

SENATE BILL NO. 2397

Introduced by

Senators Kringstad, Lyson, Trenbeath

Representatives Cleary, Herbel, Klemin

1 A BILL for an Act to amend and reenact sections 5-01-16 and 5-03-05 of the North Dakota
2 Century Code, relating to direct sales of alcoholic beverages; and to provide a penalty.

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

4 **SECTION 1. AMENDMENT.** If Senate Bill No. 2053 does not become effective,
5 section 5-01-16 of the 1999 Supplement to the North Dakota Century Code is amended and
6 reenacted as follows:

7 **5-01-16. Direct sale from out-of-state seller to consumer - Penalty.**

- 8 1. No person in the business of selling alcoholic beverages may knowingly or
9 intentionally ship, or cause to be shipped, any alcoholic beverage from an
10 out-of-state location directly to a person in this state who is not a wholesaler.
- 11 2. No person in the business of transporting goods may knowingly or intentionally
12 transport any alcoholic beverage, from an out-of-state location of a person in the
13 business of selling alcoholic beverages, directly to a person in this state who is not
14 a wholesaler.
- 15 3. For a first violation of subsection 1 or 2, the state treasurer shall notify, by certified
16 mail, the violator and order that person to cease and desist any shipment of
17 alcoholic beverages in violation of subsection 1 or 2. The second violation of
18 subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is
19 a class C felony.
- 20 4. The alcoholic beverage transported in violation of this section and the vehicle used
21 in violation of this section are forfeitable property under chapter 29-31.1.
- 22 5. This section does not apply to a transaction in which an individual twenty-one
23 years of age or older who imports or transports into this state 2.38 gallons [9 liters]
24 or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less

1 of beer per month for personal use and not for resale from a ~~person as described~~
2 ~~under subsection 1 or 2~~ manufacturer or retailer holding a valid manufacturer's or
3 retailer's license issued by the state of its domicile. Every package of alcoholic
4 beverages shipped directly to an individual in this state must be labeled with
5 conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED
6 FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one
7 years of age or older before delivering any alcoholic beverages shipped directly to
8 an individual in this state. A manufacturer or retailer selling or shipping alcoholic
9 beverages under this subsection shall obtain a direct shipper license from the state
10 treasurer and pay an annual fee of one thousand dollars before making the sale or
11 shipment. A direct shipper shall pay the wholesaler and retailer taxes to the state
12 treasurer on all alcoholic beverages sold to residents in this state at the rates set
13 forth in sections 5-03-07 and 57-39.2-03.2. A direct shipper shall file reports
14 quarterly with the state treasurer including invoices for each shipment showing the
15 price of the product, the quantity sold and shipped, the customer's name and
16 address, and the amount of tax due the state. A manufacturer or retailer of
17 alcoholic beverages who violates this subsection is subject to a civil penalty in the
18 amount of twenty-five thousand dollars. On the application for a direct shipper
19 license, a direct shipper shall acknowledge in writing the civil penalty provided in
20 this subsection and consent to the imposition of that civil penalty upon violation of
21 this subsection. The state treasurer may initiate and maintain a civil action in a
22 court of competent jurisdiction to enjoin a violation of this subsection and to recover
23 the civil penalty provided in this subsection, together with all costs and attorneys'
24 fees incurred by the state treasurer incidental to that action. Upon determination
25 by the state treasurer that an illegal sale or shipment of alcoholic beverages has
26 been made to a consumer in this state by either a manufacturer or retailer of
27 alcoholic beverages, the state treasurer shall notify both the bureau of alcohol,
28 tobacco, and firearms of the United States department of the treasury and the
29 licensing authority for the state in which the manufacturer or retailer is domiciled
30 that a state law pertaining to the regulation of alcoholic beverages has been
31 violated and shall request those agencies to take appropriate action.

