

**FIRST ENGROSSMENT
with House Amendments**

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2397

Introduced by

Senators Kringstad, Lyson, Trenbeath

Representatives Cleary, Herbel, Klemin

1 A BILL for an Act to amend and reenact sections 5-01-16 and 5-03-05 of the North Dakota
2 Century Code, relating to direct sales of alcoholic beverages; and to provide a penalty.

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

4 **SECTION 1. AMENDMENT.** If Senate Bill No. 2053 does not become effective,
5 section 5-01-16 of the 1999 Supplement to the North Dakota Century Code is amended and
6 reenacted as follows:

7 **5-01-16. Direct sale from out-of-state seller to consumer - Penalty.**

- 8 1. No person in the business of selling alcoholic beverages may knowingly or
9 intentionally ship, or cause to be shipped, any alcoholic beverage from an
10 out-of-state location directly to a person in this state who is not a wholesaler.
- 11 2. No person in the business of transporting goods may knowingly or intentionally
12 transport any alcoholic beverage, from an out-of-state location of a person in the
13 business of selling alcoholic beverages, directly to a person in this state who is not
14 a wholesaler.
- 15 3. For a first violation of subsection 1 or 2, the state treasurer shall notify, by certified
16 mail, the violator and order that person to cease and desist any shipment of
17 alcoholic beverages in violation of subsection 1 or 2. The second violation of
18 subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is
19 a class C felony.
- 20 4. The alcoholic beverage transported in violation of this section and the vehicle used
21 in 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
23 years of age or older who imports or transports into this state 2.38 gallons [9 liters]
24 or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less

1 of beer per month for personal use and not for resale from a person ~~as described~~
2 ~~under subsection 1 or 2~~ holding a valid manufacturer's or retailer's license issued
3 by the state of its domicile. Every package of alcoholic beverages shipped directly
4 to an individual in this state must be labeled with conspicuous words "SIGNATURE
5 OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall
6 obtain the signature of an individual twenty-one years of age or older before
7 delivering any alcoholic beverages shipped directly to an individual in this state. A
8 manufacturer or retailer selling or shipping alcoholic beverages under this
9 subsection shall obtain a direct shipping license from the state treasurer and pay
10 an annual fee of fifty dollars within thirty days of making the first shipment. A direct
11 shipper shall pay the wholesaler and retailer taxes to the state treasurer on all
12 alcoholic beverages sold to residents in this state at the rates set forth in sections
13 5-03-07 and 57-39.2-03.2. A direct shipper shall file reports with the state
14 treasurer showing for each shipment, the quantity sold, the date shipped, and the
15 amount of tax due the state. A direct shipper is subject to section 5-03-06. The
16 state treasurer may initiate and maintain an action in a court of competent
17 jurisdiction to enjoin a violation of this subsection and may request award of all
18 costs and attorneys' fees incurred by the state incidental to that action. Upon
19 determination by the state treasurer that an illegal sale or shipment of alcoholic
20 beverages has been made to a consumer in this state by either a manufacturer or
21 retailer of alcoholic beverages, the state treasurer may notify both the bureau of
22 alcohol, tobacco, and firearms of the United States department of the treasury and
23 the licensing authority for the state in which the manufacturer or retailer is
24 domiciled that a state law pertaining to the regulation of alcoholic beverages has
25 been violated and may request those agencies to take appropriate action.

26 **SECTION 2. AMENDMENT.** Section 5-01-16 of the North Dakota Century Code as
27 amended and reenacted by Senate Bill No. 2053, as approved by the fifty-seventh legislative
28 assembly, is amended and reenacted as follows:

29 **5-01-16. Direct sale from out-of-state seller to consumer - Penalty.**

- 1 1. No person in the business of selling alcoholic beverages may knowingly or
2 intentionally ship, or cause to be shipped, any alcoholic beverage from an
3 out-of-state location directly to a person in this state who is not a wholesaler.
- 4 2. No person in the business of transporting goods may knowingly or intentionally
5 transport any alcoholic beverage, from an out-of-state location of a person in the
6 business of selling alcoholic beverages, directly to a person in this state who is not
7 a wholesaler.
- 8 3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by
9 certified mail, the violator and order that person to cease and desist any shipment
10 of alcoholic beverages in violation of subsection 1 or 2. The second violation of
11 subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is
12 a class C felony.
- 13 4. The alcoholic beverage transported in violation of this section and the vehicle used
14 in violation of this section are forfeitable property under chapter 29-31.1.
- 15 5. This section does not apply to a transaction in which an individual twenty-one
16 years of age or older who imports or transports into this state 2.38 gallons [9 liters]
17 or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less
18 of beer per month for personal use and not for resale from a person ~~as described~~
19 ~~under subsection 1 or 2~~ holding a valid manufacturer's or retailer's license issued
20 by the state of its domicile. Every package of alcoholic beverages shipped directly
21 to an individual in this state must be labeled with conspicuous words "SIGNATURE
22 OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall
23 obtain the signature of an individual twenty-one years of age or older before
24 delivering any alcoholic beverages shipped directly to an individual in this state. A
25 manufacturer or retailer selling or shipping alcoholic beverages under this
26 subsection shall obtain a direct shipping permit from the state tax commissioner
27 and pay an annual fee of fifty dollars within thirty days of making the first shipment.
28 A direct shipper shall pay the wholesaler and retailer taxes to the state tax
29 commissioner on all alcoholic beverages sold to residents in this state at the rates
30 set forth in sections 5-03-07 and 57-39.2-03.2. A direct shipper shall file reports
31 with the state tax commissioner showing for each shipment, the quantity sold, the

1 date shipped, and the amount of tax due the state. A direct shipper is subject to
2 section 5-03-06. The state tax commissioner may initiate and maintain an action in
3 a court of competent jurisdiction to enjoin a violation of this subsection and may
4 request award of all costs and attorneys' fees incurred by the state incidental to
5 that action. Upon determination by the state tax commissioner that an illegal sale
6 or shipment of alcoholic beverages has been made to a consumer in this state by
7 either a manufacturer or retailer of alcoholic beverages, the state tax commissioner
8 may notify both the bureau of alcohol, tobacco, and firearms of the United States
9 department of the treasury and the licensing authority for the state in which the
10 manufacturer or retailer is domiciled that a state law pertaining to the regulation of
11 alcoholic beverages has been violated and may request those agencies to take
12 appropriate action.

13 **SECTION 3. AMENDMENT.** If Senate Bill No. 2053 does not become effective,
14 section 5-03-05 of the 1999 Supplement to the North Dakota Century Code is amended and
15 reenacted as follows:

16 **5-03-05. Treasurer to ~~enact regulations~~ adopt rules - Appeal.** The state treasurer,
17 pursuant to chapter 28-32, shall adopt rules and regulations governing retailers, wholesalers,
18 direct shippers, and manufacturers necessary to carry out the provisions of this title and to
19 ensure efficient collection of beer and liquor taxes. All decisions of the state treasurer are
20 subject to court review.

21 **SECTION 4. AMENDMENT.** Section 5-03-05 of the North Dakota Century Code as
22 amended and reenacted by Senate Bill No. 2053, as approved by the fifty-seventh legislative
23 assembly, is amended and reenacted as follows:

24 **5-03-05. Tax commissioner to adopt rules - Appeal.** The state tax commissioner,
25 pursuant to chapter 28-32, shall adopt rules governing retailers, wholesalers, direct shippers,
26 and manufacturers necessary to carry out the provisions of this title and to ensure efficient
27 collection of beer and liquor taxes. All decisions of the state tax commissioner are subject to
28 court review.