

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

444E0782

SENATE ENGROSSED NO. **HB 1295** - 02/27/2001

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Derby and Brown (Richard) and Senator Hutmacher

1 FOR AN ACT ENTITLED, An Act to allow certain interstate shipments of wine.

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

3 Section 1. Notwithstanding any other provision of law, any person who is at least twenty-one
4 years of age may purchase and receive wine from another state as provided in this section if the
5 wine is not in distribution in this state and a reciprocal agreement exists between this state and
6 the state from which the wine is sent. The person shall place an order with a licensee as defined
7 in subdivision 35-4-2(3) or (5) on a form prescribed by the Department of Revenue. The licensee
8 shall order the wine through a wholesaler licensed pursuant to subdivision 35-4-2(2) and the
9 wholesaler shall arrange the purchase of the wine. The licensee shall inform the purchaser of the
10 cost of the wine, the amount of any tax that would apply to the purchase pursuant to § 35-5-3,
11 the amount of sales tax that would apply to the purchase, and the amount of any charges for
12 freight and handling. The licensee may order the wine and shall provide the wine to the purchaser
13 on receipt of payment for the cost of the wine and the taxes and freight and handling charges
14 associated with the purchase. Wine purchased pursuant to this Act may only be delivered and
15 received by the purchaser from a licensee as defined in subdivision 35-4-2(3) or (5). If the

1 wholesaler orders twelve or less cases of a particular brand of wine in one calendar year pursuant
2 to this section, no registration fee pursuant to chapter 39-13 may be imposed. No person may
3 receive more than twelve cases of wine, containing no more than nine liters per case, in any
4 calendar year for personal use from another state under this Act. No person who receives wine
5 under this Act may resell any of the wine. However, if the delivery of the wine does not result
6 in a completed sale to the person who placed the original order, the licensee or wholesaler may
7 sell the wine in the ordinary course of business. It is a Class 2 misdemeanor for any person to
8 receive more than twelve cases of wine during a calendar year in violation of this section. It is
9 a Class 2 misdemeanor for any person to resell or attempt to resell any wine obtained pursuant
10 to this section. The Department of Revenue shall promulgate rules pursuant to chapter 1-26 to
11 provide for the reporting and tracking of information related to the sale of wine under this Act
12 and to prescribe forms for the implementation of this Act.

13 Section 2. Any South Dakota licensee who holds a South Dakota license pursuant to § 35-
14 12-2 may ship no more than twelve cases of wine per shipment. A case may contain no more
15 than nine liters per case in any one shipment. Any wine sold may only be for personal use and
16 not for resale. The wine may only be sold directly to a resident of another state if the state to
17 which the wine is sent allows residents of the state to receive wine sent from outside that state.
18 For tax purposes, the sale is considered to have occurred in this state.

19 Section 3. Any container of wine being shipped into or out of this state shall be clearly
20 labeled to indicate that it contains alcoholic beverages and that it may not be delivered to a
21 person who is not at least twenty-one years of age or to a person who is visibly intoxicated.

22 Section 4. Notwithstanding any other provision of law, any licensee who holds a valid license
23 in another state for the retail sale of wine for consumption off the licensed premise is permitted
24 to ship wine directly to any person in this state for personal use if such person purchases the wine

1 while physically present at the licensed premise and the licensee has verified that the person
2 purchasing the wine is of age. No licensee may ship more than twelve cases of wine in any
3 calendar year to a person in this state and no case may contain more than nine liters of wine. For
4 tax purposes, any sale of wine pursuant to this section is considered to have occurred in the state
5 where the licensee is located.