

FISCAL NOTE
Requested by Legislative Council
03/12/2015

Amendment to: SB 2324

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2324 with House Amendments relates to out-of-state alcohol shipments to customers in North Dakota and penalties to be assessed for illegal shipments

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Engrossed SB2324 with House Amendments provides that if the Tax Commissioner has notified a licensed alcohol carrier that a direct shipper of alcoholic beverages is not licensed, the carrier must notify the direct shipper that it will no longer ship alcoholic beverages until required licenses are obtained. If the licensed alcohol carrier continues to make shipments for an unlicensed direct shipper more than 15 days after receiving notice from the Tax Commissioner, the carrier may be subject to civil penalties. If the out-of-state seller of alcoholic beverages does not obtain a direct shipper permit, as required by this section, they may be subject to civil penalties. The engrossed bill changes the penalty for a second violation of this section from a class A misdemeanor to a civil penalty of \$200. The number of licensed alcohol carries and direct shippers that would commit a violation of this section and potentially be subject to civil penalties cannot be determined. No fiscal impact is anticipated.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Tax Department

Telephone: 701-328-3402

Date Prepared: 03/13/2015

FISCAL NOTE
Requested by Legislative Council
02/11/2015

Amendment to: SB 2324

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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Engrossed SB 2324 relates to out-of-state alcohol shipments to customers in North Dakota and penalties to be assessed for illegal shipments

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Engrossed SB2324 provides that if the Tax Commissioner has notified a licensed alcohol carrier that a direct shipper of alcoholic beverages is not licensed, the carrier must notify the direct shipper that it will no longer ship alcoholic beverages until required licenses are obtained. If the licensed alcohol carrier continues to make shipments for an unlicensed direct shipper more than 15 days after receiving notice from the Tax Commissioner, the carrier may be subject to civil penalties. If the out-of-state seller of alcoholic beverages does not obtain a direct shipper permit, as required by this section, they may be subject to civil penalties. The engrossed bill changes the penalty for a second violation of this section from a class A misdemeanor to a civil penalty of \$200. The number of licensed alcohol carries and direct shippers that would commit a violation of this section and potentially be subject to civil penalties cannot be determined. No fiscal impact is anticipated.

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- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Joe Morrissette

Agency: Tax Department

Telephone: 701-328-3033

Date Prepared: 02/12/2015

2015 SENATE JUDICIARY

SB 2324

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2324
1/27/2015
22595

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We will open the hearing on SB 2324.

Sen. Judy Lee: Sponsor, support. The goal of this bill is to permit a few people who might like to order a little wine once in a while for personal consumption from an out-of-state winery to have it shipped to our homes when we are over 21 and capable of paying for it by credit card. It has become more and more a challenge. We thought we had it fixed last session. This was reviewed in 2005, 2007, 2009, and 2013. We were able to actually ship before the 2013 session, but now because we did such a detailed bill last time, FedEx has said that they aren't going to ship because the bill created liability for us. We had the Tax Dept. because that's where the rubber meets the road as far as alcohol taxes and a lot of the regulation goes. Due to the drafting last time, in conjunction with the attorney who was representing the Wine Institute. With the level of the detail that was in there did create a couple of areas in which it is a challenge as far as the shipper, FedEx in this situation, keeping a record of who might be an unlicensed person for whom they are carrying. How do they know? I'm sure that the Tax Dept will have other ideas here, but I'm telling you that's really what the problem is. We've deleted the language in SB 2324 which would require this to be done. Instead, we said that the Tax Commissioner may not require the records to include the license number, name of the licensed direct shipper or any licensed logistic shipper. Let me give you an example: a couple of years ago during a family trip we were in the Sonoma Valley, and we went to this little Mary Edwards Winery; great pinot noir, a little Savenblanc, small winery, they ship themselves. My silly example is Aunt Martha is in the garage with the brown paper and the tape, puts on a label and ships it straight out of the building in the little winery. I can still get Mary Edwards wine, a couple of bottles from my kids for Mother's Day every year. I can't get it at home. We go a little ways down the road to

the Rodney Strong winery, very fine wine, some really nice reds; I'd like to have some. Where are you from? North Dakota. We can't ship it there. Because it is a large winery and they ship via a fulfillment house. In other words they send the stuff to another place where another business does not take ownership of the beverage but wraps it in the brown paper and puts the label on it and then sends it to FedEx, that's where the problem is. There is no transfer of ownership, there is nothing that should be violating anything with that old 3 tiered system. Can we just figure out a way to go back to the way we were even in 2012, when we actually could deliver to ND? I don't want anyone under age having wine delivered either. But think about it, realistically, is anybody who is under 21 going 2 or 3 weeks ahead, order on the internet, no wine is under \$25.00 a bottle, pay the shipping, find someone over 21 with an AmEx card for is going to be at the house to demonstrate what their age is for delivery. You have to have someone over the age of 21 sign for the delivery. I'm sure none of you ever drank in high school, because actually I didn't. You maybe knew somebody, if they got thirsty on Friday afternoon, they would call a friend and by an hour later they'd buy out of the back of a Chevy somewhere, and it sure wasn't going to be this beverage. Let's see if we can find a way for those folks, not very many of us, who might like to have a little special wine from a winery where we visited shipped to us and have a dinner. If you can come up with a solution that is amenable to everybody, I would be thrilled because we're not there yet. It's really getting kind of silly.

