



2021 South Dakota Legislature

House Bill 1208

Introduced by: **Representative Mulally**

1 **An Act to establish a distilled spirits direct shipment license and distilled spirits**
 2 **carrier license to enable the direct shipments of certain distilled spirits in**
 3 **South Dakota.**

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

5 **Section 1.** That a NEW SECTION be added:

6 **35-13A-1. Definitions.**

7 Terms used in Sections 1 to 17, inclusive, of this Act, mean:

- 8 (1) "Common carrier," a carrier that holds itself out to the general public as engaged
 9 in the business of transporting goods for a fee;
 10 (2) "Distilled spirits carrier," a common carrier that has obtained a distilled spirits
 11 carrier license;
 12 (3) "Distiller," a person that produces distilled spirits and holds a federal distilled spirits
 13 plant-beverage permit;
 14 (4) "Department," the South Dakota Department of Revenue;
 15 (5) "Direct shipper," a distiller that has obtained a distilled spirits direct shipper
 16 license;
 17 (6) "Purchase price," the price of a product charged to the end consumer before the
 18 application of South Dakota state and local taxes.

19 **Section 2.** That a NEW SECTION be added:

20 **35-13A-2. Distilled spirits direct shipper--License--Requirements--Fee.**

21 Any distiller located within or outside of the state may obtain a distilled spirits
 22 direct shipper license. An applicant for an initial or renewed distilled spirits direct shipper
 23 license shall:

- 24 (1) File an application with the department on a form prescribed by the department;
 25 (2) Pay a license fee of one hundred dollars;

- 1 (3) Submit a copy of the applicant's current federal distilled spirits plant permit;
2 (4) Register each brand label offered for sale in this state, if not previously registered,
3 and pay all applicable brand registration fees pursuant to chapter 39-13;
4 (5) Hold a South Dakota sales and use tax license issued by the department; and
5 (6) Be current on the remittance of all applicable state and local taxes.

6 The department shall issue a distilled spirits direct shipper license to any applicant
7 who meets the requirements of this Act. Any money collected pursuant to this section
8 shall be deposited in the general fund.

9 **Section 3.** That a NEW SECTION be added:

10 **35-13A-3. Distilled spirits carrier--License--Requirements--Fees.**

11 Any common carrier may apply for a distilled spirits carrier license. An applicant
12 for an initial or renewal distilled spirits carrier license shall:

- 13 (1) File an application with the department on a form prescribed by the department;
14 and
15 (2) Pay a license fee of one hundred dollars.

16 The department shall issue a distilled spirits carrier license to any applicant who
17 meets the requirements of this Act. Any money collected pursuant to this section shall be
18 deposited in the general fund.

19 **Section 4.** That a NEW SECTION be added:

20 **35-13A-4. Licenses--Duration--Fees.**

21 Each distilled spirits direct shipper license and distilled spirits carrier license is valid
22 from twelve o'clock midnight on the thirty-first day of December to twelve o'clock midnight
23 on the thirty-first day of the next December. However, the license is valid for an additional
24 three days if a proper application for a new license is in the possession of the department
25 before midnight on the thirty-first day of December when the license expires. The full fee
26 shall be charged for any license for a portion of the period.

27 **Section 5.** That a NEW SECTION be added:

28 **35-13A-5. Distilled spirits--Registered for direct shipment--Requirements.**

29 Notwithstanding any other provisions of title 35, a direct shipper licensed pursuant
30 to this Act may sell and ship distilled spirits to any person in this state who is twenty-one
31 years of age or older if the distilled spirits are registered for direct shipment as required

1 pursuant to section 2 of this Act. Before shipping the distilled spirits, the direct shipper
2 shall verify the age of the person placing the order by obtaining a copy of the person's
3 valid age-bearing photo identification document issued by this state, another state, or the
4 federal government, or by using an age verification service. The direct shipper shall record
5 the name, address, date of birth, and telephone number of the person placing the order
6 on the order form or other verifiable record. The direct shipper shall notify the person
7 placing the order that the recipient of the shipment is required to show a valid age-bearing
8 photo identification document issued by this state, another state, or the federal
9 government upon delivery. No direct shipper may ship more than three cases of distilled
10 spirits, containing no more than twelve bottles per case and no more than seven hundred
11 fifty milliliters per bottle, in any calendar year to any person for personal use under this
12 Act.

