



Self-Distribution for Distilled Spirits

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Why we are here!!



- Study Scope: Study alcoholic beverage shipping and distribution regulation in South Dakota. The study should include:
 - The three-tier system of alcohol distribution in the state to determine if the current system is necessary and appropriate in today's society. . .

Starting in 1933



Following the repeal of Prohibition in 1933, the States created systems to regulate the production and sale of alcohol.

21st Amendment

Repeal of Prohibition



When the nation repealed Prohibition via the Twenty-first Amendment in 1933, it vested primary control over alcoholic beverages in the states. The common understanding of the framers of the Twenty-first Amendment was that it grants each state the power to regulate alcoholic beverages within its borders without intrusion by federal law or regulation.

Three – Tier System



South Dakota implemented a three-tier system that prohibits close ties between manufacturers and retailers by requiring retailers to buy their product from distributors, not directly from the manufacturers.

Wholesale (Distributor) Level



Typically the use of a wholesaler/distributor is looked at as an easy way for regulators to monitor the flow of alcohol products and to collect excise tax revenues.

Taxes Paid



	State Tax Per Gallon	Federal Tax Per Gallon
Beer	\$0.27	\$0.58
Low Wine (14%)	\$0.93	\$1.07
High Wine (14%-21%)	\$1.45	\$1.57
Sparkling Wine	\$2.07	\$3.40
Distilled Spirits	\$3.93	\$13.50

*Source: Carol Logan, Special Taxes, SD Dept. of Revenue

Taxes Collected



From	How tax is collected
Manufacturer	Excises Taxes
Wholesaler/Distributor	2% of value of all wine and spirits received
Retailer	South Dakota Sales Tax

Considering Wine and Distilled Spirits - Legislators Can



Help to minimize both the magnitude and inequality of the advantages created for any one group. . .

Equal Protection Under the Law



The **Equal Protection Clause** is part of the Fourteenth Amendment to the United States Constitution. The clause, which took effect in 1868, provides that no State shall deny to any person within its jurisdiction “the equal protection of the laws”.

South Dakota License Fee



	Annual Fee	Statute
Farm Winery	\$100.00	35-12-2 Farm Winery License – Renewal Fee Licenses may be issued and renewed for an annual fee of one hundred dollars...
Artisan Distillers	\$500.00	35-13-2 Licensing of Artisan Distillers – Fee The fee for the license shall be five hundred dollars per year.

Self Distribution



	Statute
Farm Winery	<p>35-12-5 Sales Authorized by License (Farm Wineries)</p> <p>A license issued pursuant to § 35-12-2 authorizes the sale on the farm winery premises of table wine, sparkling wines, or sacramental wines, or any wine as defined in subdivision 35-12-1(3), produced by the farm winery at on-sale or off-sale, in retail, or wholesale lots in total quantities not in excess of one hundred fifty thousand gallons. . .</p>
Artisan Distillers	<p>35-13-9 On-Sale and Off-Sale Authorized Under License (Artisan Distillers)</p> <p>A license issued pursuant to § 35-13-2 authorizes the sale on the distillery premises of distilled spirits produced by the artisan distillery at on-sale or off-sale, in total quantities not in excess of fifty thousand gallons in a calendar year. . .</p>

Beer Self Distribution



States Allowed:

Alaska, Connecticut, Hawaii, Idaho, Iowa, Maine, Massachusetts, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Vermont, Wisconsin, West Virginia, Wyoming

States Allowed With Restrictions:

State	Self Distribution
Arkansas	Brewers producing up to 60,000 bbls annually.
Arizona	Up to 3,000 bbl under 20,000 bbl production cap; unlimited to same-ownership outlets.
California	No restrictions on production size or on-premise [brewpubs].
Colorado	Up to 300,000 gallons per calendar year.
Illinois	A craft brewer licensee, set at less than 465,000 gal. of beer annually, may self-distribute up to 232,500 gal. per yr.

Beer Self Distribution cont.



State	Self Distribution
Indiana	Only brewers producing up to 30,000 bbls annually.
Minnesota	Only brewers producing up to 25,000 bbls annually.
Montana	A brewer producing up to 60,000 bbls of beer annually.
New Hampshire	Brewers producing less than 15,000 bbls can sell up to 5,000 bbls. For brewpubs it is 2,500 bbls.
New Jersey	Brewers producing up to 300,000 bbls annually.
New York	Distributors permit allows for self-distribution up to a capacity of 60,000 bbl annually. For brew pub the distribution limit is 3,000 bbl per year.
North Carolina	A brewery producing less than 25,000 bbls.
Oregon	Brewery licensees can self-distribute with no volume restriction. Brew pubs can self-distribute if their production is less than 1,000 bbls.
Texas	Brewers producing less than 75,000 bbls of beer per year.
Utah	Less than 60,000 bbls.
Virginia	A brewery can form a separate distribution company as a distinct legal entity.
Washington	Less than 60,000 bbls.

