

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

813M0269

HOUSE BILL NO. 1187

Introduced by: Representatives Murschel, Brunner, Dykstra, Hargens, Haverly, Jerke, Krebs, Kroger, McLaughlin, O'Brien, Roberts, Schafer, and Tidemann and Senators Dempster, Hansen (Tom), Knudson, Koetzle, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to establish a wine direct shipper permit and to provide for
2 certain direct shipments of wine.

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

4 Section 1. Any person currently licensed in this state or any other state as a winery or wine
5 grower whose total annual production of wine is not more than fifty thousand gallons and who
6 obtains a wine direct shipper permit in accordance with this Act may sell and ship wine directly
7 to a resident of South Dakota. Nothing in this Act prevents any person from shipping or
8 obtaining wine using the procedures specified in §§ 35-12A-1 to 35-12A-5, inclusive.

9 Section 2. Any applicant for a wine direct shipper permit shall:

- 10 (1) File an application with the Department of Revenue and Regulation containing
11 information specified in rules promulgated pursuant to section 9 of this Act;
- 12 (2) Pay a registration fee of one hundred dollars;
- 13 (3) Provide to the department a true copy of any current alcoholic beverage license
14 issued in another state;
- 15 (4) Provide certification that the applicant produced less than fifty thousand gallons of



1 wine during the previous calendar year;

2 (5) Hold a license issued pursuant to § 35-12-2, if the applicant is located in South
3 Dakota.

4 The department shall issue a wine direct shipper permit to any applicant who meets the
5 requirements of this section and rules promulgated pursuant to section 9 of this Act. Before
6 sending any shipment of wine to a resident of South Dakota under this Act, the shipper shall
7 obtain a wine direct shippers permit and a sales and use tax permit from the department. A wine
8 direct shipper permit holder located outside the state may annually renew its permit with the
9 department by paying a renewal registration fee of one hundred dollars and providing the
10 department with a true copy of its current alcoholic beverage license issued by another state. A
11 wine direct shipper permit holder located in South Dakota may annually renew its wine direct
12 shipper permit in conjunction with its farm winery license and shall pay a renewal registration
13 fee of one hundred dollars.

14 Section 3. The holder of a wine direct shipper permit may sell and ship wine to any resident
15 of South Dakota who is twenty-one years of age or older for the resident's personal use and not
16 for resale. The permit holder may ship no more than two cases of wine per month to the
17 resident. A case of wine is any combination of packages containing not more than nine liters of
18 wine. Before shipping the wine, the permit holder shall verify the age of the person placing the
19 order by obtaining from the person a copy of a photo identification issued by this state, another
20 state, or the federal government or by using an identification verification service approved by
21 the Department of Revenue and Regulation. The person receiving and accepting the order shall
22 record the name, address, date of birth, and telephone number of the person placing the order
23 on the order form or other verifiable record. Additionally, permit holders shall notify purchasers
24 that the recipient will be required to show identification upon delivery.

1 Section 4. The holder of a wine direct shipper permit may ship wine directly to a resident
2 in this state only in containers that are conspicuously labeled with the words "CONTAINS
3 ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."
4 The permit holder shall place a label on the top panel of the shipping container containing the
5 permit holder's permit number, the order number, and the name and address of the permit
6 holder.

7 Section 5. The holder of a wine direct shipper permit may ship wine only if the permit
8 holder requires the common carrier delivering the wine to:

- 9 (1) Require the recipient, at the delivery address, upon delivery, to demonstrate that the
10 recipient is at least twenty-one years of age by providing a valid form of photographic
11 identification;
- 12 (2) Require the recipient to sign an electronic or paper form or other acknowledgment
13 of receipt;
- 14 (3) Refuse delivery if the proposed recipient appears to be less than twenty-one years of
15 age and refuses to present a valid form of photographic identification or the recipient
16 appears to be intoxicated.

17 The common carrier shall implement the requirements specified in subdivisions (1), (2), and
18 (3) of this section. Any common carrier that delivers wine to a person who is less than
19 twenty-one years of age is subject to a fine of five hundred dollars for the first offense; a fine
20 of five hundred dollars and a seven-day suspension of alcohol shipments into or within South
21 Dakota for the second offense; and a fine of one thousand dollars and a ninety-day suspension
22 of alcohol shipments into or within South Dakota for the third offense.

