

ALCOHOLIC BEVERAGES

CHAPTER 89

H. B. No. 714
(Aamoth, Gackle, Wilkie)

ALCOHOLIC BEVERAGES, POSSESSION, SALE, CONSUMPTION

AN ACT

To amend and reenact sections 2-05-09, 5-01-04, 5-01-05, 5-01-11, 5-01-14, 5-01-22, 5-01-25, 5-01-26, 5-01-27, 5-01-28, 5-04-03, 12-44-25, 12-44-27, 12-44-28, 12-47-21, 16-12-01, 16-20-13, 16-20-14, 20-01-04.1, and 48-05-06 of the North Dakota Century Code, relating to the possession, sale, consumption and use of alcoholic beverages, providing penalties, and declaring an emergency.

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

§ 1. **Amendment.)** Section 2-05-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-05-09. Reckless Operation of Aircraft.) No person shall operate an aircraft in the air, or on the ground or water, while under the influence of alcoholic beverages, narcotics, or other habit-forming drug, nor operate an aircraft in the air or on the ground or water, in a careless or reckless manner so as to endanger life or property.

§ 2. **Amendment.)** Section 5-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-04. Possession of Property to Make Alcoholic Beverages is Illegal.) It shall be unlawful to have or possess any property designed for the manufacture of alcoholic beverages intended for use in violating this chapter, or which has been so used, and no property rights shall exist in any such property.

§ 3. **Amendment.)** Section 5-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-05. Disposition of Evidence.) Whenever any sheriff, deputy sheriff, constable, or police officer, or any person acting under authority given in this title and the laws of this state, shall seize any property designed or intended for use in the manufacture of alcoholic beverages, such officer or person,

within five days after the seizing of the same, shall file a certified inventory with the clerk of the district court, or county court having increased jurisdiction, in the county in which the offense has been committed or the proceeding commenced. From and after the date of such filing, such property shall be held by the officer subject to the order of such court, and the officer shall be accountable to such court for the disposition of the same. Upon any violation of this section or any disposition of such property other than by the order of such court, such officer or person shall be held to be in contempt of court and shall be punished therefor in the manner provided by law.

§ 4. **Amendment.)** Section 5-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-11. Person Charged with Intoxication to Answer Questions—Punishment.) Whenever any person shall be arrested for intoxication, the justice of the peace, police magistrate, or county or district judge before whom he shall be brought for trial may cause him to be questioned fully under oath as to where, when, and how he secured the alcoholic beverages causing his intoxication. Testimony so taken shall be reduced to writing and signed by the witness, and one copy thereof forthwith shall be delivered to the state's attorney of the county wherein the same is taken. Any person who fails or refuses to answer fully and truthfully any question that may be put to him on such examination, as to where, when, and how he secured the alcoholic beverages causing his intoxication, is guilty of contempt of court, and shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or by both such fine and imprisonment. When any person is compelled to testify and disclose incriminating testimony against himself in any case under the provisions of this section he shall not be prosecuted in such case.

§ 5. **Amendment.)** Section 5-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-14. Giving or Selling Alcoholic Beverages at Public Sale of Property Prohibited—Punishment.) Any person who at any public sale of property, either real, personal, or mixed, directly or indirectly, in any manner shall give, sell, barter, or furnish, or aid, assist, or abet others in giving, selling, bartering, or furnishing, or by any means whatsoever distributing to or among the persons assembled at such sale, alcoholic beverages as a beverage is guilty of a misdemeanor.

§ 6. **Amendment.)** Section 5-01-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-22. Place Where Alcoholic Beverages Kept, Manufactured, or Sold in Violation of Law a Common Nuisance—Abatement.) Any room, house, building, structure, or place where alcoholic beverages are manufactured, sold, kept for sale, or otherwise employed in violation of any of the provisions of this title, hereby is declared to be a common nuisance, and the same shall be abated in the manner provided in chapter 42-02.

