alcohol and tobacco tax and trade bureau of the United States treasury department is guilty of a class A misdemeanor and property used for the 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 alcohol within this state if the person has secured a license from the ~~state~~ tax commissioner. 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. This license shall allow sale to only licensed wholesalers.

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

5-01-14. Microbrew pubs - Licensing - Taxes. 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 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]. This section may not be superseded under chapters 11-09.1 and 40-05.1.

SECTION 3. AMENDMENT. Subsection 5 of section 5-01-16 of the North Dakota Century Code is amended and reenacted as follows:

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 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 57-39.6-02. 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 alcohol and tobacco tax and trade 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.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act is effective for taxable periods beginning after June 30, 2009.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1087.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State