



Legislative Research Council

MINUTES

Alcoholic Beverage Interim Study Committee

Representative Roger Solum, Chair
Senator Corey Brown, Vice Chair

Fourth Meeting
2014 Interim
October 20, 2014

Room 413
State Capitol Building
Pierre, South Dakota

The fourth and final 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, and Craig Tieszen. Excused: Senator Ryan Maher.

Staff members present included Roxanne Hammond, Legislative Attorney; Fred Baatz, Principal Research Analyst; Amanda Jacobs, Research Analyst; 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>. The afternoon portion of 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 SENATOR BRADFORD, THAT THE MINUTES OF THE SEPTEMBER 2, 2014, ALCOHOLIC BEVERAGE SHIPPING AND DISTRIBUTION STUDY COMMITTEE BE APPROVED. The motion prevailed on a voice vote.

Potential Legislation

Ms. Roxanne Hammond, Legislative Attorney, distributed four draft bills for the committee's consideration (**Documents 1, 2, 3, 4**). The first bill presented by Ms. Hammond was draft 0014, also referred to as the large bill on wine shipping. Ms. Hammond went through the bill explaining the changes that had been made since the previous committee meeting.

After some discussion, the committee agreed that the word "shall" in the first line of Section 13 should be changed to "may".

Public Testimony on Potential Legislation – Draft 0014

Representative Roger Solum opened the meeting to public testimony on bill draft 0014, an act to establish a wine direct shipment license and wine carrier license to enable the direct shipments of certain wine in South Dakota.

Mr. Tim Dougherty, Licensed Beverage Dealers of South Dakota, Sioux Falls, distributed several proposed amendments to the bill (*Documents #5, 6, 7*). Mr. Dougherty said that he is pleased with the changes that were made to the bill, but that he would like to see a few more changes made and those changes were included in the amendments he presented. The first amendment he presented would change the license fee in Section 2 from \$100 to \$250. The amendment also adds a section to the bill regarding municipal markups on wine sold within a municipality.

The next amendment Mr. Dougherty presented would require the wine carrier to report the quantity of wine received by the recipient.

Mr. Dougherty's final amendment changes Section 18 of the bill to require that the Department of Revenue publish the list of wine labels registered for sale on the Department's website and removes the requirement to list whether the manufacturer shipped the brand label to any wholesaler.

Ms. Dianna Miller, South Dakotans for Better Wine Laws, Sioux Falls, testified via telephone. Ms. Miller said that the direct shipment bill needs to be easy to comply with because if it is simple then the wineries will comply. Ms. Miller said that she would like the license fee to be left at \$100 and not raised to the \$250.

Ms. Miller said that the municipal markup is something that the small wineries should not be burdened with, as these wineries have no way of knowing which communities have markup agreements.

Ms. Miller added that this legislation may improve business for retailers, as consumers will first check with their local retailer to see if the wine is available from the retailer before ordering it online. Purchasing it locally would save on shipping and handling costs.

Mr. Jim Hood, Wine Institute, Spearfish, testified on behalf of the 800 California wineries who are members of the Wine Institute and in favor of this draft legislation. Mr. Hood suggested two minor technical changes to the language in the bill that the committee agreed should be made.

Mr. Hood said that there is no way the wineries would know what cities impose a municipal markup or the amount of that markup. The municipal markup is an agreement between the municipality and the liquor retailer in that community, and is applied to the wholesale price, not the retail price. The municipal markup is unique to South Dakota and would impose an unreasonable burden on the out-of-state wineries.

As to the amount of the license fee, Mr. Hood said that it should not be more than \$100, and, in fact, the amount of that fee in most states that charge such a fee is usually \$25 or \$50. Mr. Hood also commented that the quantity of wine issue is addressed in the bill by using weight of shipment.

Mr. Don Roesler, South Dakotans for Better Wine Laws, Sioux Falls, testified on behalf of the draft legislation. Mr. Roesler said that the members of his organization want to insure consumer choice when it comes to purchasing wine. Mr. Roesler said that the wines they cannot currently purchase are high end wines from boutique wineries or wines available exclusively to wine club members. He said that direct shipping of wine to South Dakotans is already being done, but it is shipped to an address just across the border then the consumer picks it up there. This legislation would let South Dakota benefit from the taxes and fees collected on these wine sales and shipping charges.

