

SB 114
[Senate Commerce and Energy Engrossed Bill – 2/11/14]

FOR AN ACT ENTITLED, An Act to establish a wine direct shipper license and a wine carrier license and to provide for certain direct shipments of wine.

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

Section 1. Terms used in this Act mean:

- (1) "Common carrier," a carrier which holds itself out to the general public as engaged in the business of transporting goods for a fee;
- (2) "Department," the South Dakota Department of Revenue;
- (3) "Direct shipper," a winery that has obtained a wine direct shipper license;
- (4) "Winery," a winery that produces its own wine and holds a federal basic wine manufacturing permit.

(5) "Wine carrier," a common carrier that has obtained a wine carrier license.

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

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

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

Section 3. Any common carrier that delivers wine from a direct shipper to a person in this state must have a wine carrier license. A common carrier may obtain an initial or renewal wine carrier license by filing an application with the department on forms prescribed by the department and paying a license fee of one hundred dollars. The department shall issue a wine carrier license to any common carrier that meets the requirements of this section and the Act.

Section ~~34~~. Wine direct shipper licenses and wine carrier licenses are valid from twelve o'clock midnight on the thirty-first day of December to twelve o'clock midnight on the thirty-first day of the next December. However, the license is valid for an additional three days if a proper application for a new license is in the possession of the department before midnight on the thirty-first day of December when the license expires. The full fee shall be charged for any license for a portion of the period.

Section ~~45~~. Notwithstanding any other provisions of title 35, a direct shipper licensed pursuant to this Act may sell and ship wine products to any person in this state who is twenty-one years of age or older if the wine product is registered for direct shipment as required by section 24 of this Act.

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

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

Section ~~56~~. A direct shipper shall label each package to be shipped in accordance with this Act so that it conspicuously contains words indicating the package contains alcohol and that the signature of a person twenty-one years of age or older is required for delivery.

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

Section ~~67~~. Each shipment of wine made in accordance with this Act shall be ~~made~~delivered by a ~~common~~wine carrier and shall be accompanied by a shipping label that conforms to the requirements contained in section ~~56~~ of this Act. The ~~common~~wine carrier shall obtain the signature of a person twenty-one years of age or older prior to delivery of the shipment, and shall request that the person signing for the shipment display a valid age-bearing photo identification document issued by this state, another state, or the federal government verifying that the person is twenty-one years of age or older.

A wine carrier shall maintain a record of wine shipped which include the license number and name of the wine manufacturer, quantity of wine shipped, recipient's name and address, and an electronic or paper form signature from the recipient of the wine.

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

Section ~~78~~. That § 35-9-1.2 be amended to read as follows:

35-9-1.2. Any person charged with a violation of § 35-9-1 or, 35-9-1.1, or section ~~67~~ of this Act may offer evidence, as a defense, that the person made a reasonable attempt to investigate the age of the person by examining an age-bearing identification document that would have appeared valid to a reasonable and prudent person.

Section ~~89~~. No person may receive more than twelve cases of wine, containing no more than nine liters per case, in any calendar year for personal use under this Act. No person who receives wine under this Act may resell any of the wine. It is a Class 2 misdemeanor for any person to receive more than twelve cases of wine during a calendar year in violation of this Act. It is a Class 1 misdemeanor for any person to resell or attempt to resell any wine obtained pursuant to this Act.

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

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

Section ~~11~~12. A direct shipper shall file ~~quarterly reports~~ with the ~~department on or before the fifteenth day of the month following each quarterly period. The required quarterly report shall be filed even if no business was transacted in this state during the reporting period~~ secretary a return on such form as the secretary may require. The return shall cover the period of one calendar month.

The ~~report~~ return shall include:

- (1) The business name, address, and direct shipper license number of the direct shipper;
- (2) The total gallons of wine shipped to recipients in this state during the ~~quarterly reporting~~ period;
- (3) The name and address of shipment recipients in this state and the number of cases, or portions thereof, received per recipient during the ~~quarterly reporting~~ period;
- (4) The ~~common wine~~ carrier or carriers used to deliver each shipment; and
- (5) The date, wine product, quantity, and purchase price of each shipment, along with any taxes paid by the recipients, during the ~~quarterly reporting~~ period.