13 **Section 6.** That a NEW SECTION be added:

14 **35-13A-6. Package labeling requirements--Penalty.**

15 A direct shipper shall label each package to be shipped in accordance with the
16 provisions of this Act so that it conspicuously contains words indicating the package
17 contains alcohol and that the signature of a person twenty-one years of age or older is
18 required for delivery. Any direct shipper who causes a direct shipment of distilled spirits
19 in violation of the provisions of section 5 of this Act or this section is subject to a civil
20 penalty of one thousand dollars for a first offense and two thousand dollars for a second
21 or subsequent offense. Penalties may be imposed by the Department of Revenue. Any
22 money collected pursuant to this section shall be deposited in the general fund.

23 **Section 7.** That a NEW SECTION be added:

24 **35-13A-7. Carrier--Delivery of shipment--Requirements--Penalty.**

25 Each shipment of distilled spirits made in accordance with this Act shall be delivered
26 by a distilled spirits carrier and shall be accompanied by a shipping label that conforms to
27 the requirements contained in section 6 of this Act. The distilled spirits carrier shall obtain
28 the signature of a person twenty-one years of age or older prior to delivery of the
29 shipment, and shall request that the person signing for the shipment display a valid age-
30 bearing photo identification document issued by this state, another state, or the federal
31 government verifying that the person is twenty-one years of age or older.

32 Any common carrier or distilled spirits carrier who delivers distilled spirits to a
33 person under twenty-one years of age is subject to a civil penalty of one thousand dollars

1 for a first offense and two thousand dollars for a second or subsequent offense. Any money
2 collected by the department pursuant to this section shall be deposited in the general
3 fund.

4 **Section 8.** That a NEW SECTION be added:

5 **35-13A-8. Distilled spirits received--Limits--Resale prohibited--Penalty.**

6 No person may receive more than three cases of distilled spirits, containing no
7 more than twelve bottles per case and no more than seven hundred fifty milliliters per
8 bottle, in any calendar year for personal use under this Act. No person who receives
9 distilled spirits pursuant to the provisions of this Act may resell any of the distilled spirits.
10 It is a Class 2 misdemeanor for any person to receive more than three cases of distilled
11 spirits during a calendar year in violation of the provisions of this Act. It is a Class 1
12 misdemeanor for any person to resell or attempt to resell any distilled spirits obtained
13 pursuant to the provisions of this Act.

14 **Section 9.** That a NEW SECTION be added:

15 **35-13A-9. Production and shipment in accordance with federal permit--**
16 **Penalty.**

17 A direct shipper may only ship distilled spirits that were produced by the direct
18 shipper in accordance with the direct shipper's federal distilled spirits plant permit. A
19 violation of this section is a Class 2 misdemeanor.

20 **Section 10.** That a NEW SECTION be added:

21 **35-13A-10. State jurisdiction--Audit of records.**

22 A direct shipper is deemed to have consented to the jurisdiction of the department
23 and the courts of the State of South Dakota with respect to the enforcement of the
24 provisions of this Act. The direct shipper shall allow the department to perform an audit
25 of the direct shipper's records, including any documents used to verify the age of any
26 person ordering distilled spirits from the direct shipper and provide copies of any such
27 records upon request.

28 **Section 11.** That a NEW SECTION be added:

1 **35-13A-11. Direct shipper--Quarterly reports.**

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

5 The report shall include:

- 6 (1) The business name, address, and direct shipper license number of the direct
7 shipper;
8 (2) The total gallons of distilled spirits shipped to recipients in this state during the
9 quarterly period;
10 (3) The name and address of shipment recipients in this state and the number of cases,
11 or portions thereof, received per recipient during the quarterly period;
12 (4) The distilled spirits carrier or carriers used to deliver each shipment;
13 (5) The date, distilled spirits type, brand label, quantity, and purchase price of each
14 shipment, along with any taxes paid by the purchaser, during the quarterly period;
15 and
16 (6) The tracking number of each shipment.

