

**HOUSE BILL NO. 1265**

Introduced by

Representatives D. Ruby, Becker, Boschee, Kasper, B. Koppelman, Mock, M. Ruby, Toman  
Senators O. Larsen, Meyer, Oban

1 A BILL for an Act to amend and reenact section 5-01-14 of the North Dakota Century Code,  
2 relating to microbrew pubs.

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~~Except as provided in  
13 subsections 2 and 4, a microbrew pub may not engage in any wholesaling activities.  
14 ~~Except as provided in subsection 3, and~~ all sales and delivery of malt beverages to  
15 any other retail licensed premises may be made only through a wholesale malt  
16 beverage licensee.

17 a. Beer manufactured on the licensed premises and sold by a microbrew pub  
18 directly to the consumer for consumption on or off the premises is subject to the  
19 taxes imposed pursuant to section 5-03-07, in addition to any other taxes  
20 imposed on brewers and retailers.

21 b. A microbrew pub is required to file a monthly sales report with the tax  
22 commissioner by the fifteenth day of the month following the month in which the  
23 sales are made. The report must be prepared and submitted in a form and  
24 manner as prescribed by the tax commissioner.

- 1           c. A microbrew pub is not precluded from retailing beer it purchases from a  
2           wholesaler.
- 3           d. Complimentary samples of beer may not be in an amount exceeding sixteen  
4           ounces [.47 liter] per patron.
- 5           e. Licenses under this section entitle the microbrew pub to sell beer manufactured  
6           on the premises for off-premises consumption, in brewery-sealed containers of  
7           not ~~more~~less than ~~three gallons [11.36 liters]~~. A licensee may not sell to any  
8           person for off-premises consumption ~~more than two hundred eighty-eight ounces~~  
9           ~~[8.51 liters]~~ of beer per day, in any size brewery-sealed container of not more  
10          than ~~three gallons [11.36 liters]~~twelve ounces [.36 liters] and not more than five  
11          and sixteen hundredths gallons [19.53 liters].
- 12          f. This section may not be superseded under chapters 11-09.1 and 40-05.1.
- 13          2. A microbrew pub may:
- 14           a. Sell and deliver beer in brewery-sealed containers holding twelve ounces  
15           [.36 liters] manufactured by the microbrew pub to licensed retailers within the  
16           state if:
- 17           (1) The brewer uses the brewer's own equipment, trucks, and employees to  
18           deliver the beer;
- 19           (2) Individual deliveries are limited to the case equivalent of eight barrels per  
20           day to each licensed retailer;
- 21           (3) The total amount of beer sold or delivered directly to all retailers does not  
22           exceed ten thousand barrels per year; and
- 23           (4) A common carrier is not used to ship or deliver the microbrew pub's product  
24           to the public or to licensed retailers.
- 25          3. The tax commissioner may issue a special event permit for not more than twenty days  
26          per calendar year to a microbrew licensee which allows the licensee to give free  
27          samples of beer manufactured by the licensee, sell beer manufactured by the glass or  
28          in closed containers, or dispense beer manufactured by the licensee at a designated  
29          trade show, convention, festival, fundraiser, or other related special event hosted by a  
30          nonprofit organization unaffiliated with the licensee, or a similar event approved by the  
31          tax commissioner. This subsection is subject to local ordinances.

- 1     ~~3.4.~~ A microbrew pub may transfer beer in bulk, as defined by section 5-01-01,  
2           manufactured by the microbrew pub to an affiliated microbrew pub licensee. For  
3           purposes of this subsection, "affiliated microbrew pub licensee" means a microbrew  
4           pub of which at least an eighty-five percent interest is owned by the microbrew pub  
5           measured annually and:
- 6           a. The microbrew pub does not own more than three affiliated microbrew pub  
7           licensees;
  - 8           b. The microbrew pub licensee receiving the beer in bulk has produced no less than  
9           five thousand gallons [18927.06 liters] of beer on the premises in the preceding  
10          calendar year. For the purpose of calculating the production requirements, the  
11          production must be prorated based on the number of days beer was produced;
  - 12          c. The beer in bulk transferred in any calendar year constitutes no more than fifty  
13          percent of the beer being produced by the microbrew pub licensee receiving the  
14          beer; and
  - 15          d. For purposes of determining whether the ten thousand barrel production limit  
16          under subsection 1 is being exceeded, the beer being transferred is credited to  
17          the microbrew pub that manufactured the beer.