Ch. Hogue: You mentioned that you had the conversation, "oh ND"; is ND kind of unique in our restriction.

Sen. Judy Lee: Yes.

Ch. Hogue: What do the other states do that we're not doing. What barrier are we putting up?

Sen. Judy Lee: Most states permit this to be done. The Wine Institute did assist last time in trying to develop the language. I recognize that the Tax Dept. trying to be responsible in making sure that there isn't problem with people receiving an alcoholic beverage that shouldn't. I support that concept. The people are getting a ping, as you see from the legislation if you look up what the statute is, for paying a fee in order to be able to ship. They agreed to pay the tax, so that's not even the issue. Most states, in fact, there was just something on the news about MA having liberalized their law, and it on the national news about the fact that they can now ship in, in a way which we've

been trying to do here since 2005. It does not mean that there's been any significant reduction in the sale of wine through local businesses in ND. The alcohol tax collections are up. It's not even a financial issue at all. There has got to be a simpler way to do this. We shouldn't be interfering with the ability to ship. The other thing is that we have small wineries in ND, who also would like to be able to ship the other direction.

Sen. Luick: Is that part of the problem right now, we cannot ship out of the state of ND also.

Sen. Judy Lee: We have probably taken care of that part. I haven't had any of the vintners in ND talk to me this time about this; I'm thinking that maybe we've gotten that resolved. That was part of our effort before, to make sure we were solving it for them. If they were big enough they would have the same problem if they used a fulfillment house to ship.

Sen. C. Nelson: Is this also a problem with TSA. We used to be able to go to CA and bring back 4 pack of wine, and carry it on. You can't do that anymore, if it's more than 3 oz.

Sen. Judy Lee: That has exacerbated the problem, yes. We used to be able to carry it on and you can't do that anymore. This is a first world problem; I'm the first to admit.

Ch. Hogue: Thank you. Further testimony in support.

Arik Spencer, ND Motor Carriers Association: Support. We're the state trade association for the trucking industry in ND. We have about 320 members that come from a variety of different segments of our industry. There are about 16 of those members who fall into the less than truckload category. That's the segment of our membership who would make this kind of shipment from a winery or a business to a consumer. Sen. Lee referenced UPS and FedEx; they are two of the biggest and well-known companies. There are a number of others, MME, Cross Country Courier; those are both ND based businesses that have regional transportation. They work with partners across the country to do this very thing. Of those, in visiting with the Tax Dept., only one has a license as a carrier to make these kinds of shipments. The reason is for the most part, is our members' feel that the laws are much too restrictive and onerous on business to comply with. Sen. Judy Lee's bill addresses some of those issues in terms of the wineries or the third party shipper. The number that they have to have for the business license registered with the Tax Dept.

to collect that at the time of pick-up or when an order is called in, is not always possible. UPS has made the investment to do that. Not all companies have the ability to do that. It takes software changes, takes capital to make those changes, and with the number of shipments coming into the state, there just isn't the volume and the market in that to make that kind of investment for just ND. One comment on the language in the bill, some of the changes talk about "may" not required or "may include". That doesn't seem to be prescriptive and leave some wiggle room, where they may still do it. I don't know if it should say "shall" or not. Either of the changes though here, it will not increase by one shipper the number of people willing to do this kind of work. If you look at page 2 of the bill, lines 7, if we don't collect the licensed shipper's number or logistics shipper number, we're subject to penalties. Those penalties are for first violation, cease and desist order and a \$100 fine per shipment. On a second violation, it moves to a class A misdemeanor and I assume the fine still applies. On a subsequent violation after that, it is a class C felony and a \$500 fee per shipment. We report to the Tax Dept monthly. Of all our shipments if a winery, for whatever reason, gives us a false number, or lies about the number, we could be subject to serious fines, even on a first offense, when you're making 10 or 20 shipments from that winery in a given month. I will say that the Tax Dept to my knowledge they haven't levied any fines. They've been very good to work with, flexible. This is the letter of the law and they are operating within the letter of the law. This is a good step forward, but in reality without changing the fine structure and fee structure, it won't make any difference. We feel that reporting the names of the wineries that we carry product from and the Tax Dept notifies us that they are unlicensed, we will notify that winery, and that we won't be able to ship for them anymore. That's not the case today.

Ch. Hogue: You mentioned the penalties on page 2, do you have any suggested language that you would like the committee to consider.

Arik Spencer: I have a suggestion from FedEx that I can submit to the committee, "a licensed alcohol carrier shall, upon notice from the Tax Commissioner of the shippers that are unlicensed, notify said shippers, they must cease tendering packages to carriers until the license is obtained by said shipper". That may need some modification but essentially if the Tax Dept tells us that they are not licensed, we will stop shipping from them until they comply. One of the members said to me that he feels like this makes our carriers the Tax Dept police. That's the feeling, that the enforcement burden has almost been put on us.

Ch. Hogue: Please give a copy to the intern.

Sen. C. Nelson: Isn't this kind of a backwards way to go at it, those who aren't, rather than these guys are. Here FedEx, here is the list of approved wineries, rather than putting it on FedEx to submit the names of wineries and have them say yes or no. I think we should go at it proactively instead of reacting.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony.

