

State of South Dakota

NINETIETH SESSION LEGISLATIVE ASSEMBLY, 2015

594W0014

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to establish a wine direct shipment license to enable the
2 direct shipments of certain wine in South Dakota.

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

4 Section 1. Terms used in this chapter mean:

5 (1) "Common carrier," a carrier which holds itself out to the general public as engaged in
6 the business of transporting goods for a fee;

7 (2) "Department," the South Dakota Department of Revenue;

8 (3) "Direct shipper," a winery that has obtained a wine direct shipper license;

9 (4) "Winery," a winery that produces its own wine and holds a federal basic wine
10 manufacturing permit;

11 Section 2. Any winery located within or outside of the state may obtain a wine direct shipper
12 license. An applicant for an initial or renewal wine direct shipper license shall:

13 (1) File an application with the department on a form prescribed by the department;

14 (2) Pay a license fee of one hundred dollars;

15 (3) Submit a copy of the applicant's current federal basic wine manufacturing permit;

16 (4) Register each brand label offered for sale in this state, if not previously registered, and



1 pay all applicable brand registration fees pursuant to chapter 39-13;

2 (5) Hold a South Dakota sales and use tax license issued by the department; and

3 (6) Be current on the remittance of all applicable state taxes.

4 The department shall issue a wine direct shipper license to any applicant who meets the
5 requirements of this section and this Act. A direct shipper that is also licensed as a farm
6 winery pursuant to chapter 35-12 shall receive a credit for registration fees paid pursuant to
7 §35-12-2.

8 Section 3. Wine direct shipper label licenses are valid from twelve o'clock midnight on
9 the thirty-first day of December to twelve o'clock midnight on the thirty-first day of the next
10 December. However, the license is valid for an additional three days if a proper application
11 for a new license is in the possession of the department before midnight on the thirty-first
12 day of December when the license expires. The full fee shall be charged for any license for a
13 portion of the period.

14 Section 4. Notwithstanding any other provisions of title 35, a direct shipper licensed
15 pursuant to this Act may sell and ship wine to any person in this state who is twenty-one
16 years of age or older if the wine is registered for direct shipment as required by section 2 of
17 this Act. Before shipping the wine, the direct shipper shall verify the age of the person
18 placing the order by obtaining a copy of the person's valid age-bearing photo identification
19 document issued by this state, another state, or the federal government, or by using an age
20 verification service. The direct shipper shall record the name, address, date of birth, and
21 telephone number of the person placing the order on the order form or other verifiable
22 record. The direct shipper shall notify the person placing the order that the recipient of the
23 shipment will be required to show a valid age-bearing photo identification document issued
24 by this state, another state, or the federal government upon delivery. The direct shipper may

1 not ship more than twelve cases of wine, containing no more than nine liters per case, in any
2 calendar year to any person for personal use under this Act.

3 Section 5. A direct shipper shall label each package to be shipped in accordance with this
4 Act so that it conspicuously contains words indicating the package contains alcohol and that
5 the signature of a person twenty-one years of age or older is required for delivery. Any direct
6 shipper who knowingly causes a direct shipment of wine in violation of section 5 of this Act
7 or this section is subject to a civil penalty of one thousand dollars for a first offense
8 and two thousand dollars for a second or subsequent offense.

9 Section 6. Each shipment of wine made in accordance with this Act shall be delivered
10 by a common carrier and shall be accompanied by a shipping label that conforms to the
11 requirements contained in section 5 of this Act. The common carrier shall obtain the
12 signature of a person twenty-one years of age or older prior to delivery of the shipment, and
13 shall request that the person signing for the shipment display a valid age-bearing photo
14 identification document issued by this state, another state, or the federal government
15 verifying that the person is twenty-one years of age or older.

16 Any common carrier who knowingly delivers wine to a person under twenty-one years of
17 age is subject to a civil penalty of one thousand dollars for a first offense and two thousand
18 dollars for a second or subsequent offense.