Wine Self Distribution



States Allowed:

Arizona, Arkansas, Connecticut, Illinois, Maryland, Maine, Minnesota, Montana, New Jersey, New Hampshire, Ohio, Oregon, South Dakota, Vermont, Washington, Wyoming

Distilled Spirits Self Distribution



States Allowed:

Washington

New York (One Other Location)

District of Columbia

Re-Cap of Self-Distribution in South Dakota



- Wine = Yes
- Beer = Brewer may assume wholesaler for 2 years; can be limited partner for up to 10 years
- Artisan Distiller = No

South Dakota

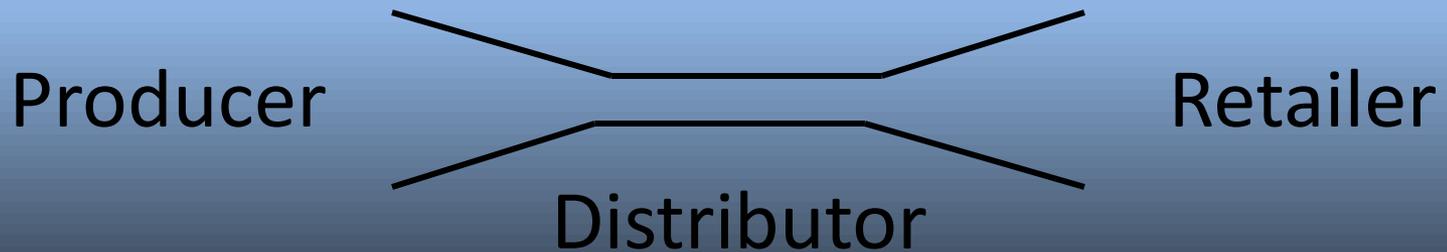
Wine vs. Distilled Spirits Distribution



Wine Distribution



Distilled Spirits Distribution



Why is this Important?



National Share of Beverage Alcohol = Number of Drinks Ordered

Beer: 49%

Spirits: 37%

Wine: 15%

*Source: Nielsen Report/The Beverage Information Group

Violation of Federal Commerce Clause



- Self-Distribution should not trigger Federal Commerce Clause requirements, that self-distribution be extended to out-of-state producers because changes would favor market actors physically present in South Dakota
- Market Participant Exception
 - Reeves, Inc. v. Stake (US 1980)
 - State may discriminate against non-residents (Power to regulate under 21st Amendment)

Pandora's Box vs. Common Sense



- Beer Self-Distribution;
Budweiser
- Collection of Revenue;
Increased Strain on Dept. of
Revenue
- Drive Retailers Out of Business
- “Catch 22” with Wholesalers
- Commerce Clause
- Cost/Benefit



Why Distilled Spirits Self-Distribution



- Parity with Farm Wineries
- Close the Sale
- Economies of Scale
- SD Product/Agribusiness
 - SD Resources
- Win-Win
- Benefit to Small Business

Suggested Bill Re: Distilled Spirits Self-Distribution



FOR AN ACT ENTITLED, An Act to provide for the distribution and sell of artisan distilled spirits produced under license in accordance with 35-13 to licensed wholesalers and retailers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That Chapter 35-13, be amended by adding thereto a NEW SECTION to read as follows:

A license issued pursuant to § 35-13-1 and § 35-13-2, authorizes the sale of distilled spirits as defined in subdivision 35-13-1(1), produced by the artisan distiller at on-sale or off-sale, in retail, or wholesale lots in total quantities not in excess of fifty thousand gallons in a calendar year, including glassware, artisan spirit literature and accessories, food products, South Dakota made products, and the dispensing of free samples of distilled spirits offered for sale. Any artisan distiller in the state of South Dakota may sell to wholesalers and retailers no more than one thousand gallons, per product-line, not to exceed a total of fifty thousand gallons.

Suggested Bill Re: Other Location



FOR AN ACT ENTITLED, An Act to extend on-sale and off-sale authorizations under license.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 35-13-9 be amended to read as follows:

35-13-9. A license issued pursuant to § 35-13-2 authorizes the sale on the distillery premises and from one other location in the State of South Dakota of distilled spirits produced by the artisan distillery at on-sale or off-sale, in total quantities not in excess of fifty thousand gallons in a calendar year and the dispensing of free samples of distilled spirits offered for sale. Except as provided in this chapter, such sales shall comply with the provisions of Title 35.