Mr. Bob Riter, SD Beer Distributors, Pierre, said that he appreciates all the work that has been done on this piece of legislation. Mr. Riter agrees with the last two of Mr. Dougherty's proposed amendments, regarding the reporting of the quantity of wine delivered, and removing subsection 3 of Section 18.

Mr. Jeremiah M. Murphy, Republic National Distributing Company (RNDC), Rapid City, testified that he agrees with the amendments proposed by Mr. Dougherty regarding this piece of draft legislation. Mr. Murphy said that quantity of wine should be used instead of weight and then the Department of Revenue would have the ability to set how they want the quantity reported. This won't have much of an impact on the revenues but will make it more consistent with current practices.

Mr. Murphy said that he believes having the direct shippers pay the municipal markups is doable. Mr. Murphy added that if the committee chooses not to raise the \$100 license fee, then perhaps they should consider reducing the fees charged to the local distributors to make things more fair.

Mr. Shawn Lyons, SD Retailers Association, Pierre, said that the committee has done a great job with this legislation and that no one is going to be completely happy with the final outcome. Mr. Lyons said that a number of retailers believe this piece of legislation will help their traffic as it will increase the interest in wines.

Mr. Lyons said that perhaps it is time for the Legislature to take a look at municipal markups on the sale of alcoholic beverages. Currently, Brookings has an 11% markup. Perhaps those markups should be reduced or done away with completely.

Ms. Yvonne Taylor, SD Municipal League, Fort Pierre, said that her organization will support this piece of legislation as long as local sales tax is collected and that there are adequate identification checks done to assure no deliveries will be made to minors.

Ms. Taylor explained the municipal markups on alcoholic beverage sales. Municipal markups are charged on off-sale purchases. If the municipality owns the liquor license, they lease the license and the municipality can then have a markup agreement with the lessor of that license. Currently, there are 120 municipalities that own the local liquor stores. Most are smaller communities, except for Brookings, Vermillion, and Pierre. The revenue for these markups is used to cover the expense of administering these liquor store leases. Ms. Taylor said that the Municipal League does not have a list of the rate of the agreements and she does not know where an out-of-state winery would get that information. There wouldn't be any administrative cost to the municipality on these direct-ship sales of wine.

Mr. Jason Evans, Deputy Director, Property and Special Taxes, said that the Department of Revenue does not support or oppose this draft legislation. He said that he does support the last two of Mr. Dougherty's proposed amendments, as well as the technical changes Mr. Hood had suggested. Mr. Evans added that this is a bill that the Department of Revenue could administer.

Representative Solum opened the floor to committee questions and discussion regarding this proposed piece of legislation.

Senator Corey Brown said that after hearing testimony he would be willing to accept Mr. Dougherty's proposed amendment regarding Section 18 of the bill to require that the Department of Revenue publish the list of wine labels registered for sale on the Department's website and remove the requirement to list whether the manufacturer shipped the brand label to any wholesaler.

Senator Craig Tieszen asked if anyone had contacted the shippers and asked what works for them as far as reporting number of bottles versus weight. Ms. Hammond spoke to Fed Ex on the issue of quantity and Fed Ex said that they have no way of knowing how many bottles of wine are in a shipment, they only know the weight of that shipment.

Representative Tim Rounds asked Mr. Dougherty in regard to the municipal markup, if someone lives outside Gettysburg but their address is Gettysburg, would the winery still be liable to pay the municipal markup. Mr. Dougherty said that he did not know the answer to that question.

A MOTION WAS MADE BY REPRESENTATIVE ROUNDS, SECONDED BY SENATOR TIESZEN, TO ADOPT PROPOSED LEGISLATION 0014.

A MOTION WAS MADE BY REPESENTATIVE GREENFIELD, SECONDED BY SENATOR BROWN, TO STRIKE THE WORD LICENSED FROM PAGE 2 LINE 24 AND REPLACE IT WITH THE WORD REGISTERED. The motion prevailed on a voice vote.

A MOTION WAS MADE BY SENATOR BROWN, SECONDED BY REPRESENTATIVE GREENFIELD, THAT SECTION 5 ON PAGE 3 LINE 20 BE REPLACED WITH SECTION 6. The motion prevailed on a voice vote.

