



Legislative Research Council

MINUTES

Alcoholic Beverage Interim Study Committee

Representative Roger Solum, Chair
Senator Corey Brown, Vice Chair

Third Meeting
2014 Interim
September 2, 2014

Room 413
State Capitol Building
Pierre, South Dakota

The third meeting of the Alcoholic Beverage Shipping and Distribution Study Committee for the 2014 Interim was called to order by Representative Roger Solum at 10:00 a.m. (CDT) in room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Representative Roger Solum, Chair; Senator Corey Brown, Vice Chair; Representatives Brock Greenfield, Troy Heinert, Timothy Johns, and Tim Rounds; Senators Jim Bradford, Ryan Maher, and Craig Tieszen.

Staff members present included Roxanne Hammond, Legislative Attorney; Fred Baatz, Principal Research Analyst; Doug Decker, Code Counsel; and Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office and some can be found on the Legislative Research Council website at <http://legis.sd.gov/Interim/CommitteeDocuments.aspx?Session=2014>. This meeting was web cast live. The archived web cast is available at the LRC website at <http://legis.sd.gov>.

Approval of the Minutes

REPRESENTATIVE ROUNDS MOVED, SECONDED BY REPRESENTATIVE JOHNS, THAT THE MINUTES OF THE JULY 7, 2014, ALCOHOLIC BEVERAGE SHIPPING AND DISTRIBUTION STUDY COMMITTEE BE APPROVED. The motion prevailed on a voice vote.

Review of Committee Mission Statement

Representative Roger Solum read the directive received from the Executive Board regarding the focus of the Alcoholic Beverage Shipping and Distribution Committee for the 2014 Interim:

Study Scope: Study alcoholic beverage shipping and distribution regulation in South Dakota. The study should include:

- (1) The three-tier system of alcohol distribution in the state to determine if the current system is necessary and appropriate in today's society;*
- (2) The intrastate and interstate shipping of wine, beer, and spirits. The study should include how the shipping would affect the three-tiered system including equality of taxation, enforcement, equality for retailers - both in-state and out-of-state, social issues, and permits and licenses; and*
- (3) The possibility of creating a direct-to-consumer winery shipping law.*

Testimony on Potential Legislation

A copy of a draft piece of legislation entitled “An Act to establish a wine direct shipment license to enable the direct shipments of certain wine in South Dakota” was distributed to committee members and to audience members for consideration and discussion (**Document #1**).

Senator Corey Brown explained that this draft is based on committee discussion during the previous committee meeting and several phone calls and emails between committee members and various interested parties occurring since that meeting.

Senator Brown said that in Section 12, Line 7, the one percent direct shipment tax is applied to the retail price of the wine, while currently there is a 2% wholesale tax that the distributor pays and that is applied to the wholesale price. Senator Brown explained that the 1% on retail price should be pretty equal to the 2% on wholesale price. This was just one step toward maintaining a level playing field regarding alcoholic beverage distribution.

Senator Brown said that there has also been discussion regarding the Department of Revenue keeping a list of all wine labels registered in South Dakota. If possible, it would be beneficial for the Department of Revenue to make available the list of wine labels and how the wine is distributed. It is important that wineries do not come in and undercut South Dakota distributors. Section 21 of the proposed bill also addresses that issue by adding to the current statute that says alcoholic beverages may not be sold below the wholesale cost, the following sentence: “If no wholesaler is used in the sale, the retailer may not sell the alcoholic beverage below cost.”

There had been discussion previously about licensing the shipping companies that deliver alcohol to the consumer. Senator Brown said rather than requiring shippers to pay to be licensed, shipping compliance companies will possibly be required to provide to the Department of Revenue a list of any deliveries of alcohol to the end consumer. The Department of Revenue will then have the ability to double check to make sure all required fees and taxes were paid on those sales.

Mr. Jeff Carroll, Vice President of Compliance, ShipCompliant, Boulder, CO, testified via telephone in support of a direct shipping law in South Dakota. ShipCompliant is described by Mr. Carroll as *“a unique software as a service platform for the alcoholic beverage industry that helps wineries and distilleries distribute their products efficiently and compliantly. Wine industry members rely on our software every day to facilitate seamless transactions for both the direct to consumer channel and for traditional sales through the three-tier distribution system.”* Of the 8,000 wineries in the United States, 1,000 of them are registered with ShipCompliant.

