

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

546V0410

SENATE COMMERCE AND ENERGY ENGROSSED NO. **SB 114** - 02/11/2014

Introduced by: Senators Brown, Buhl O'Donnell, Curd, Ewing, Frerichs, Heineman (Phyllis), Jensen, Jones (Tom), Kirkeby, Krebs, Lucas, Monroe, Peters, Rampelberg, Sutton, Tidemann, and Tieszen and Representatives Cronin, Bartling, Dryden, Duvall, Feinstein, Gibson, Haggar (Don), Hajek, Hoffman, Hunhoff (Bernie), Johns, Kopp, Lust, Mickelson, Munsterman, Novstrup (David), Olson (Betty), Rasmussen, Romkema, Rounds, Rozum, Russell, Sly, Stevens, Tulson, Verchio, Westra, Wick, and Wink

1 FOR AN ACT ENTITLED, An Act to establish a wine direct shipper license 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. Terms used in this Act mean:

5 (1) "Common carrier," a carrier which holds itself out to the general public as engaged
6 in the business of transporting goods for a fee;

7 (2) "Department," the South Dakota Department of Revenue;

8 (3) "Direct shipper," a winery that has obtained a wine direct shipper license;

9 (4) "Winery," a winery that produces its own wine and holds a federal basic wine
10 manufacturing permit.

11 Section 2. Any winery located within or without this state may obtain a wine direct shipper
12 license. An applicant for an initial or renewal wine direct shipper license shall:



- 1 (1) File an application with the department on a form prescribed by the department;
- 2 (2) Pay a license fee of one hundred fifty dollars;
- 3 (3) Submit a copy of the applicant's current federal basic wine manufacturing permit;
- 4 (4) Register each brand label offered for sale in this state and pay all applicable brand
5 registration fees pursuant to chapter 39-13;
- 6 (5) Hold a South Dakota sales and use tax license issued by the department; and
- 7 (6) Be current on the remittance of all applicable state taxes.

8 The department shall issue a wine direct shipper license to any applicant who meets the
9 requirements of this section and this Act.

10 Section 3. Wine direct shipper licenses are valid from twelve o'clock midnight on the
11 thirty-first day of December to twelve o'clock midnight on the thirty-first day of the next
12 December. However, the license is valid for an additional three days if a proper application for
13 a new license is in the possession of the department before midnight on the thirty-first day of
14 December when the license expires. The full fee shall be charged for any license for a portion
15 of the period.

16 Section 4. Notwithstanding any other provisions of title 35, a direct shipper licensed
17 pursuant to this Act may sell and ship wine to any person in this state who is twenty-one years
18 of age or older.

19 Before shipping the wine, the direct shipper shall verify the age of the person placing the
20 order by obtaining a copy of the person's valid age-bearing photo identification document issued
21 by this state, another state, or the federal government, or by using an age verification service.
22 The direct shipper shall record the name, address, date of birth, and telephone number of the
23 person placing the order on the order form or other verifiable record. The direct shipper shall
24 notify the person placing the order that the recipient of the shipment will be required to show

1 a valid age-bearing photo identification document issued by this state, another state, or the
2 federal government upon delivery.

3 The direct shipper may not ship more than twelve cases of wine, containing no more than
4 nine liters per case, in any calendar year to any person for personal use under this Act.

5 Section 5. A direct shipper shall label each package to be shipped in accordance with this
6 Act so that it conspicuously contains words indicating the package contains alcohol and that the
7 signature of a person twenty-one years of age or older is required for delivery.

8 Any direct shipper who knowingly causes a direct shipment of wine in violation of section
9 4 of this Act or this section is subject to a civil penalty of one thousand dollars for a first offense
10 and two thousand dollars for a second or subsequent offense.

11 Section 6. Each shipment of wine made in accordance with this Act shall be made by a
12 common carrier and shall be accompanied by a shipping label that conforms to the requirements
13 contained in section 5 of this Act. The common carrier shall obtain the signature of a person
14 twenty-one years of age or older prior to delivery of the shipment, and shall request that the
15 person signing for the shipment display a valid age-bearing photo identification document
16 issued by this state, another state, or the federal government verifying that the person is
17 twenty-one years of age or older.