A MOTION WAS MADE BY REPRESENTATIVE GREENFIELD, SECONDED BY SENATOR BROWN, TO ADD “ON ITS INTERNET WEBSITE” FOLLOWING THE WORD PUBLISH ON PAGE 6 LINE 24. The motion prevailed on a voice vote.

A MOTION WAS MADE BY REPRESENTATIVE GREENFIELD, SECONDED BY SENATOR BROWN, TO ADD “AND SHIPPED” TO PAGE 7 LINE 1. The motion prevailed on a voice vote.

A MOTION WAS MADE BY REPRESENTATIVE ROUNDS, SECONDED BY SENATOR BROWN, TO STRIKE SUBSECTION 3 ON PAGE 7 LINE 5, AND REPLACE THE NUMBER 4 IN THE NEXT SUBSECTION WITH THE NUMBER 3. The motion prevailed on a voice vote.

A MOTION WAS MADE BY REPRESENTATIVE GREENFIELD, SECONDED BY SENATOR BROWN, TO CHANGE THE WORD “SHALL” TO “MAY” ON PAGE 7 LINE 12. The motion prevailed on a voice vote.

FINAL ACTION ON DO PASS AS AMENDED FOR DRAFT LEGISLATION 0014. The motion prevailed on a roll call vote with 8 voting AYE, 1 EXCUSED. Those voting AYE: Bradford, Greenfield, Heinert, Johns, Rounds, Tieszen, Brown, Solum. EXCUSED: Maher.

Senator Brown explained that they did not adopt Mr. Dougherty’s second proposed amendment to change reporting weight in pounds of each package shipped to quantity of wine shipped because they talked to the shipping companies and the shippers prefer weight in pounds because the shipper does not know how many bottles of wine are in the package and “quantity” is too vague.

Representative Brock Greenfield asked if this would cause problems when trying to get this piece of legislation through session. Mr. Dougherty said that he does prefer using quantity rather than weight. Mr. Evans said that the Department of Revenue will be able to work with either quantity or weight, although he is not sure what the weight reflects. Mr. Evans said that identifying the direct shipper and determining if they are licensed is the most important part of this section.

Representative Solum said that it is his understanding that there is a conversion chart available that can convert the weight into how many bottles of wine are in the package.

Representative Tim Johns added that the shipping company would have to actually open the package to confirm the number of bottles of wine in the package, but the weight is determined when setting the shipping costs.

Representative Greenfield asked if not adopting the amendment regarding municipal markups would cause problems in getting this bill passed. Representative Solum said that each community rate is different and that it would be impossible to track these markups. The wineries will have to pay state

and local sales tax on the full sales price including shipping. Senator Brown added that the Municipal League does not see leaving out the municipal markup as an issue.

Public Testimony on Potential Legislation – Draft 0029

Representative Solum opened testimony on bill draft 0029 which is an act to allow for the direct sale of distilled spirits from artisan distillers to retailers and wholesalers. This piece of legislation gives artisan distillers the same rights as farm wineries.

Mr. Bob Riter, SD Beer Distributors, Pierre, testified that out-of-state businesses have to have the same rights as in-state businesses. The state cannot give discriminatory rights to in-state entities. Mr. Riter also pointed out that carving out a small area in the industry may affect many more businesses than is intended.

Mr. Paul A. Lewis, Black Hills Dakota Distillery, Rapid City, testified in favor of this legislation. Mr. Lewis pointed out that there is a 50,000 gallon maximum production annually which should keep any out-of-state distillers from wanting to come into South Dakota because of this legislation. But if a large distiller would choose to come into South Dakota and open a small artisan distillery, they would be welcome and it would be good for South Dakota as a whole. Mr. Lewis said that the artisan distillers would like to have an equal playing field with the farm wineries.

Mr. Jeremiah M. Murphy, Republic National Distributing Company (RNDC), Rapid City, testified in support of this legislation. Mr. Murphy said that this will set the template for the future.

Representative Johns pointed out that the only substantive change this bill makes is that it allows artisan distillers to sell directly to retailers as well as to wholesalers.

A MOTION WAS MADE BY REPRESENTATIVE ROUNDS, SECONDED BY SENATOR BROWN, TO ADOPT PROPOSED LEGISLATION 0029. Representative Rounds withdrew his motion.

Representative Greenfield asked about 35-4-2(9) that talks about carriers. Mr. Evans explained that carriers in that context refers to moving conveyances hired to provide alcohol, such as limos, party busses, boats, pedal pubs, etc.