19 Section 7. That § 35-9-1.2 be amended to read as follows:

20 35-9-1.2. Any person charged with a violation of § 35-9-1, ~~or~~ 35-9-1.1, or section 6 of
21 this Act, may offer evidence, as a defense, that the person made a reasonable attempt to
22 investigate the age of the person by examining an age-bearing identification document that
23 would have appeared valid to a reasonable and prudent person.

24 Section 8. No person may receive more than twelve cases of wine, containing no more

1 than nine liters per case, in any calendar year for personal use under this Act. No person who
2 receives wine under this Act may resell any of the wine. It is a Class 2 misdemeanor for any
3 person to receive more than twelve cases of wine during a calendar year in violation of this
4 Act. It is a Class 1 misdemeanor for any person to resell or attempt to resell any wine
5 obtained pursuant to this Act.

6 Section 9. A direct shipper may only ship wine that was produced by the direct shipper in
7 accordance with the direct shipper's federal basic wine manufacturing permit. A violation of
8 this section is a Class 2 misdemeanor.

9 Section 10. A direct shipper is deemed to have consented to the jurisdiction of the
10 department and the courts of the State of South Dakota with respect to the enforcement of
11 this Act. The direct shipper shall allow the department to perform an audit of the direct
12 shipper's records, including any documents used to verify the age of any person ordering
13 wine from the direct shipper and provide copies of any such records upon request.

14 Section 11. A direct shipper shall file quarterly reports with the department on or before
15 the fifteenth day of the month following each quarterly period. The required quarterly report
16 shall be filed even if no business was transacted in this state during the reporting period.

17 The report shall include:

- 18 (1) The business name, address, and direct shipper license number of the direct shipper;
- 19 (2) The total gallons of wine shipped to recipients in this state during the quarterly period;
- 20 (3) The name and address of shipment recipients in this state and the number of cases,
21 or portions thereof, received per recipient during the quarterly period;
- 22 (4) The common carrier or carriers used to deliver each shipment; and
- 23 (5) The date, wine type, quantity, and purchase price of each shipment, along with
24 any taxes paid by the recipients, during the quarterly period.

1 Section 12. A direct shipper shall pay the alcoholic beverage occupational taxes as
2 prescribed by § 35-5-2, according to the rates established in subdivisions 35-5-3(2),(3), and (4).
3 Notwithstanding the filing and payment requirements prescribed in chapter 35-5, a direct
4 shipper shall include on the report required by section 11 of this Act the gallons of wine shipped
5 to recipients in this state in each wine category as set forth in subdivisions 35-5-3(2), (3), and
6 (4), and calculate the tax due for each wine category.

7 Additionally, the direct shipper shall pay a direct shipment tax of one percent on shipped
8 wine based upon the retail price of the wine sold. The direct shipper shall remit the taxes
9 quarterly on or before the twenty-fifth day of the second month following each quarterly period.

10 A direct shipper that is also licensed as farm winery pursuant to chapter 35-12 shall receive
11 a credit for any occupational tax paid pursuant to §§ 35-12-7 and 35-12-8 for any wine sold for
12 shipment in this state by the direct shipper.

13 Section 13. All reports required by section 11 and 12 of this Act shall be
14 submitted by electronic means to the department. All taxes required to be remitted by section
15 12 of this Act shall be remitted by electronic transfer to the department.

16 Section 14. Sales and shipments of wine direct to persons in this state from wineries that do
17 not hold a current wine direct shipper license are prohibited. For the first offense, the
18 department shall send a certified letter to any person who violates this section and order the
19 person to cease and desist any shipments of wine into this state. For any subsequent violations,
20 the department shall notify the alcoholic beverage control agency in the person's state of
21 domicile, if other than this state, and the Alcohol and Tobacco Tax and Trade Bureau of the
22 United States Department of the Treasury of the violation. Any person who violates this section
23 is subject to a civil penalty of up to five thousand dollars.

