

# ALCOHOLIC BEVERAGES

## CHAPTER 74

### SENATE BILL NO. 2147

(Senators J. Lee, Krebsbach, Murphy, Sinner)  
(Representatives Louser, Gruchalla)

AN ACT to amend and reenact sections 5-01-01, 5-01-16, and 5-03-06 of the North Dakota Century Code, relating to direct shipment of alcoholic beverages from out of state; and to provide a penalty.

#### 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. "Bottle or can" means any container, regardless of the material from which made, having a capacity less than a bulk container for use for the sale of malt beverages at retail.
5. "Direct shipper" means a person that is licensed by the commissioner and ships or causes to be shipped alcoholic beverages directly into this state to a consumer for the consumer's personal use and not for resale.
6. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
- ~~6-7.~~ "In bulk" means in containers having a capacity not less than one-sixth barrel for use for the sale of malt beverages at retail.
- ~~7-8.~~ "Licensed alcohol carrier" means a person licensed to transport or deliver alcoholic beverages to a consumer without first having the alcoholic beverage delivered through a wholesaler licensed in this state.

9. "Licensed logistics shipper" means a person that provides fulfillment house services, including warehousing, packaging, distribution, order processing, or shipment of alcoholic beverages on behalf of a licensed direct shipper and by way of a licensed alcohol carrier.
10. "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.
- 8-11. "Liquor" means any alcoholic beverage except beer.
- 9-12. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
- 40-13. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
- 44-14. "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.
- 42-15. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
- 43-16. "Sparkling wine" means wine made effervescent with carbon dioxide.
- 44-17. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or wholesaler selling alcoholic beverages to a wholesaler licensed in this state for purposes of resale.
- 45-18. "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.
- 46-19. "Twenty-one years of age" means it is after eight a.m. on the date twenty-one years after a person's date of birth.
- 47-20. "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 5-01-16 of the North Dakota Century Code is amended and reenacted as follows:

**5-01-16. Direct sale from out-of-state sellerperson to consumer - Penalty.**

1. 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 licensed wholesaler in this state.
2. A person in the business of transporting goods may not knowingly or intentionally transport, or cause to be transported, 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 licensed wholesaler in this state.

3. For a first violation of subsection 1 or 2, the ~~state~~ tax commissioner shall notify, by certified mail, the ~~violator~~person and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2 and shall assess a civil penalty of one hundred dollars for each illegal shipment. The second violation of subsection 1 or 2 is a class A misdemeanor and ~~a third and~~. Any subsequent violation of subsection 1 or 2 is a class C felony and the tax commissioner shall assess a civil penalty of five hundred dollars for each illegal shipment.
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 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~~ by a person holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package and if the person obtains a direct shipping license from and on a form prescribed by the tax commissioner before making a shipment. The annual fee for a direct shipping license is fifty dollars. Licensed direct shippers may sell and ship to an individual twenty-one years of age or older 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 beverages per month for personal use and not for resale.
  - a. A direct shipper shall ship all containers of alcoholic beverages shipped directly to a resident of this state using a licensed alcohol carrier and may cause the alcoholic beverages to be shipped by a licensed logistics company.
  - b. A direct shipper shall label all containers of alcoholic beverages shipped directly to an individual in this state 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 tax commissioner and pay an annual fee of fifty dollars within thirty days of making the first shipment.
  - c. A licensed direct shipper shall report and pay the wholesaler excise tax and retailer sales taxes to the 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 excise tax 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 tax commissioner and include the identification of any logistics or fulfillment houses the licensee used for such shipments. The sales and use tax reports are due as set forth in chapter 57-39.6. The

- sales and use tax reports must 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.
- d. All alcoholic beverages that are shipped directly to a resident of this state must be properly registered with the federal alcohol and tobacco tax and trade bureau and must be owned by the licensed direct shipper.
6. A licensed alcohol carrier may ship alcoholic beverages into, out of, or within this state. A licensed alcohol carrier shall pay an annual fee of one hundred dollars and obtain a license on an application form provided by the tax commissioner and subject to any requirements determined by the tax commissioner.
- a. A licensed alcohol carrier shall ensure all containers of alcoholic beverages shipped directly to an individual in this state are labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A licensed alcohol carrier may not deliver alcoholic beverages to a person under twenty-one years of age, or to a person who is or appears to be in an intoxicated state or condition. A licensed alcohol carrier shall obtain valid proof of identity and age before delivery and shall obtain the signature of an adult as a condition of delivery.
- b. A licensed alcohol carrier shall maintain records of alcoholic beverages shipped into, out of, or within this state which include the license number and name of the licensed direct shipper, the license number and name of any licensed logistics shipper, the date of each shipment, the quantity of alcoholic beverages shipped, the recipient's name and address, and an electronic or paper form of signature from the recipient of the alcoholic beverages. A licensed alcohol carrier shall submit a report to the tax commissioner on a monthly basis in the form and format prescribed by the tax commissioner. The report is due on the last day of the month following the month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the due date. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
- c. A licensed alcohol carrier may not ship alcoholic beverages received from an unlicensed direct shipper. For a violation, the licensed alcohol carrier is subject to the penalties in subsection 3.
7. Licensed logistics shippers must obtain a logistics shipping license from the tax commissioner and shall pay an annual fee of one hundred dollars before making or causing a shipment.
- a. A licensed logistics shipper shall ensure all containers of alcoholic beverages shipped directly to an individual in this state are labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".
- b. All containers of alcoholic beverage shipped directly to a resident of this state must be shipped using a licensed alcohol carrier as provided in subsection 6.

