

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

400Z0490

HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1067** - 2/21/2018

Introduced by: The Committee on Commerce and Energy at the request of the Department of Revenue

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the licensing of
2 wineries and wine manufacturers.

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

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 For the purposes of this Act, the term, farm winery, means any manufacturer located in this
6 state producing wine, as defined in § 35-1-1, in a total quantity not in excess of one hundred
7 fifty thousand gallons within a calendar year, where at least fifty percent of the raw materials
8 used in the finished product are grown or produced in this state, and without the use of wine
9 imported from outside this state.

10 Section 2. That the code be amended by adding a NEW SECTION to read:

11 The fee for a farm winery license is five hundred dollars.

12 Section 3. That the code be amended by adding a NEW SECTION to read:

13 Except as provided in this Act, all provisions of title 35 apply to the production, sale,
14 possession, transportation, and consumption of alcoholic beverages produced by any person



1 licensed pursuant to this Act.

2 Section 4. That the code be amended by adding a NEW SECTION to read:

3 There is hereby levied on all alcoholic beverages produced by any person licensed pursuant
4 to this Act an excise tax at the same rates and collected and administered in the same manner
5 as the taxes imposed on alcoholic beverages in chapter 35-5. Notwithstanding any other
6 provision of law, the taxes imposed on a farm winery shall be deposited in the general fund.

7 Section 5. That the code be amended by adding a NEW SECTION to read:

8 Any applicant for a license as a farm winery shall verify, under oath, compliance with the
9 requirement to use agricultural products grown or produced in this state. However, if South
10 Dakota agricultural products are not available in sufficient quantities, the applicant may use
11 imported agricultural products for the period covered by the license, but may not use imported
12 alcoholic beverages. Any person who signs a statement as provided for in this section, knowing
13 the statement to be false or untrue, in whole or in part, is guilty of perjury.

14 Section 6. That the code be amended by adding a NEW SECTION to read:

15 A licensed farm winery may sell on the licensed premises alcoholic beverages produced by
16 the licensee for on-sale or off-sale consumption. A licensed farm winery may sell alcoholic
17 beverages produced by the licensee to any wholesaler or retailer authorized to receive the
18 alcoholic beverages. A licensed farm winery may sell alcoholic beverages to any licensed artisan
19 distiller, farm winery, microbrewery, or microcidery, if the alcoholic beverage is used in the
20 manufacturing process.

21 The quantity of alcoholic beverages sold pursuant to this section may not exceed the total
22 production limits for the license as specified in section 1 of this Act.

23 Section 7. That the code be amended by adding a NEW SECTION to read:

24 A licensed farm winery may hold on the licensed premises an artisan distiller license, a

1 microbrewery license, or a microcidery license. A licensed farm winery may hold on the
2 licensed premises any license issued pursuant to subdivision 35-4-2(4), (6), (12), or (16).

3 Section 8. That the code be amended by adding a NEW SECTION to read:

4 A licensed farm winery may operate additional locations in this state by obtaining additional
5 licenses of the same class pursuant to this Act. The quantity of alcoholic beverages produced
6 under the original license and any additional licenses combined may not exceed the total
7 production limits for the license as specified in section 1 of this Act. Any additional license
8 issued pursuant to this section has the privileges of the original license as specified in sections
9 6 and 7 of this Act.

10 Section 9. That the code be amended by adding a NEW SECTION to read:

11 The holder of any license issued under this Act shall register labels for each type or brand
12 produced with the department in the same manner as prescribed for alcoholic beverages in
13 chapter 39-13, before sale. If the label or brand states or implies in a false or misleading manner
14 a connection with an actual living or dead Native American leader, the department shall reject
15 the registration of the label.

16 Section 10. That the code be amended by adding a NEW SECTION to read:

17 The secretary may promulgate rules, pursuant to chapter 1-26, establishing the criteria and
18 procedures for obtaining a license pursuant to this Act, and procedures for collecting the excise
19 taxes pertaining to the licenses.

20 Section 11. That § 35-4-2 be amended to read:

21 35-4-2. ~~Classes~~ The classes of licenses, with the fee of each class, ~~follow~~ are as follows:

22 (1) Distillers--four thousand dollars. However, no license fee is required for
23 manufacturers of alcohol for use in industry as a nonbeverage. If the manufacturer
24 of industrial alcohol ~~shall at any time manufacture, produce, distill, sell, barter, or~~

1 ~~dispose~~ manufactures, produces, distills, sells, barter, or disposes of alcohol for any
2 use other than an industrial use, the license fee required by this section shall be
3 allocated to and payable for the portion of the year the manufacturer devoted to such
4 other use for each calendar month or fraction thereof while so engaged, but in no case
5 less than one-twelfth of the license fee;

6 (2) Wholesalers of alcoholic beverages--five thousand dollars;