1 **SECTION 2. AMENDMENT.** Section 5-01-16 of the North Dakota Century Code as
2 amended and reenacted by Senate Bill No. 2053, as approved by the fifty-seventh legislative
3 assembly, is amended and reenacted as follows:

4 **5-01-16. Direct sale from out-of-state seller to consumer - Penalty.**

- 5 1. No person in the business of selling alcoholic beverages may knowingly or
6 intentionally ship, or cause to be shipped, any alcoholic beverage from an
7 out-of-state location directly to a person in this state who is not a wholesaler.
- 8 2. No person in the business of transporting goods may knowingly or intentionally
9 transport any alcoholic beverage, from an out-of-state location of a person in the
10 business of selling alcoholic beverages, directly to a person in this state who is not
11 a wholesaler.
- 12 3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by
13 certified mail, the violator and order that person to cease and desist any shipment
14 of alcoholic beverages in violation of subsection 1 or 2. The second violation of
15 subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is
16 a class C felony.
- 17 4. The alcoholic beverage transported in violation of this section and the vehicle used
18 in violation of this section are forfeitable property under chapter 29-31.1.
- 19 5. This section does not apply to a transaction in which an individual twenty-one
20 years of age or older who imports or transports into this state 2.38 gallons [9 liters]
21 or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less
22 of beer per month for personal use and not for resale from a ~~person as described~~
23 ~~under subsection 1 or 2~~ manufacturer or retailer holding a valid manufacturer's or
24 retailer's license issued by the state of its domicile. Every package of alcoholic
25 beverages shipped directly to an individual in this state must be labeled with
26 conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED
27 FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one
28 years of age or older before delivering any alcoholic beverages shipped directly to
29 an individual in this state. A manufacturer or retailer selling or shipping alcoholic
30 beverages under this subsection shall obtain a direct shipper license from the state
31 tax commissioner and pay an annual fee of one thousand dollars before making

1 the sale or shipment. A direct shipper shall pay the wholesaler and retailer taxes to
2 the state tax commissioner on all alcoholic beverages sold to residents in this state
3 at the rates set forth in sections 5-03-07 and 57-39.2-03.2. A direct shipper shall
4 file reports quarterly with the state tax commissioner including invoices for each
5 shipment showing the price of the product, the quantity sold and shipped, the
6 customer's name and address, and the amount of tax due the state. A
7 manufacturer or retailer of alcoholic beverages who violates this subsection is
8 subject to a civil penalty in the amount of twenty-five thousand dollars. On the
9 application for a direct shipper license, a direct shipper shall acknowledge in writing
10 the civil penalty provided in this subsection and consent to the imposition of that
11 civil penalty upon violation of this subsection. The state tax commissioner may
12 initiate and maintain a civil action in a court of competent jurisdiction to enjoin a
13 violation of this subsection and to recover the civil penalty provided in this
14 subsection, together with all costs and attorneys' fees incurred by the state tax
15 commissioner incidental to that action. Upon determination by the state tax
16 commissioner that an illegal sale or shipment of alcoholic beverages has been
17 made to a consumer in this state by either a manufacturer or retailer of alcoholic
18 beverages, the state tax commissioner shall notify both the bureau of alcohol,
19 tobacco, and firearms of the United States department of the treasury and the
20 licensing authority for the state in which the manufacturer or retailer is domiciled
21 that a state law pertaining to the regulation of alcoholic beverages has been
22 violated and shall request those agencies to take appropriate action.

23 **SECTION 3. AMENDMENT.** If Senate Bill No. 2053 does not become effective,
24 section 5-03-05 of the 1999 Supplement to the North Dakota Century Code is amended and
25 reenacted as follows:

26 **5-03-05. Treasurer to ~~enact regulations~~ adopt rules - Appeal.** The state treasurer,
27 pursuant to chapter 28-32, shall adopt rules and regulations governing retailers, wholesalers,
28 direct shippers, and manufacturers necessary to carry out the provisions of this title and to
29 ensure efficient collection of beer and liquor taxes. All decisions of the state treasurer are
30 subject to court review.

1 **SECTION 4. AMENDMENT.** Section 5-03-05 of the North Dakota Century Code as
2 amended and reenacted by Senate Bill No. 2053, as approved by the fifty-seventh legislative
3 assembly, is amended and reenacted as follows:

4 **5-03-05. Tax commissioner to adopt rules - Appeal.** The state tax commissioner,
5 pursuant to chapter 28-32, shall adopt rules governing retailers, wholesalers, direct shippers,
6 and manufacturers necessary to carry out the provisions of this title and to ensure efficient
7 collection of beer and liquor taxes. All decisions of the state tax commissioner are subject to
8 court review.