

HOUSE BILL NO. 1146

Introduced by

Representative Rick C. Becker

1 A BILL for an Act to amend and reenact subsections 5 and 8 of section 5-01-01 and sections
2 5-01-16 and 5-02-01 of the North Dakota Century Code, relating to direct shipment of alcoholic
3 beverages from out of state to a retail licensee; and to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Subsections 5 and 8 of section 5-01-01 of the North Dakota
6 Century Code are amended and reenacted as follows:

7 5. "Direct shipper" means a person that is licensed by the commissioner and ships or
8 causes to be shipped alcoholic beverages directly into this state to a consumer for the
9 consumer's personal use and not for resale or to a retail licensee.

10 8. "Licensed alcohol carrier" means a person licensed to transport or deliver alcoholic
11 beverages to a consumer or to a retail licensee without first having the alcoholic
12 beverage delivered through a wholesaler licensed in this state.

13 **SECTION 2. AMENDMENT.** Section 05-01-16 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **5-01-16. Direct sale from out-of-state person to consumer or retail licensee - Penalty.**

16 1. A person in the business of selling alcoholic beverages may not knowingly or
17 intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state
18 location directly to a person in this state who is not a licensed wholesaler in this state.

19 2. A person in the business of transporting goods may not knowingly or intentionally
20 transport, or cause to be transported, any alcoholic beverage directly to a person in
21 this state who is not a licensed wholesaler in this state.

22 3. For a first violation of subsection 1 or 2, the tax commissioner shall notify, by certified
23 mail, the person and order that person to cease and desist any shipment of alcoholic
24 beverages in violation of subsection 1 or 2 and shall assess a civil penalty of one

1 hundred dollars for each illegal shipment. For a second violation of subsection 1 or 2,
2 the tax commissioner shall assess a civil penalty of two hundred dollars for each illegal
3 shipment. For any subsequent violation of subsection 1 or 2, the tax commissioner
4 shall assess a civil penalty of five hundred dollars for each illegal shipment.

5 4. The alcoholic beverage transported in violation of this section and the vehicle used in
6 violation of this section are forfeitable property under chapter 29-31.1.

7 5. This section does not apply to a transaction by a person holding a valid manufacturer's
8 or retailer's license issued by the state of its domicile and if the person obtains a direct
9 shipping license from and on a form prescribed by the tax commissioner before
10 making a shipment. The annual fee for a direct shipping license is fifty dollars.

11 Licensed direct shippers may sell and ship to an individual twenty-one years of age or
12 older 7.13 gallons [27 liters] or less of wine, two hundred eighty-eight fluid ounces
13 [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other
14 alcoholic beverages per month for personal use and not for resale. Licensed direct
15 shippers may sell and ship alcoholic beverages to a retail licensee upon receiving a
16 copy of the certificate issued by the attorney general to the retail licensee under
17 section 5-02-01.

18 a. A direct shipper shall ship all containers of alcoholic beverages shipped directly
19 to a resident of this state or a retail licensee using a licensed alcohol carrier and
20 may cause the alcoholic beverages to be shipped by a licensed logistics
21 company.

22 b. A direct shipper shall label all containers of alcoholic beverages shipped directly
23 to an individual or retail licensee in this state with conspicuous words
24 "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".

25 c. A licensed direct shipper shall report and pay the wholesaler excise tax and
26 retailer sales taxes to the tax commissioner on all alcoholic beverages sold to
27 residents in this state for personal use and not for resale at the rates set forth in
28 sections 5-03-07 and 57-39.6-02. A licensed direct shipper shall report and pay
29 the wholesaler excise tax to the tax commissioner on all alcoholic beverages sold
30 to retail licensees in this state at the rates set forth in section 5-03-07. The excise
31 tax reports are due January fifteenth of the year following the year sales and

1 shipments were made. When the fifteenth day of January falls on a Saturday,
2 Sunday, or legal holiday, the due date is the first working day thereafter. The
3 report must provide such detail and be in format as prescribed by the tax
4 commissioner and include the identification of any logistics or fulfillment houses
5 the licensee used for such shipments. The sales and use tax reports are due as
6 set forth in chapter 57-39.6. The sales and use tax reports must be in a format as
7 prescribed by the tax commissioner. The tax commissioner may require that the
8 report be submitted in an electronic format approved by the tax commissioner.

9 d. All alcoholic beverages that are shipped directly to a resident of this state or retail
10 licensee must be properly registered with the federal alcohol and tobacco tax and
11 trade bureau and must be owned by the licensed direct shipper.

