

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2147

Introduced by

Senators J. Lee, Krebsbach, Murphy, Sinner

Representatives Louser, Gruchalla

1 A BILL for an Act to amend and reenact sections 5-01-01, 5-01-16, and 5-03-06 of the North
2 Dakota Century Code, relating to direct shipment of alcoholic beverages from out of state; and
3 to provide a penalty.

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

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

7 **5-01-01. Definitions.**

8 In this title:

- 9 1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof,
10 whether or not such product is subsequently reduced, for nonindustrial use.
- 11 2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which
12 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 alcohol
14 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 at
17 retail.
- 18 5. "Direct shipper" means a person that is licensed by the commissioner and ships or
19 causes to be shipped alcoholic beverages directly into this state to a consumer for the
20 consumer's personal use and not for resale.
- 21 6. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine,
22 or alcohol.
- 23 ~~6-7.~~ "In bulk" means in containers having a capacity not less than one-sixth barrel for use
24 for the sale of malt beverages at retail.

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- 1 ~~7-8.~~ "Licensed alcohol carrier" means a person licensed to transport or deliver alcoholic
2 beverages to a consumer without first having the alcoholic beverage delivered through
3 a wholesaler licensed in this state.
- 4 ~~9.~~ "Licensed logistics shipper" means a person that provides fulfillment house services,
5 including warehousing, packaging, distribution, order processing, or shipment of
6 alcoholic beverages on behalf of a licensed direct shipper and by way of a licensed
7 alcohol carrier.
- 8 ~~10.~~ "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages
9 are normally sold or dispensed and must be delineated by diagram or blueprint which
10 must be included with the license application or the license renewal application.
- 11 ~~8-11.~~ "Liquor" means any alcoholic beverage except beer.
- 12 ~~9-12.~~ "Local governing body" means the governing entity of a city, county, or federally
13 recognized Indian tribe in this state.
- 14 ~~10-13.~~ "Local license" means a city, county, or tribal retail alcoholic beverage license issued
15 by the appropriate local governing body.
- 16 ~~11-14.~~ "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per
17 year and sells beer produced or manufactured on the premises for consumption on or
18 off the premises or serves beer produced or manufactured on the premises for
19 purposes of sampling the beer.
- 20 ~~12-15.~~ "Organization" means a domestic or foreign corporation, general partnership, limited
21 partnership, or limited liability company.
- 22 ~~13-16.~~ "Sparkling wine" means wine made effervescent with carbon dioxide.
- 23 ~~14-17.~~ "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or
24 wholesaler selling alcoholic beverages to a wholesaler licensed in this state for
25 purposes of resale.
- 26 ~~15-18.~~ "Tribal licensee" means a person issued a local license by the governing body of a
27 federally recognized Indian tribe in this state for the retail sale of alcoholic beverages
28 within the exterior tribal reservation boundaries.
- 29 ~~16-19.~~ "Twenty-one years of age" means it is after eight a.m. on the date twenty-one years
30 after a person's date of birth.

1 ~~17-20.~~ "Wine" means the alcoholic beverage obtained by fermentation of agricultural products
2 containing natural or added sugar or such beverage fortified with brandy and
3 containing not more than twenty-four percent alcohol by volume.

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

6 **5-01-16. Direct sale from out-of-state sellerperson to consumer - Penalty.**

- 7 1. A person in the business of selling alcoholic beverages may not knowingly or
8 intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state
9 location directly to a person in this state who is not a licensed wholesaler in this state.
- 10 2. A person in the business of transporting goods may not knowingly or intentionally
11 transport, or cause to be transported, any alcoholic beverage, ~~from an out-of-state~~
12 ~~location of a person in the business of selling alcoholic beverages,~~ directly to a person
13 in this state who is not a licensed wholesaler in this state.
- 14 3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by
15 certified mail, the ~~viator~~person and order that person to cease and desist any
16 shipment of alcoholic beverages in violation of subsection 1 or 2 and shall assess a
17 civil penalty of one hundred dollars for each illegal shipment. ~~The second violation of~~
18 ~~subsection 1 or 2 is a class A misdemeanor and a third and~~Any subsequent violation
19 of subsection 1 or 2 after receiving notice of a first violation is a class C felony and the
20 tax commissioner shall assess a civil penalty of five hundred dollars for each illegal
21 shipment.
- 22 4. The alcoholic beverage transported in violation of this section and the vehicle used in
23 violation of this section are forfeitable property under chapter 29-31.1.
- 24 5. This section does not apply to a transaction ~~in which an individual twenty-one years of~~
25 ~~age or older who imports or transports into this state 7.13 gallons [27 liters] or less of~~
26 ~~wine, two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer, or 2.38~~
27 ~~gallons [9 liters] or less of any other alcoholic beverage per month for personal use~~
28 ~~and not for resale from~~by a person holding a valid manufacturer's or retailer's license
29 issued by the state of its domicile. Every package and if the person obtains a direct
30 shipping license from and on a form prescribed by the tax commissioner before
31 making a shipment. The annual fee for a direct shipping license is fifty dollars.

