

HOUSE BILL NO. 1458

Introduced by

Representatives Damschen, Heilman, Owens, Sukut

Senator Andrist

1 A BILL for an Act to create and enact a new section to chapter 12.1-31 of the North Dakota
2 Century Code, relating the delivery of alcohol to an underage individual; to amend and reenact
3 sections 5-01-09, 5-02-06, and 14-10-06 of the North Dakota Century Code, relating to the
4 penalty for delivery of alcohol to an underage individual; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 5-01-09 of the North Dakota Century Code is amended
7 and reenacted as follows:

8 **5-01-09. Delivery to certain persons unlawful.**

- 9 1. Any individual ~~who knowingly delivering~~delivers alcoholic beverages to an individual
10 under twenty-one years of age ~~if the violator is under-twenty-one years of age~~, except
11 as allowed under section 5-02-06, or to a habitual drunkard, an incompetent, or an
12 obviously intoxicated individual is guilty of a class A misdemeanor, subject to sections
13 5-01-08, 5-01-08.1, and 5-01-08.2. An individual twenty-one years of age or older who
14 knowingly delivers alcoholic beverages to an individual under twenty-one years of age
15 is guilty of a class C felony, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
- 16 2. An individual under twenty-one years of age is immune from criminal prosecution
17 under this section if that individual contacted law enforcement or emergency medical
18 services and reported that another individual under twenty-one years of age was in
19 need of medical assistance due to alcohol consumption, provided assistance to the
20 individual in need of medical assistance until assistance arrived and remained on the
21 scene and cooperated with medical assistance and law enforcement personnel on the
22 scene, or was the individual in need of medical assistance. The maximum number of
23 individuals that may be immune for any one occurrence is five individuals.

- 1 3. If an individual is convicted of this section for delivering alcoholic beverages to an
2 individual under twenty-one years of age, the court shall consider the following in
3 mitigation:
- 4 a. After consuming the alcohol, the underage individual was in need of medical
5 assistance as a result of consuming alcohol; and
- 6 b. Within twelve hours after the underage individual consumed the alcohol, the
7 defendant contacted law enforcement or emergency medical personnel to report
8 that the underage individual was in need of medical assistance as a result of
9 consuming alcohol.

10 **SECTION 2. AMENDMENT.** Section 5-02-06 of the North Dakota Century Code is amended
11 and reenacted as follows:

12 **5-02-06. Prohibitions for individuals under twenty-one years of age - Penalty -**
13 **Exceptions.**

- 14 1. ~~Except as permitted in this section, a~~ licensee who dispenses alcoholic beverages to
15 an individual under twenty-one years of age, ~~or is guilty of a class C felony, subject to~~
16 sections 5-01-08, 5-01-08.1, and 5-01-08.2. ~~Except as permitted in this section, a~~
17 licensee who permits an individual under twenty-one years of age to remain on the
18 licensed premises while alcoholic beverages are being sold or displayed, is guilty of a
19 class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
- 20 2. An individual under twenty-one years of age may not remain in a restaurant where
21 alcoholic beverages are being sold except if the restaurant is separated from the room
22 in which alcoholic beverages are opened or mixed and gross sales of food are at least
23 equal to gross sales of alcoholic beverages which are consumed in the dining area, or
24 if the individual is employed by the restaurant as a food waiter, food waitress, busboy,
25 or busgirl under the direct supervision of an individual twenty-one or more years of age
26 and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic
27 beverages.
- 28 3. An individual under twenty-one years of age may enter and remain on the licensed
29 premises if the individual is an independent contractor or the independent contractor's
30 employee engaged in contract work and is not engaged in selling, dispensing,
31 delivering, or consuming alcoholic beverages; if the individual is a law enforcement

1 officer or other public official who enters the premises in the performance of official
2 duty; or if the individual enters the licensed premises for training, education, or
3 research purposes under the supervision of an individual twenty-one or more years of
4 age with prior notification of the local licensing authority.

5 4. An individual under twenty-one years of age may remain in an area of a site where
6 beer, wine, or sparkling wine is sold in accordance with the conditions of an event
7 permit issued pursuant to section 5-02-01.1.

8 5. An individual who is eighteen years of age or older but under twenty-one years of age
9 may be employed by a restaurant as provided in subsection 2 to serve and collect
10 money for alcoholic beverages, if the individual is under the direct supervision of an
11 individual twenty-one or more years of age, but may not be engaged in mixing,
12 dispensing, or consuming alcoholic beverages. Any establishment where alcoholic
13 beverages are sold may employ individuals from eighteen to twenty-one years of age
14 to work in the capacity of musicians under the direct supervision of an individual
15 twenty-one or more years of age.

16 6. For purposes of this section, an individual is not twenty-one years of age until
17 eight a.m. on that individual's twenty-first birthday.

18 7. If an individual is convicted of this section, the court shall consider the following in
19 mitigation:

20 a. After consuming the alcohol, the underage individual was in need of medical
21 assistance as a result of consuming alcohol; and

22 b. Within twelve hours after the underage individual consumed the alcohol, the
23 defendant contacted law enforcement or emergency medical personnel to report
24 that the underage individual was in need of medical assistance as a result of
25 consuming alcohol.

26 **SECTION 3.** A new section to chapter 12.1-31 of the North Dakota Century Code is created
27 and enacted as follows:

28 **Arrest for certain alcohol offenses required.**

29 Notwithstanding any other provision of law, a law enforcement officer who has a reasonable
30 suspicion that a specific individual has committed a felony alcohol-related violation of section
31 5-01-09, 5-02-06, or 14-10-06, the law enforcement officer shall arrest that individual. A violation

1 of this section is a class C felony and the appropriate state's attorney shall charge the crime if
2 an affidavit of facts that supports the crime is provided to the state's attorney.

3 **SECTION 4. AMENDMENT.** Section 14-10-06 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **14-10-06. Unlawful to encourage or contribute to the deprivation or delinquency of**
6 **minor - Penalty.**

- 7 1. Any individual who by any act willfully encourages, causes, or contributes to the
8 delinquency or deprivation of any minor is guilty of a class A misdemeanor. If the act is
9 done by an individual twenty-one years of age or older and the act includes the
10 delivery of alcoholic beverages to an individual under twenty-one years of age, the
11 individual is guilty of a class C felony.
- 12 2. Any individual who by any act willfully encourages, causes, or contributes to the
13 deprivation of a child less than sixteen years of age by causing that child to engage in
14 sexual conduct as defined under section 12.1-27.2-01, in any play, motion picture,
15 photograph, dance, or other visual representation is guilty of a class C felony.
- 16 3. If an individual is convicted of this section for encouraging, causing, or contributing to
17 the consumption or possession of alcoholic beverages by a minor, the court shall
18 consider the following in mitigation:
- 19 a. After consuming the alcohol, the underage individual was in need of medical
20 assistance as a result of consuming alcohol; and
- 21 b. Within twelve hours after the underage individual consumed the alcohol, the
22 defendant contacted law enforcement or emergency medical personnel to report
23 that the underage individual was in need of medical assistance as a result of
24 consuming alcohol.