

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

606L0556

HOUSE BILL NO. 1159

Introduced by: Representatives Murschel, Boomgarden, Brunner, Dennert, Dykstra, Howie, Krebs, Kroger, McLaughlin, Nelson, O'Brien, Rounds, Schafer, and Tidemann and Senators Dempster, Abdallah, Duniphan, Hansen (Tom), Koetzle, McCracken, Nesselhuf, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to allow intrastate shipment of wine to consumers by farm
2 wineries.

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

4 Section 1. That § 35-4-74 be amended to read as follows:

5 35-4-74. No off-sale licensee ~~shall~~, except a person licensed pursuant to § 35-12-2, may
6 make any delivery of alcoholic beverages outside of the premises described in ~~his~~ the license.

7 A violation of this section is a Class 2 misdemeanor.

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

9 35-12A-1. Notwithstanding any other provision of law, any person who is at least
10 twenty-one years of age may purchase and receive wine from another state as provided in this
11 section if the wine is not in distribution in this state and the wine comes from a winery that is
12 located in a state that affords South Dakota wineries an equal reciprocal shipping privilege, ~~or~~
13 ~~a winery located in South Dakota~~. The person shall place an order with a licensee as defined in
14 subdivision 35-4-2(3) or (5). The licensee shall order the wine through a wholesaler licensed



1 pursuant to subdivision 35-4-2(2) and the wholesaler shall arrange the purchase of wine. The
2 licensee shall inform the purchaser of the cost of the wine, the amount of any tax that would
3 apply to the purchase pursuant to § 35-5-3, the amount of sales tax that would apply, and the
4 amount of charges for freight and handling. The licensee shall collect the total amount due from
5 the customer before ordering the wine through the wholesaler. After receiving the order for the
6 wine from the licensed retailer the wholesaler shall arrange for the wine to be shipped directly
7 to the licensee who placed the order for the purchaser. Wine purchased pursuant to this chapter
8 may only be delivered and received by the purchaser from a licensee as defined in subdivision
9 35-4-2(3) or (5), unless the person shipping the wine is licensed pursuant to § 35-12-2. Any
10 South Dakota resident who is at least twenty-one years of age may purchase and receive wine
11 directly from a farm winery, as provided in this chapter, if the farm winery is located in South
12 Dakota and licensed pursuant to § 35-12-2.

13 Section 3. That § 35-12A-5 be amended to read as follows:

14 35-12A-5. No person, except a person licensed pursuant to § 35-12-2, in the business of
15 selling alcoholic beverages may ship or cause to be shipped any alcoholic beverage to any South
16 Dakota resident who does not hold a license issued pursuant to chapter 35-4. The department
17 shall, for the first offense, send a certified letter to any person who violates this section and
18 order such person to cease and desist any shipments of alcoholic beverages to South Dakota
19 residents. Any subsequent violation of this section is a Class 1 misdemeanor.