1 Licensed direct shippers may sell and ship to an individual twenty-one years of age or
2 older 7.13 gallons [27 liters] or less of wine, two hundred eighty-eight fluid ounces
3 [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other
4 alcoholic beverages per month for personal use and not for resale.

5 a. A direct shipper shall ship all containers of alcoholic beverages shipped directly
6 to a resident of this state using a licensed alcohol carrier and may cause the
7 alcoholic beverages to be shipped by a licensed logistics company.

8 b. A direct shipper shall label all containers of alcoholic beverages shipped directly
9 to an individual in this state with conspicuous words "SIGNATURE OF PERSON
10 AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the
11 signature of an individual twenty-one years of age or older before delivering any
12 alcoholic beverages shipped directly to an individual in this state. A manufacturer
13 or retailer selling or shipping alcoholic beverages under this subsection shall
14 obtain a direct shipping permit from the tax commissioner and pay an annual fee
15 of fifty dollars within thirty days of making the first shipment.

16 c. A licensed direct shipper shall report and pay the wholesaler excise tax and
17 retailer sales taxes to the tax commissioner on all alcoholic beverages sold to
18 residents in this state at the rates set forth in sections 5-03-07 and 57-39.6-02.
19 The excise tax reports are due January fifteenth of the year following the year
20 sales and shipments were made. When the fifteenth day of January falls on a
21 Saturday, Sunday, or legal holiday, the due date is the first working day
22 thereafter. The report must provide such detail and be in format as prescribed by
23 the tax commissioner. The sales and use tax reports are due as set forth in
24 chapter 57-39.2. The sales and use tax reports must be in a format as prescribed
25 by the tax commissioner and include the identification of any logistics or
26 fulfillment houses the licensee used for such shipments. The tax commissioner
27 may require that the report be submitted in an electronic format approved by the
28 tax commissioner.

29 d. All alcoholic beverages that are shipped directly to a resident of this state must
30 be properly registered with the federal alcohol and tobacco tax and trade bureau
31 and must be owned by the licensed direct shipper.

- 1 6. A licensed alcohol carrier may ship alcoholic beverages into, out of, or within this state.
2 A licensed alcohol carrier shall pay an annual fee of one hundred dollars and obtain a
3 license on an application form provided by the tax commissioner and subject to any
4 requirements determined by the tax commissioner.
- 5 a. A licensed alcohol carrier shall ensure all containers of alcoholic beverages
6 shipped directly to an individual in this state are labeled with conspicuous words
7 "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".
8 A licensed alcohol carrier may not deliver alcoholic beverages to a person under
9 twenty-one years of age, or to a person who is or appears to be in an intoxicated
10 state or condition. A licensed alcohol carrier shall obtain valid proof of identity and
11 age before delivery and shall obtain the signature of an adult as a condition of
12 delivery.
- 13 b. A licensed alcohol carrier shall maintain records of alcoholic beverages shipped
14 into, out of, or within this state which include the license number and name of the
15 licensed direct shipper, the license number and name of any licensed logistics
16 shipper, the date of each shipment, the quantity of alcoholic beverages shipped,
17 the recipient's name and address, and an electronic or paper form of signature
18 from the recipient of the alcoholic beverages. A licensed alcohol carrier shall
19 submit a report to the tax commissioner on a monthly basis in the form and
20 format prescribed by the tax commissioner. The report is due on the last day of
21 the month following the month of shipment. If the due date falls on a Saturday,
22 Sunday, or legal holiday, the due date is the first working day after the due date.
23 The tax commissioner may require that the report be submitted in an electronic
24 format approved by the tax commissioner.
- 25 c. A licensed alcohol carrier may not ship alcoholic beverages received from an
26 unlicensed direct shipper. For a violation, the licensed alcohol carrier is subject to
27 the penalties in subsection 3.
- 28 7. Licensed logistics shippers must obtain a logistics shipping license from the tax
29 commissioner and shall pay an annual fee of one hundred dollars before making or
30 causing a shipment.

