

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1325
(Representatives Ruby, Kasper, L. Meier)
(Senators O'Connell, Tollefson)

AN ACT to amend and reenact section 5-01-16 of the North Dakota Century Code, relating to interstate sales of wine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-16 of 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~~ 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 wholesaler.
2. ~~No~~ A person in the business of transporting goods may not 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 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 attorney's 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, firearms and explosives 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.

6. In the alternative to subsection 5 and as a means for allowing reciprocal privilege, this section does not apply to and there are not due any state tax, fees, or other charges for a resident of this state who is at least twenty-one years of age who imports or transports into this state from another state wine for personal use if the state from which the wine is sent allows a resident of that state to receive wine from this state without imposition of state tax, fees, or other charges. A person who receives wine under this subsection may not resell the wine. For tax purposes, receipt of a shipment into this state under this subsection is not a sale in this state. A licensed winery, wholesaler, or retailer in this state may ship wine for personal use and not for resale directly to a resident of another state if the state to which the wine is sent allows residents of this state to receive wine sent from that state without payment of additional state tax, fees, or other charges. For tax purposes, the shipment to another state under this subsection is a sale in this state. The shipping container of any wine sent into or out of this state under this subsection must be labeled to indicate clearly that the container contains alcoholic beverages and may not be delivered to an individual who is under twenty-one years of age. A person in another state may not sell wine for shipment to a person in this state under this subsection in an amount in excess of 7.13 gallons [27 liters] of wine per month. Sales by a winery may include interstate sales and interstate sales through the internet. Annual shipping sales under this section made by a winery in this state are in addition to on-premise tasting room volume totals and are not part of the winery's annual on-premise total limitations.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1325.

House Vote: Yeas 88 Nays 1 Absent 5

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State