

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1159

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact sections 5-01-11 and 5-03-06 of the North Dakota
2 Century Code, relating to goods and services provided by alcohol wholesalers to retailers and
3 the authority of the tax commissioner to audit records of alcoholic beverage entities; and to
4 provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 5-01-11 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **5-01-11. Unfair competition - Penalty.** A manufacturer may not have any financial
9 interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not
10 have any financial interest in any retail alcoholic beverage establishment and may not furnish
11 any such retailer with anything of value. A retailer may not have any financial interest in any
12 manufacturer, supplier, or wholesaler. A wholesaler may:

- 13 1. Extend normal commercial credits to retailers for industry products sold to them.
14 The state tax commissioner may determine by rule the definition of "normal
15 commercial credits" for each segment of the industry.
- 16 2. Furnish retailers with beer containers and equipment for dispensing of tap beer if
17 the expense to the wholesaler associated with the furnishing of containers,
18 equipment, and tap or coil cleaning service does not exceed one hundred fifty
19 dollars per tap per calendar year.
- 20 3. Furnish outside signs to retailers if the sign cost does not exceed ~~one~~ four hundred
21 dollars exclusive of costs of erection and repair.
- 22 4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per
23 year. "Miscellaneous materials" not subject to this limitation include any indoor
24 point-of-sale items for retail placement. Point-of-sale items include back bar signs,

1 pool table lights, neon window signs, and items of a similar nature. The
2 point-of-sale items must be limited to ~~two hundred fifty~~ five hundred dollars per
3 retail account from the wholesaler for each of the wholesaler's brewers or
4 suppliers. ~~The state tax commissioner may, to keep current with market~~
5 ~~conditions, adjust the limitation amount for the point of sale items on an annual~~
6 ~~basis upon consultation with representatives of the alcohol beverage industry.~~

7 Any wholesaler, retailer, or manufacturer violating this section, or any rule adopted to
8 implement this section, and any retailer receiving benefits thereby, is guilty of a class A
9 misdemeanor. A microbrew pub is exempt from the provisions of this section to the extent that
10 this section restricts the coownership of a manufacturer's license and a retail license for the
11 purpose of a microbrew pub.

12 **SECTION 2. AMENDMENT.** Section 5-03-06 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **5-03-06. Examination by tax commissioner - Penalty for improper returns.** The
15 state tax commissioner may at any reasonable time make an examination of the books and
16 premises of any retailer, wholesaler, manufacturer, domestic winery, microbrew pub, or other
17 person to determine if such person has fully complied with all statutes and rules pertaining to
18 the person's business. If any wholesaler, domestic winery, or microbrew pub liable for any
19 taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be
20 added to the tax a penalty of five percent of the total amount of the tax or five dollars,
21 whichever is greater, plus interest of one percent of the tax per month or fraction of a month of
22 the total amount of the tax unpaid from the due date of payment until paid delay, except the first
23 month after the return or tax became due. Any wholesaler, domestic winery or microbrew pub
24 failing to furnish reports when required must be assessed a penalty of one hundred dollars for
25 each day such reports are delinquent. The state tax commissioner may forgive all or part of
26 any penalty for good cause shown. The tax commissioner shall give notice of the
27 determination to the person liable for tax. If the determination of tax due relates to an incorrect
28 or insufficient return filed by a taxpayer, notice of the determination must be given not later than
29 three years after the last day on which the return was due or three years after the return was
30 filed, whichever is later. If it is determined upon audit by the tax commissioner that the tax due
31 was twenty-five percent or more above the amount reported on the return, notice of

1 determination of tax due must be given not later than six years after the last day on which the
2 return was due or six years after the return was filed, whichever was later. Notice of
3 determination of tax due for any reporting period for which a taxpayer failed to file a return must
4 be given not later than six years after the due date of the return, but if fraudulent information is
5 given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of
6 the taxpayer in any manner to evade the tax, the time limitation provided in this section for
7 giving notice of the determination of tax due does not apply. If any wholesaler, domestic
8 winery, or microbrew pub files a fraudulent return, there must be added to the tax an amount
9 equal to the tax evaded or attempted to be evaded and such wholesaler, domestic winery, or
10 microbrew pub is also guilty of a class C felony. All such taxes and civil penalties may be
11 collected by assessment or distraint, and no court of this state may enjoin the collection of any
12 such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a
13 manufacturer after notice from the state tax commissioner that such manufacturer has failed to
14 file required reports with the tax commissioner's office. Any wholesaler, domestic winery, or
15 microbrew pub may have its license suspended or revoked for violation of any of the provisions
16 of this title after a hearing conducted similar to that prescribed by this law.