

HOUSE BILL NO. 1414

Introduced by

Representatives Boschee, Beadle, Rick C. Becker

1 A BILL for an Act to create and enact section 5-01-17.1 of the North Dakota Century Code,
2 relating to class 2 domestic winery licenses; to amend and reenact section 5-01-01,
3 subsection 1 of section 5-01-17, sections 5-01-20 and 5-02-01.1, subsection 5 of section
4 5-02-06, section 5-03-07, and subsection 1 of section 40-05-02.2 of the North Dakota Century
5 Code, relating to the definition, production, sale, and taxation of hard cider; and to provide an
6 effective date.

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

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

10 **5-01-01. Definitions.**

11 In this title:

- 12 1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof,
13 whether or not such product is subsequently reduced, for nonindustrial use.
- 14 2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which
15 contains one-half of one percent or more of alcohol by volume.
- 16 3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol
17 by volume.
- 18 4. "Bottle or can" means any container, regardless of the material from which made,
19 having a capacity less than a bulk container for use for the sale of malt beverages at
20 retail.
- 21 5. "Direct shipper" means a person that is licensed by the commissioner and ships or
22 causes to be shipped alcoholic beverages directly into this state to a consumer for the
23 consumer's personal use and not for resale.

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- 1 6. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine,
2 hard cider, or alcohol.
- 3 7. "Hard cider" means any alcoholic beverage obtained by the fermentation of the juice of
4 apples or pears which contains not less than one-half of one percent of alcohol by
5 volume and not more than ten percent of alcohol by weight, including flavored,
6 sparkling, or carbonated cider.
- 7 8. "In bulk" means in containers having a capacity not less than one-sixth barrel for use
8 for the sale of malt beverages at retail.
- 9 8-9. "Licensed alcohol carrier" means a person licensed to transport or deliver alcoholic
10 beverages to a consumer without first having the alcoholic beverage delivered through
11 a wholesaler licensed in this state.
- 12 9-10. "Licensed logistics shipper" means a person that provides fulfillment house services,
13 including warehousing, packaging, distribution, order processing, or shipment of
14 alcoholic beverages on behalf of a licensed direct shipper and by way of a licensed
15 alcohol carrier.
- 16 10-11. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages
17 are normally sold or dispensed and must be delineated by diagram or blueprint which
18 must be included with the license application or the license renewal application.
- 19 11-12. "Liquor" means any alcoholic beverage except beer.
- 20 12-13. "Local governing body" means the governing entity of a city, county, or federally
21 recognized Indian tribe in this state.
- 22 13-14. "Local license" means a city, county, or tribal retail alcoholic beverage license issued
23 by the appropriate local governing body.
- 24 14-15. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per
25 year and sells beer produced or manufactured on the premises for consumption on or
26 off the premises or serves beer produced or manufactured on the premises for
27 purposes of sampling the beer.
- 28 15-16. "Organization" means a domestic or foreign corporation, general partnership, limited
29 partnership, or limited liability company.
- 30 16-17. "Sparkling wine" means wine made effervescent with carbon dioxide.

1 ~~17-18.~~ "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or
2 wholesaler selling alcoholic beverages to a wholesaler licensed in this state for
3 purposes of resale.

4 ~~18-19.~~ "Tribal licensee" means a person issued a local license by the governing body of a
5 federally recognized Indian tribe in this state for the retail sale of alcoholic beverages
6 within the exterior tribal reservation boundaries.

7 ~~19-20.~~ "Twenty-one years of age" means it is after eight a.m. on the date twenty-one years
8 after a person's date of birth.

9 ~~20-21.~~ "Wine" means the alcoholic beverage obtained by fermentation of agricultural products
10 containing natural or added sugar or such beverage fortified with brandy and
11 containing not more than twenty-four percent alcohol by volume.

