

Introduced by

Senators Klein, Meyer, Poolman

Representatives Beadle, Howe, Mock

1 A BILL for an Act to amend and reenact sections 5-01-14 and 5-01-21 of the North Dakota
2 Century Code, relating to licensing of microbrew pubs and brewer taproom licenses.

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

4 **SECTION 1. AMENDMENT.** Section 5-01-14 of the North Dakota Century Code is amended
5 and reenacted as follows:

6 **5-01-14. Microbrew pubs - Licensing - Taxes.**

7 1. A microbrew pub shall obtain a brewer license and a retailer license as required under
8 this title. A microbrew pub may manufacture on the licensed premises, store, transport,
9 sell to wholesale malt beverage licensees, and export no more than ten thousand
10 barrels of malt beverages annually; sell malt beverages manufactured on the licensed
11 premises; and sell alcoholic beverages regardless of source to consumers for
12 consumption on the microbrew pub's licensed premises. A microbrew pub may not
13 engage in any wholesaling activities. ~~All~~Except as provided in subsection 3, all sales
14 and delivery of malt beverages to any other retail licensed premises may be made
15 only through a wholesale malt beverage licensee. Beer manufactured on the licensed
16 premises and sold by a microbrew pub directly to the consumer for consumption on or
17 off the premises is subject to the taxes imposed pursuant to section 5-03-07, in
18 addition to any other taxes imposed on brewers and retailers. A microbrew pub is
19 required to file a monthly sales report with the tax commissioner by the fifteenth day of
20 the month following the month in which the sales are made. The report must be
21 prepared and submitted in a form and manner as prescribed by the tax commissioner.
22 A microbrew pub is not precluded from retailing beer it purchases from a wholesaler.
23 Complimentary samples of beer may not be in an amount exceeding sixteen ounces
24 [.47 liter] per patron. Licenses under this section entitle the microbrew pub to sell beer

1 manufactured on the premises for off-premises consumption, in brewery-sealed
2 containers of ~~not less than one-half gallon [1.89 liters]~~ and not more than three gallons
3 [11.36 liters]. A licensee may not sell to any person for off-premises consumption more
4 than two hundred eighty-eight ounces [8.51 liters] of beer per day, in any size brewery-
5 sealed container of not more than three gallons [11.36 liters]. This section may not be
6 superseded under chapters 11-09.1 and 40-05.1.

7 2. The tax commissioner may issue a special event permit for not more than twenty days
8 per calendar year to a microbrew licensee which allows the licensee to give free
9 samples of beer manufactured by the licensee, sell beer manufactured by the glass or
10 in closed containers, or dispense beer manufactured by the licensee at a designated
11 trade show, convention, festival, fundraiser, or other related special event hosted by a
12 nonprofit organization unaffiliated with the licensee, or a similar event approved by the
13 tax commissioner. This subsection is subject to local ordinances.

14 3. A microbrew pub may transfer beer in bulk, as defined by section 5-01-01,
15 manufactured by the microbrew pub to an affiliated microbrew pub licensee. For
16 purposes of this subsection, "affiliated microbrew pub licensee" means a microbrew
17 pub of which at least an eighty-five percent interest is owned by the microbrew pub
18 measured annually and:

19 a. The microbrew pub does not own more than three affiliated microbrew pub
20 licensees;

21 b. The microbrew pub licensee receiving the beer in bulk has produced no less than
22 five thousand gallons [18927.06 liters] of beer on the premises in the preceding
23 calendar year. For the purpose of calculating the production requirements, the
24 production must be prorated based on the number of days beer was produced;

25 c. The beer in bulk transferred in any calendar year constitutes no more than fifty
26 percent of the beer being produced by the microbrew pub licensee receiving the
27 beer; and

28 d. For purposes of determining whether the ten thousand barrel production limit
29 under subsection 1 is being exceeded, the beer being transferred is credited to
30 the microbrew pub that manufactured the beer.