§ 7. **Amendment.)** Section 5-01-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-25. Minors—Possession or Purchase of Alcoholic Beverages Unlawful.) It shall be unlawful for any person under the age of twenty-one years to purchase or have in his or her possession in this state any alcoholic beverage as defined by section 5-01-01.

§ 8. **Amendment.)** Section 5-01-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-26. Purchase of Alcoholic Beverages for Minors Unlawful.) It shall be unlawful for any person to purchase or procure for any person under the age of twenty-one years any alcoholic beverage as herein defined or to furnish or deliver such alcoholic beverage to any such person.

§ 9. **Amendment.)** Section 5-01-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-27. Minors—Unlawful to Furnish Money for Alcoholic Beverages.) It shall be unlawful for any person under the age of twenty-one years to furnish money to any other person for the purpose of purchasing alcoholic beverages.

§ 10. **Amendment.)** Section 5-01-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-28. Minors — False Statement or Evidence Regarding Age.) It shall be unlawful for any person under the age of twenty-one years to make any false statement or to furnish, present, or exhibit any false or fictitious registration card or other document or evidence for the purpose of gaining admission to any place where his or her presence is prohibited or for the purpose of procuring the sale to him or her of alcoholic beverages.

§ 11. Amendment.) Section 5-04-03 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

5-04-03. Wholesaler's Report—Revenue To Go Into General Fund.) Any wholesaler selling to any such carrier shall report such sale as in the case of other sales of intoxicating liquors. The revenue realized under the provisions of this chapter, shall be deposited into the general fund.

§ 12. Amendment.) Section 12-44-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44-25. No Alcoholic Beverages Shall Be Allowed Prisoners.) No sheriff or jailer under any pretense, shall give, sell, or deliver to any prisoner for any cause whatever, any alcoholic beverage unless a physician certifies in writing that the health of such person requires it, in which case he may be allowed the quantity prescribed and no more.

§ 13. Amendment.) Section 12-44-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44-27. Violation of Sections 12-44-25 and 12-44-26 by Officer—Punishment.) If any sheriff or jailer shall sell or deliver to a prisoner in his custody, or willingly or negligently shall allow a prisoner to have any alcoholic beverage as prohibited in section 12-44-25, or shall place or keep together prisoners of different sex contrary to the provisions of section 12-44-26, he shall be fined for the first offense the sum of twenty-five dollars, and a second conviction shall make him ineligible to hold the office of sheriff, deputy sheriff, jailer, or keeper of any jail for the term of five years.

§ 14. Amendment.) Section 12-44-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44-28. Person Other Than Officer Giving Alcoholic Beverages to Prisoner—Misdemeanor.) If any person, other than the sheriff or jailer, shall sell or deliver to any person committed for any cause whatever, any alcoholic beverage or shall have any such alcoholic beverage in his possession in the precincts of any jail with intent to carry or deliver the same to any prisoner confined therein, he shall be guilty of a misdemeanor.

§ 15. Amendment.) Section 12-47-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-21. Alcoholic Beverages Prohibited — Physician's Orders—Use of Tobacco.) No alcoholic beverages shall be brought into the penitentiary or upon the grounds thereof except by the direction in writing of the penitentiary physician noted in the journal of that day. No alcoholic beverages or other article of indulgence shall be allowed any inmate except by order of the physician, such order to be in writing and for a definite and limited period. The warden may make a moderate allowance of tea, coffee, or tobacco to inmates as a reward for industry and good behavior.

§ 16. Amendment.) Section 16-12-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-12-01. Election Not To Be Held in Room Where Alcoholic Beverages Sold.) No election shall be held in a room in which alcoholic beverages commonly are sold.

