

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED 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. Every package of alcoholic beverages shipped directly to
3 an individual in this state must be labeled with conspicuous words "SIGNATURE
4 OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall
5 obtain the signature of an individual twenty-one years of age or older before
6 delivering any alcoholic beverages shipped directly to an individual in this state. A
7 manufacturer or retailer selling or shipping alcoholic beverages under this
8 subsection shall obtain a direct shipping permit from the state treasurer and pay an
9 annual fee of fifty dollars within thirty days of making the first shipment. A direct
10 shipper shall pay the wholesaler and retailer taxes to the state treasurer on all
11 alcoholic beverages sold to residents in this state at the rates set forth in sections
12 5-03-07 and 57-39.2-03.2. A direct shipper shall file reports with the state
13 treasurer including invoices for each shipment showing the price of the product,
14 the quantity sold and shipped, the customer's name and address, and the amount
15 of tax due the state. A manufacturer or retailer of alcoholic beverages who violates
16 this subsection is subject to a civil penalty in the amount of one thousand dollars.
17 On the application for a direct shipping permit, a direct shipper shall acknowledge
18 in writing the civil penalty provided in this subsection and consent to the imposition
19 of that civil penalty upon violation of this subsection. The state treasurer may
20 initiate and maintain a civil action in a court of competent jurisdiction to enjoin a
21 violation of this subsection and to recover the civil penalty provided in this
22 subsection, together with all costs and attorneys' fees incurred by the state
23 treasurer incidental to that action. Upon determination by the state treasurer that
24 an illegal sale or shipment of alcoholic beverages has been made to a consumer in
25 this state by either a manufacturer or retailer of alcoholic beverages, the state
26 treasurer shall notify both the bureau of alcohol, tobacco, and firearms of the
27 United States department of the treasury and the licensing authority for the state in
28 which the manufacturer or retailer is domiciled that a state law pertaining to the
29 regulation of alcoholic beverages has been violated and shall request those
30 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. Every package of alcoholic beverages shipped directly to
24 an individual in this state must be labeled with conspicuous words "SIGNATURE
25 OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall
26 obtain the signature of an individual twenty-one years of age or older before
27 delivering any alcoholic beverages shipped directly to an individual in this state. A
28 manufacturer or retailer selling or shipping alcoholic beverages under this
29 subsection shall obtain a direct shipping permit from the state tax commissioner
30 and pay an annual fee of fifty dollars before making the sale or shipment. A direct
31 shipper shall pay the wholesaler and retailer taxes to the state tax commissioner

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

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

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

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

1 **5-03-05. Tax commissioner to adopt rules - Appeal.** The state tax commissioner,
2 pursuant to chapter 28-32, shall adopt rules governing retailers, wholesalers, direct shippers,
3 and manufacturers necessary to carry out the provisions of this title and to ensure efficient
4 collection of beer and liquor taxes. All decisions of the state tax commissioner are subject to
5 court review.