1 **SECTION 2. AMENDMENT.** Section 5-01-21 of the North Dakota Century Code is amended
2 and reenacted as follows:

3 **5-01-21. Brewer taproom license.**

- 4 1. The tax commissioner may issue multiple brewer taproom licenses to the owner or
5 operator of a brewery producing no more than twenty-five thousand barrels of malt
6 beverages annually. A brewer with multiple taproom licenses must produce malt
7 beverages at each location and the total amount of malt beverages produced at all
8 locations combined may not exceed twenty-five thousand barrels of malt beverages
9 annually. Each brewer taproom license may be issued and renewed for an annual fee
10 of five hundred dollars, which is in lieu of all other state license fees required by this
11 title. All provisions of this chapter which apply to a retail license must apply to a license
12 issued under this section unless the provision is explicitly inconsistent with this
13 section.
- 14 2. A brewer holding a brewer taproom license may:
- 15 a. Manufacture on the licensed premises, store, transport, sell, and export no more
16 than twenty-five thousand barrels of malt beverages annually.
- 17 b. Sell malt beverages manufactured on the licensed premises for consumption on
18 the premises of the brewery or a restaurant owned by the licensee and located
19 on property contiguous to the brewery.
- 20 c. Sell beer manufactured on the licensed premises for off premises consumption in
21 brewery-sealed containers of not less than twelve ounces [.36 liters] and not
22 more than 5.16 gallons [19.53 liters].
- 23 d. Sell and deliver beer produced by the brewery to licensed beer wholesalers.
- 24 e. Dispense free samples of beer offered for sale. Complimentary samples of beer
25 may not be in an amount exceeding sixteen ounces [.47 liter] per patron.
- 26 f. Sell and deliver beer produced by the brewery to licensed retailers within the
27 state, but only if:
- 28 (1) The brewer uses the brewer's own equipment, trucks, and employees to
29 deliver the beer;
- 30 (2) Individual deliveries, other than draft beer, are limited to the case equivalent
31 of eight barrels per day to each licensed retailer;

- 1 (3) The total amount of beer sold or delivered directly to all retailers does not
2 exceed ten thousand barrels per year; and
- 3 (4) A common carrier is not used to ship or deliver the brewery's product to the
4 public or to licensed retailers. All other sales and deliveries of beer to
5 licensed retailers in this state may be made only through a wholesaler
6 licensed in this state.
- 7 3. The tax commissioner may issue special event permits for not more than twenty days
8 per calendar year to a brewer taproom licensee allowing the licensee, subject to local
9 ordinance, to give free samples of its beer ~~and to~~ sell its beer by the glass or in closed
10 containers, or dispense beer manufactured by the licensee at a designated trade
11 show, convention, festival, fundraiser or other related special event hosted by a
12 nonprofit organization unaffiliated with the brewer taproom licensee, or a similar event
13 approved by the tax commissioner.
- 14 4. For any month in which a brewery has made sales to a wholesaler licensed in this
15 state, that brewery shall file a report with the tax commissioner no later than the last
16 day of each calendar month reporting sales made during the preceding calendar
17 month. When the last day of the calendar month falls on a Saturday, Sunday, or legal
18 holiday, the due date is the first working day after that day.
- 19 5. A brewer taproom licensee is subject to section 5-03-06 and shall report and pay
20 annually to the tax commissioner the wholesaler taxes due on all beer sold by the
21 licensee at retail or to a retail licensee, including all beer sold directly to consumers as
22 set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are
23 due January fifteenth of the year following the year sales were made. When the
24 fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the
25 first working day after that day. The report must provide the detail and be in a format
26 as prescribed by the tax commissioner. The tax commissioner may require the report
27 be submitted in an electronic format approved by the tax commissioner.
- 28 6. A brewer may have multiple taproom licenses, but may not have an ownership interest
29 in whole or in part, or be an officer, director, agent, or employee of any other
30 manufacturer, brewer, importer, wholesaler, or retailer, or be an affiliate thereof,
31 whether the affiliation is corporate or by management, direction, or control. A brewer

- 1 may transfer beer in bulk, as defined by section 5-01-01, manufactured by the brewer
2 to an affiliated brewer. For the purposes of this subsection, an "affiliated brewer
3 taproom" means a licensed brewer taproom of which at least an eighty-five percent
4 interest is owned by the brewer taproom, measured annually and:
- 5 a. The brewer does not own more than three affiliated brewer taprooms;
6 b. The licensed brewer taproom receiving the beer in bulk has produced no less
7 than five thousand gallons [18927.06 liters] of beer on the premises in the
8 preceding calendar year. For the purpose of calculating the production
9 requirements, the production must be prorated based on the number of days
10 beer was produced;
- 11 c. The beer in bulk transferred in any calendar year constitutes no more than fifty
12 percent of the beer being produced by the licensed brewer taproom receiving the
13 beer; and
- 14 d. For purposes of determining whether the twenty-five thousand barrel production
15 limit under subsections 1 and 2 is being exceeded, the beer being transferred is
16 credited to the brewer that manufactured the beer.