

ALCOHOLIC BEVERAGES

CHAPTER 95

HOUSE BILL NO. 1474
(Representative O'Shea)
(Senator Krauter)

DRAM SHOP LAW RECOVERY

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to a cause of action for fault or negligence resulting from intoxication; to amend and reenact section 5-01-09 of the North Dakota Century Code, relating to the unlawful delivery of alcoholic beverages; to repeal section 5-01-06 of the North Dakota Century Code, relating to recovery of damages resulting from intoxication; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. If House Bill No. 1571 is not approved by the fiftieth legislative assembly or does not become effective, a new section to chapter 5-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Claim for relief for negligence resulting from intoxication. Every spouse, child, parent, guardian, employer, or other person who is injured by any obviously intoxicated person has a claim for relief for negligence under section 9-10-07 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. No claim for relief pursuant to this section may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives; nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

SECTION 2. If House Bill No. 1571, as approved by the fiftieth legislative assembly, becomes effective, a new section to chapter 5-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Claim for relief for fault resulting from intoxication. Every spouse, child, parent, guardian, employer, or other person who is injured by any obviously intoxicated person has a claim for relief for fault under section 2 of House Bill No. 1571 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. No claim for relief pursuant to this section may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives; nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

SECTION 3. If House Bill No. 1571, as approved by the fiftieth legislative assembly, becomes effective and subsequently terminates by its own provisions, a new section to chapter 5-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Claim for relief for negligence resulting from intoxication. Every spouse, child, parent, guardian, employer, or other person who is injured by any obviously intoxicated person has a claim for relief for negligence under section 9-10-07 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. No claim for relief pursuant to this section may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives; nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

* SECTION 4. AMENDMENT. Section 5-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-09. Delivery to certain persons unlawful. Any person knowingly delivering alcoholic beverages to a person under twenty-one years of age, ~~an~~ a habitual drunkard, an incompetent, or an obviously intoxicated person is guilty of a class A misdemeanor, subject to the provisions of sections 5-01-08, 5-01-08.1, and 5-01-08.2.

** SECTION 5. REPEAL. Section 5-01-06 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 6. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 1993.

Approved April 9, 1987
Filed April 9, 1987

* NOTE: Section 5-01-09 was also amended by section 1 of House Bill No. 1072, chapter 99.

** NOTE: Section 5-01-06 was also repealed by section 2 of House Bill No. 1072, chapter 99.

CHAPTER 96

HOUSE BILL NO. 1551
(C. Williams)

TOWNSHIP BEER OR LIQUOR LICENSES

AN ACT to amend and reenact section 5-01-07 of the North Dakota Century Code, relating to township beer or liquor licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-07. Township beer or liquor licenses. No retail beer or liquor license shall be issued in any organized township without the written consent of the board of township supervisors. ~~Every third renewal of such license shall be reviewed and subject to approval by the board of township supervisors.~~

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 97

HOUSE BILL NO. 1533
(Representatives Hill, Scherber, Rydell)
(Senators W. Meyer, Wright)

ILLEGAL POSSESSION OF ALCOHOL

AN ACT to amend and reenact section 5-01-08 of the North Dakota Century Code, relating to minors in possession of certain alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-08. Persons under twenty-one years of age prohibited from entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities. Except as permitted in this section and section 5-02-06, any person under twenty-one years of age purchasing, attempting to purchase, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor ~~and shall, if a fine is imposed, be fined not less than three hundred dollars.~~ The court may, under this section, refer the person to an outpatient addiction facility licensed by the department of health for evaluation and appropriate counseling or treatment.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 98

HOUSE BILL NO. 1457
(Haugen)

MISREPRESENTATION OF AGE FOR ALCOHOL

AN ACT to amend and reenact sections 5-01-08.1 and 5-01-08.2 of the North Dakota Century Code, relating to misrepresentation of age by minors purchasing alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-08.1. ~~Misrepresentation of age - Penalty - Obligations of licensee Licensee may keep book.~~ Any person who shall ~~misrepresent misrepresents or misstate his age~~ misstates that person's age or the age of any other person, or shall ~~misrepresent who misrepresents~~ misrepresents his age through presentation of any document purporting to show ~~such~~ that person to be of legal age to purchase alcoholic beverages shall ~~be~~ is guilty of a class B misdemeanor. ~~Every Any licensee shall be required to may keep a book which such licensee and his employees shall and may require anyone who has shown documentary proof of his age, which substantiates his age to allow the purchase of alcoholic beverages, to sign such the book if the age of such that person is in question. Such The book shall must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and his the purchaser's signature.~~

SECTION 2. AMENDMENT. Section 5-01-08.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-08.2. ~~Presumption of licensee's innocence when certain facts established.~~ The establishment of the following facts by a person making a sale of alcoholic beverages to a person not of legal age shall ~~constitute~~ constitutes prima facie evidence of innocence and a defense to any prosecution therefor:

1. That the purchaser falsely represented ~~in writing,~~ and supported with other documentary proof, that he was of legal age to purchase alcoholic beverages.

2. That the appearance of ~~such~~ the purchaser was such that an ordinary and prudent person would believe ~~him~~ the purchaser to be of legal age to purchase alcoholic beverages.
3. That the sale was made in good faith and in reliance upon the ~~written~~ representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase alcoholic beverages.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 99

HOUSE BILL NO. 1072
(Wald)

ILLEGAL DELIVERY OF ALCOHOL

AN ACT to amend and reenact section 5-01-09 of the North Dakota Century Code, relating to the unlawful delivery of alcoholic beverages; and to repeal section 5-01-06 of the North Dakota Century Code, relating to recovery of damages resulting from intoxication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

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

5-01-09. Delivery to certain persons unlawful. Any person knowingly delivering alcoholic beverages to a person under twenty-one years of age, an habitual drunkard, an incompetent, or an obviously intoxicated person is guilty of a class A misdemeanor, subject to the provisions of sections 5-01-08, 5-01-08.1, and 5-01-08.2.

