

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1502

Introduced by

Representatives Mock, Becker, Blum, J. Nelson, D. Ruby

Senators Klein, Poolman

1 A BILL for an Act to create and enact a new section to chapter 5-01 of the North Dakota Century
2 Code, relating to the direct sale of liquor by a domestic distillery to licensed retailers; ~~and~~ to
3 amend and reenact section 5-01-19 of the North Dakota Century Code, relating to domestic
4 distilleries; and to declare an emergency.

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

6 **SECTION 1. AMENDMENT.** Section 5-01-19 of the North Dakota Century Code is amended
7 and reenacted as follows:

8 **5-01-19. Domestic distillery.**

9 1. The tax commissioner may issue a domestic distillery license to the owner or operator
10 of a distillery that is located within this state which uses a majority of North Dakota
11 farm products to manufacture and sell spirits produced on the premises. A domestic
12 distillery license may be issued and renewed for an annual fee of one hundred dollars.
13 This fee is in lieu of all other license fees required by this title. The tax commissioner
14 may not issue the domestic distillery license until the applicant has established that the
15 applicant has applied for and obtained the necessary federal registrations and permits,
16 as required under the Internal Revenue Code of 1986 [26 U.S.C. 5001 et seq.] and the
17 federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits
18 plant.

19 2. A domestic distillery may sell spirits produced by that distillery at on sale or off sale, in
20 retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or
21 outside the state in a manner consistent with the laws of the place of the sale or
22 delivery in total quantities not in excess of twenty-five thousand gallons [94635 liters]
23 in a calendar year. Direct sales within this state are limited to two and thirty-eight
24 hundredths gallons [9 liters] or less per month per person for personal use and not for

1 resale. The packaging must conform with the labeling requirements in section 5-01-16.
2 A licensee may dispense free samples of the spirits offered for sale. Subject to local
3 ordinance, sales at on sale and off sale may be made on Sundays between twelve
4 noon and twelve midnight. A domestic distillery may hold events inside and outside its
5 premises, but only on contiguous property under common ownership, allowing free
6 samples of its spirits and to sell its spirits by the glass or in closed containers. The tax
7 commissioner may issue ~~special event~~event permits for not more than ~~twenty~~forty
8 ~~events~~event days per calendar year to a domestic distillery allowing the domestic
9 distillery, subject to local ordinance, to give free samples of its product and to sell its
10 product by the glass or in closed containers, at off-premises events. ~~To participate in a~~
11 ~~pride of Dakota event sponsored by the department of agriculture, a domestic distillery~~
12 ~~shall obtain a special events~~an event ~~permit from the tax commissioner. Participation~~
13 ~~by a domestic distillery in a pride of Dakota event sponsored by the department of~~
14 ~~agriculture does not count against the~~ ~~twenty~~ ~~special~~forty events ~~limitation.~~ A domestic
15 distillery may not engage in any wholesaling activities. ~~All~~Except as provided by
16 section 2 of this Act, all sales and deliveries of spirits to any other retail licensed
17 premises in this state may be made only through a licensed North Dakota liquor
18 wholesaler. However, a domestic distillery may sell distilled spirits to a domestic winery
19 if the distilled spirits were produced from products provided to the domestic distillery
20 by the domestic winery. No later than the last business day of a calendar month, a
21 farm distillery that has made sales to a North Dakota wholesaler during the preceding
22 calendar month shall file a report with the tax commissioner reporting those sales.

23 3. A domestic distillery may obtain a domestic distillery license and a retailer license
24 allowing the onpremises sale of alcoholic beverages at a restaurant owned by the
25 licensee and located on property contiguous to the domestic distillery. A domestic
26 distillery also may own or operate a winery.

27 4. A domestic distillery is subject to section 5-03-06 and shall report and pay annually to
28 the tax commissioner the wholesaler taxes due on all spirits sold by the licensee at
29 retail or to a retail licensee, including all spirits shipped directly to consumers as set
30 forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due
31 January fifteenth of the year following the year sales were made. The report must

1 provide the detail and be in a format as prescribed by the tax commissioner. The tax
2 commissioner may require that the report be submitted in an electronic format
3 approved by the tax commissioner.

4 **SECTION 2.** A new section to chapter 5-01 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Direct sale by domestic distilleries.**

- 7 1. A domestic distillery that produces no more than ~~twenty-five~~twelve thousand proof
8 gallons [94635.342000 liters] of spirits per year may sell and deliver, onsite or offsite,
9 the spirits produced by the distillery directly to licensed retailers. The distillery may sell
10 and deliver spirits onsite to a licensed retailer that presents the retailer's license or a
11 photocopy of the license. The distillery may deliver the spirits offsite if the distillery:
12 a. Uses the distillery's equipment, trucks, and employees to deliver the spirits;
13 b. Contracts with a licensed distributor to ship and deliver the spirits to the retailer;
14 or
15 c. Contracts with a common carrier to ship and deliver the spirits to the retailer
16 directly from the distillery or the distillery's warehouse.
17 2. The total amount of spirits each domestic distillery may sell or deliver directly to all
18 licensed retailers may not exceed ~~five~~two hundred cases per year. Individual
19 shipments delivered by common carrier may not exceed three cases a day for each
20 licensed retailer. A case may not exceed two and thirty-eight hundredths gallons
21 [9 liters].
22 3. As used in this section, "proof gallon" means a gallon [3.78 liters] of liquid at sixty
23 degrees Fahrenheit [15.5 degrees Celsius] which contains fifty percent ethyl alcohol
24 by volume or its equivalent.

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