18 Any common carrier who knowingly delivers wine to a person under twenty-one years of
19 age is subject to a civil penalty of one thousand dollars for a first offense and two thousand
20 dollars for a second or subsequent offense.

21 Section 7. That § 35-9-1.2 be amended to read as follows:

22 35-9-1.2. Any person charged with a violation of § 35-9-1 ~~or~~, 35-9-1.1, or section 6 of this
23 Act may offer evidence, as a defense, that the person made a reasonable attempt to investigate
24 the age of the person by examining an age-bearing identification document that would have

1 appeared valid to a reasonable and prudent person.

2 Section 8. No person may receive more than twelve cases of wine, containing no more than
3 nine liters per case, in any calendar year for personal use under this Act. No person who receives
4 wine under this Act may resell any of the wine. It is a Class 2 misdemeanor for any person to
5 receive more than twelve cases of wine during a calendar year in violation of this Act. It is a
6 Class 1 misdemeanor for any person to resell or attempt to resell any wine obtained pursuant
7 to this Act.

8 Section 9. A direct shipper may only ship wine that was produced by the direct shipper in
9 accordance with the direct shipper's federal basic wine manufacturing permit. A violation of this
10 section is a Class 2 misdemeanor.

11 Section 10. A direct shipper is deemed to have consented to the jurisdiction of the
12 department and the courts of the State of South Dakota with respect to the enforcement of this
13 Act. The direct shipper shall allow the department to perform an audit of the direct shipper's
14 records, including any documents used to verify the age of any person ordering wine from the
15 direct shipper, and provide copies of any such records upon request.

16 Section 11. A direct shipper shall file quarterly reports with the department on or before the
17 fifteenth day of the month following each quarterly period. The required quarterly report shall
18 be filed even if no business was transacted in this state during the reporting period.

19 The report shall include:

- 20 (1) The business name, address, and direct shipper license number of the direct shipper;
- 21 (2) The total gallons of wine shipped to recipients in this state during the quarterly
22 period;
- 23 (3) The name and address of shipment recipients in this state and the number of cases,
24 or portions thereof, received per recipient during the quarterly period;

1 (4) The common carrier or carriers used to deliver each shipment; and

2 (5) The date, quantity, and purchase price of each shipment, along with any taxes paid
3 by the recipients, during the quarterly period.

4 Section 12. A direct shipper shall pay the alcoholic beverage occupational taxes as
5 prescribed by § 35-5-2, according to the rates established in subdivisions 35-5-3(2),(3), and (4).
6 Notwithstanding the filing and payment requirements prescribed in chapter 35-5, a direct
7 shipper shall include on the report required by section 10 of this Act the gallons of wine shipped
8 to recipients in this state in each wine category as set forth in subdivisions 35-5-3(2), (3), and
9 (4), and calculate the tax due for each wine category. The direct shipper shall remit the alcoholic
10 beverage occupational taxes quarterly on or before the twenty-fifth day of the month following
11 each quarterly period.

12 A direct shipper that is also licensed as a farm winery pursuant to chapter 35-12 shall receive
13 a credit for any occupational tax paid pursuant to §§ 35-12-7 and 35-12-8 for any wine sold in
14 this state by the direct shipper.

15 Section 13. All reports required by section 11 and 12 of this Act shall be submitted by
16 electronic means to the department. All taxes required to be remitted by section 12 of this Act
17 shall be remitted by electronic transfer to the department.

18 Section 14. Sales and shipments of wine direct to persons in this state from wineries that do
19 not hold a current wine direct shipper license are prohibited. For the first offense, the
20 department shall send a certified letter to any person who violates this section and order the
21 person to cease and desist any shipments of wine into this state. For any subsequent violations,
22 the department shall notify the alcoholic beverage control agency in the person's state of
23 domicile, if other than this state, and the Alcohol and Tobacco Tax and Trade Bureau of the
24 United States Department of the Treasury of the violation. Any person who violates this section

1 is subject to a civil penalty of up to five thousand dollars.