Blane Braunberger, ND Tax Dept. Compliance Supervisor: I oversee the alcohol tax collection in our state, as well as the enforcement of the manufacturer wholesalers and other licenses that we distribute and license. The alcoholic carrier area is an area as well as logistics, shippers and our experience has been that in the mid-2000 year, there was the penalty provision in the law as you see it. However, our compliance rate was very dismal, even with the penalty in there, because shippers could ship into the state and basically go under the radar and not have to be licensed with the state and report the applicable taxes, as well as the regulated as the federal government requires alcohol to be regulated. In later of 2000, we became aware of the fact that there was the issue Sen. Lee talks about with the logistics shippers. The way the law was set up initially, it said that it had to be a retailer or a manufacturer in a state of domicile that could ship into ND if they were licensed. That did prohibit the logistics carriers to be involved and that was our intent in 2013, was to allow some flexibility for the direct shippers of wine in other states to use the logistics carrier. At that time, we did include information in there that would assist us in our compliance efforts to determine if direct shippers were licensed when they sent product into the state. Sen. Lee had mentioned earlier, why can't we do the work ourselves instead of putting that responsibility on the carrier. We look at it as somewhat being a partnership with the alcohol carrier and our office. We do have on our website that information that is available of all the different license categories that have complied with the law and are licensed. That information is available. Just to give you an idea of what we're talking here, in March 2013, we had roughly 700 shipments into ND of alcohol through the direct shipping area. Of those nearly 700 shipments, almost 200 of them were from unlicensed carriers. About a quarter, 26% was from unlicensed carriers that were not complying with the law. Even though the penalty provision was in there at the time. After the law went into effect in August 2013, we did another analysis in March. The number of shipments that UPS showed us and because their main

competitor FedEx was not choosing to be a licensed carrier, UPS shipments went up drastically to almost 1900 shipments by March 2014. Of those shipments, only 88 were from unlicensed carriers or 4.7%. In looking at another snapshot of shipping activity in November of 2014, which was during the busy holiday season, UPS showed again another 2000 shipments but their compliance continues to improve, we only had 30 unlicensed direct shippers, or 1.5% of the total shipments. This bill would basically prohibit our office from doing any compliance on the direct shipper activity because we would not have any name or license information. The purpose of the license is for us to know if there are different types of wineries out there that operate under multiple trade names in different locations. It's difficult to compare all those and to find out if somebody is, in fact, licensed or not. That's why we request that. The state of NH does require similar information; however, they have chosen through their alcohol beverage control agency, to basically have their own person on staff do all the leg work; that's all they do, monitor their licensed databases and determines if someone is or is not licensed. They look up the license number. We just don't have the staff to do those ourselves. The process now is working well with UPS, they've been very conscientious and we felt that we had overcome the obstacles several times with their named competitor. We've met with them three times and tried to come to a working arrangement with them to phase in that information and we were told that they could work with us and that they would go back and check with their company and then respond back to us. On two different occasions we didn't even get a response back from them, even after asking them a second follow-up to let us know if there was something we could do, if there was some misunderstandings or whatever. We just haven't gotten any cooperation from them to try to come to an agreement where we could work with this.

Ch. Hogue: Did you hear the proposed amendment from the representative of Motor Carriers and if so, what did you think of that amendment.

Blane Braunberger: I think that does have merit. If we don't have the ability to know the name of the direct shipper and their license number, it's going to seriously cripple us from doing any compliance work to see who is shipping alcohol into the state. Now, one thing that has been said is that these carriers shouldn't be the enforcer for the Tax Commissioner. These carriers, we've been told, do require TTB information about those carriers. They have to do that for federal purposes. Their federal basic permit that they have to take out before they can become a direct shipper. They do maintain records for the federal government and we try to see if there is any way that that would be

acceptable for us as a cross-check but that isn't something that we can use to cross check now. We haven't used the law penalty area because we felt that our experience has been since it's been in place and we've been able to get the license number in conjunction with the name. We feel it's been very effective where we can check the monthly report, see who isn't licensed on the carrier's report and send them a letter that they need to cease from further shipments unless they get licensed, and we have been getting that compliance. I think our numbers show that, that we're getting that compliance and we haven't had to go and assess these penalties for the issue of illegal shipments.

Ch. Hogue: I'm hearing from you that the regulatory concern is really the collection of the tax and not necessarily the alcohol being delivered to somebody under the age of 21, or being shipped by someone under the age of 21. It's more the tax issue.

Blane Braunberger: That is correct. When this direct shipper law was put into place, there was obvious concern about the three-tiered system being broken down with the manufacturer, the wholesaler, and the wholesaler selling through the retailer. One thing that the wholesalers, both the liquor and beer, when that bill was being proposed they shared their concerns with us. We're concerned because of whether there was going to be compliance or not and whether these direct shippers would be paying the wholesale tax and also the retail tax that the wholesalers and the ND retailers charge the customer and pay. We told them that we would be able to perform compliance checks and we did the best we could. As you can see, the 26%, that's pretty high error rate at that time, but it is continuing to get better with the system we do have in place.

Sen. C. Nelson: How much is the license.

Blane Braunberger: The license for direct shipper is \$50.00 annually per calendar year. For the alcohol carrier and logistic shipper, those are both \$100.00 per year.

Sen. C. Nelson: So why are they fussing; they could take that in one shipment.

