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Sixty-first  
Legislative Assembly  
of North Dakota

Introduced by

Finance and Taxation Committee

(At the request of the Office of State Tax Commissioner)

1 A BILL for an Act to amend and reenact sections 5-01-01 and 5-01-16 of the North Dakota  
2 Century Code, relating to the definitions of a transporter and wholesaler of alcoholic beverages  
3 and licensing requirements for transporters of alcoholic beverages to consumers in North  
4 Dakota; and to provide an effective date.

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

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

8 **5-01-01. Definitions.** In this title:

- 9 1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees  
10 proof, whether or not such product is subsequently reduced, for nonindustrial use.
- 11 2. "Alcoholic beverages" means any liquid suitable for drinking by human beings,  
12 which contains one-half of one percent or more of alcohol by volume.
- 13 3. "Beer" means any malt beverage containing one-half of one percent or more of  
14 alcohol by volume.
- 15 4. "Bottle or can" means any container, regardless of the material from which made,  
16 having a capacity less than a bulk container for use for the sale of malt beverages  
17 at retail.
- 18 5. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling  
19 wine, or alcohol.
- 20 6. "In bulk" means in containers having a capacity not less than one-sixth barrel for  
21 use for the sale of malt beverages at retail.
- 22 7. "Licensed premises" means the premises on which beer, liquor, or alcoholic  
23 beverages are normally sold or dispensed and must be delineated by diagram or

- 1 blueprint which must be included with the license application or the license renewal  
2 application.
- 3 8. "Liquor" means any alcoholic beverage except beer.
- 4 9. "Local governing body" means the governing entity of a city, county, or federally  
5 recognized Indian tribe in this state.
- 6 10. "Local license" means a city, county, or tribal retail alcoholic beverage license  
7 issued by the appropriate local governing body.
- 8 11. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer  
9 per year and sells beer produced or manufactured on the premises for  
10 consumption on or off the premises or serves beer produced or manufactured on  
11 the premises for purposes of sampling the beer.
- 12 12. "Organization" means a domestic or foreign corporation, general partnership,  
13 limited partnership, or limited liability company.
- 14 13. "Sparkling wine" means wine made effervescent with carbon dioxide.
- 15 14. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or  
16 wholesaler selling alcoholic beverages to a wholesaler licensed in this state for  
17 purposes of resale.
- 18 15. "Transporter" means a person or entity that transports or causes delivery of any  
19 alcoholic beverage directly to a North Dakota consumer without that beverage  
20 having first been sold to a North Dakota wholesaler.
- 21 16. "Tribal licensee" means a person issued a local license by the governing body of a  
22 federally recognized Indian tribe in this state for the retail sale of alcoholic  
23 beverages within the exterior tribal reservation boundaries.
- 24 ~~16.~~17. "Twenty-one years of age" means it is after eight a.m. on the date twenty-one  
25 years after a person's date of birth.
- 26 18. "Wholesaler" means a person or entity that imports or causes to be imported into  
27 this state or purchases or causes to be purchased in this state any alcoholic  
28 beverage for sale or resale to a licensed retailer.
- 29 ~~17.~~19. "Wine" means the alcoholic beverage obtained by fermentation of agricultural  
30 products containing natural or added sugar or such beverage fortified with brandy  
31 and containing not more than twenty-four percent alcohol by volume.