12 **SECTION 2. AMENDMENT.** Subsection 1 of section 5-01-17 of the North Dakota Century
13 Code is amended and reenacted as follows:

14 1. The tax commissioner may issue a class 1 domestic winery license to the owner or
15 operator of a winery located within this state to produce wine. The percentage of
16 ingredients by volume, excluding water, of wine produced by a domestic winery which
17 must be grown and produced in this state must be at least ten percent in the second
18 year of licensure, twenty percent in the third year of licensure, thirty percent in the
19 fourth year of licensure, forty percent in the fifth year of licensure, and fifty-one percent
20 in the sixth and subsequent years of licensure. Domestic wineries may be granted an
21 exemption from the ingredient utilization requirement whenever the state tax
22 commissioner determines, upon the commissioner's own motion or at the request of a
23 domestic winery, that weather conditions, pest infestations, plant disease epidemics,
24 or other natural causes have reduced the quantity or quality of produce grown in this
25 state to an extent that renders compliance with the ingredient utilization requirement
26 infeasible. The exemption is effective for one year unless the tax commissioner issues
27 a new exemption. A domestic winery may purchase, at wholesale or retail, brandy for
28 use of onpremises fortification. A domestic winery license may be issued and renewed
29 for an annual fee of one hundred dollars, which is in lieu of all other license fees
30 required by this title.

1 **SECTION 3.** Section 5-01-17.1 of the North Dakota Century Code is created and enacted
2 as follows:

3 **Class two domestic winery license.**

- 4 1. The tax commissioner may issue a class 2 domestic winery license to the owner or
5 operator of a hard cider winery producing no more than twenty-five thousand gallons
6 [94625 liters] of hard cider annually. A class 2 domestic winery with multiple hard cider
7 licenses must produce hard cider beverages at each location and the total amount of
8 hard cider produced at all locations combined may not exceed twenty-five thousand
9 gallons [94625 liters] of hard cider annually. A class 2 domestic winery license may be
10 issued and renewed for an annual fee of one hundred dollars. All provisions of this
11 chapter which apply to a retail license must apply to a license issued under this
12 section unless the provision is explicitly inconsistent with this section.
- 13 2. A class 2 domestic winery may sell hard cider produced by that winery at on sale or off
14 sale, in retail lots, and not for resale, and may sell or direct ship its hard cider to
15 persons inside or outside the state in a manner consistent with the laws of the place of
16 the sale or delivery in total quantities not in excess of twenty-five thousand gallons
17 [94625 liters] in a calendar year; glassware; wine literature and accessories; and
18 cheese, cheese spreads, and other snack food items. A licensee may dispense free
19 samples of the hard ciders offered for sale. Subject to local ordinance, sales at on sale
20 and off sale may be made on Sundays between twelve noon and twelve midnight. The
21 tax commissioner may issue special events permits to a class 2 domestic winery
22 allowing the brewery, subject to local ordinance, to give free samples of its hard cider
23 and to sell its hard cider by the glass or in closed containers, at off-premises events.
24 To participate in a pride of Dakota event sponsored by the department of agriculture, a
25 class 2 domestic winery shall obtain a special events permit. A class 2 domestic
26 winery may not engage in any wholesaling activities. All sales and deliveries of hard
27 ciders to any other retail licensed premises in this state may be made only through a
28 licensed North Dakota liquor wholesaler. For any month in which a domestic winery
29 has made sales to a North Dakota wholesaler, that class 2 domestic winery shall file a
30 report with the tax commissioner no later than the last day of each calendar month
31 reporting sales made during the preceding calendar month. When the last day of the

1 calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first
2 working day thereafter.

3 3. A class 2 domestic winery may obtain a domestic winery license and a retailer license
4 allowing the on-premises sales of alcoholic beverages.

5 4. A class 2 domestic winery is subject to section 5-03-06 and shall report and pay
6 annually to the tax commissioner the wholesaler taxes due on all hard ciders sold by
7 the licensee at retail, including all hard ciders shipped directly to consumers as set
8 forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due
9 January fifteenth of the year following the year sales were made. When the fifteenth of
10 January falls on a Saturday, Sunday, or legal holiday, the due date is the first working
11 day thereafter. The report must provide such detail and be in a format as prescribed by
12 the tax commissioner. The tax commissioner may require that the report be submitted
13 in an electronic format approved by the tax commissioner.

14 **SECTION 4. AMENDMENT.** Section 5-01-20 of the North Dakota Century Code is amended
15 and reenacted as follows:

16 **5-01-20. Direct sale by licensed wineries.**

17 1. A licensed winery that produces no more than fifty thousand gallons [189271 liters] of
18 wine per year may sell and deliver, onsite or offsite, the wine or hard cider produced
19 by the winery directly to licensed retailers. The licensed winery may sell and deliver
20 wine or hard cider onsite to a licensed retailer who presents the retailer's license or a
21 photocopy of the license. The winery may deliver the wine or hard cider offsite if the
22 winery:

- 23 a. Uses the winery's equipment, trucks, and employees to deliver the wine or hard
24 cider;
- 25 b. Contracts with a licensed distributor to ship and deliver the wine or hard cider to
26 the retailer; or
- 27 c. Contracts with a common carrier to ship and deliver the wine or hard cider to the
28 retailer directly from the winery or the winery's bonded warehouse.