17 **Section 12.** That a NEW SECTION be added:

18 **35-13A-12. Carrier--Quarterly reports.**

19 A distilled spirits carrier shall file quarterly reports with the department on or before
20 the fifteenth day of the month following each quarterly period. The required quarterly
21 report shall be filed even if no business was transacted in this state during the reporting
22 period.

23 The report shall include:

- 24 (1) The business name and address of the direct shipper for each shipment;
25 (2) The date of shipment;
26 (3) The name and address of shipment recipients in this state;
27 (4) The weight in pounds of each package shipped; and
28 (5) The tracking number of each shipment.

29 **Section 13.** That a NEW SECTION be added:

30 **35-13A-13. Tax payments.**

31 A direct shipper shall pay the alcohol excise tax as prescribed pursuant to § 35-5-
32 2, according to the rates established in subdivisions 35-5-3(2) and (5). Notwithstanding
33 the filing and payment requirements prescribed in chapter 35-5, a direct shipper shall

1 include on the report required by section 11 of this Act the gallons of distilled spirits
2 shipped to recipients in this state in each distilled spirits category as set forth in
3 subdivisions 35-5-3(2) and (5), and calculate the tax due for each category.

4 Additionally, the direct shipper shall pay the tax imposed by § 35-5-6.1 on shipped
5 distilled spirits based upon the purchase price of the distilled spirits sold to the consumer.
6 The direct shipper shall remit the taxes quarterly on or before the fifteenth day of the
7 month following each quarterly period.

8 A direct shipper that is also licensed, pursuant to chapter 35-13, as an artisan
9 distiller or distiller shall receive a credit for any alcohol excise tax paid pursuant to this
10 title for any distilled spirits sold for shipment in this state by the direct shipper.

11 **Section 14.** That a NEW SECTION be added:

12 **35-13A-14. Electronic submission of reports--Electronic tax payments.**

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

16 **Section 15.** That a NEW SECTION be added:

17 **35-13A-15. Sale and shipment of distilled spirits--License required--Action**
18 **by department--Civil penalty.**

19 Any sale and shipment of distilled spirits directly to a person in this state from a
20 distiller that does not hold a current distilled spirits direct shipper license is prohibited. For
21 the first offense, the department shall send a certified letter to any person who violates
22 this section and order the person to cease and desist any shipment of distilled spirits into
23 this state. For any subsequent violation, the department shall notify the alcoholic beverage
24 control agency in the person's state of domicile, if other than this state, and the Alcohol
25 and Tobacco Tax and Trade Bureau of the United States Department of the Treasury of
26 the violation. Any person who violates this section is subject to a civil penalty of up to five
27 thousand dollars. Any money collected by the department pursuant to this section shall
28 be deposited in the general fund.

29 **Section 16.** That a NEW SECTION be added:

30 **35-13A-16. Promulgation of rules.**

31 The department may promulgate rules, pursuant to chapter 1-26, concerning:

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

5 **Section 17.** That a NEW SECTION be added:

6 **35-13A-17. Internet website list of distilled spirits labels registered for sale**
7 **and shipment.**

8 The department shall compile and publish on its internet website a list of distilled
9 spirits labels registered for sale and shipped in the state each quarter, based on
10 information reported pursuant to section 11 of this Act. The list shall include:

- 11 (1) The manufacturer's name and address;
12 (2) Each brand label shipped by the manufacturer; and
13 (3) Whether the manufacturer shipped the brand label to any consumer.

14 **Section 18.** That § 35-9-1.2 be AMENDED.

15 **35-9-1.2. Reasonable attempt to investigate age.**

16 Any person charged with a violation of § 35-9-1, 35-9-1.1, ~~or~~ 35-12B-7, or section
17 7 of this Act, may offer evidence, as a defense, that the person made a reasonable attempt
18 to investigate the age of the person by examining an age-bearing identification document
19 that would have appeared valid to a reasonable and prudent person.