Blane Braunberger: I don't know. I can't speak for FedEx. The first meeting we had was with representatives from both of the major carriers. It was a business choice I presume of whether one wanted to adjust their records to

put it in and the other one choosing not to. There was concern expressed about the penalty side; however, we provided information to them how we plan to address the penalty issue and at what point we would institute it after working with the direct shipper so that they would know that they weren't going to be nailed with penalties. We were willing to work with them.

Sen. Armstrong: Is the criminal penalty needed anymore. Has it ever been implemented?

Blane Braunberger: It has not.

Sen. Armstrong: Would a civil penalty be better. Who can get charged with this?

Blane Braunberger: Actually it is at both tier levels, the direct shipper because their violation on subsection 3, as well as the carrier, the UPS/FedEx and the logistic company if they were being used. Any one of the three could be charged.

Sen. Armstrong: I know the felony is after X number of offenses; regardless of a misdemeanor you are charging a corporation. I would think that is problematic on another level for various reasons. If we remove the criminal penalty either a) just remove them or b) replace them with some kind of civil fine or something of that nature. It may, at least, get us moving in the right direction. Corporations and anybody looking at something, look at the fact that they could be charged with a felony, not the affirmation "yeah, but we don't really do that". People change but the law stays the same.

Ch. Hogue: Thank you. Further neutral testimony relative to SB 2324. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2324
2/10/2015
23567

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will take a look at SB 2324.

Sen. C. Nelson: There is a history to this bill. In the past, we had the bill where the dealers, retailers, and intermediaries were all at each other's throats, and it went on for two sessions and then it came to this committee dealing with the wine and who was going to pay the tax. I think they finally settled it amongst themselves instead of the legislature figuring it out.

Sen. Armstrong: I brought amendments to this bill, 15.0920.01001 (explained the amendment, see attached 1). No one has been charged with the crime. This bill isn't against individuals it's the corporations. I asked if we removed the criminal sanctions, and we are talking about Federal Express, would that help. They said they thought it would help. I worked with the Tax Dept. with the language. The key for the Tax Dept. is on page 2, lines 13-15. That was the language that was removed in the original incarnation of the bill and that's the language that they had trouble with. They really want that language to stay in the bill. We're trying to solve the problem, but we are trying to do it in a different way. The civil penalties are more appropriate for corporations or for a violation like this. If you removed the felony (they said they had never charged anybody with a misdemeanor, let alone a felony). There is some information out there that because the word "felony" is involved it may be a significant reason as to why FedEx won't do it as to the potential consequence for it. The removal of lines 17-20 was at the request of Tax Commissioner, I don't know why.

Ch. Hogue: Where did we get those dollar amounts for the civil penalties? You have the Tax Commissioner "shall" assess. Is that the preferred language that you want?

Sen. Armstrong: I'm comfortable with the language.

Sen. Grabinger: Was there any contact with any shippers to see if this acceptable.

Sen. Armstrong: I know that the Motor Carriers were contacted about these amendments; I did not call FedEx. Hopefully this might solve the problem with the shippers. At the end of the day, FedEx is going to make its own decision regardless of whatever we do. This is clearing up some of the problem language that they had been told from FedEx, whether it clears it up enough that they'll do it, I don't know. It's a more accurate penalty in the depiction of how the Tax Dept. assesses penalties anyway.

Sen. C. Nelson: Did you run this by Sen. J. Lee.

Sen. Armstrong: She saw the amendment, yes.

Ch. Hogue: In regard to Sen. Grabinger's question, I thought that Mr. Rouse indicated that he had spoken to a representative of FedEx. Before the session started, they specifically came to Bismarck to talk about this issue. He indicated that their biggest issue was the criminal sanctions for violating this provision. I don't know how they feel about civil penalties as compared to criminal penalties. Hopefully this takes care of the problem.

Sen. Casper: I move the amendments, 15.0920.01001.

Sen. Luick: Second the motion.

Ch. Hogue: We will take a voice vote; motion carried. We now have the bill before us as amended.

Sen. Casper: I move Do Pass as amended.

Sen. Luick: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Ch. Hogue

February 10, 2015

JP
2/10/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2324

Page 1, line 1, replace "subsection" with "to amend and reenact subsections 3 and"

Page 1, line 2, after "state" insert "; and to provide a penalty"

Page 1, line 4, replace "Subsection" with "Subsections 3 and"

Page 1, line 5, replace "is" with "are"

Page 1, after line 5, insert:

"3. For a first violation of subsection 1 or 2, the tax commissioner shall notify, by certified mail, the person and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2 and shall assess a civil penalty of one hundred dollars for each illegal shipment. TheFor a second violation of subsection 1 or 2 is a class A misdemeanor, the tax commissioner shall assess a civil penalty of two hundred dollars for each illegal shipment. AnyFor any subsequent violation of subsection 1 or 2 is a class C felony and, the tax commissioner shall assess a civil penalty of five hundred dollars for each illegal shipment."

Page 1, line 19, remove "may"

Page 1, line 19, remove the overstrike over "~~the license number and name~~"

Page 1, remove the overstrike over line 20

Page 1, line 21, remove the overstrike over "~~logistics shipper,~~"

Page 1, line 23, remove "The tax commissioner may not require the records to include the"

Page 1, remove line 24

Page 2, line 1, remove "shipper."

