

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. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine,  
19 or alcohol.
- 20 6. "In bulk" means in containers having a capacity not less than one-sixth barrel for use  
21 for the sale of malt beverages at retail.
- 22 7. "Licensed alcohol carrier" means a person licensed to transport or deliver alcoholic  
23 beverages to a consumer without first having the alcoholic beverage delivered through  
24 a wholesaler licensed in this state.

- 1        8.    "Licensed logistics shipper" means a person that provides fulfillment house services,  
2        including warehousing, packaging, distribution, order processing, or shipment of  
3        alcoholic beverages on behalf of a licensed direct shipper and by way of a licensed  
4        alcohol carrier.
- 5        9.    "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages  
6        are normally sold or dispensed and must be delineated by diagram or blueprint which  
7        must be included with the license application or the license renewal application.
- 8        ~~8-10.~~ "Liquor" means any alcoholic beverage except beer.
- 9        ~~9-11.~~ "Local governing body" means the governing entity of a city, county, or federally  
10       recognized Indian tribe in this state.
- 11       ~~10-12.~~ "Local license" means a city, county, or tribal retail alcoholic beverage license issued  
12       by the appropriate local governing body.
- 13       ~~11-13.~~ "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per  
14       year and sells beer produced or manufactured on the premises for consumption on or  
15       off the premises or serves beer produced or manufactured on the premises for  
16       purposes of sampling the beer.
- 17       ~~12-14.~~ "Organization" means a domestic or foreign corporation, general partnership, limited  
18       partnership, or limited liability company.
- 19       ~~13-15.~~ "Sparkling wine" means wine made effervescent with carbon dioxide.
- 20       ~~14-16.~~ "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or  
21       wholesaler selling alcoholic beverages to a wholesaler licensed in this state for  
22       purposes of resale.
- 23       ~~15-17.~~ "Tribal licensee" means a person issued a local license by the governing body of a  
24       federally recognized Indian tribe in this state for the retail sale of alcoholic beverages  
25       within the exterior tribal reservation boundaries.
- 26       ~~16-18.~~ "Twenty-one years of age" means it is after eight a.m. on the date twenty-one years  
27       after a person's date of birth.
- 28       ~~17-19.~~ "Wine" means the alcoholic beverage obtained by fermentation of agricultural products  
29       containing natural or added sugar or such beverage fortified with brandy and  
30       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 amended  
2 and reenacted as follows:

3       **5-01-16. Direct sale from in-state or out-of-state seller person 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 in-state or  
6 out-of-state location directly to a person in this state who is not a licensed wholesaler  
7 in this state.
- 8       2. A person in the business of transporting goods may not knowingly or intentionally  
9 transport, or cause to be transported, any alcoholic beverage, ~~from an out-of-state~~  
10 ~~location of a person in the business of selling alcoholic beverages,~~ directly to a person  
11 in this state who is not a licensed wholesaler in this state.
- 12       3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by  
13 certified mail, the ~~violator~~ person and order that person to cease and desist any  
14 shipment of alcoholic beverages in violation of subsection 1 or 2 and shall assess a  
15 civil penalty of one hundred dollars for each illegal shipment. ~~The second violation of~~  
16 ~~subsection 1 or 2 is a class A misdemeanor and a third and~~ Any subsequent violation  
17 of subsection 1 or 2 after receiving notice of a first violation is a class C felony and the  
18 tax commissioner shall assess a civil penalty of five hundred dollars for each illegal  
19 shipment.
- 20       4. The alcoholic beverage transported in violation of this section and the vehicle used in  
21 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 years of~~  
23 ~~age or older who imports or transports into this state 7.13 gallons [27 liters] or less of~~  
24 ~~wine, two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer, or 2.38~~  
25 ~~gallons [9 liters] or less of any other alcoholic beverage per month for personal use~~  
26 ~~and not for resale from~~ by a person holding a valid manufacturer's or retailer's license  
27 issued by the state of its domicile. Every package and if the person obtains a direct  
28 shipping license from and on a form prescribed by the tax commissioner before  
29 making a shipment. The annual fee for a direct shipping license is fifty dollars.  
30 Licensed direct shippers may sell and ship to an individual twenty-one years of age or  
31 older 7.13 gallons [27 liters] or less of wine, two hundred eighty-eight fluid ounces

1 [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other  
2 alcoholic beverages per month for personal use and not for resale.