A MOTION WAS MADE BY SENATOR BROWN, SECONDED BY REPRESENTATIVE HEINERT, TO ADOPT PROPOSED LEGISLATION 0029. The motion prevailed on a roll call vote with 8 voting AYE, 1 EXCUSED. Those voting AYE: Bradford, Greenfield, Heinert, Johns, Rounds, Tieszen, Brown, Solum. EXCUSED: Maher.

Public Testimony on Potential Legislation – Draft 0059

Representative Solum opened testimony on bill draft 0059, an act to make an appropriation to fund the Department of Revenue to aid in the electronic submission of reports and taxes related to direct shipment of wine and to declare an emergency.

Mr. Evans testified that the first bill approved by the committee this morning calls for a lot of changes and additions to be made to the reporting system currently used by the Department of Revenue. A new electronic system will need to be implemented and the cost for that system is not included in the Department of Revenue's budget. Mr. Evans said that he would like to ask that "direct shipment of wine" be changed to "alcoholic beverages" in both the title of the bill and on line 8 of the bill.

The committee agreed to amend the bill per Mr. Evans' request.

A MOTION WAS MADE BY SENATOR BROWN, SECONDED BY REPRESENTATIVE ROUNDS, TO ADOPT PROPOSED LEGISLATION 0059 AS AMENDED. The motion prevailed on a roll call vote with 8 voting AYE, 1 EXCUSED. Those voting AYE: Bradford, Greenfield, Heinert, Johns, Rounds, Tieszen, Brown, Solum. EXCUSED: Maher.

Public Testimony on Potential Legislation – Draft 0060

Representative Solum opened testimony on bill draft 0060, an act to abolish the wholesaler tax and transfer costs to the occupational tax on certain alcoholic beverages.

Mr. Jeremiah M. Murphy, Republic National Distributing Company (RNDC), Rapid City, spoke in favor of this draft legislation. Mr. Murphy said that the wholesalers tax is unique to South Dakota and making this change better fits the way distributors currently do business. Mr. Murphy said that this is basically revenue neutral to the state.

Mr. Tim Dougherty, Licensed Beverage Dealers of South Dakota, Sioux Falls, also testified that he supports this piece of draft legislation.

Senator Jim Bradford asked for an explanation of the bill in layperson's language.

Senator Brown explained that this bill will merely move the money around and the tax will no longer be called a wholesalers tax and will become part of the occupational tax that is being collected. Mr. Evans said that he did the estimates and calculated how much the occupational tax would have to increase to level out the elimination of the wholesalers tax. This legislation reflects those calculations, and the state will be kept whole.

Senator Bradford asked if any of the alcoholic beverage taxes are earmarked toward law enforcement. Mr. Evans said that all revenues from the alcoholic beverage taxes go into the general fund and none are earmarked for law enforcement.

A MOTION WAS MADE BY SENATOR BROWN, SECONDED BY REPRESENTATIVE GREENFIELD, TO ADOPT PROPOSED LEGISLATION 0060. The motion prevailed on a roll call vote with 8 voting AYE, 1 EXCUSED. Those voting AYE: Bradford, Greenfield, Heinert, Johns, Rounds, Tieszen, Brown, Solum. EXCUSED: Maher.

Committee Discussion

A MOTION WAS MADE BY REPRESENTATIVE GREENFIELD, SECONDED BY REPRESENTATIVE JOHNS, TO MOVE ALL FOUR PIECES OF LEGISLATION ADOPTED BY THE COMMITTEE TO THE EXECUTIVE BOARD FOR THEIR CONSIDERATION. The motion prevailed on a roll call vote with 8 voting AYE, 1 EXCUSED. Those voting AYE: Bradford, Greenfield, Heinert, Johns, Rounds, Tieszen, Brown, Solum. EXCUSED: Maher.

The final report of the Alcoholic Beverage Shipping and Distribution Study Committee will be presented to the Executive Board at their November 10, 2014, meeting in Pierre.

Representative Greenfield thanked everyone for making this study committee successful. He said that with both sides working together, hopefully these pieces of legislation will pass through the full legislature.

Representative Solum thanked the committee and the lobbyists for the hard work that went into this interim study. Representative Solum, on behalf of the full committee, wished Senator Bradford a happy 81st birthday.

Adjourn

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

The Committee adjourned at 2:10 p.m.

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