Page 2, line 8, overstrike "For a violation, the licensed alcohol carrier is subject to"

Page 2, line 9, overstrike "the penalties in subsection 3" and insert immediately thereafter: "If the tax commissioner has provided notice to a licensed alcohol carrier that a direct shipper is not licensed, the licensed alcohol carrier must notify the direct shipper that it will not ship additional alcoholic beverages for the unlicensed direct shipper until the direct shipper obtains the required license. For each shipment made by a licensed alcohol carrier for an unlicensed direct shipper more than fifteen days after receiving notice from the tax commissioner, the licensed alcohol carrier is subject to the penalties under subsection 3. Any assessed penalty may be waived by the tax commissioner for good cause upon request by the licensed alcohol carrier"

Renumber accordingly

Date: 2/10/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 2324

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15.0920.01001 02000

Recommendation: Adopt Amendment

Do Pass Do Not Pass Without Committee Recommendation

As Amended Rerefer to Appropriations

Place on Consent Calendar

Other Actions: Reconsider _____

Seconded By

Motion Made By Sen. Casper Sen. Luick

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion Carried.

Date: 2/10/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2324

Senate

JUDICIARY

Committee

Subcommittee

Amendment LC# or Description: 15.0920.01001 02000

Recommendation: Adopt Amendment

Do Pass Do Not Pass Without Committee Recommendation

As Amended Rerefer to Appropriations

Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Casper Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Hogue

REPORT OF STANDING COMMITTEE

SB 2324: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2324 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection" with "to amend and reenact subsections 3 and"

Page 1, line 2, after "state" insert "; and to provide a penalty"

Page 1, line 4, replace "Subsection" with "Subsections 3 and"

Page 1, line 5, replace "is" with "are"

Page 1, after line 5, insert:

- "3. For a first violation of subsection 1 or 2, the tax commissioner shall notify, by certified mail, the person and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2 and shall assess a civil penalty of one hundred dollars for each illegal shipment. ~~The~~For a second violation of subsection 1 or 2 is a class A misdemeanor, the tax commissioner shall assess a civil penalty of two hundred dollars for each illegal shipment. Any~~For any subsequent violation of subsection 1 or 2 is a class C felony and,~~ the tax commissioner shall assess a civil penalty of five hundred dollars for each illegal shipment."

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Page 2, line 1, remove "shipper."

Page 2, line 8, overstrike "For a violation, the licensed alcohol carrier is subject to"

Page 2, line 9, overstrike "the penalties in subsection 3" and insert immediately thereafter: "If the tax commissioner has provided notice to a licensed alcohol carrier that a direct shipper is not licensed, the licensed alcohol carrier must notify the direct shipper that it will not ship additional alcoholic beverages for the unlicensed direct shipper until the direct shipper obtains the required license. For each shipment made by a licensed alcohol carrier for an unlicensed direct shipper more than fifteen days after receiving notice from the tax commissioner, the licensed alcohol carrier is subject to the penalties under subsection 3. Any assessed penalty may be waived by the tax commissioner for good cause upon request by the licensed alcohol carrier."

ReNUMBER accordingly

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

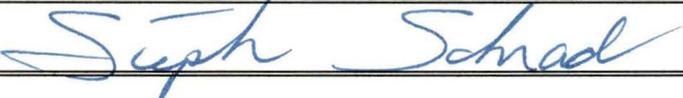
SB 2324

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2324
3/10/2015
Job # 24553

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to out-of-state shipments of alcohol to customers in this state; and to provide a penalty.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing.

Senator Lee~District 13: Explains bill and amendments.

Representative Ruby: Mainly what was stricken was references to the shipper and the license number, was that mainly to address the fulfillment house situation so that they could ship from there?

Senator Lee: I asked to have it drafted so that the shipper isn't required to keep a log on this stuff. They did eliminate the penalties in the senate, which were federal penalties.

Representative Devlin: UPS didn't have the problem but Fed Ex does.

Senator Lee: Correct.

Arik Spencer~North Dakota Motor Carriers Association: (Attachment 1).

Representative Hanson: The changes you're suggesting on page 2 of the amendments, why were these not suggested in the Senate?

Spencer: We talked about some of these issues. The tax department proposed some changes. I took them back to our members, we weren't able to get the feedback I needed in time for action in the Senate. Since then, I've gotten feedback that allows us to drill into what really needs to be done. We feel that these are the minimum things that need to happen for Fed Ex and others to consider it.

Representative Hanson: So you're saying that these were not considered in the Senate simple because of time constraints with your clients?

Spencer: That's correct.

Representative Ruby: Have you gotten any information from Fed Ex that they would consider taking on these types of shipments if these changes were made.

Spencer: Yes.

Representative Louser: How many customers in North Dakota are we talking about that can't find wine at a retailer and are doing this?

Spencer: I don't know the answer, but the tax department said there were 4,000 shipments made into the state of North Dakota the month of December. This isn't just wine, it affects beer too.

Representative Lefor: Have you had discussions with other state's motor carriers associations as to how it's done in their states?

Spencer: Yes, there are some states more strict and some states less strict.

Representative Hanson: Do you happen to know how our neighbor states compare?

Spencer: I do not.