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

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

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

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

30 6. A licensed alcohol carrier may ship alcoholic beverages into, out of, or within this state.  
31 A licensed alcohol carrier shall pay an annual fee of one hundred dollars and obtain a

1 license on an application form provided by the tax commissioner and subject to any  
2 requirements determined by the tax commissioner.

3 a. A licensed alcohol carrier shall ensure all containers of alcoholic beverages  
4 shipped directly to an individual in this state are labeled with conspicuous words  
5 "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".  
6 A licensed alcohol carrier may not deliver alcoholic beverages to a person under  
7 twenty-one years of age, or to a person who is or appears to be in an intoxicated  
8 state or condition. A licensed alcohol carrier shall obtain valid proof of identity and  
9 age before delivery and shall obtain the signature of an adult as a condition of  
10 delivery.

11 b. A licensed alcohol carrier shall maintain records of alcoholic beverages shipped  
12 into, out of, or within this state which include the license number and name of the  
13 licensed direct shipper, the license number and name of any licensed logistics  
14 shipper, the date of each shipment, the quantity of alcoholic beverages shipped,  
15 the recipient's name and address, and an electronic or paper form of signature  
16 from the recipient of the alcoholic beverages. A licensed alcohol carrier shall  
17 submit a report to the tax commissioner on a monthly basis in the form and  
18 format prescribed by the tax commissioner. The report is due on the last day of  
19 the month following the month of shipment. If the due date falls on a Saturday,  
20 Sunday, or legal holiday, the due date is the first working day after the due date.  
21 The tax commissioner may require that the report be submitted in an electronic  
22 format approved by the tax commissioner.

23 c. A licensed alcohol carrier may not ship alcoholic beverages received from an  
24 unlicensed direct shipper. For a violation, the licensed alcohol carrier is subject to  
25 the penalties in subsection 3.

26 7. Licensed logistics shippers must obtain a logistics shipping license from the tax  
27 commissioner and shall pay an annual fee of one hundred dollars before making or  
28 causing a shipment.

29 a. A licensed logistics shipper shall ensure all containers of alcoholic beverages  
30 shipped directly to an individual in this state are labeled with conspicuous words  
31 "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".

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

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

1           **5-03-06. Examination by tax commissioner - Penalty for improper returns.**

2           The state tax commissioner may at any reasonable time make an examination of the books  
3 and premises of any retailer, wholesaler, manufacturer, domestic winery, domestic distillery,  
4 microbrew pub, direct shipper, licensed alcohol carrier, licensed logistics carrier, or other person  
5 to determine if ~~such~~the person has fully complied with all statutes and rules pertaining to the  
6 person's business. If any manufacturer, wholesaler, domestic winery, domestic distillery,  
7 microbrew pub, or direct shipper liable for any taxes imposed by this chapter fails to pay such  
8 tax on the date payment is due, there must be added to the tax a penalty of five percent of the  
9 total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the  
10 tax per month or fraction of a month of delay, except the first month after the return or tax  
11 became due. Any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew  
12 pub, ~~or~~ direct shipper, licensed alcohol carrier, or licensed logistics shipper failing to furnish  
13 reports when required must be assessed a penalty of one hundred dollars for each day such  
14 reports are delinquent. The state tax commissioner may forgive all or part of any penalty for  
15 good cause shown. The tax commissioner shall give notice of the determination to the person  
16 liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a  
17 taxpayer, notice of the determination must be given not later than three years after the last day  
18 on which the return was due or three years after the return was filed, whichever is later. If it is  
19 determined upon audit by the tax commissioner that the tax due was twenty-five percent or  
20 more above the amount reported on the return, notice of determination of tax due must be given  
21 not later than six years after the last day on which the return was due or six years after the  
22 return was filed, ~~whichever was~~is later. Notice of determination of tax due for any reporting  
23 period for which a taxpayer failed to file a return must be given not later than six years after the  
24 due date of the return, but if fraudulent information is given in a return or the failure to file a  
25 return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade  
26 the tax, the time limitation provided in this section for giving notice of the determination of tax  
27 due does not apply. If any manufacturer, wholesaler, domestic winery, domestic distillery,  
28 microbrew pub, or direct shipper files a fraudulent return, there must be added to the tax an  
29 amount equal to the tax evaded or attempted to be evaded and such manufacturer, wholesaler,  
30 domestic winery, domestic distillery, microbrew pub, or direct shipper is also guilty of a class C  
31 felony. All such taxes and civil penalties may be collected by assessment or distraint, and no

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