



SouthDakota

Legislative  
Research  
Council

MINUTES  
Alcoholic Beverage Interim Study Committee

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Representative Roger Solum, Chair  
Senator Corey Brown, Vice Chair

Second Meeting  
2014 Interim  
July 7, 2014

Room 413  
State Capitol Building  
Pierre, South Dakota

**Monday, July 7, 2014**

The second meeting of the Alcoholic Beverage Shipping and Distribution Study Committee for the 2014 Interim was called to order by Representative Roger Solum at 10:00 a.m. (CDT) in room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Representative Roger Solum, Chair; Representatives Timothy Johns, and Tim Rounds; Senators Jim Bradford, Ryan Maher, and Craig Tieszen. Excused were Senator Corey Brown, Vice Chair; Representatives Brock Greenfield, and Troy Heinert.

Staff members present included Roxanne Hammond, Legislative Attorney; Fred Baatz, Principal Research Analyst; Doug Decker, Code Counsel; and Cindy Tryon, Senior Secretary.

*NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office and some can be found on the Legislative Research Council website at <http://legis.sd.gov/Interim/CommitteeDocuments.aspx?Session=2014>. This meeting was web cast live. The archived web cast is available at the LRC website at <http://legis.sd.gov>.*

**Approval of the Minutes**

**REPRESENTATIVE ROUNDS MOVED, SECONDED BY SENATOR MAHER, THAT THE MINUTES OF THE JUNE 10, 2014, ALCOHOLIC BEVERAGE SHIPPING AND DISTRIBUTION STUDY COMMITTEE BE APPROVED. The motion prevailed on a voice vote.**

**LRC Report – Review of Past Legislation**

**Ms. Roxanne Hammond, Legislative Attorney, Legislative Research Council (LRC),** presented a report on alcohol-related legislation from 2010 through the 2014 Legislative Session, as requested by the committee at the previous meeting (**Document #1**).

According to Ms. Hammond, in 2010, there were 23 alcohol-related bills introduced and 9 of those bills passed. In 2011, there were 16 alcohol-related bills introduced and 7 of those passed. It was during the 2011 session that the bill creating a combination license for those selling both malt beverages and wine was passed. In 2012, 8 alcohol-related bills were introduced and 3 of those passed. During the 2012 session, the bill was passed allowing alcoholic beverage licensees to charge a corkage fee.

During the 2013 session, 7 alcohol-related bills were introduced and 1 of those passed. The piece of legislation that passed allowed farm wineries to make their tax payments quarterly. In 2013, a bill was introduced, SB100, that would have allowed direct shipment of wine. It failed in the Senate committee.

During the 2014 session, 9 alcohol-related bills were introduced and 4 of those passed. SB114 would have created a wine direct shipper license. This bill passed the Senate but failed in the House committee.

### Draft Bill Proposal

**Mr. Jeremiah Murphy, Republic National Distributing Company, and Mr. Tim Dougherty, Licensed Beverage Dealers of South Dakota**, distributed a handout giving their philosophy and goals for drafting direct wine shipment legislation (**Document #2**).

Mr. Dougherty presented a draft version of a bill as requested by the committee at the June meeting (**Document #3**). Mr. Dougherty and Mr. Murphy used SB114 from the 2014 Legislative Session as the base for their draft and then made changes to the bill so that it includes the philosophy and goals found in document #2.

Some of the suggested changes made to SB114 were: adding a definition of “wine carrier”; adding the requirements for obtaining a wine carrier license; describing the records that the wine carrier needs to maintain; explaining how the wine carrier must report sales to the Department of Revenue; setting out the penalties for wine carriers; and including wine carriers in the reporting and tracking requirements that also apply to shippers (this is directed at eliminating sales to underage persons).

A new section added to SB114 says that wine manufacturers must choose if a wine is for direct shipment or to be distributed through wholesalers, the wine cannot be sold through both methods.

**Senator Craig Tieszen** asked why the manufacturer has to choose between the distribution methods. Mr. Murphy responded that the current method works best for regulating the sales, collecting the taxes, and keeping the product out of the hands of minors. He said that having the winery choose one method of delivery makes the solution fit the issue. He added that this legislation creates a clear avenue as to which wines can come into the state in a different manner than the process established through the three-tier system. Mr. Murphy added that his client accommodates the smaller orders from businesses in smaller communities in order to meet the needs of all customers.

