

ALCOHOLIC BEVERAGES

CHAPTER 96

H. B. No. 551

(Legislative Research Committee)

ALCOHOLIC BEVERAGE AND TOBACCO DEALERS AND DISTRIBUTORS (LICENSING AND TAXATION)

AN ACT

To amend and reenact sections 5-0205, 5-0206, 5-0211, 5-0212, 5-0213, 5-0217, 5-0218, 5-0220 and 5-0307 of the North Dakota Revised Code of 1943 and subsection 1 of section 5-0222 of the 1953 Supplement to the North Dakota Revised Code of 1943, and to repeal sections 5-0203 and 5-0204 of the North Dakota Revised Code of 1943, relating to the licensing of alcoholic beverage dealers and distributors, and the taxation of alcoholic beverages; and to amend and reenact section 57-3602 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to the licensing of tobacco dealers and distributors.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 5-0205 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0205. Additional State Revenue: The Amount Thereof and How Collected.) There hereby is levied and assessed, and there shall be collected and paid to the state treasurer upon all beer sold in North Dakota to consumers, a tax of two dollars and forty-eight cents per barrel of thirty-one gallons or a pro rata proportion thereof in accordance with the size of the bulk container. Every brewery whose product is licensed for sale in this state, on or before the fifteenth of each month, shall file with the state treasurer a report of all shipments of beer for sale in the state during the previous month, such reports to be made in the manner and form prescribed by the state treasurer. Every wholesaler licensed to do business in this state, on or before the fifteenth of each month, shall make an exact return to the state treasurer of the amount of beer bought by him within or without the state during the previous month. Such report shall be made in the manner and form prescribed by the state treasurer. The state treasurer, at any time, may make an examination of the books and premises of any such wholesaler and otherwise may check the accuracy of

such return. Any wholesaler who fails to make the return to the state treasurer shall be liable to a penalty of not less than fifty dollars per day for each day of delay. Any wholesaler who refuses to allow such examination, or fails to make an accurate return according to the manner prescribed, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars. With such return, the wholesaler shall pay to the state treasurer the amount of tax upon all beer which shall have been bought by him during the previous month, less leakers and breakage in transit and tax exempt government sales. The tax on all beer transferred or resold by one wholesaler to another for sale within the state shall be paid by the wholesaler receiving such shipment in the same manner as though received direct from a brewery and the wholesaler making such transfer shall be credited with the tax thereon. Wholesalers licensed in this state and also operating in adjoining states who receive beer from breweries or any other source which is sold outside the state, shall receive proper credit for the tax thereon. Any penalties or fines collected under the provisions of this section shall be paid over to the state treasurer in the same manner as the license fees are remitted.

§ 2. Amendment.) Section 5-0206 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0206. Breweries May Be Established Within the State.) Any person shall have the right to establish within this state a brewery for the manufacture of beer or ale upon obtaining a license therefor from the state treasurer and paying to said treasurer a license fee of five hundred dollars per annum. Said license also shall entitle the brewery to sell its manufactured product to licensed wholesale dealers or jobbers regularly engaged in legitimate wholesale business. No brewery, domestic or foreign, operating within or without the state, shall be licensed to operate or conduct, directly or indirectly, either in the name of the brewery or as a subsidiary or through any of its officers, agents, or employees, branches, or distributing offices, the business of a wholesale dealer in this state. No brewery operating within or without the state shall be licensed to engage in the retail sale of beer or ale within the state.

§ 3. Amendment.) Section 5-0211 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0211. Wholesalers and Distributors Authorized to Distribute Beer and Ale; License and Restrictions.) Any person regularly engaged in legitimate wholesale business within the

state may be licensed to distribute beer and ale by wholesale. Such license shall be procured from the state treasurer upon an application in writing on such forms as the state treasurer shall require, containing such information as shall be required to bring the applicant within the provisions of this chapter. Each distributor shall pay a wholesaler's license fee of two hundred dollars to be collected by the state treasurer. The license fee shall cover a year beginning January first and ending December thirty-first. No distributor licensed to do business in this state shall be licensed to retail the sale of beer or ale within the state in quantities less than a case. No applicant for wholesaler's or distributor's license shall be eligible therefor unless he has established both a warehouse for handling the beer or ale under such license and a bona fide office in which is kept a complete set of records, correspondence, and files relative to all beer and ale transactions within this state.