2 Section 15. The department may promulgate rules, pursuant to chapter 1-26, concerning:

- 3 (1) Forms necessary for the implementation of this Act;
- 4 (2) Reporting and tracking requirements for wine direct shipper licensees; and
- 5 (3) The procedure for filing tax returns and the payment of all applicable taxes.

6 Section 16. That § 35-12A-1 be amended to read as follows:

7 35-12A-1. Notwithstanding any other provision of law, any person who is at least
8 twenty-one years of age may purchase and receive wine from another state as provided in this
9 section if the wine is not in distribution in this state ~~and the wine comes from a winery that is~~
10 ~~located in a state that affords South Dakota wineries an equal reciprocal shipping privilege, or~~
11 ~~a winery located in South Dakota.~~ The person shall place an order with a licensee as defined in
12 subdivision 35-4-2(3) ~~or, (5), or (12).~~ The licensee shall order the wine through a wholesaler
13 licensed pursuant to subdivision 35-4-2(2) and the wholesaler shall arrange the purchase of
14 wine. The licensee shall inform the purchaser of the cost of the wine, the amount of any tax that
15 would apply to the purchase pursuant to § 35-5-3, the amount of sales tax that would apply, and
16 the amount of charges for freight and handling. The licensee shall collect the total amount due
17 from the customer before ordering the wine through the wholesaler. After receiving the order
18 for the wine from the licensed retailer the wholesaler shall arrange for the wine to be shipped
19 directly to the licensee who placed the order for the purchaser. Wine purchased pursuant to this
20 chapter may only be delivered and received by the purchaser from a licensee as defined in
21 subdivision 35-4-2(3) ~~or, (5), or (12).~~

22 Section 17. That § 35-12A-2 be amended to read as follows:

23 35-12A-2. If the wholesaler orders twelve or less cases of a particular brand of wine for an
24 individual purchaser in one calendar year pursuant to this ~~section~~ chapter, no registration fee

1 pursuant to chapter 39-13 may be imposed.

2 Section 18. That § 35-12A-3 be amended to read as follows:

3 35-12A-3. No person may receive more than twelve cases of wine, containing no more than
4 nine liters per case, in any calendar year for personal use from another state under this chapter.
5 No person who receives wine under this chapter may resell any of the wine. However, if the
6 delivery of the wine does not result in a completed sale to the person who placed the original
7 order, the licensee may sell the wine in the ordinary course of business. It is a Class 2
8 misdemeanor for any person to receive more than twelve cases of wine during a calendar year
9 in violation of this chapter. It is a Class 2 misdemeanor for any person to resell or attempt to
10 resell any wine obtained pursuant to this chapter. The Department of Revenue shall promulgate
11 rules, pursuant to chapter 1-26, to provide for the reporting and tracking of information related
12 to the sale of wine under this chapter and to prescribe forms for the implementation of this
13 chapter.

14 Section 19. That § 35-12A-4 be repealed.

15 ~~35-12A-4. Any licensee who holds a farm winery license pursuant to § 35-12-2 may ship~~
16 ~~no more than twelve cases of wine per person per calendar year. A case may contain no more~~
17 ~~than nine liters per case in any one shipment. Any wine sold may only be for personal use and~~
18 ~~not for resale. The wine may only be sold directly to a resident of another state if the state to~~
19 ~~which the wine is sent allows residents of the state to receive wine sent from outside that state.~~

20 Section 20. That § 35-12A-5 be repealed.

21 ~~35-12A-5. No person in the business of selling alcoholic beverages may ship or cause to be~~
22 ~~shipped any alcoholic beverage to any South Dakota resident who does not hold a license issued~~
23 ~~pursuant to chapter 35-4. The department shall, for the first offense, send a certified letter to any~~
24 ~~person who violates this section and order such person to cease and desist any shipments of~~

1 ~~alcoholic beverages to South Dakota residents. Any subsequent violation of this section is a~~
2 ~~Class 1 misdemeanor.~~

3 Section 21. The effective date of this Act is January 1, 2015.