Pat Ward~ ND Whole Sale Liquor Dealers: We collect and pay the tax directly to the tax department on all alcohol that comes in from out of state. Our concern is that if you water down this bill too much there will be an opportunity for people to not comply and pay the tax. We feel that it's important to have a level playing field.

Blaine Braunberger~Supervisor, Alcohol Taxes-Tax Commissioner's Office: I'm here for any questions.

Representative Ruby: Have you seen the amendment that was offered by Arik Spencer?

Braunbergerberger: About two minutes ago, so may not have any input.

Representative Ruby: Does the tax department have an issue with removing the requirement that the carrier obtain the license number?

Braunbergerberger: I'd like to answer by giving some brief history. When the 2013 session passed the law that required the licensing for the carriers and the logistics shippers, we met with the largest carriers; Fed Ex and UPS, we were told at that time it wasn't an issue because everybody that comes to them and sets up an account to ship has to file an agreement with them that says they will abide by all federal and state laws. We found that even though those documents were signed with the alcohol carriers in good faith that the compliance end of it was not being handled properly by the carriers. We asked the carriers and the logistics companies to have the information, to require that number. Even though the penalties are there for illegally shipping a product that hasn't been registered by

the carrier, we do not impose a penalty at the initial shipment. UPS, the only one shipping, provides the information to us and indicates that they are shipping for an unlicensed carrier. We send a letter to that carrier that tells them to cease and desist from further shipments to North Dakota. We provide UPS with the same information. From that point on we get compliance. Prior to the law going into effect, they had only 690 shipments in March 2013 that showed a 26% noncompliance. After the law changed, in March of 2014, their shipments had gone up almost 300%; they had nearly 1900 shipments and the noncompliance rate had gone down to under 5%. We looked at Dec. 2014 there were nearly 3600 shipments into North Dakota and a noncompliance of 1.4%. It's a process that we feel is working. We feel having the information does allow us to have the compliance information.

Representative Ruby: I don't consider it working well when we only have one shipper that's willing to do it. Additionally, don't you think you'd be able to glean a lot of information just with the name of the company and what's being shipped, rather than also getting the license number?

Braunbergerberger: Prior to 2011, we had the option of doing a name search. The problem is that a lot of companies have different trade mark names so it takes a lot of time to search them out verses if you have an actually license number.

Representative Ruby: Do you require the fulfillment house to be licensed to ship into the state?

Braunbergerberger: Yes, that was the change in the 2011 session.

Representative Ruby: If a fulfillment house shipped for several wineries you could trace it with the license number?

Braunbergerberger: Yes. We have a list of the direct shippers that are the licensed in North Dakota on our website.

Representative Beadle: I know you can order wine from Amazon, does their distribution center qualify as a fulfillment house and would they have to be licensed?

Braunbergerberger: I'm not sure.

Chairman Keiser: How do you collect the tax?

Braunbergerberger: The license for the direct shipper entitles them to ship into the state but it requires them to pay the wholesale gallonage tax. Because they are jumping the tiers of how we normally collect the tax they have to pay the 7% gross receipt sales tax.

Chairman Keiser: They remit that at the end of the year?

Braunbergerberger: Usually.

Chairman Keiser: Have you done an analysis on the cost of the transportation because of the limited access? Is there any advantage to open it up to different shippers?

Braunbergerberger: We have tried to work with Fed Ex, in all situations they were going to get back to us and they never responded back.

Chairman Keiser: Have you come up with any solution other than what we have?

Braunbergerberger: Not at this point, unless we get additional staff, it's pretty difficult.

Chairman Keiser closes hearing.

Representative Ruby: Hold the bill.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2324
3/11/2015
24692

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Relating to out-of-state shipments of alcohol to customers in this state; and to provide a penalty.

Minutes:

Chairman Keiser: Opens the work session on SB 2324.

Representative Ruby: We received a **proposed amendment from Spencer from the motor carriers**, I've read it over several times and I don't think there is any problem with it that it does remove the requirement for the carrier to ask for the license number. It does require the name, date, the recipient's name and address and all information that they still have to provide and file that form with the tax department. The intent of the bill was to put the onerous back on the tax department to be the enforcer and not require the carriers to do it because that was their issue. I asked about a commitment from at least one more carrier, which would be Fed Ex, if they would start accepting those types of shipments if this change were made. **Moves the amendment.**

Representative Boschee: Seconded.

Representative Boschee: As we talk about this amendment, the concern the tax commissioner had as far as tracking down these taxes, is it specifically because it's alcohol? When I buy for example t-shirts, I don't pay taxes when I order it on line.

Chairman Keiser: There is a state law that requires you to pay tax on that. None of us do. Liquor is a separate issue because there is a much higher tax.

Representative Boschee: My experience is that in Fargo, we have a little Havana over in Moorhead where the Fed Ex shop is where everyone ships it to. Minnesota is getting all of those taxes.

Representative Ruby: The other difference is there is a three tier system with alcohol so you get the retail and the whole sale tax as well. When I asked Blaine, the carrier can get the fulfillment house's permit number that tax department could easily determine whether

they have one or not. I don't think it's that onerous for the tax department to do that. They do it for all the other taxes.

Representative Beadle: Does this finally solve Fed Ex's issues.

Chairman Keiser: That's what the North Dakota Motor Carriers Association representative said.

