

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2397
(Senators Kringstad, Lyson, Trenbeath)
(Representatives Cleary, Herbel, Klemin)

AN ACT to amend and reenact sections 5-01-16 and 5-03-05 of the North Dakota Century Code, relating to direct sales of alcoholic beverages; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state treasurer shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.
5. This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person ~~as described under subsection 1 or 2~~ holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state. A manufacturer or retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipping license from the state treasurer and pay an annual fee of fifty dollars within thirty days of making the first shipment. A direct shipper shall pay the wholesaler and retailer taxes to the state treasurer on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and 57-39.2-03.2. A direct shipper shall file reports with the state treasurer showing for each shipment, the quantity sold, the date shipped, and the amount of tax due the state. A direct shipper is subject to section 5-03-06. The state treasurer may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this subsection and may request award of all costs and attorneys' fees incurred by the state incidental to that action. Upon determination by the state treasurer that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by either a manufacturer or retailer of alcoholic beverages, the state treasurer may notify both the

bureau of alcohol, tobacco, and firearms of the United States department of the treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

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

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

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.
5. This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person ~~as described under subsection 1 or 2~~ holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state. A manufacturer or retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipping permit from the state tax commissioner and pay an annual fee of fifty dollars within thirty days of making the first shipment. A direct shipper shall pay the wholesaler and retailer taxes to the state tax commissioner on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and 57-39.2-03.2. A direct shipper shall file reports with the state tax commissioner showing for each shipment, the quantity sold, the date shipped, and the amount of tax due the state. A direct shipper is subject to section 5-03-06. The state tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this subsection and may request award of all costs and attorneys' fees incurred by the state incidental to that action. Upon determination by the state tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by either a manufacturer or retailer of alcoholic beverages, the state tax commissioner may notify both the bureau of alcohol, tobacco, and firearms of the United States department of the treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

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

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2397.

Senate Vote: Yeas 42 Nays 5 Absent 2

House Vote: Yeas 53 Nays 45 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State