§ 4. Amendment.) Section 5-0212 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0212. Bond Required Before License Issued.) No wholesale license shall be issued until the applicant shall file a bond, to be approved by the state treasurer. The bond shall be payable to the state of North Dakota and shall be in an amount of not less than one thousand dollars and conditioned upon the faithful observance of all the provisions of this chapter, including the payment of all taxes, fines, penalties, and costs. The bond shall be signed by the obligor as principal, and by a surety company authorized to do business in this state.

§ 5. Amendment.) Section 5-0213 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0213. Transfer of Licenses Prohibited.) No license issued by the state treasurer under the provisions of this chapter shall be transferable, and any attempt to transfer such license shall constitute a violation of the provisions of this chapter.

§ 6. Amendment.) Section 5-0217 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0217. Treasurer May Require Reports and Records.) The state treasurer, in order to carry out fully his powers and duties, may demand, require, and receive from any licensed wholesale or retail beer dealer in North Dakota:

1. Weekly, monthly, or quarterly reports in such form as the state treasurer shall direct; and

2. Any book, record, document, invoice, and voucher kept, maintained, received, or issued by such licensee in connection with his business, which in the judgment of the treasurer may be necessary properly to administer and discharge his duties and to secure the maximum of revenue and to carry out the provisions of law.

§ 7. Amendment.) Section 5-0218 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0218. Default by Licensees.) If default is made, or if a beer licensee shall fail or refuse to furnish any of the reports or information referred to in section 5-0217 upon request or demand being made therefor, the state treasurer or any of his duly appointed representatives may enter upon the delinquent licensee's premises where said records are kept and make such examination as is necessary to compile the required report. The cost and expenses of such examination shall be paid by the beer dealer whose reports are in default, and in addition to such cost and expenses of examination the defaulting dealer shall be subject to a fine of fifty dollars for each such default, and such fine if imposed shall be paid over to the state treasurer in the manner in which the license fees are remitted.

§ 8. Amendment.) Section 5-0220 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0220. Revocation of License.) In the event of a default, failure, or refusal to furnish the information referred to in section 5-0217, the state treasurer, in his discretion, may cancel and revoke the license of such defaulting licensee until such default is made good.

§ 9. Amendment.) Subsection 1 of section 5-0222 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

1. There hereby is levied and assessed and there shall be collected by the state treasurer for the general fund upon all beer sold in bottles or cans in North Dakota to consumers, an additional tax, separate and apart from all other taxes, of one cent per pint or a pro rata proportion thereof in accordance with the size of the container. This additional tax shall be collected as existing taxes on such beer are or hereafter may be collected, and shall be subject to similar accounting procedures, but no part of the revenue from this tax shall ever be used as such to satisfy any statutory allocation of beer tax revenues; provided, however, that this Act and the provisions thereof shall expire by their own limitation on July 1, 1961.

§ 10. Amendment.) Section 5-0307 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0307. Excise Tax Stamp; Who Issue; Record Kept.) The stamps herein provided for shall be prepared and printed by the state treasurer in such form and denominations as may be necessary for the carrying out of the provisions of this chapter and shall be issued and sold to all wholesale dealers upon requisition thereof from time to time. Such wholesale dealers shall attach, or cause to be attached, to each package or container, in the proper amounts, such stamps as are provided for in this chapter before the same are delivered, shipped, or consigned to any retail dealer, and he shall keep a record thereof, designating the county, city, or village to which the same are shipped, and shall report to the state treasurer the location of the retailer to whom said sale, delivery, or consignment is made.