Representative Beadle: If they come back with the bill next session to continue to solve this, what do we have to go through just to subpoena the Fed Ex attorney to answer us?

Chairman Keiser: Legislature can subpoena.

Voice vote, motion carried.

Chairman Keiser: What are the wishes of the committee?

Representative Ruby: Moves a Do Pass as Amended.

Representative Boschee: Second.

Roll call was taken on SB 2324, for a Do Pass as Amended with 13 yes, 0 no, 2 absent and Representative Ruby will carry the bill.

March 11, 2015

SAC
3/11/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2324

Page 2, line 4, overstrike "license number and"

Page 2, line 5, overstrike "license number and"

Page 2, line 15, overstrike "A licensed alcohol carrier may not ship alcoholic beverages received from an"

Page 2, line 16, overstrike "unlicensed direct shipper."

Page 2, line 19, remove "it will not ship additional alcoholic"

Page 2, remove lines 20 through 23

Page 2 line 24 replace "subsection 3" with "the direct shipper must obtain a direct shipper permit before tendering packages to the licensed alcohol carrier for delivery"

Renumber accordingly

Date: Mar 11, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2324

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

adopt the ND Carrier's Amendment
voice vote, motion carries

Date: Mar 11, 2015

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2324

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson	x	
Representative Kasper	Ab		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2324, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2324 was placed on the Sixth order on the calendar.

Page 2, line 4, overstrike "license number and"

Page 2, line 5, overstrike "license number and"

Page 2, line 15, overstrike "A licensed alcohol carrier may not ship alcoholic beverages received from an"

Page 2, line 16, overstrike "unlicensed direct shipper."

Page 2, line 19, remove "it will not ship additional alcoholic"

Page 2, remove lines 20 through 23

Page 2 line 24 replace "subsection 3" with "the direct shipper must obtain a direct shipper permit before tendering packages to the licensed alcohol carrier for delivery"

Renumber accordingly

2015 TESTIMONY

SB 2324

Sen Armstrong
2-10-15
#1-1

PROPOSED SENATE BILL NO. 2324

1 A BILL for an Act ~~subsection~~to amend and reenact subsections 3 and 6 of section 5-01-
2 16 of the North Dakota Century Code, relating to out-of-state shipments of alcohol to
3 customers in this state.

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

5 **SECTION 1. AMENDMENT.** Subsection 3 of section 05-01-16 of the North
6 Dakota Century Code is amended and reenacted as follows:

7 3. For a first violation of subsection 1 or 2, the tax commissioner shall notify,
8 by certified mail, the person and order that person to cease and desist
9 any shipment of alcoholic beverages in violation of subsection 1 or 2 and
10 shall assess a civil penalty of one hundred dollars for each illegal
11 shipment. ~~The~~ For a second violation of subsection
12 1 or 2 is a class A misdemeanor., the tax commissioner shall assess a
13 civil penalty of two hundred dollars for each illegal shipment. ~~Any~~ For any
14 subsequent violation of subsection 1 or 2 is a class C felony and, the tax
15 commissioner shall assess a civil penalty of five hundred dollars for each
16 illegal shipment.

17 **SECTION 1 AMENDMENT.** ~~Subsection~~Subsections 3 and 6 of section 05-01-16
18 of the North Dakota Century Code ~~is~~are amended and reenacted as follows:

19 6. A licensed alcohol carrier may ship alcoholic beverages into, out of, or
20 within this state. A licensed alcohol carrier shall pay an annual fee of one
21 hundred dollars and obtain a license on an application form provided by
22 the tax commissioner and subject to any requirements determined by the

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tax commissioner.

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

b. A licensed alcohol carrier shall maintain records of alcoholic beverages shipped into, out of, or within this state which may include the license number and name of the licensed direct shipper, the license number and name of any licensed logistics shipper, the date of each shipment, the recipient's name and address, and an electronic or paper form of signature from the recipient of the alcoholic beverages. The tax commissioner may not require the records to include the license number and name of the licensed direct shipper or any licensed logistics shipper. A licensed alcohol carrier shall submit a report to the tax commissioner on a monthly basis in the form and format prescribed by the tax commissioner. The report is due on the last day of the month following the month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the

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first_working day after the due date. The tax commissioner may require that the report_be submitted in an electronic format approved by the tax commissioner.

- c. A licensed alcohol carrier may not ship alcoholic beverages received from an unlicensed direct shipper. ~~For a violation, the licensed alcohol carrier is subject to the penalties in subsection 3.~~ If the tax commissioner has provided notice to a licensed alcohol carrier that a direct shipper is not licensed, the licensed alcohol carrier must notify the direct shipper that it will not ship additional alcoholic beverages for the unlicensed direct shipper until the direct shipper obtains the required license. For each shipment made by a licensed alcohol carrier for an unlicensed shipper more than fifteen days after receiving notice from the tax commissioner, the licensed alcohol carrier will be subject to the penalties under subsection 3. Any assessed penalty may be waived by the tax commissioner for good cause upon request by the licensed alcohol carrier.

SB 2324
2/10/15

3/10/15

TESTIMONY OF ARIK SPENCER
SENATE BILL 2324
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

Mr. Chairman and members of the House Industry, Business and Labor Committee my name is Arik Spencer, executive vice president of the North Dakota Motor Carriers Association. I am here this morning to testify in support of what Engrossed Senate Bill 2324 is trying to achieve, which is allowing North Dakota Consumers to get the products they want.