24 Section 15. The department may promulgate rules, pursuant to chapter 1-26, concerning:

- 1 (1) Forms necessary for the implementation of this Act;
- 2 (2) Reporting and tracking requirements for wine direct shipper licensees; and
- 3 (3) The procedure for filing tax returns and the payment of all applicable taxes.

4 Section 16. The department shall compile and publish a list of wine labels registered for sale
5 or shipment in the state each quarter. The list shall include:

- 6 (1) Label name;
- 7 (2) Wine type, including year produced if applicable; and
- 8 (3) If label is available for sale or shipment in the state.

9 Section 17. That § 35-12A-1 be repealed.

10 ~~35-12A-1. Notwithstanding any other provision of law, any person who is at least~~
11 ~~twenty-one years of age may purchase and receive wine from another state as provided in this~~
12 ~~section if the wine is not in distribution in this state and the wine comes from a winery that is~~
13 ~~located in a state that affords South Dakota wineries an equal reciprocal shipping privilege, or~~
14 ~~a winery located in South Dakota. The person shall place an order with a licensee as defined in~~
15 ~~subdivision 35-4-2(3) or (5). The licensee shall order the wine through a wholesaler licensed~~
16 ~~pursuant to subdivision 35-4-2(2) and the wholesaler shall arrange the purchase of wine. The~~
17 ~~licensee shall inform the purchaser of the cost of the wine, the amount of any tax that would~~
18 ~~apply to the purchase pursuant to § 35-5-3, the amount of sales tax that would apply, and the~~
19 ~~amount of charges for freight and handling. The licensee shall collect the total amount due from~~
20 ~~the customer before ordering the wine through the wholesaler. After receiving the order for the~~
21 ~~wine from the licensed retailer the wholesaler shall arrange for the wine to be shipped directly~~
22 ~~to the licensee who placed the order for the purchaser. Wine purchased pursuant to this chapter~~
23 ~~may only be delivered and received by the purchaser from a licensee as defined in subdivision~~
24 ~~35-4-2(3) or (5).~~

1 Section 18. That § 35-12A-2 be amended to read as follows:

2 35-12A-2. If the wholesaler orders twelve or less cases of a particular brand of wine for an
3 individual purchaser in one calendar year pursuant to this ~~section~~ chapter, no registration fee
4 pursuant to chapter 39-13 may be imposed.

5 Section 19. That § 35-12A-4 be repealed.

6 ~~35-12A-4. Any licensee who holds a farm winery license pursuant to § 35-12-2 may ship
7 no more than twelve cases of wine per person per calendar year. A case may contain no more
8 than nine liters per case in any one shipment. Any wine sold may only be for personal use and
9 not for resale. The wine may only be sold directly to a resident of another state if the state to
10 which the wine is sent allows residents of the state to receive wine sent from outside that state.~~

11 Section 20. That § 35-12A-5 be repealed.

12 ~~35-12A-5. No person in the business of selling alcoholic beverages may ship or cause to be
13 shipped any alcoholic beverage to any South Dakota resident who does not hold a license issued
14 pursuant to chapter 35-4. The department shall, for the first offense, send a certified letter to any
15 person who violates this section and order such person to cease and desist any shipments of
16 alcoholic beverages to South Dakota residents. Any subsequent violation of this section is a
17 Class 1 misdemeanor.~~

18 Section 21. That § 37-10A-1 be amended to read as follows:

19 37-10A-1. Alcoholic beverages may not be sold below the wholesale cost of such alcoholic
20 beverages, unless the sale constitutes the termination of the sale of the alcoholic beverage on
21 the licensed premises. Alcoholic beverages offered for sale at less than wholesale cost may not
22 be offered again for sale on the licensed premises for a period of less than one year after
23 termination of the sale of said product on the licensed premises. Wholesale cost is the
24 consideration paid by a retailer to a wholesaler to acquire alcoholic beverages and includes but

1 is not limited to the purchase price and freight charges. If no wholesaler is used in the sale, the
2 retailer may not sell the alcoholic beverage below cost.

3 **Source:** SL 1989, ch 337.