§ 17. Amendment.) Section 16-20-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-20-13. Treating by or in Behalf of Candidate — Prohibited.) Any person or candidate who, by himself or by any other person, either before or after an election or while such person or candidate is seeking nomination or election, directly or indirectly, shall give, provide, or pay, wholly or in part, the expense of giving or providing any drink of alcoholic beverage to or for any person:

1. For the purpose or with the intent or hope of influencing that person or any other person to give or refrain from giving his vote at such election to or for any candidate or political party, ticket, or measure before the people;
 2. Because such person or any other person voted or refrained from voting for any candidate or the candidates of any political party or organization or measure before the people;
 3. Because such person or any other person is about to vote or refrain from voting at such election,
- shall be guilty of treating.

§ 18. Amendment.) Section 16-20-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-20-14. Elector Accepting Drink of Alcoholic Beverage Guilty of Misdemeanor—Grounds for Challenging Vote.) An elector who accepts any drink of alcoholic beverage in violation of the provisions of section 16-20-13 is guilty of a misdemeanor, and such acceptance shall be a ground for challenge to his vote.

§ 19. Amendment.) Section 20-01-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20-01-04.1. Going Afield with Gun or Other Firearm When Intoxicated, Prohibited.) No person shall go afield at any time, with a gun or other firearm, when intoxicated or under the influence of alcoholic beverages. Upon conviction of a person for violating this section, the license to hunt of such person shall become void, and the county justice, county court judge or district judge before whom such conviction is had, shall take the license from the person so convicted, and mark it revoked, and send it to the state game and fish department at the state capitol in Bismarck. If the conviction is reversed on appeal, the license so revoked shall be restored to the defendant. Game wardens, including special wardens, shall have the authority of a general peace officer in the enforcement of this section. Any person violating the provisions of this section, as a first offense, shall be punishable by a fine of not more than ten dollars. Any subsequent offense shall be punishable by a fine of not more than one hundred dollars, and such person so convicted shall be ineligible to be licensed to hunt in the state of North Dakota for a period of two years from and after such conviction.

§ 20. Amendment.) Section 48-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-05-06. Alcoholic Beverages and Drugs in Penal or Charitable Institutions Prohibited.) Every person who shall take, send, or introduce any alcoholic beverage, narcotic, or other habit-forming drug of any kind into any of the buildings or upon any of the premises of any penal or charitable institution of this state, or of any county, city, or village thereof, except upon the express authority of the physician or chief executive officer of such institution, given in writing, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

§ 21. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 16, 1963.

CHAPTER 90

H. B. No. 865

(Brown, Maragos, Shablow)

WHOLESALE BEER TAX

AN ACT

To amend and reenact section 5-03-22 of the North Dakota Century Code Supplement, providing for an increase in the tax on the sale at wholesale of beer, malt, and ale containing more than four percent alcohol by weight from four to eight cents per gallon.

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

§ 1. **Amendment.)** Section 5-03-22 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

5-03-22. Separate and Additional Taxes on the Sale of Liquor—Collection—Penalty.) 1. There hereby is levied and assessed and there shall be collected by the proper officer and paid to the state treasurer for the general fund upon all sales at wholesale of beer, malt, and ale containing more than four percent alcohol by weight, a tax, separate and apart from all other taxes, of eight cents per gallon. There hereby is levied and assessed and there shall be collected and paid to the state treasurer for the general fund upon all sales at wholesale of alcoholic beverages, other than malt beverages, containing more than four percent of alcohol by weight but less than twenty-four percent of alcohol by weight, an additional tax, separate and apart from all other taxes, equal to the sum of twenty cents per gallon, and upon all sales at wholesale of alcoholic beverages containing twenty-four percent or more of alcohol by weight, an additional tax, separate and apart from all other taxes, equal to the sum of eighty cents per gallon. All such taxes shall be added to the sale price of merchandise sold to retailers and shall be collected as existing wholesale liquor transaction taxes are or hereafter may be collected, subject to similar accounting procedures, but no part of the revenue from the taxes hereby imposed shall ever be used as such to satisfy any statutory allocation of malt beverage or liquor tax revenues; provided, however, that this section and the provisions thereof shall expire by their own limitation on July 1, 1967.

2. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

Approved March 4, 1963.

CHAPTER 91

S. B. No. 35

(Baeverstad, Luick, Becker)
(From LRC Study)

NONALCOHOLIC COMMODITIES TAX

AN ACT

To create and enact section 5-03-26 of the North Dakota Century Code, providing for the imposition of an excise tax upon the sale or the possession of, nonalcoholic commodities suitable for use in mixed drinks, to retail dealers engaged in the business of selling alcoholic beverages at retail in lieu of retail sales taxes and providing for the collection, administration and allocation of such tax, and imposing a penalty.

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

§ 1.) Section 5-03-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

5-03-26. Nonalcoholic Commodities Suitable for Use in Mixed Drinks—Excise Tax on Wholesale Price—Reports—Collection—Penalty.) 1. In this section, unless the context or subject matter otherwise requires:

- a. "Nonalcoholic commodities" means any commodity suitable for use in a mixed drink including, but not limited to, all beverages containing less than one-half of one percent of alcohol by volume;
- b. "Retail dealer" is any person engaged in the business of selling alcoholic beverages at retail;
- c. "Wholesale dealer" is any person engaged in making sales of nonalcoholic commodities at wholesale to a retail dealer;
- d. "Wholesale price" is the price charged a retail dealer by a wholesale dealer for nonalcoholic commodities sold, less discounts allowed and taken.

2. An excise tax at the rate of three percent of the wholesale price is hereby levied and assessed upon all sales of nonalcoholic commodities sold by a wholesale dealer to a retail dealer. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the retail dealer on a calendar quarterly basis on or before the end of the month following the quarterly period for which such tax is paid.

3. An excise tax at the rate of three percent of the wholesale price is hereby levied and assessed upon all nonalcoholic

commodities purchased in another state and brought into this state by a retail dealer for the purpose of sale at retail. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the retail dealer on a calendar quarterly basis on or before the end of the month following the quarterly period for which such tax is paid. If such nonalcoholic commodities have previously been subjected to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this subsection shall apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in such other state is three percent of the wholesale price or more, then no tax shall be due on such articles. The provisions of this subsection, allowing a credit for a similar tax paid in another state, shall apply only if such other state allows a tax credit with respect to the excise tax on such nonalcoholic commodities imposed by this state which is substantially similar to the credit allowed by this subsection.

4. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section shall be subject to a penalty of five percent of the amount of tax due but not less than five dollars, plus one percent of such tax for each month after such return was required to be filed or such tax became due. The tax commissioner, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this section.

5. The retail sale of any commodities taxable under the provisions of this section shall not be subject to any sales or use taxes imposed by chapters 57-39 and 57-40.

6. All moneys received by the tax commissioner under the provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

7. Any person knowingly or willfully violating the provisions of this section shall be guilty of a misdemeanor and, for each such offense, shall be punished by a fine of not to exceed five hundred dollars or by imprisonment in the county jail for not to exceed one year, or by both such fine and imprisonment.

Approved March 18, 1963.

CHAPTER 92

H. B. No. 817
(Wilkie, Aamoth)

MINORS PROHIBITED IN BARS

AN ACT

To amend and reenact section 5-05-04 of the North Dakota Century Code, relating to the prohibition of minors in any room wherein a bar is operated for the purpose of selling or distributing alcoholic beverages..

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

§ 1. **Amendment.)** Section 5-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-05-04. Separation of Bar—Minors Prohibited.) No licensee authorized to sell alcoholic beverages shall operate or maintain a bar on or over which alcoholic beverages are sold, furnished, or distributed in any room or rooms wherein food is served at tables for consumption on the premises. It shall be unlawful for any person under twenty-one years of age to be in or to be permitted in any room wherein is operated or maintained a bar on or over which alcoholic beverages are sold, furnished, or distributed.

Approved March 9, 1963.