Engrossed Senate Bill 2324 is an attempt to foster a better business climate to attract more companies to engage in the direct shipment of alcohol to a consumer. In reality though, SB 2324 will do little to attract more carriers because of the burdensome regulations that a direct carrier must comply with.

Currently when a ND resident wants to have a case of wine shipped to their home from out of state, the winery must be licensed as a direct alcohol shipper with the Tax Department. If the winery uses a 3rd party logistics shipper to fulfill the order, the logistics shipper must be licensed as an alcohol logistics shipper with the Tax Department. Finally, the trucking company who brings the product to the consumer must also license as an alcohol carrier with the Tax Department.

Trucking companies who will make this type of delivery are less than truck load carriers. These are large national companies like UPS and Fed Ex as well as ND based companies such as Midwest Motor Express and Cross Country Courier. The North Dakota Motor Carriers Association has 17 less than truck load carriers, of those only one, UPS, is licensed with the tax department as an alcohol carrier.

The regulations that have prevented carriers from engaging in this type of shipment and that need to be addressed to increase alcohol shipments to North Dakota consumers or to ship alcohol produced in ND to consumers in other states include:

- First, changing the criminal penalties for noncompliance to civil penalties which this bill does.
- Second, the requirement that a alcohol carrier get the license number of the direct shipper must be removed (SB 2324 page 2, lines 4-5). This is important because a carrier may not always be able to capture this information in real time when the shipment is picked-up or when a shipment is scheduled for pick-up. The relatively low volume of alcohol shipments and low profit margins on these deliveries do not justify the software investment carriers need to make to capture this information. As you can see from the Tax Department's Alcohol Carrier monthly reporting form (attached), there would still be ample information submitted without the license numbers to allow for compliance.
- Finally, we have a general concern with the regulatory environment created by N.D.C.C. 5-01-16, which essentially makes the carrier a compliance officer for the tax department. When a shipper elects to use a carrier, the shipper must sign an alcohol shipping agreement, stating that the shipper must comply with all state and federal laws. If for whatever reason the shipper is in non-compliance with ND laws, carriers should not be held liable.

NDMCA encourages a regulatory environment in which more than one company can participate, balanced against the regulatory and compliance desires of the State. NDMCA has attached language that addresses these concerns and asks for your favorable consideration.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions.

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2324

Introduced by

Senators J. Lee, Murphy, Poolman

Representatives Keiser, Schreiber Beck

A BILL for an Act to amend and reenact subsections 3 and 6 of section 5-01-16 of the North Dakota Century Code, relating to out-of-state shipments of alcohol to customers in this state; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 6 of section 5-01-16 of the North Dakota Century Code are amended and reenacted as follows:

3. For a first violation of subsection 1 or 2, the tax commissioner shall notify, by certified mail, the person and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2 and shall assess a civil penalty of one hundred dollars for each illegal shipment. ~~The~~For a second violation of subsection 1 or 2 is a class A misdemeanor, the tax commissioner shall assess a civil penalty of two hundred dollars for each illegal shipment. Any~~For any subsequent violation of subsection 1 or 2 is a class C felony and,~~ the tax commissioner shall assess a civil penalty of five hundred dollars for each illegal shipment.
6. A licensed alcohol carrier may ship alcoholic beverages into, out of, or within this state. A licensed alcohol carrier shall pay an annual fee of one hundred dollars and obtain license on an application form provided by the tax commissioner and subject to any requirements determined by the tax commissioner.
 - a. A licensed alcohol carrier shall ensure all containers of alcoholic beverages shipped directly to an individual in this state are labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A licensed alcohol carrier may not deliver alcoholic beverages to a person under twenty-one years of age, or to a person who is or appears to be in an intoxicated state or condition. A licensed alcohol carrier shall obtain valid proof of identity and

age before delivery and shall obtain the signature of an adult as a condition of delivery.

- b. A licensed alcohol carrier shall maintain records of alcoholic beverages shipped into, out of, or within this state which include ~~license number and~~ the name of the licensed direct shipper, ~~license number and~~ the name of any licensed logistics shipper, the date of each shipment, the recipient's name and address, and an electronic or paper form of signature from the recipient of the alcoholic beverages. A licensed alcohol carrier shall submit a report to the tax commissioner on a monthly basis in the form and format prescribed by the tax commissioner. The report is due on the last day of the month following the month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the due date. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
- c. ~~A licensed alcohol carrier may not ship alcoholic beverages received from an unlicensed direct shipper. For a violation, the licensed alcohol carrier is subject to the penalties in subsection 3. If the tax commissioner has provided notice to a licensed alcohol carrier that a direct shipper is not licensed, the licensed alcohol carrier must notify the direct shipper that the direct shipper must obtain a direct shipper permit before tendering packages to the licensed alcohol carrier for delivery. it will not ship additional alcoholic beverages for the unlicensed direct shipper until the direct shipper obtains the required license. For each shipment made by a licensed alcohol carrier for an unlicensed direct shipper more than fifteen days after receiving notice from the tax commissioner, the licensed alcohol carrier is subject to the penalties under subsection 3. Any assessed penalty may be waived by the tax commissioner for good cause upon request by the licensed alcohol carrier.~~