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

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

24 b. A licensed alcohol carrier shall maintain records of alcoholic beverages shipped
25 into, out of, or within this state which include the name of the licensed direct
26 shipper, the name of any licensed logistics shipper, the date of each shipment,
27 the recipient's name and address, and an electronic or paper form of signature
28 from the recipient of the alcoholic beverages. A licensed alcohol carrier shall
29 submit a report to the tax commissioner on a monthly basis in the form and
30 format prescribed by the tax commissioner. The report is due on the last day of
31 the month following the month of shipment. If the due date falls on a Saturday,

- 1 Sunday, or legal holiday, the due date is the first working day after the due date.
- 2 The tax commissioner may require that the report be submitted in an electronic
- 3 format approved by the tax commissioner.
- 4 c. If the tax commissioner has provided notice to a licensed alcohol carrier that a
- 5 direct shipper is not licensed, the licensed alcohol carrier must notify the direct
- 6 shipper that the direct shipper must obtain a direct shipper permit before
- 7 tendering packages to the licensed alcohol carrier for delivery. Any assessed
- 8 penalty may be waived by the tax commissioner for good cause upon request by
- 9 the licensed alcohol carrier.
- 10 7. Licensed logistics shippers must obtain a logistics shipping license from the tax
- 11 commissioner and shall pay an annual fee of one hundred dollars before making or
- 12 causing a shipment.
- 13 a. A licensed logistics shipper shall ensure all containers of alcoholic beverages
- 14 shipped directly to an individual or retail licensee in this state are labeled with
- 15 conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED
- 16 FOR DELIVERY".
- 17 b. All containers of alcoholic beverage shipped directly to a resident of this state or
- 18 retail licensee must be shipped using a licensed alcohol carrier as provided in
- 19 subsection 6.
- 20 c. A licensed logistics shipper shall maintain records of alcoholic beverages shipped
- 21 which include the license number and name of the licensed direct shipper, the
- 22 license number and name of the licensed common carrier, the date of each
- 23 shipment, the quantity and kind of alcohol shipped, and the recipient's name and
- 24 address for each shipment. A licensed logistics shipper shall submit a report to
- 25 the tax commissioner on a monthly basis in the form and format prescribed by
- 26 the tax commissioner. The report is due on the last day of the month following the
- 27 month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday,
- 28 the due date is the first working day after the due date. The tax commissioner
- 29 may require that the report be submitted in an electronic format approved by the
- 30 tax commissioner.

1 d. Licensed logistics shippers may not ship alcoholic beverages from unlicensed
2 direct shippers or through unlicensed carriers. For a violation, a licensed logistics
3 shipper is subject to the penalties in subsection 3.

4 8. The tax commissioner may initiate and maintain an action in a court of competent
5 jurisdiction to enjoin a violation of this section and may request award of all costs and
6 attorney's fees incurred by the state incidental to that action. Upon determination by
7 the tax commissioner that an illegal sale or shipment of alcoholic beverages has been
8 made to a consumer or retail licensee in this state by any person, the tax
9 commissioner may notify both the alcohol and tobacco tax and trade bureau of the
10 United States department of the treasury and the licensing authority for the state in
11 which the person is domiciled that a state law pertaining to the regulation of alcoholic
12 beverages has been violated and may request those agencies to take appropriate
13 action.

14 **SECTION 3. AMENDMENT.** Section 5-02-01 of the North Dakota Century Code is amended
15 and reenacted as follows:

16 **5-02-01. State and local retail license required - Penalty - Exception.**

17 1. Except as otherwise provided in section 5-02-01.1, any person engaging in the sale of
18 alcoholic beverages at retail without first securing an appropriate license from the
19 attorney general and a local license from the governing body of any city, or if the
20 business is located outside the corporate limits of a city, the board of county
21 commissioners or the governing body of an Indian tribe, as the location requires, is
22 guilty of a class A misdemeanor.

23 2. This section does not apply to public carriers engaged in interstate commerce.

24 3. This section does not apply to a nonprofit organization that sells an alcoholic beverage
25 as part of a fundraising activity. As used in this subsection, fundraising activity includes
26 an auction, raffle, or other prize contest for which consideration is given. If the
27 alcoholic beverage is sold as part of a fundraising event, the sale may not be for
28 consumption at that event.

29 4. The attorney general shall issue a certificate to a retail licensee allowing for direct
30 shipment of specified alcoholic beverages from an out-of-state person pursuant to
31 section 05-01-16 if the attorney general determines, based on the receipt of completed

1 forms prescribed by the attorney general, the retail licensee was unable to receive the
2 specified alcoholic beverages from a licensed wholesaler within sixty days from the
3 date the licensed wholesaler received the request from the retail licensee.