Senator Tieszen asked how this would address people wanting to purchase a wine that is in distribution in South Dakota but is not available in their community. **Senator Ryan Maher** asked if a certain wine becomes more difficult to find does RNDC ration the wine being more selective as to which retailer is able to make that purchase. Mr. Murphy said that he does not believe that happens with RNDC, but the manufacturer may pull a brand of wine from distribution meaning RNDC can no longer restock that wine.

Senator Maher said that he had tried to order a case of a certain wine from RNDC for sale through his business but was told he could only purchase it if it was to be used for in-house consumption. Mr. Murphy said that he would look into that issue.

**Representative Tim Rounds** asked why the new bill draft raises the wine direct shipper license fee from \$150 to \$250. Mr. Dougherty said that the fee is higher to bring it closer to the package liquor license fee which is \$500, and the \$250 is the average of the direct shipper license fees charged in other states that allow for direct shipment.

Representative Rounds asked if the definition of common carrier that is in the proposed bill is similar to the definition used by other states. Mr. Dougherty said that he took the language from North Dakota and Delaware statutes and used those when writing this definition. He said that it is relatively similar to the other states that allow common carrier licensing. Mr. Murphy distributed a map illustrating the 19 states that have common carrier licensing (**Document #4**).

**Representative Roger Solum** asked about registering wine labels. Mr. Dougherty said that all labels on wines sold in South Dakota must be registered. This requirement applies to all wines no matter how they are distributed. Mr. Murphy added that the winery is responsible for registering the labels and label registration is required in 40 states.

**Ms. Dianna Miller, South Dakotans for Better Wine Laws**, drafted the original SB114 for the 2014 Legislative Session, and offered her comments on Mr. Murphy's and Mr. Dougherty's suggested changes to that bill.

Ms. Miller said that the organization she represents does not agree with the licensing of carriers, but rather the winery should be the responsible party. Fed Ex and UPS do have procedures in place for delivering products for which the recipient must show identification and do not need a special license to comply with that. Ms. Miller said that North Dakota has a common carrier license and that there are so many problems with that law, one of the common carriers no longer delivers wine in North Dakota.

Ms. Miller also disagreed with forcing the winery to choose between the direct delivery method and the three-tier system. Ms. Miller said that each winery should be able to use different methods of delivery for different brands of wine.

Ms. Miller said that she did not agree with the \$250 direct shipper license fee. She said that North Dakota's fee is \$50, Minnesota does not charge anything, and most of our other neighboring states that have these fees charge \$50.

Ms. Miller added that South Dakota has always been a state that tries to eliminate red tape and bureaucracy, but this draft legislation adds way too much red tape to the concept of direct ship wines.

### **Black Hills Dakota Distillery**

**Mr. Paul Lewis, Black Hills Dakota Distillery**, said that he and his brother, Michael Lewis, own the limited liability company which is a distillery located outside Sturgis, and produces SturgisShine. Mr. Lewis said that to qualify as an artisan distillery, at least 30% of the ingredients used to make the product must be from South Dakota. The barley and the honey that go into the SturgisShine are from South Dakota producers. SturgisShine is a type of moonshine based on an old Irish recipe brought to this country by ancestors of Mr. Lewis.

Mr. Lewis gave a PowerPoint presentation, "Self-Distribution for Distilled Spirits" (**Document #5**). Mr. Lewis asked the committee to consider granting artisan distillers the same ability to self-distribute their products the way farm wineries are allowed to distribute their products. Farm wineries have the freedom to access the marketplace and artisan distillers are asking for that same opportunity.

One other discrepancy in South Dakota alcoholic beverage statutes is that the farm winery annual license fee is \$100 while the artisan distiller annual license fee is \$500.

On page 12 of the PowerPoint document, Mr. Lewis presented the draft of a bill that would allow artisan distillers to sell to wholesalers and to retailers.

Representative Rounds asked Mr. Murphy about RNDC's thoughts on Mr. Lewis' proposed legislation. Mr. Murphy said that RNDC supports Mr. Lewis' proposed legislation, that they believe it would be a good opportunity to help South Dakota's artisan distillers grow. The one thing that could be changed is not citing 35-12-5 which applies to farm wineries, but instead using SDCL 35-12-10, which applies to artisan distillers.