The return, together with payment of the tax due, shall be transmitted to the department on or before the twenty-fifth day of the second month following the close of the reporting period.

Section ~~12~~13. A direct shipper shall pay the alcoholic beverage occupational taxes as prescribed by § 35-5-2, according to the rates established in subdivisions 35-5-3(2),(3), and (4), ~~and the tax imposed by § 35-5-6.1 computed on the winery's sales price.~~ Notwithstanding the filing and payment requirements prescribed in chapter 35-5, a direct shipper shall include on the ~~report~~ return required by section ~~10~~12 of this Act the gallons of wine shipped to recipients in this state in each wine category as set forth in subdivisions 35-5-3(2), (3), and (4), and calculate the tax due for each wine category. The direct shipper shall remit the ~~alcoholic beverage occupational~~ taxes ~~quarterly~~ monthly on or before the twenty-fifth day of the second month following each ~~quarterly reporting~~ period.

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

Section 14. A wine carrier shall file with the secretary a report, on such form as the secretary may require, which includes the following information regarding each wine shipment delivered in this state during the reporting period:

- (1) The business name, address, and direct shipper license number of the direct shipper;
- (2) The date of the shipment; and

(3) The name and address of the shipment recipient and the number of cases, or portions thereof, received by recipient.

The report shall cover the period of one calendar month. The report shall be transmitted to the department on or before the twenty-fifty day of the second month following the close of the reporting period.

Section ~~13~~15. All returns and reports required by section ~~11 and~~ 12 and 14 of this Act shall be submitted by electronic means to the department. All taxes required to be remitted by section ~~12~~13 of this Act shall be remitted by electronic transfer to the department.

Section ~~14~~16. Sales and shipments of wine direct to persons in this state from wineries that do not hold a current wine direct shipper license are prohibited. For the first offense, the department shall send a certified letter to any person who violates this section and order the person to cease and desist any shipments of wine into this state. For any subsequent violations, the department shall notify the alcoholic beverage control agency in the person's state of domicile, if other than this state, and the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury of the violation. Any person who violates this section is subject to a civil penalty of up to five thousand dollars.

Section 17. Deliveries of wine to persons in this state by common carriers that do not hold a current wine carrier license are prohibited. For the first offense, the department shall send a certified letter to any person who violates this section and order the person to cease and desist any shipments of wine into this state. For any subsequent violations, the department may impose a civil penalty of up to five thousand dollars.

Section ~~15~~18. The department may promulgate rules, pursuant to chapter 1-26, concerning:

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

Section ~~16~~19. That § 35-12A-1 be amended to read as follows:

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

only be delivered and received by the purchaser from a licensee as defined in subdivision 35-4-2(3) ~~or~~, (5), or (12).

Section ~~1720~~. That § 35-12A-2 be amended to read as follows:

35-12A-2. If the wholesaler orders twelve or less cases of a particular brand of wine for an individual purchaser in one calendar year pursuant to this ~~section~~ chapter, no registration fee pursuant to chapter 39-13 may be imposed.

Section ~~1821~~. That § 35-12A-3 be amended to read as follows:

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

Section ~~1922~~. That § 35-12A-4 be repealed.

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

Section ~~2023~~. That § 35-12A-5 be repealed.

~~35-12A-5. No person in the business of selling alcoholic beverages may ship or cause to be shipped any alcoholic beverage to any South Dakota resident who does not hold a license issued pursuant to chapter 35-4. The department shall, for the first offense, send a certified letter to any person who violates this section and order such person to cease and desist any shipments of alcoholic beverages to South Dakota residents. Any subsequent violation of this section is a Class 1 misdemeanor.~~

Section 24. That chapter 39-13 be amended by adding a NEW SECTION to read as follows:
If the manufacturer is licensed as a wine direct shipper under section 2 of this Act, the manufacturer shall specify on the application for registration required by § 39-13-3 whether the wine product is registered for direct shipment. Wine products registered for direct shipment may be sold and distributed pursuant to this Act. Manufacturers may not sell or ship any wine product registered for direct shipment to wholesalers in this state except as provided in §35-12A-1.

Section ~~2125~~. The effective date of this Act is January 1, ~~2015~~2016.