- c. A licensed logistics shipper shall maintain records of alcoholic beverages shipped which include the license number and name of the licensed direct shipper, the license number and name of the licensed common carrier, the date of each shipment, the quantity and kind of alcohol shipped, and the recipient's name and address for each shipment. A licensed logistics shipper shall submit a report to the tax commissioner on a monthly basis in the form and format prescribed by the tax commissioner. The report is due on the last day of the month following the month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the due date. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
- d. Licensed logistics shippers may not ship alcoholic beverages from unlicensed direct shippers or through unlicensed carriers. For a violation, a licensed logistics shipper is subject to the penalties in subsection 3.
8. The tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this ~~subsection~~section and may request award of all costs and attorney's fees incurred by the state incidental to that action. Upon determination by the 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~~any person, the tax commissioner may notify both the alcohol and tobacco tax and trade bureau of the United States department of the treasury and the licensing authority for the state in which the ~~manufacturer or retailer~~person 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 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, domestic distillery, microbrew pub, direct shipper, licensed alcohol carrier, licensed logistics shipper, or other person to determine if ~~such~~the person has fully complied with all statutes and rules pertaining to the person's business. If any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper 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 delay, except the first month after the return or tax became due. Any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper, licensed alcohol carrier, or licensed logistics shipper 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 manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper 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 manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper 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 manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, ~~or~~ direct shipper, licensed alcohol carrier, or licensed logistics shipper 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.

Approved April 1, 2013

Filed April 1, 2013

## CHAPTER 75

### HOUSE BILL NO. 1077

(Representatives Ruby, J. Nelson, Glassheim)  
(Senators Sitte, Klein, Murphy)

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to direct sales by licensed wineries.

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

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

##### **Direct sale by licensed wineries.**

1. A licensed winery that produces no more than fifty thousand gallons [189,271 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 thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].

Approved March 27, 2013  
Filed March 27, 2013

## CHAPTER 76

### SENATE BILL NO. 2284

(Senators Larsen, Klein, O'Connell)  
(Representatives J. Nelson, Ruby, Streyle)

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to brewer taproom licenses; to amend and reenact section 5-03-07 of the North Dakota Century Code, relating to taxes on alcohol; and to provide for a statement of legislative intent and severability.

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

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

##### **Brewer taproom license.**

1. The tax commissioner may issue a brewer taproom license to the owner or operator of a brewery producing no more than twenty-five thousand barrels of malt beverages annually. A 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, at a designated trade show, convention, festival, 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 only one taproom license and 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.

**SECTION 2. AMENDMENT.** Section 5-03-07 of the North Dakota Century Code is amended and reenacted as follows:

**5-03-07. Imposition of tax - Rate.**

A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers for the privilege of doing business in this state. The amount of this tax shall be determined by the gallonage according to the following schedule:

Beer in bulk containers - per wine gallon	\$ .08 (.021 per liter)
Beer in bottles and cans - per wine gallon	.16 (.042 per liter)
Wine, including sparkling wine, containing less than 17% alcohol by volume - per wine gallon	.50 (.132 per liter)

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Wine containing 17%-24% alcohol by volume - per wine gallon	.60 (.159 per liter)
Distilled spirits - per wine gallon	2.50 (.66 per liter)
Alcohol - per wine gallon	4.05 (1.07 per liter)

**SECTION 3. LEGISLATIVE INTENT - SEVERABILITY.** A licensee who manufactures more than twenty-five thousand barrels of malt beverages annually may not use the sales and distribution activities identified in section 1 of this Act. In the event that a court of competent or final jurisdiction holds that any section of title 5 is unconstitutional or otherwise invalid, the invalidity does not affect other provisions or applications of title 5 that can be given effect without the invalid provisions or application, and to this end the provisions of title 5 are severable.

Approved March 21, 2013

Filed March 21, 2013