Representative Rounds then asked Mr. Dougherty for his comments on the distilled spirits proposed legislation. Mr. Dougherty pointed out the draft legislation addressed two separate issues, the self-distribution of artisan distilled spirits and the satellite location issue. Mr. Dougherty said that his client has no problem with the self-distribution issue, but it should use SDCL 35-12-10 which applies to artisan distillers.

As for the satellite location issue, Mr. Dougherty said that he is not aware of that type of distribution being used by any other South Dakota alcoholic beverage manufacturers and that it may not work under many of the municipal regulations. Mr. Dougherty added that if an artisan distiller wanted to have another location to sell their product, the artisan could obtain another distillers license and that would allow the product to be sold at another location.

Representative Rounds asked Mr. Riter for his comments on the proposed artisan distiller direct shipment legislation.

**Mr. Bob Riter, SD Beer Distributors**, said that many of the beer distributors have licenses that allow them to distribute other products in addition to the beer. Mr. Riter pointed out that the farm wine laws were developed before the allowance of exceptions to certain laws was stopped by a US Supreme Court decision that said what you do for one you must do for all, you cannot have exceptions that benefit one group and not another group.

Mr. Riter suggested that the artisan distillers be allowed the same rights as the farm wineries. And, if laws are written for farm wineries and artisan distillers, craft brewers may ask that those laws be applied to them, too.

Mr. Lewis was then offered time to address the comments made regarding his presentation. Mr. Lewis said that the draft legislation regarding satellite establishments was written only with the intention of helping artisan distillers get their product out there if they are not given the right to self-distribute their product. He added that obtaining a license as an artisan distiller is a huge amount of work and applying for a second license would not be the answer. If the self-distribution bill should pass, then the satellite establishment would not be needed.

Mr. Lewis explained that he based his draft bill on a bill from the 2010 session and that is why he used SDCL 35-12-5, but can easily change that to SDCL 35-12-10.

At this time, getting the artisan spirits out to the retailers rests solely on the distributors and whether or not they want to work with a distiller that is so small. If the distributor wants nothing to do with selling the artisan distillers' products, they have no recourse. This draft legislation gives the artisan distiller the opportunity to get the product out to the consumer.

### **Public Testimony**

**Mr. Matt Keck, Prairie Berry Winery, Hill City**, via telephone, gave public testimony in favor of a direct shipping of wine law in South Dakota. Mr. Keck said that his business started in the basement of a house in Mobridge in 1998, and, in 2004, he moved the business to Hill City.

Mr. Keck said that they currently ship product to customers in about 30 states. Prairie Berry is licensed and pays taxes on direct sales in all those states. He said they average about \$1400 per state in fees and taxes each year. They use computer software that verifies that all sales are legal. Prairie Berry does not direct ship to any state that does not allow direct shipment of wine. Any winery that is caught not complying with state laws will lose its federal alcohol license.

Mr. Keck said that because SD does not allow direct shipment of wine, some out-of-state wineries are willing to ship illegally. When a wine is shipped illegally, it is not marked as an alcohol product and therefore the age of the recipient is not checked. Also, no fees or taxes are paid to the state on these products.

Representative Solum asked about licensing the carriers that deliver the wine. Mr. Keck said that North Dakota is the best example of how that may not work. FedEx has opted to exit the North Dakota market because of their carrier licensing laws. The only wine carrier into North Dakota now is UPS. Mr. Keck suggested that compliance be made as easy as possible. Forcing carriers to be licensed may make a carrier decide it's just not worth it and South Dakota could end up with no common carrier willing to deliver wine.

Mr. Keck said that he knows UPS and FedEx already require proof of identification when delivering wine because those carriers have returned shipments to Prairie Berry because they could not obtain the required signature.

**Mr. Don Roesler, South Dakotans for Better Wine Laws, Sioux Falls**, and a nurse anesthetist, testified in favor of legislation allowing direct shipment of wine into South Dakota. Mr. Roesler said that he and his wife have travelled the world and take part in wine tastings during their travels. They have joined several wine clubs, of which some wines get sold only to club members. The specialty or boutique wines that they would like to purchase are not available through distributors and cannot be sent directly to their home in South Dakota.

