THE DOMESTIC BREWERY LICENSE

What is it?
How do I get one?
What can I do with it?
**What is a Domestic Brewery License?**

A domestic brewery license allows the licensee to brew, sell and deliver its beer to any licensed wholesaler. In some cases, it allows the licensee to provide samples of beer it brews for consumption in their sample rooms, with or without charge.

Montana recognizes three types of domestic breweries:

1. **Nano Brewery**: Breweries that produce less than 100 barrels annually.
2. **Small Brewery or Microbrewery**: Breweries that produce between 101 and 59,999 barrels annually.
3. **Brewery**: Breweries that produce more than 60,000 barrels annually.

Any domestic brewery licensed in the state may own, lease, maintain and operate a building in any city or town in Montana for use as a storage depot. Breweries can use the depots for receiving, handling, storing, selling and distributing beer.

The following definitions apply:

*Affiliated manufacturers*: means a manufacturer of beer that one or more members of the manufacturing entity have more than a majority share interest in, or that controls directly or indirectly another beer manufacturing entity. This includes a manufacturer of beer for which the business operations conducted between or among entities are interrelated or interdependent to the extent that the net income of one entity cannot reasonably be determined without reference to operations of the other entity; or of which the brand names, products, recipes, merchandise, trade name, trademarks, labels or logos are identical or nearly identical.
Beer: means a malt beverage containing not more than 8.75% alcohol content by volume or an alcoholic beverage containing not more than 14% alcohol by volume:

- that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

- in which sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

Alcoholic beverage: means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume
*Distilled spirits:* means an alcoholic beverage that has more than 14% alcohol by volume, or if it has more than 8.75% alcohol by volume and does not meet the definition of beer (such as any caffeinated malt beverage), that alcoholic beverage is considered a distilled spirit and must be shipped through the Montana state liquor warehouse.

*Tasting:* means an event where a licensed manufacturer or retailer sells or gives away products to the public.

*Sampling:* means an event where a domestic brewery offers products to a licensed wholesaler or retailer solely for the purpose of soliciting sales of the product.

**WHERE DO I START?**

You can file your application electronically at [https://revenue.mt.gov/apply-electronically](https://revenue.mt.gov/apply-electronically).

**WHAT ARE THE ASSOCIATED COSTS?**

- One-time domestic brewery license processing fee: $200.
- Annual domestic brewery license fee: $500.
- One-time domestic brewery storage depot license processing fee: $100.
- Annual domestic brewery storage depot license: $500.
- Fingerprint card fee. Price subject to change.
What do I need to apply?

When applying for a domestic brewery license, you need to provide the following:

• A completed application for a domestic brewery license or a brewery storage depot license.

• Alcohol and Tobacco Tax and Trade Bureau (TTB) Federal Basic Permit to manufacture beer.

• Label approvals or exemption from the TTB (COLA) for each brand of beer to be manufactured. TTB label approvals will not delay the processing of your application. A brewery that has an annual nationwide production of less than 10,000 barrels is exempt from the label approval process. More information regarding TTB COLA can be found at [www.TTB.gov](http://www.TTB.gov). Your TTB label approvals or exemption can be filed online with your electronic application.
• A floor plan that includes the business name, physical address, storage area, sample room, manufacturing area and any patio or deck. Do not send in the original blueprints, only a copy of the floor plan.

• A liquor authorization to disclose tax information form.

Financial records showing the purchase of the license and/or building, including:

• Signed copies of all loan agreements, contracts, notes and all related security agreements, guarantees and trust indentures.

Note: You must file the non-institutional loan (NIL) form with the application if any lenders or other sources of financing are not state or federally regulated financial institutions, including gifting statements.

• Authorization for examination and release of information for each NIL.

• Personal criminal history statement form for each NIL.

• Two fingerprint cards and fees for each NIL.

• Copies of lease, rent, purchase options, financing agreements or other evidence showing possessory interest in the building.

• Financial statements, such as a projected balance sheet and income statement or tax return for the business.

• Purchase/transfer documents for the license, such as a buy/sell agreement, contract for deed, warranty deed and bill of sale (only for transfer of ownership).
• Copy of business’s bank signature card.

Ownership information (if applicable), including:

• Copy of partnership agreement documentation.

• Copy of Articles of Incorporation and amendments or addenda.

• Copy of Bylaws and amendments or addenda.

• Copy of Certificate of Fact (for LLCs and LLPs).

• LLC organizational information.

• Copy of stock certificates, corporate minutes and attachments.

• Stock ledger or register.

• Copy of Certificate of Existence (for in-state corporations)
• Copy of documentation from the Secretary of State verifying that the use of the assumed business name (ABN) has been approved.

• Copy of federal employer identification number (FEIN) verification from IRS.

• A personal criminal history statement form for each individual with 10% or more interest in the business.

• Two fingerprint cards and fees for each individual with 10% or more interest in the business.

Management information, including:

• Personal criminal history statement form for each location manager.

• Two fingerprint cards and fees for each location manager.

Miscellaneous information, including:

• Agreements with licensed beer wholesalers who will distribute your products.
WHAT ARE THE STEPS IN THE APPLICATION PROCESS?