§ 11. Amendment.) Section 57-3602 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

57-3602. Distributors and Dealers To Be Licensed.) Each person engaged in the business of selling cigarettes, cigarette papers, or snuff in this state, including any distributor or dealer, shall secure a license from the state laboratory department before engaging in such business or continuing to engage therein. A separate application and license shall be required for each distributor at each outlet or place of business within the state, and a separate dealer's license shall be required for each retail outlet when a person shall own or control more than one place of business dealing in cigarettes, cigarette papers, or snuff. No retailer shall be granted a distributor's license except a retailer who also performs, in the usual course of business, a distributor's or wholesaler's function, and has performed such functions for at least one year prior to filing application for said license. Such license shall be issued by the state laboratory department on applications stating, on a form prescribed by the state laboratory department, the name and address of the applicant, the address and place of business at which it is proposed to engage in such business, the type of business, and such other information as the laboratory department may require for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license shall be accompanied by a fee of ten dollars and a surety bond to be approved by the laboratory department in the sum of not less than one thousand dollars or more than five thousand dollars. Each application for a dealer's outlet license shall be accompanied by a fee of five dollars. Stamps or insignia

provided for in this chapter shall be sold to and affixed by licensed distributors only. Licensed dealers may sell or buy or have in their possession only cigarettes, or snuff upon which such stamps or insignia have been previously affixed. A distributor's license does not authorize the holder thereof to make sales at retail. Each license issued shall be prominently displayed on the premises covered by the license.

§ 12. Repeal.) Sections 5-0203 and 5-0204 of the North Dakota Revised Code of 1943 are hereby repealed.

Approved February 28, 1955.

CHAPTER 97

H. B. No. 569

(Wicks, Hofstrand, Fine and Roen)

SALE OF ALCOHOLIC BEVERAGES TO INDIANS PERMITTED

AN ACT

To amend and reenact section 5-0318 of the North Dakota Revised Code of 1943 and sections 5-0210 and 5-0509 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to the sale of alcoholic beverages to Indians and other persons.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 5-0210 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0210. Sales to Certain Persons Unlawful; Penalty.) No person shall sell or deliver any beer, alcohol or alcoholic beverages to any person under the age of twenty-one years, incompetent person, or a person who is an inebriate, or habitual drunkard. Any person violating the provisions of this section shall be guilty of a misdemeanor, and for the first offense shall be punished by imprisonment in the county jail for not less than ten days nor more than thirty days, or by a fine of not less than twenty dollars nor more than one hundred dollars, or by both such fine and imprisonment; and for a second or subsequent offense shall be punished by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by a fine of not less than fifty dollars nor more than five hundred dollars, or by both such fine and imprisonment.

§ 2. Amendment.) Section 5-0318 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0318. Sale to Certain Persons Unlawful.) No person shall sell any liquor to a minor, incompetent person, or a person who is an inebriate, or habitual drunkard.

§ 3. Amendment.) Section 5-0509 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

5-0509. Regulations Governing Sale.) No holder of a license authorizing the sale at retail of beer, alcohol or alcoholic beverages, or any servant, agent, or employee of the licensee, shall do any of the following upon the licensed premises:

1. Sell beer, alcohol, or alcoholic beverages to a minor or to an incompetent person;
2. Sell beer, alcohol or alcoholic beverages to any person while such person is in an intoxicated condition;
3. Sell or permit the consumption of beer, alcohol or alcoholic beverages upon the licensed premises on any day at any time when such sale or consumption is prohibited by law;
4. Permit on the licensed premises any disorderly conduct, breach of the peace, or any lewd, immoral or improper entertainment, conduct or practices;
5. Sell, offer for sale, possess or permit the consumption on the licensed premises of any kind of alcoholic liquors, the sale or possession of which is not authorized under his license.

The provisions of this Act shall not be construed as exclusive and shall in no manner repeal or abolish any restrictions or regulations now contained in or hereafter provided by law or ordinance for the conduct and operation of such business.

Approved February 11, 1955.