When purchasing a wine that is not available through a South Dakota distributor, the Roeslers have the wine delivered to family or friends who live in Iowa or Minnesota and then travel to pick it up from them. When the wine is shipped to family or friends, the recipient must always show proof of age. Fees and taxes that apply in those states are paid when purchasing the wine. None of those fees and taxes go to South Dakota. Mr. Roesler said that it is a matter of choice and that they would like to have the same options wine drinkers have in other states, and be able to have wines direct shipped to them.

When the South Dakotans for Better Wine Laws group first started working on the legislation that was proposed last session, there were 39 states that allowed for direct shipping. Now there are 42 states that allow for direct shipping of wine.

**Mr. Al Schmitt, speaking on behalf of himself, Gregory**, testified in favor of legislation allowing direct shipment of wine into South Dakota. Mr. Schmitt, a nurse anesthetist in Gregory, said he enjoys a nice bottle of wine from time to time but is not always able to get the wine he wants from his local retailer. Mr. Schmitt said that if the retailer special orders a \$50 bottle of wine through the distributor, by the time Mr. Schmitt purchases it, the cost will be from \$80 - \$100, because of all the extra processing fees charged by each business that handles it. He added that oftentimes the retailer will not get the wine for him unless he buys an entire case.

Mr. Schmitt explained that the wines he really, really wants are not available to consumers in South Dakota. Those are the club wines that are put aside for members only and there are a variety of factors that make these specialty wines so desirable. Currently, Mr. Schmitt said that he orders the wine and has it delivered to an address in Nebraska and then goes to pick it up when he has time. Those wines

are usually saved for special occasions. All taxes and fees are paid to Nebraska and South Dakota does not receive any revenue from that purchase.

**Mr. Jim Schade, Schadé Vineyards, Volga**, said that his vineyard does ship wine, but only to people who have been in the tasting room and they do not want to carry it with them as they travel. Schadé Vineyards is a tourism business that provides an experience.

Mr. Schade explained that wine is being delivered into the state already, but South Dakota is not receiving any revenue from those sales. As legislation is being considered, it is important to remember to keep it simple. Wineries want to comply and will do so if the laws are fair and easy to understand. He pointed out that the issue is sales tax revenue, not license fees or label fees, but the sales tax will bring in the most revenue. He suggested raising the excise tax to replace the need for other fees, in order to keep it simple.

Representative Solum asked if Mr. Schade had experienced any problems with proof of age when shipping wine to other states. Mr. Schade said that if appropriate identification cannot be obtained by the carrier, the wine is sent back and the vineyard pays the shipping costs both ways.

**Mr. Alan Schroeder, Sioux Falls**, testified on behalf of himself via telephone in support of legislation allowing direct shipment of wine into South Dakota. Mr. Schroeder said that South Dakota is missing out on revenue by not allowing wine to be direct shipped into the state. He said that 42 other states allow direct shipping of wine and that carriers do provide age verification services. Mr. Schroeder said that he has wine delivered to an address in Iowa and then a co-worker brings it to him.

**Mr. Brett Kooima, Cask and Cork, Sioux Falls**, distributes wines in South Dakota, North Dakota, Nebraska, and Iowa, and testified in favor of the proposed changes to SB114 as presented by Mr. Murphy and Mr. Dougherty. Mr. Kooima said that the Cask and Cork carries over 1000 different labels, mostly boutique wines. He said that the option in the proposed legislation that makes the winery choose if they will sell by direct ship or through a distributor would protect his business. If the wineries are allowed to distribute both ways, the Cask and Cork business would feel a significant hit to their sales.

**Mr. Byron Schaffersmith, CEO, Global Distributing, Sioux Falls**, testified via telephone. Global Distributing is a type of co-op that represents over 200 very small breweries that do not have the wherewithal to have trucks and warehouses, and Global distributes their product for them. Mr. Schaffersmith said that the craft brewers are very passionate and good at distilling beer, but not so about promoting, selling, and distributing the product. Global distributing takes care of getting the product out there.

Global Distributing has 5 full-time employees and two part-time employees. The consumer wants different products and Global provides that service.

**Mr. Shawn Lyons, SD Retailers, Pierre**, talked about the role the SD Retailers Association plays in alcohol sales and distribution. Mr. Lyons said that the Retailers have trained over 24,000 people about serving alcohol and how to avoid underage sales.