- The application process takes between 60 and 90 days and begins after the department receives your application package and all supporting documents. The approval process includes notifying public officials to determine if any concerns exist that may prevent the license from being issued.

- Prior to final approval of any new location, it is the responsibility of the applicant to contact local building, health and fire code officials to schedule inspections. DOR will not approve an application until:
  
  o local officials have given notice that the licensed premises meet their requirements.
  
  o DOR has conducted a complete audit and background check of the applicant and verified the location meets suitability requirements.
  
  o DOJ has conducted a background check of the applicant(s) and verified the location meets suitability requirements.

WHAT TAXES DOES A DOMESTIC BREWERY PAY?

Breweries are required to electronically file, on or before the 15th of each month, a tax return (BET) for all sales to retailers and sales out of their sample room during the preceding month. If a brewery sells directly to a wholesaler or distributor, the wholesaler or distributor pays the taxes after it sells the product to retailers. The tax rate is based upon the number of barrels produced in a fiscal year, July 1 through June 30.
<table>
<thead>
<tr>
<th>Barrels Produced</th>
<th>Tax Rate Per Barrel</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 5,000</td>
<td>$1.30</td>
</tr>
<tr>
<td>5,001 - 10,000</td>
<td>$2.30</td>
</tr>
<tr>
<td>More than 10,000</td>
<td>$4.30</td>
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If a brewery’s production level in the last 12 months goes over its current production threshold, the brewery pays the lower tax rate for the month in which it went over the production threshold and pays the higher tax rate going forward.

If a domestic brewery’s production level in the last 12 months goes below the current production threshold, the brewery pays the higher tax rate for the month in which it went under the production threshold and pays the lower tax rate going forward.


If you need help filing any of these forms, call the Liquor Control Division at (406) 444-2909.
**What are the rules for a domestic brewery license?**

- All licensees, their agents, and employees must conduct the licensed premises in compliance with all:
  - alcohol-related provisions of the laws of Montana and the United States.
  - county and city or town ordinances.
  - Indian alcohol beverage laws applicable within the areas of Indian country.
  - rules of the department.

- Breweries producing *less than 100 barrels annually* can:
  - provide free samples between 8 a.m. and 2 a.m.
  - sell for off-premises consumption.
  - sell and deliver beer to wholesalers, licensed retailers and the public using their own trucks, equipment and employees.
  - not use a common carrier to deliver to the public or retailers.

- Breweries producing *between 101 and 59,999 barrels annually* can: (the 59,999 barrel limit is calculated according to the state’s fiscal year, July 1 through June 30.)
  - provide samples, with or without charge, (up to 48 ounces per customer) between 10 a.m. and 8 p.m. Customers can stay on the premises and consume until 9 p.m.
• Breweries producing 60,000 barrels or more annually can:
  o not provide samples.
  o not sell for off-premises consumption.
  o sell and deliver only to licensed beer wholesalers.
  o not use a common carrier to deliver to the public or retailers.

• All breweries who produce less than 60,000 barrels annually can:
  o provide product samples only in the sample room shown on the floor plan submitted to and approved by the department.
  o have a patio or deck. The deck or patio must be immediately adjacent to the brewery sample room and only accessed from the sample room.
  o with the licensees permission, hold a beer tasting at a licensed establishment. The brewery must sell the product to the retail licensee, unless the licensee allows manufacturing. Only the retail licensee or the licensee’s employees are authorized to sell and serve the alcoholic beverages on their premises.
o donate its beer to a public nonprofit event if the nonprofit organization has a special permit from DOR.

o serve and sell samples of its beer at a “Brew Fest” held under a Special Permit or at a catered event.

o deliver directly to an event held under a special permit. The permit holder may also pick up the product directly at the brewery by producing a copy of the special permit.

o host a sampling where they pour and serve beer samples to licensed retailers and their employees only for the following purposes:
  - to promote their product
  - to negotiate a sale
  - to determine the quality and character of a product

Sampling events must be held either at a licensed on-premises retail location or at a location catered by an on-premises retail licensee. The brewery may provide any products from their inventory for this event if the product falls into the category of a sample (e.g., not purchased by a retailer within the last 12 months and offered in limited quantities).
However, all product samples must be removed from the retail premises at the end of the event. If the brewery wishes to have products available at the event that do not fall into the category of a sample (e.g., products that are regularly available at the retail establishment), they must buy the product from the retailer at the ordinary retail price.

No more than 2,000 barrels may be provided annually for on-premises consumption including all affiliated manufacturers.

**Domestic breweries who serve to the public must:**

- ensure that all employees serving open-container alcoholic beverages are be 18 years or older.

- ensure all employees who serve or sell alcoholic beverages and their immediate supervisors:
  - obtain state-approved training within 60 days of hire.
  - complete renewal training every three years.

You can find a list of approved training providers at [www.AlcoholServerTraining.mt.gov](http://www.AlcoholServerTraining.mt.gov).

**Miscellaneous**

- A brewery must notify the department when there is a change in manager for the location.