ShipCompliant is a software program that makes sure all shipments of wine made by its clients comply with state laws and assures that the reports made to each state are accurate. The software determines the proper tax jurisdiction and detects if a household is going to exceed the shipment totals allowed in each state. If a winery ships to every state, they need to file over 700 reports each year. ShipCompliant helps them with these reports.

Representative Brock Greenfield asked Mr. Carroll about purchasing wine through Amazon.com and if they use ShipCompliant. Mr. Carroll explained that although a consumer purchases the wine through Amazon.com, the winery is responsible for the actual delivery of that wine and for abiding by all state laws for the consumer’s location.

Representative Greenfield then asked Mr. Carroll what penalties there should be for any winery not registering in the state where they are delivering wine. Mr. Carroll explained that through the federal

21st Amendment Enforcement Act a warning letter is first sent to the offender followed by loss of their federal permit to produce wine if the winery does not comply with the warning letter.

Mr. Carroll said that it is common for wineries to submit names and addresses of direct-ship customers to each state's Department of Revenue. He added that the vast majority of wineries will be eager to comply with the state's laws and regulations.

Ms. Dianna Miller, South Dakotans for Better Wines Committee, Sioux Falls, said that this draft legislation is a fair compromise and that, for the most part, this draft meets the goals that the Better Wines Committee set out to accomplish. One added benefit to the wholesalers is that they will be able to see what wines are being delivered into South Dakota and they can try to establish an account with those wineries. In response to a question, Dianna explained that the winery has to report how much wine was delivered and to whom it was delivered, but only the list of wines delivered will be available to the public.

Representative Tim Johns asked, in regard to this draft piece of legislation, if the wine is available through a South Dakota distributor can the consumer still purchase it online. Ms. Miller explained that this legislation would allow the consumer to purchase it online but that would not be common practice because of the additional fees and shipping costs.

Mr. Jeremiah Murphy, Republic National Distributing Company (RNDC), Sioux Falls, distributed a document, "Level Playing Field" (**Document #2**). Mr. Murphy said that making the list of wines delivered into South Dakota available will help South Dakota's wholesalers in knowing what wines are being sold through direct shipment. Mr. Murphy added that this may be the time to look at removing the 2% wholesale tax, and that South Dakota is the only state that imposes such a tax on wine. He said that they are not looking for an advantage but they also do not want to be at a disadvantage.

Mr. Murphy said that another way to address the level playing field issue is by requiring shipping companies to become licensed to deliver wine in South Dakota. Carrier reporting is the check for those wineries who do not comply with South Dakota laws. He said that once North Dakota required carriers to file reports on wine deliveries, the North Dakota Department of Revenue learned which wineries were not complying through the lists the carriers provided.

Senator Brown said that he heard there are currently no carriers delivering wine into North Dakota because of North Dakota's carrier laws. Mr. Murphy replied that Iowa's carrier law may be a better choice to use as an example. He added that his organization believes carrier reporting should be done as in Iowa and 17 other states. He said that it is not their goal to stop carriers from delivering into South Dakota but to better assure a level playing field.

Mr. Tim Dougherty, Licensed Beverage Dealers of South Dakota, Sioux Falls, first addressed the question about Amazon.com selling wine to be direct shipped. Mr. Dougherty explained that a company like Amazon.com would not fall under this piece of legislation as the bill says that the wine has to be direct ordered from the winery, so purchasing wine from Amazon.com would not be legal in South Dakota even with this legislation.

Mr. Dougherty then went through the draft legislation giving his specific suggested changes: section 2 line 14 – the fee should be \$250 rather than \$100; page 2 line 3 – remove the word sales, if you do not remove that word, excise tax and municipal option fees are excluded; section 12 line 8 – change retail price to purchase price; section 16 needs clarification; section 21 – not clear on what the wholesale cost means in this section.

Mr. Dougherty said that his client feels very strongly that there should be a license requirement for shippers. Iowa has a carrier license requirement and major carriers are not pulling out of Iowa like they have in North Dakota. Mr. Dougherty added that ShipCompliant is a reputable company but there are a lot more wineries than the 1,000 clients they have. A carrier license is a good way to make sure all wineries are compliant.

Representative Johns added that perhaps it should be a felony for anyone to ship into South Dakota without a direct shipper license. Mr. Dougherty said that making this a felony has been discussed and that without it being a felony it is nearly impossible to enforce.

Mr. Bob Riter, SD Beer Distributors, Pierre, said that his clients believe that there needs to be a checks and balance system like the beer distributors have and that the carriers having to report would provide that checks and balance. Mr. Riter continued saying that there are already a lot of companies shipping into South Dakota without being compliant and licensing the shippers would eliminate that issue. Carrier registration and reporting would insure the proper reporting and tax collection as well. The state cannot rely on ShipCompliant. Mr. Riter stated that carrier licensing works in 17 other states, with North Dakota being the only state having problems with that law.