Mr. Lyons said that if the state allows out-of-state wineries to deliver into the state, perhaps in-state retailers should also be allowed to direct-ship to consumers. Mainstreet fairness regarding sales tax collection is an ongoing issue addressed by the Retailers. The state is currently missing out on revenues from illegal shipments of wine, so legalizing it would probably help with tax collections. The municipal markup has to also be considered in the communities to which it applies.

Mr. Bob Riter returned to testify on the proposed legislation drafted by Mr. Murphy and Mr. Dougherty. Mr. Riter said fairness to local brick and mortar businesses must be considered when looking at legislation. Internet sales do not bring in tax revenues as do local businesses which are required by law to collect and remit the tax.

The fact that only small winery wines can be delivered via direct shipment and the winery must pay a \$250 fee to the state makes the legislation more palatable. Mr. Riter said that the \$250 fee is reasonable and is the average of the fees charged by states that allow direct shipment. The communities that apply the municipal markup on alcoholic beverage sales would miss out on those fees when wine is delivered via direct shipment.

Mr. Jeremiah Murphy returned to respond to some of the comments that were made regarding his draft legislation. Mr. Murphy said that he considered today's meeting a success and that a lot of progress was made. The direct ship issue is of great interest to everyone because what is done today for wine will have to be done for other such businesses in the future, this will set a precedent.

As for the carrier licensing issues, Mr. Murphy said that half of the states that allow direct shipping require carriers to be licensed. Connecticut charges \$1250 to carriers to be licensed to deliver wine. He said that the wine institute supports licensing carriers.

Mr. Murphy added that the wine lovers who testified today described situations in which they cannot get certain wines that they want. This piece of legislation would allow them to purchase what they want in a way that is fair to all.

Senator Maher asked if there would be support from the drafters for local retailers to be allowed to ship and/or deliver wine. Mr. Murphy said that this would not be an exception to the three-tier system and so his organization would not have a problem with retailers being allowed to do that. Mr. Dougherty said that there is a difference between shipment and delivery and that he has drafted some legislation that he will bring for the committee's consideration. Mr. Dougherty added that the municipalities may want to add input to this idea of retailers being allowed to ship wine.

**Mr. Patrick Rounds, Dakota Spirits Distillery, Pierre**, testified in regard to artisan distillers. Mr. Rounds said that the work the legislature did with the small wineries has been successful and now the artisan distillers would like those same opportunities. Currently the artisan distillers must either sell their products on the same premises as the distillery or sell through a distributor. The distiller is not allowed to sell their own products to retailers. Mr. Rounds said that because they produce such a small amount of product, it is not as beneficial to the distributor to promote the artisan's product. The distiller's would like the opportunity to be able to promote and distribute their own product. Once the product has reached the consumer and has a customer base, then the distributor will be more willing to promote and sell the product.

### **Committee Discussion**

Representative Rounds said that he would like to have everyone in agreement on the draft legislation presented by Mr. Murphy and Mr. Dougherty before presenting it to the full legislature because amending a bill can tend to destroy it.

Representative Rounds said that the issue with artisan distillers needs to be addressed in a way that will also be workable for craft breweries, because the breweries will probably be next to ask for these same considerations.

Representative Solum said that he is not sure about the language in the draft bill regarding wine carriers. Representative Solum said that it is important that the legislature be proactive in encouraging businesses and not discouraging them from doing business here.

Senator Tieszen said that he now better understands the purpose of licensing the common carrier. He does not, however, see the need for making a producer choose between direct shipping or wholesaling the product. The Senator said that something needs to be done as the status quo is unacceptable.

### **Next Meeting**

**REPRESENTATIVE SOLUM MOVED, SECONDED BY REPRESENTATIVE ROUNDS, THAT THE NEXT ALCOHOLIC BEVERAGE SHIPPING AND DISTRIBUTION COMMITTEE MEETING BE HELD ON TUESDAY, SEPTEMBER 2, 2014, IN ROOM 413 OF THE CAPITOL IN PIERRE. The motion prevailed on a voice vote.**

### **Adjourn**

**REPRESENTATIVE ROUNDS MOVED, SECONDED BY SENATOR MAHER, THAT THE ALCOHOLIC BEVERAGE INTERIM STUDY COMMITTEE BE ADJOURNED. The motion prevailed unanimously on a voice vote.**

The Committee adjourned at 3:05 p.m.

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