

**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 To keep current with market conditions, the tax commissioner may adjust the limitation amounts  
8 for subsections 2, 3, and 4 on an annual basis upon consultation with representatives of the  
9 alcohol beverage industry. Any wholesaler, retailer, or manufacturer violating this section, or  
10 any rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty  
11 of a class A misdemeanor. A microbrew pub is exempt from the provisions of this section to the  
12 extent that this section restricts the coownership of a manufacturer's license and a retail license  
13 for the purpose of a microbrew pub.

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

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

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