

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

564M0564

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1233** - 02/07/2006

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

Introduced by: Representatives Bradford, Elliott, Gassman, Glover, Haley, Kroger, Lange, Sigdestad, and Van Norman and Senator Bartling

1 FOR AN ACT ENTITLED, An Act to provide for the establishment and operation of artisan
2 distillers and to revise certain provisions concerning farm wineries.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Artisan distiller," an artisan distiller located in South Dakota that produces fifty
6 thousand gallons or less of distilled spirits annually;

7 (2) "Department," the Department of Revenue and Regulation;

8 (3) "Farm Winery," any winery licensed pursuant to chapter 35-12;

9 (4) "Distilled spirits sample or liquor sample," any sample of distilled spirits given with
10 or without charge to a customer, visitor, or tourist, but does not include amounts
11 consumed or tested as a part of production, or given to employees, directors,
12 members, owners, consultants, or paid taste panels as a part of product development,
13 product production, or marketing research;

14 (5) "Produces," the distillation of distilled spirits on the premises of the artisan distiller



1 licensee.

2 Section 2. The secretary of the Department of Revenue and Regulation may issue an artisan
3 distiller license to the owner or operator of an artisan distiller located within the state. A license
4 may be issued and renewed for an annual fee of five hundred dollars, which is in lieu of all other
5 license fees required by chapter 35-4. The fee shall be deposited in the general fund.

6 Section 3. The department may, upon receipt of an application, issue an artisan distiller
7 license to a person who is authorized under the provisions of the Federal Alcohol
8 Administration Act, 27 U.S.C. §§ 201 to 212, inclusive, as of January 1, 2006. A licensee may
9 import, manufacture, distill, rectify, blend, process, denature, sell, transport, and store distilled
10 spirits of an alcoholic content greater than seventeen percent alcohol by weight and may
11 transport the distilled spirits out of this state for sale outside this state. A licensee may sell
12 alcoholic beverages as provided in section 6 of this Act.

13 Section 4. No agricultural producer, association of agricultural producers, or legal agent who
14 manufactures and converts agricultural surpluses, byproducts, or wastes into denatured ethyl and
15 industrial alcohol for purposes other than human consumption is required to obtain an artisan
16 distiller license.

17 Section 5. An artisan distiller that produces distilled spirits within the state pursuant to
18 section 2 of this Act shall maintain records of all sales and shipments. The artisan distiller shall
19 furnish the department a monthly and other reports concerning quantities and prices of distilled
20 spirits shipped and other information that the department determines to be necessary to ensure
21 that the distribution of distilled spirits within this state conforms to the requirements of this Act.

22 Section 6. An artisan distiller licensed pursuant to this Act may:

23 (1) Import necessary products in bulk;

24 (2) Bottle, produce, blend, store, transport, or export distilled spirits that the artisan

- 1 distiller produces;
- 2 (3) Perform any operation that is permitted for bonded artisan distiller premises under
3 applicable regulations of the United States Department of the Treasury;
- 4 (4) Provide, with or without charge, not more than four ounces of any distilled spirits
5 sample that the artisan distiller produces at that location for consumption on the
6 premises between twelve noon to twelve midnight;
- 7 (5) Provide without charge more than four ounces of any distilled spirits sample that the
8 artisan distiller produces at that location to employees, directors, members, owners,
9 shareholders, paid consultants, or paid taste panels as long as the sample is used for
10 the purposes of product research or product development;
- 11 (6) Sell distilled spirits, if produced, manufactured, blended, or processed at that artisan
12 distiller, at retail to any person for off-premises consumption. However, no artisan
13 distiller may sell more than three and one-half liters per day to any person. However,
14 an artisan distiller may sell more than three and one-half liters per day if the artisan
15 distiller holds a license an off-sale license pursuant to subdivision 35-4-2(3);
- 16 (7) Sell distilled spirits aging or to be aged at the premises or at a licensed warehouse
17 operated by the artisan distiller in advance of the bottling of that distilled spirits,
18 provided that delivery of that distilled spirits does not exceed three and one-half liters
19 per day per person. Any advanced sale delivered by a distributor licensed pursuant
20 to chapter 35-2 is not limited by this section;
- 21 (8) Sell and transport distilled spirits to a farm winery made from product from the
22 respective farm winery;
- 23 (9) Hold on the premises where the distilled spirits is produced, an on-sale license issued
24 pursuant to subdivision 35-4-2(4) or (6) or pursuant to the license issued pursuant to

1 section 2 of this Act;

2 (10) Hold on the premises where the distilled spirits is produced, an off-sale license issued
3 pursuant to subdivision 35-4-2(5) or (19) or pursuant to the license issued pursuant
4 to section 2 of this Act.

5 Section 7. Except as otherwise specified in this Act, all provisions of this title apply to the
6 production, sale, possession, and consumption of distilled spirits produced by an artisan distiller.

7 Section 8. Notwithstanding the provisions of § 35-2-6.4, any person employed by or with
8 an interest in a business that holds a license pursuant to subdivisions 35-4-2(2), (3), (4), (5), (6),
9 (12), (13), (16), (17), (18), and (19) may have an interest of ten percent or less in an artisan
10 distiller provided that the total percent of ownership of an artisan distiller by persons with such
11 interest does not exceed forty-nine percent.

12 Section 9. There is hereby levied on all distilled spirits manufactured or produced by a South
13 Dakota artisan distillery an excise tax imposed at the same rates and collected and administered
14 in the same manner as the tax imposed on distilled spirits in chapter 35-5.

15 Section 10. The excise tax on distilled spirits established in section 9 of this Act shall be
16 paid to the secretary of the Department of Revenue and Regulation on or before the fifteenth day
17 of the month following the month in which the first sale is made in this state by a licensed farm
18 winery and shall be deposited in the general fund. The artisan distillery licensee shall file with
19 the secretary a return in the form prescribed by the secretary, and shall keep records and render
20 reports required by the secretary in rules promulgated pursuant to chapter 1-26.

21 Section 11. A farm winery may sell for off sale consumption up to one liter per person per
22 day of distilled spirits made from product provided by that winery and purchased from an artisan
23 distiller pursuant to this Act.

24 Section 12. A farm winery licensed pursuant to chapter 35-12 may provide, with or without

1 charge, not more than two ounces of distilled spirits samples produced at an artisan distiller
2 pursuant to this Act to any person for consumption on the premises between twelve noon and
3 twelve midnight.

4 Section 13. An artisan distiller or farm winery which receives less than ten dollars a month
5 from the tax on the sale of distilled spirits samples is not required to file a return or pay the tax
6 under Title 35.

7 Section 14. Any artisan distiller or farm winery who owe taxes amounting to less than one
8 hundred dollars per month on an annual average may be permitted by the department to report
9 any pay the tax on a semiannual basis or other time period and in such manner as deemed
10 reasonable by the department.

11 Section 15. That § 35-2-6.3 be amended to read as follows:

12 35-2-6.3. Any distiller, manufacturer, wholesaler, or retailer licensee under this title ~~must,~~
13 except as provided in this Act, shall be the owner or actual lessee of the premises where the
14 business is to be conducted and the sole owner of the business to be operated under such license.