29 2. The shipments delivered by a winery's equipment, trucks, and employees in a year
30 may not exceed four thousand five hundred cases. A case may not exceed
31 2.38 gallons [9 liters].

1 3. Individual shipments delivered by common carrier may not exceed three cases a day
2 for each licensed retailer. The shipments delivered by a common carrier in a year may
3 not exceed four thousand five hundred cases. A case may not exceed 2.38 gallons
4 [9 liters].

5 **SECTION 5. AMENDMENT.** Section 5-02-01.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **5-02-01.1. Event permit authorized - Penalty.**

8 1. The local governing body may by permit authorize a qualified alcoholic beverage
9 licensee licensed under this chapter to engage in the sale of alcoholic beverages at
10 events designated by the permit. For purposes of this section, "qualified alcoholic
11 beverage licensee" means a licensee in a city that imposed a city lodging and
12 restaurant tax on July 31, 1993, who paid such tax and who continues to pay any such
13 tax imposed by the city or a licensee in a county, a licensee in a city that did not
14 impose a city lodging and restaurant tax on July 31, 1993, or a tribal licensee. A fee for
15 the local permit may be set by ordinance or resolution at not more than twenty-five
16 dollars. The permit may not be valid for a period greater than fourteen days and may
17 include Sundays. The local governing body may establish rules to regulate and restrict
18 the operation of an event permit. Any person who dispenses, sells, or permits the
19 consumption of alcoholic beverages in violation of this section or the conditions of a
20 permit is guilty of a class B misdemeanor.

21 2. The local governing body may authorize persons under twenty-one years of age to
22 remain in the area of the event, or a portion thereof, where beer, wine, ~~or~~ sparkling
23 wine, or hard cider may be sold pursuant to the permit. However, this authorization
24 must be subject to the following minimum conditions:

25 a. The area where persons under twenty-one years of age may remain must be
26 specifically set forth in the permit;

27 b. Only employees of the qualified alcoholic beverage licensee who are at least
28 twenty-one years of age may deliver and sell the beer, wine, ~~or~~ sparkling wine, or
29 hard cider;

30 c. Subject to section 5-02-06, the area where persons under twenty-one years of
31 age may remain may not be the qualified alcoholic beverage licensee's fixed or

1 permanent licensed premises as shown on the state and local governing body's
2 alcoholic beverage license issued pursuant to section 5-02-01; and
3 d. No person under twenty-one years of age within the area described in the permit
4 may consume, possess, or receive alcoholic beverages.

5 **SECTION 6. AMENDMENT.** Subsection 5 of section 5-02-06 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 5. An individual under twenty-one years of age may remain in an area of a site where
8 beer, wine, or sparkling wine, or hard cider is sold in accordance with the conditions of
9 an event permit issued pursuant to section 5-02-01.1.

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

12 **5-03-07. Imposition of tax - Rate.**

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

17 Beer in bulk containers - per wine gallon	\$.08 (.021 per liter)
18 Beer in bottles and cans - per wine gallon	.16 (.042 per liter)
19 Wine, including sparkling wine <u>and hard cider</u> , containing 20 less than 17% alcohol by volume - per wine gallon	.50 (.132 per liter)
21 Wine containing 17%-24% alcohol by volume - per wine gallon	.60 (.159 per liter)
22 Distilled spirits - per wine gallon	2.50 (.66 per liter)
23 Alcohol - per wine gallon	4.05 (1.07 per liter)

24 **SECTION 8. AMENDMENT.** Subsection 1 of section 40-05-02.2 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 1. Any city, through the enactment of an ordinance to such effect, may levy a local excise
27 tax, not in excess of fifty percent, upon the proceeds from gross sales of liquor, as
28 defined by ~~subsection 6~~ of section 5-01-01, by any nonprofit corporation licensed by
29 the city to sell such liquor; provided, however, that no city may levy the tax herein
30 provided for unless such nonprofit corporation is the only person, firm, association,

1 corporation, or limited liability company within the corporate limits of such city licensed
2 to sell such liquor.

3 **SECTION 9. EFFECTIVE DATE.** Section 7 of this Act is effective for taxable events
4 occurring after June 30, 2017.