** SECTION 2. REPEAL. Section 5-01-06 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 9, 1987
Filed April 9, 1987

* NOTE: Section 5-01-09 was also amended by section 4 of House Bill No. 1474, chapter 95.

** NOTE: Section 5-01-06 was also repealed by section 5 of House Bill No. 1474, chapter 95.

CHAPTER 100

SENATE BILL NO. 2380
(Holmberg)

SUNDAY BEER AND WINE SALES

AN ACT to create and enact a new section to chapter 5-02 of the North Dakota Century Code, relating to the sale on Sunday of beer and wine by eating establishments in conjunction with the sale of prepared meals; and to amend and reenact section 5-02-05 and subsection 37 of section 12.1-30-03 of the North Dakota Century Code, relating to the sale or consumption of alcoholic beverages on certain days and businesses authorized to operate on Sunday.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 5-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Local approval of Sunday beer and wine sales by eating establishments - Fee. The local governing body may provide in any on sale liquor or beer license the right of an eating establishment to dispense and sell beer and wine in conjunction with the sale of prepared meals on Sunday between the hours of twelve noon and nine p.m. for consumption only in that part of the eating establishment habitually used for the serving of prepared meals. As used in this section, "eating establishment" means a restaurant or other commercial establishment that is licensed to engage in the sale of alcoholic beverages at retail pursuant to this chapter, and which derives fifty percent or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. Where this provision is made in an on sale license, the governing body may require the licensee to pay an additional annual fee of not more than one hundred fifty dollars.

SECTION 2. AMENDMENT. Section 5-02-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-05. Disposal prohibited on certain days - Penalty. Except as permitted by ~~section sections~~ sections 5-02-05.1 and 1 of this Act, any person who dispenses or permits the consumption of alcoholic

beverages on licensed premises after one a.m. on Sundays, before eight a.m. on Mondays, or between the hours of one a.m. and eight a.m. on all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Good Friday, Thanksgiving Day, Christmas Day, or after six p.m. on Christmas Eve, or between the hours of one a.m. and eight p.m. on the day of any statewide special, primary, or general election is guilty of a class A misdemeanor.

SECTION 3. AMENDMENT. Subsection 37 of section 12.1-30-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in sections 5-02-05 and, 5-02-05.1, and 1 of this Act.

Approved March 20, 1987

Filed March 23, 1987

CHAPTER 101

SENATE BILL NO. 2549
(Holmberg)
(Approved by the Committee on Delayed Bills)

TRADE ZONE ALCOHOL TAXATION

AN ACT to amend and reenact sections 5-03-01 and 5-03-04 of the North Dakota Century Code, relating to sale and taxation of alcoholic beverages for export from foreign trade zones.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-03-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-03-01. State wholesale license required - Qualifications - Penalty. Before any person ~~shall engage~~ engages in the sale at wholesale of beer or liquor in this state ~~he, that person~~ shall first procure a license from only the state treasurer. ~~Such~~ That license ~~shall~~ must only allow sale to licensed retailers, licensed wholesalers ~~and~~, regular retail outlets on federal military reservations, and sale for export from a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse. No such license shall be issued unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

1. ~~Applicant, other than corporate,~~ If the applicant is not a corporation, the applicant must be a citizen of the United States and a resident of the this state of North Dakota and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises shall be a resident of the this state of North Dakota, a citizen of the United States, and a person of good moral character, and the officers, directors, and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.
2. The state treasurer may require the applicant to set forth ~~such~~ other information ~~as is~~ necessary to enable ~~him~~ the

state treasurer to determine if a license should be granted.

3. ~~No~~ A person shall be ~~is not~~ eligible for such a license unless ~~he~~ that person has a warehouse and office in this state, in which is kept a complete set of records relative to ~~his~~ that person's alcoholic beverage transactions in ~~North Dakota~~ this state.

Any person distributing alcoholic beverages in this state without compliance with the provisions of this title is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 5-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-03-04. Collection of taxes. The taxes imposed by this chapter ~~shall be paid by~~ are payable as follows:

1. Except as provided in subsection 3, wholesalers shall pay the tax to the state treasurer on or before the fifteenth day of each month.
2. Liquor wholesalers shall make ~~such~~ the payments based on the total gallonage sold the preceding calendar month. Beer wholesalers shall make ~~such~~ the payments based on the total gallonage purchased from brewers the preceding calendar month. ~~Sales of beer of an alcoholic content of not more than 3.2 percent by weight to military exchanges shall be excluded from the computation of gallonage tax due from wholesalers.~~
3. Sales of alcoholic beverages for export through a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse are excluded from the computation of the gallonage tax. If the alcoholic beverages are returned to this state from the federally bonded warehouse, the foreign trade zone, or the export bonded warehouse, the exemption no longer applies.
4. Upon satisfactory proof, a tax credit ~~shall be~~ is allowed beer wholesalers for beer purchased, but which ~~cannot be~~ sold in ~~North Dakota~~ this state. A tax credit ~~shall be~~ is allowed wholesalers on bad accounts which are charged off for income tax purposes, but a pro rata tax ~~shall be~~ is again ~~paid~~ payable on any accounts subsequently collected.
5. If any wholesaler makes an overpayment of taxes due, the state treasurer shall issue a credit applicable to future obligations or certify ~~such~~ that amount to the office of management and budget for a refund.
6. Any remittance within one dollar of the correct amount due may be accepted by the state treasurer as the correct amount due.

Approved April 7, 1987
Filed April 9, 1987