

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1249

Introduced by

Representatives Ruby, Bellew, Headland, Kasper

Senators Hogue, Miller

1 A BILL for an Act to create and enact a new section to chapter 5-01 of the North Dakota
2 Century Code, relating to a farm distillery license; and to amend and reenact section 5-03-06 of
3 the North Dakota Century Code, relating to examination by and reports to the tax
4 commissioner.

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

6 **SECTION 1.** A new section to chapter 5-01 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Farm distillery.**

- 9 1. The state tax commissioner may issue a farm distillery license to the owner or
10 operator of a distillery that is located on a farm premises or any other premises
11 within this state which primarily uses a majority of North Dakota farm products to
12 manufacture and sell spirits produced on the premises. A farm distillery license
13 may be issued and renewed for an annual fee of one hundred dollars. This fee is
14 in lieu of all other license fees required by this title.
- 15 2. A farm distillery may sell spirits produced by that distillery at on sale or off sale, in
16 retail lots, and not for resale, and may sell or direct ship its spirits to persons inside
17 or outside the state in a manner consistent with the laws of the place of the sale or
18 delivery in total quantities not in excess of twenty-five thousand gallons [94625
19 liters] in a calendar year. A licensee may dispense free samples of the spirits
20 offered for sale. Subject to local ordinance, sales at on sale and off sale may be
21 made on Sundays between twelve noon and twelve midnight. A farm distillery may
22 hold events inside and outside its premises allowing free samples of its spirits and
23 to sell its spirits by the glass or in closed containers. A farm distillery may not
24 engage in any wholesaling activities. All sales and deliveries of spirits to any other

retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. No later than the last business day of a calendar month, a farm distillery that has made sales to a North Dakota wholesaler during the preceding calendar month shall file a report with the tax commissioner reporting those sales.

3. A farm distillery may obtain a farm distillery license and a retailer license allowing the onpremises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the farm distillery. A farm distillery also may own or operate a winery.

4. A farm distillery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all spirits sold by the licensee at retail, including all spirits shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. The report must provide the detail and 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.

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

5-03-06. Examination by tax commissioner - Penalty for improper returns. The state tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, domestic winery, farm distillery, microbrew pub, or other person to determine if such person has fully complied with all statutes and rules pertaining to the person's business. If any wholesaler, domestic winery, farm distillery, or microbrew pub liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax a penalty of five percent of the total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay, except the first month after the return or tax became due. Any wholesaler, domestic winery, farm distillery, or microbrew pub failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state tax commissioner may forgive all or part of any penalty for good cause

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