- 1 a. A licensed logistics shipper shall ensure all containers of alcoholic beverages
2 shipped directly to an individual in this state are labeled with conspicuous words
3 "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".
- 4 b. All containers of alcoholic beverage shipped directly to a resident of this state
5 must be shipped using a licensed alcohol carrier as provided in subsection 6.
- 6 c. A licensed logistics shipper shall maintain records of alcoholic beverages shipped
7 which include the license number and name of the licensed direct shipper, the
8 license number and name of the licensed common carrier, the date of each
9 shipment, the quantity and kind of alcohol shipped, and the recipient's name and
10 address for each shipment. A licensed logistics shipper shall submit a report to
11 the tax commissioner on a monthly basis in the form and format prescribed by
12 the tax commissioner. The report is due on the last day of the month following the
13 month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday,
14 the due date is the first working day after the due date. The tax commissioner
15 may require that the report be submitted in an electronic format approved by the
16 tax commissioner.
- 17 d. Licensed logistics shippers may not ship alcoholic beverages from unlicensed
18 direct shippers or through unlicensed carriers. For a violation, a licensed logistics
19 shipper is subject to the penalties in subsection 3.
- 20 8. The tax commissioner may initiate and maintain an action in a court of competent
21 jurisdiction to enjoin a violation of this ~~subsection~~section and may request award of all
22 costs and attorney's fees incurred by the state incidental to that action. Upon
23 determination by the tax commissioner that an illegal sale or shipment of alcoholic
24 beverages has been made to a consumer in this state by ~~either a manufacturer or~~
25 ~~retailer of alcoholic beverages~~any person, the tax commissioner may notify both the
26 alcohol and tobacco tax and trade bureau of the United States department of the
27 treasury and the licensing authority for the state in which the ~~manufacturer or~~
28 ~~retailer~~person is domiciled that a state law pertaining to the regulation of alcoholic
29 beverages has been violated and may request those agencies to take appropriate
30 action.

1 **SECTION 3. AMENDMENT.** Section 5-03-06 of the North Dakota Century Code is amended
2 and reenacted as follows:

3 **5-03-06. Examination by tax commissioner - Penalty for improper returns.**

4 The state tax commissioner may at any reasonable time make an examination of the books
5 and premises of any retailer, wholesaler, manufacturer, domestic winery, domestic distillery,
6 microbrew pub, direct shipper, licensed alcohol carrier, licensed logistics carrier, or other person
7 to determine if ~~such~~the person has fully complied with all statutes and rules pertaining to the
8 person's business. If any manufacturer, wholesaler, domestic winery, domestic distillery,
9 microbrew pub, or direct shipper liable for any taxes imposed by this chapter fails to pay such
10 tax on the date payment is due, there must be added to the tax a penalty of five percent of the
11 total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the
12 tax per month or fraction of a month of delay, except the first month after the return or tax
13 became due. Any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew
14 pub, ~~or~~ direct shipper, licensed alcohol carrier, or licensed logistics shipper failing to furnish
15 reports when required must be assessed a penalty of one hundred dollars for each day such
16 reports are delinquent. The state tax commissioner may forgive all or part of any penalty for
17 good cause shown. The tax commissioner shall give notice of the determination to the person
18 liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a
19 taxpayer, notice of the determination must be given not later than three years after the last day
20 on which the return was due or three years after the return was filed, whichever is later. If it is
21 determined upon audit by the tax commissioner that the tax due was twenty-five percent or
22 more above the amount reported on the return, notice of determination of tax due must be given
23 not later than six years after the last day on which the return was due or six years after the
24 return was filed, whichever ~~was~~is later. Notice of determination of tax due for any reporting
25 period for which a taxpayer failed to file a return must be given not later than six years after the
26 due date of the return, but if fraudulent information is given in a return or the failure to file a
27 return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade
28 the tax, the time limitation provided in this section for giving notice of the determination of tax
29 due does not apply. If any manufacturer, wholesaler, domestic winery, domestic distillery,
30 microbrew pub, or direct shipper files a fraudulent return, there must be added to the tax an
31 amount equal to the tax evaded or attempted to be evaded and such manufacturer, wholesaler,

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1 domestic winery, domestic distillery, microbrew pub, or direct shipper is also guilty of a class C
2 felony. All such taxes and civil penalties may be collected by assessment or distraint, and no
3 court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may
4 purchase alcoholic beverages from a manufacturer after notice from the state tax commissioner
5 that such manufacturer has failed to file required reports with the tax commissioner's office. Any
6 manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper,
7 licensed alcohol carrier, or licensed logistics shipper may have its license suspended or revoked
8 for violation of any of the provisions of this title after a hearing conducted similar to that
9 prescribed by this law.