1           **SECTION 2. AMENDMENT.** Section 5-01-16 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **5-01-16. Direct sale from in-state or out-of-state seller to consumer - Penalty.**

- 4           1. A person in the business of selling alcoholic beverages may not knowingly or  
5 intentionally ship, or cause to be shipped, any alcoholic beverage from ~~an~~  
6 ~~out-of-state~~ any location directly to a person in this state who is not a wholesaler.
- 7           2. A person in the business of transporting goods may not knowingly or intentionally  
8 transport any alcoholic beverage, from an in-state or out-of-state location of a  
9 person in the business of selling alcoholic beverages, directly to a person in this  
10 state who is not a wholesaler.
- 11           3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by  
12 certified mail, the violator and order that person to cease and desist any shipment  
13 of alcoholic beverages in violation of subsection 1 or 2. The second violation of  
14 subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is  
15 a class C felony.
- 16           4. The alcoholic beverage transported in violation of this section and the vehicle used  
17 in violation of this section are forfeitable property under chapter 29-31.1.
- 18           5. This section does not apply to a transaction in which an individual twenty-one  
19 years of age or older who imports or transports into or within this state 7.13 gallons  
20 [27 liters] or less of wine, two hundred eighty-eight fluid ounces [8517.18 milliliters]  
21 or less of beer, or 2.38 gallons [9 liters] or less of any other alcoholic beverage per  
22 month for personal use and not for resale from a person holding a valid  
23 manufacturer's or retailer's license issued by the state of its domicile. Every  
24 package of alcoholic beverages shipped directly to an individual in this state must  
25 be shipped through a licensed transporter and labeled with conspicuous words  
26 "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A  
27 ~~shipper~~ transporter shall obtain the signature of an individual twenty-one years of  
28 age or older before delivering any alcoholic beverages shipped directly to an  
29 individual in this state. A transporter who delivers alcoholic beverages directly to  
30 persons in this state shall obtain an alcoholic beverage transporter's license from  
31 the tax commissioner and pay an annual fee of fifty dollars. Transporters are

1           subject to section 5-03-06 and must file a report with the tax commissioner on or  
2           before the last day of the month following the month in which the transporter made  
3           delivery of any alcoholic beverages directly to a North Dakota consumer. When the  
4           last day of the month falls on a Saturday, Sunday, or legal holiday, the due date is  
5           the first working day thereafter. The report must provide such detail and be in a  
6           format as prescribed by the tax commissioner. The tax commissioner may require  
7           that the report be submitted in an electronic format approved by the tax  
8           commissioner. A manufacturer or retailer selling or shipping alcoholic beverages  
9           under this subsection shall obtain a direct shipping permit from the ~~state~~ tax  
10          commissioner ~~and~~, pay an annual fee of fifty dollars within thirty days of making  
11          the first shipment, and must ship all alcoholic beverages using a licensed  
12          transporter. A direct shipper is subject to section 5-03-06 and shall report and pay  
13          the wholesaler and retailer taxes to the ~~state~~ tax commissioner on all alcoholic  
14          beverages sold to residents in this state at the rates set forth in sections 5-03-07  
15          and 57-39.6-02. The reports are due January fifteenth of the year following the  
16          year sales and shipments were made. When the fifteenth day of January falls on a  
17          Saturday, Sunday, or legal holiday, the due date is the first working day thereafter.  
18          The report must provide such detail and be in format as prescribed by the ~~state~~ tax  
19          commissioner. The ~~state~~ tax commissioner may require that the report be  
20          submitted in an electronic format approved by the ~~state~~ tax commissioner. The  
21          ~~state~~ tax commissioner may initiate and maintain an action in a court of competent  
22          jurisdiction to enjoin a violation of this subsection and may request award of all  
23          costs and attorney's fees incurred by the state incidental to that action. Upon  
24          determination by the ~~state~~ tax commissioner that an illegal sale or shipment of  
25          alcoholic beverages has been made to a consumer in this state by either a  
26          manufacturer or retailer of alcoholic beverages, the ~~state~~ tax commissioner may  
27          notify both the ~~bureau of alcohol, tobacco, firearms and explosives~~ alcohol and  
28          tobacco tax and trade bureau of the United States department of the treasury and  
29          the licensing authority for the state in which the manufacturer or retailer is  
30          domiciled that a state law pertaining to the regulation of alcoholic beverages has  
31          been violated and may request those agencies to take appropriate action.

1           **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
2   December 31, 2008.