7 (3) Off-sale--not less than five hundred dollars in municipalities of the first class, not
8 more than four hundred dollars in municipalities of the second class, and not more
9 than three hundred dollars in municipalities of the third class. The renewal fee for
10 ~~such~~ the licenses may not exceed five hundred dollars in municipalities of the first
11 class, four hundred dollars in municipalities of the second class, and three hundred
12 dollars in municipalities of the third class;

13 (4) On-sale--in municipalities of various classes: municipalities of the first class, not less
14 than one dollar for each person residing within the municipality as measured by the
15 last preceding federal census, the renewal fee for such license is fifteen hundred
16 dollars; municipalities of the second class, no more than twelve hundred dollars;
17 municipalities of the third class, no more than nine hundred dollars;

18 (5) Off-sale licenses issued to municipalities under local option--not less than two
19 hundred fifty dollars;

20 (6) On-sale licenses issued outside municipalities--except as provided in § 35-4-11.9, not
21 less than the maximum that the municipality to which the applicant is nearest is
22 charging for a like license in that municipality, the renewal fee shall be the same as
23 is charged for a like license in the nearest municipality. However, if the nearest
24 municipality is more than fifteen miles from the on-sale license, the fee shall be

1 established pursuant to § 35-4-11.10. If the municipality to which the applicant is
2 nearest holds an on-sale license, pursuant to § 35-3-13 and does not charge a
3 specified fee, then the fee shall be the maximum amount that could be charged as if
4 the municipality had not been authorized to obtain on-sale licenses pursuant to § 35-
5 3-13. However, if the nearest municipality is a municipality of the first class and is
6 authorized to hold an on-sale license pursuant to § 35-3-13, ~~such~~ the fee may not be
7 more than one hundred fifty percent of the minimum a municipality not so authorized
8 may charge for a like license. The renewal fee shall be the same as could be charged
9 for a like license in the nearest municipality;

10 (7) Solicitors--twenty-five dollars;

11 (8) Transportation companies--twenty-five dollars;

12 (9) Carrier--one hundred dollars, which fee entitles the licensee to sell or serve alcoholic
13 beverages on all conveyances the licensee operates within the state unless restricted
14 by local ordinance;

15 (10) Dispensers--ten dollars;

16 (11) On-sale dealers at publicly operated airports--two hundred fifty dollars;

17 (12) Wine and cider retailers, being both package dealers and on-sale dealers--five
18 hundred dollars;

19 (13) Convention facility on-sale--not less than one dollar for each person residing within
20 the municipality as measured by the last preceding federal census, the renewal fee for
21 ~~such~~ the license, in municipalities of the first class, is fifteen hundred dollars; the
22 renewal fee for ~~such~~ the license, in municipalities of the second class, is no more than
23 twelve hundred dollars; the renewal fee for ~~such~~ the license, in municipalities of the
24 third class, is no more than nine hundred dollars;

- 1 (14) Manufacturers of malt beverages--five hundred dollars;
- 2 (15) Wholesalers of malt beverages--four hundred dollars;
- 3 (16) Malt beverage retailers, being both package dealers and on-sale dealers--three
- 4 hundred dollars;
- 5 (17) Malt beverage package dealers--two hundred dollars;
- 6 (17A) Malt beverage and wine produced pursuant to chapter 35-12 package dealers--two
- 7 hundred twenty-five dollars;
- 8 (18) On-sale dealers in light wine containing not more than six percent alcohol by weight
- 9 for each day of the week between the hours of seven a.m. and two a.m. to nonprofit
- 10 corporations established pursuant to chapter 7-7--two hundred dollars;
- 11 (19) ~~Off-sale package wine dealers in table wines, sparkling wines, sacramental wine, and~~
- 12 ~~distilled spirits produced from product provided to an artisan distiller by the~~
- 13 ~~respective farm winery to be operated in conjunction with a farm winery established~~
- 14 ~~pursuant to chapter 35-12--one hundred fifty dollars;~~
- 15 (20) Malt beverage retailers, being both package dealers and on-sale dealers, and retailers
- 16 of wine produced pursuant to chapter 35-12, being both package dealers and on-sale
- 17 dealers--three hundred twenty-five dollars;
- 18 (21) Retail on premises manufacturer--two hundred fifty dollars;
- 19 (22) Manufacturers of cider--five hundred dollars; and
- 20 (23) Off-sale delivery--one hundred fifty dollars.

21 Section 12. That § 35-12-2 be repealed.

22 ~~35-12-2. The secretary of the Department of Revenue may issue a farm winery license to the~~

23 ~~owner or operator of a farm winery located within the state and producing table wines, sparkling~~

24 ~~wines, and sacramental wines, or wine as defined in subdivision 35-12-1(3). Licenses may be~~

1 ~~issued and renewed for an annual fee of one hundred dollars, which is in lieu of all other license~~
2 ~~fees required by chapter 35-4. The fee shall be deposited in the general fund.~~

3 Section 13. That § 35-12-1 and §§ 35-12-3 to 35-12-12, inclusive, be repealed.