Mr. Jason Evans, Deputy Director, Property and Special Taxes, suggested some changes to the proposed legislation. Mr. Evans went through the proposed bill line by line making corrections and suggesting changes. In response to a question, Mr. Evans said that farm wineries currently report on a quarterly basis and that he would prefer that reporting schedule remain.

Mr. Evans questioned where the revenues from the 1% direct shipment tax will go. He said that the 2% wholesale tax goes to the general fund. Representative Solum suggested that some of the funds could be used to offset the additional costs to the Department of Revenue created by the passage of this type of legislation. Mr. Evans said that passing a bill of this nature would create the need for an additional FTE and additional filing software. Directing some of the tax collected to help cover those expenses would be helpful, but funding would be needed prior to any taxes collected in preparation for these changes. Mr. Evans said that they estimate implementation costs for this type of program would be about \$100,000.

Mr. Evans asked that the committee consider including a delayed implementation date to January 2016 rather than the usual July 2015 start date. Mr. Evans also commented on the fact that there is no enforcement mechanism included in this legislation and he does not know what the department is to do when they find someone not complying.

Representative Troy Heinert pointed out that some tribes have a luxury tax on alcohol and asked Mr. Evans how the Department of Revenue would deal with that issue. Mr. Evans said that the Department does not get involved in that now and he does not anticipate getting involved in that with regard to direct shippers.

Mr. Shawn Lyons, South Dakota Retailers Association, Pierre, testified that his organization wants to make sure of a level playing field when it comes to the sale and distribution of alcohol in South Dakota. He said that the 1% direct shipment tax on the retail price of the wine should be higher because at the 1% rate the direct shipper has an advantage over the South Dakota distributor because the distributor pays a 2% tax on the wholesale price.

As for the carrier license issue, Mr. Lyons suggested that the committee meet with representatives from the major carriers to get their input on the licensing option.

In response to a question, Mr. Lyons said that there would most likely be some interest from South Dakota retailers to be able to direct ship wine to consumers.

Mr. Jim Schade, Schadé Vineyards, Volga, said that wineries do have an option other than ShipCompliant. VinoShipper.com is available in 14 states and will take orders and ship wine for members. VinoShipper is then responsible for collecting and remitting the taxes and fees in all the different states. Members pay a \$150 monthly fee for those services.

Mr. Schade said that it is important to make compliance as simple as possible. He suggested a sales tax in lieu of all the excise taxes and fees, which would make it much easier for wineries to comply. He added that wineries know how to not comply, so it has to be simple in order to get them to comply.

Committee Discussion

The committee agreed that a request for one more meeting should be submitted to the Executive Board. The staff is requested to make changes to the draft legislation per the testimony heard today and then bring that proposal to the committee for further review.

Issues that need further discussion are: the suggested 1% direct shipment tax on the retail price of wine sold into South Dakota via direct ship versus the current 2% tax on the wholesale price paid by South Dakota distributors on wine they sell to retailers; carrier licensing; where the revenues from this legislation would go; and enforcement and penalties.

Representative Tim Rounds said that he would like the license fee in section 2 to remain at the proposed \$100. Senator Brown agreed with Representative Rounds adding that raising it to the suggested \$250 would make South Dakota's fee more expensive than 43 other states per capita. He added that even at the \$100 rate South Dakota would be more expensive than 30 other states per capita. He added that he believes the wine direct shipper license should be kept as inexpensive and easy to register as possible.

The committee agreed that they would like to hear from the carriers as to their thoughts on having to be licensed to deliver wine into South Dakota.

The committee also agreed that they need more information regarding the direct sale of distilled spirits produced by artisan distillers before taking any action on that issue.

Next Meeting

With approval from the Executive Board, the next meeting of the Alcoholic Beverage Shipping and Distribution Study Committee will be Monday, October 20, at 10:00 a.m. in room 413 of the Capitol.

Adjourn

REPRESENTATIVE GREENFIELD MOVED, SECONDED BY REPRESENTATIVE ROUNDS, THAT THE ALCOHOLIC BEVERAGE SHIPPING AND DISTRIBUTION INTERIM STUDY COMMITTEE BE ADJOURNED. The motion prevailed unanimously on a voice vote.

The Committee adjourned at 3:20 p.m.