

North Dakota Liquor Control Law Reporter, North Dakota, 5-01-16. Direct sale from out-of-state seller to consumer—Penalty



Sec. 5-01-16, as reproduced below, amended by (S.B. 2147), Laws 2013, is effective August 1, 2013.



5-01-16. Direct sale from out-of-state seller to consumer—Penalty.— 1. A person in the business of selling alcoholic beverages may not 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 licensed wholesaler in this state.

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

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 second violation of subsection 1 or 2 is a class A misdemeanor. 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.

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 by a person holding a valid manufacturer's or retailer's license issued by the state of its domicile and if the person obtains a direct shipping license from and on a form prescribed by the tax commissioner before making a shipment. The annual fee for a direct shipping license is fifty dollars. Licensed direct shippers may sell and ship to an individual twenty-one years of age or older 7.13 gallons [27 liters] or less of wine, two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other alcoholic beverages per month for personal use and not for resale.

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

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

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

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

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 a 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 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 quantity of alcoholic beverages shipped, 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.

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

a. A licensed logistics shipper 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".

b. All containers of alcoholic beverage shipped directly to a resident of this state must be shipped using a licensed alcohol carrier as provided in subsection 6.

c. A licensed logistics shipper shall maintain records of alcoholic beverages shipped which include the license number and name of the licensed direct shipper, the license number and name of the licensed common carrier, the date of each shipment, the quantity and kind of alcohol shipped, and the recipient's name and address for each shipment. A licensed logistics shipper 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.

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

8. The tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this section and may request award of all costs and attorney's fees incurred by the state incidental to that action. Upon determination by the tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by any person, the tax commissioner may notify both the alcohol and tobacco tax and trade bureau of the United States department of the treasury and the licensing authority for the state in which the person 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.

[Sec. 5-01-16 amended by L. 2001, Ch. 84 (H.B. 2053); Ch. 86 (S.B. 2397); L. 2005, Ch. 77; L. 2007, S.B. 2135; L. 2009, (H.B. 1087); L. 2013, (S.B. 2147), approved Apr. 1, 2013, effective Aug. 1, 2013.]