23 Section 6. The holder of a wine direct shipper permit is deemed to have consented to the
24 jurisdiction of the Department of Revenue and Regulation, any other state agency, and the courts

1 of the state of South Dakota with respect to the enforcement of this Act and any related laws or
2 rules. The permit holder shall allow the department to perform an audit of the permit holder's
3 records upon request. Upon request of the department, the permit holder shall make available
4 to the department any document used to verify the age of any person ordering or receiving wine
5 from the permit holder. A wine direct shipper permit may be revoked or suspended as provided
6 in § 35-2-10.

7 Section 7. The holder of a wine direct shipper permit shall report to the Department of
8 Revenue and Regulation no later than January thirty-first of each year, the total amount of wine,
9 by type, brand and price, shipped into or within the state during the preceding calendar year
10 under the wine direct shipper permit, and the names, addresses, order numbers, and amounts of
11 wine ordered by and shipped to individual consumers. If the permit holder is located outside of
12 the state of South Dakota, the permit holder shall annually pay to the Department of Revenue
13 and Regulation all sales taxes and excise taxes due on sales to residents of South Dakota in the
14 preceding calendar year. The amount of the taxes is calculated as if the sale were in South
15 Dakota.

16 Section 8. Sales and shipments of wine direct to consumers in South Dakota from wineries
17 or wine growers that do not possess a current wine direct shipper permit from the Department
18 of Revenue and Regulation are prohibited. For the first offense, the department shall send a
19 certified letter to any person who violates this section and order the person to cease and desist
20 any shipments of alcoholic beverages to South Dakota residents. For any subsequent violation
21 of this section, the department shall notify the alcoholic liquor control agency in the direct
22 shipper's state of domicile, if other than South Dakota, and the Alcohol and Tobacco Tax and
23 Trade Bureau of the United States Department of Treasury of the violation. Any violation of this
24 section is subject to any other applicable penalties provided under this title.

1 Section 9. The Department of Revenue and Regulation shall promulgate rules pursuant to
2 chapter 1-26 to specify forms, criteria, and procedures for the application for and issuance of
3 a wine direct shipper permit; requirements and standards for the selection, approval, and use of
4 identification verification services; and requirements, forms, and procedures for the reporting
5 and tracking of information related to the sale or shipment of wine under this Act.

6 Section 10. That § 35-4-66 be amended to read as follows:

7 35-4-66. Alcoholic beverages, except malt beverages, may be transported only:

- 8 (1) By transporter licensees in the course of delivery to persons authorized under this
9 title to receive such alcoholic beverages;
- 10 (2) By a distiller or wholesale licensee in his own vehicles, carrying his own
11 merchandise;
- 12 (3) By solicitor licensees, such transportation being confined to samples, sealed or
13 unsealed, of products for which orders are solicited;
- 14 (4) By individuals, interstate transportation being confined to alcoholic beverages in
15 quantities of one gallon or less, intrastate transportation not being restricted as to
16 quantity, but in either case such alcoholic beverages must have been purchased by
17 such individuals for personal use;
- 18 (5) By common carriers in interstate commerce where the shipment originates outside
19 the state and is destined for a point outside the state;
- 20 (6) By carrier licensees, as to that included in the stock in trade of such licensees;
- 21 (7) By common carriers in accordance with the provisions of sections 1 to 9, inclusive
22 of this Act.

23 Section 11. That § 35-4-74 be amended to read as follows:

24 35-4-74. No off-sale licensee ~~shall~~, except a person who holds a wine direct shipper permit

1 issued pursuant to section 1 of this Act, may make any delivery of alcoholic beverages outside
2 of the premises described in ~~his~~ the license. A violation of this section is a Class 2
3 misdemeanor.

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

5 35-12A-5. No person in the business of selling alcoholic beverages, except a person who
6 holds a wine direct shipper permit issued pursuant to section 1 of this Act, may ship or cause
7 to be shipped any alcoholic beverage to any South Dakota resident who does not hold a license
8 issued pursuant to chapter 35-4. The department shall, for the first offense, send a certified letter
9 to any person who violates this section and order such person to cease and desist any shipments
10 of alcoholic beverages to South Dakota residents. Any subsequent violation of this section is
11 a Class 1 misdemeanor.