

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

495R0080

## HOUSE ENGROSSED NO. **HB 1002** - 2/9/2010

Introduced by: Representatives Turbiville and Lederman and Senators Nelson, Maher, Olson (Russell), and Tieszen at the request of the Interim Committee on Alcoholic Beverage Control and Licensing Laws

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the days and hours  
2 that alcoholic beverages may be sold on a licensed premise and who may sell, serve, or  
3 dispense alcoholic beverages on a licensed premise and to revise certain provisions  
4 concerning the power of municipalities and counties to regulate the sale and use of alcoholic  
5 beverages.

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

7 Section 1. That § 35-4-81 be amended to read as follows:

8 35-4-81. No on-sale or off-sale licensee, licensed under subdivisions 35-4-2(3), (4), (5), (6),  
9 (9), (11), ~~and~~ (13), or (18), may sell, serve, or allow to be consumed on the premises covered  
10 by the license, alcoholic beverages between the hours of two a.m. and seven a.m. or on Sunday  
11 after two a.m., on Memorial Day after two a.m., or at any time on Christmas Day. However, any  
12 municipality or county may, by ordinance, allow the sale of alcoholic beverages on Sundays and  
13 Memorial Day. A violation of this section is a Class 2 misdemeanor.

14 Section 2. That § 35-4-81.1 be repealed.



1 ~~35-4-81.1. No off-sale licensee, licensed under subdivisions 35-4-2(3), (5), and (19), may~~  
2 ~~sell, or allow to be sold, alcoholic beverages between the hours of twelve midnight and seven~~  
3 ~~a.m. of the following day, or sell, or allow to be sold, distilled spirits or wine on Memorial Day~~  
4 ~~or Christmas Day. In addition, no off-sale licensee may sell, or allow to be sold, alcoholic~~  
5 ~~beverages on Sunday unless the municipality or the county by ordinance allows such sales on~~  
6 ~~Sunday.~~

7 Section 3. That § 35-4-81.2 be amended to read as follows:

8 35-4-81.2. No licensee licensed under subdivisions 35-4-2(12), (16) ~~and~~, (17), (17A), and  
9 (19) may sell, serve, or allow to be consumed on the premises covered by the license, any malt  
10 ~~beverage~~ alcoholic beverages between the hours of two a.m. and seven a.m. ~~No licensee licensed~~  
11 ~~under subdivision 35-4-2(12) may sell, serve, or allow to be consumed on the premises covered~~  
12 ~~by the license, any wine between the hours of two a.m. and seven a.m.~~ A violation of this  
13 section is a Class 2 misdemeanor.

14 Section 4. That § 35-4-79 be amended to read as follows:

15 35-4-79. No on-sale licensee may permit any person less than twenty-one years old to loiter  
16 on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on such  
17 premises. However, an on-sale licensee licensed pursuant to subdivision 35-4-2(4), (6), (11),  
18 (12), (13), or (16) may permit persons eighteen years old or older to sell and serve or dispense  
19 alcoholic beverages if ~~not~~ less than fifty percent of the gross business transacted by that  
20 establishment is from the sale of ~~food~~ alcoholic beverages and the licensee or an employee that  
21 is at least twenty-one years of age is on the premises when the alcoholic beverage is sold or  
22 dispensed. For the purposes of this section, the term, "to sell and serve alcoholic beverages,"  
23 means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers  
24 as a normal adjunct of waiting tables. The term does not include tending bar or drawing or

1 mixing alcoholic beverages.

2 A violation of this section is a Class 2 misdemeanor.

3 Section 5. That § 35-4-79.1 be amended to read as follows:

4 35-4-79.1. No off-sale licensee licensed under subdivision 35-4-2(3), (5), (17), or (17A) may  
5 permit any person less than twenty-one years old to sell, serve, or dispense alcoholic beverages  
6 on the licensed premises unless such sales of alcoholic beverages constitutes less than fifty  
7 percent of the gross business transacted by that establishment. If alcoholic beverage sales  
8 constitute less than fifty percent of the gross business transacted by the establishment, the  
9 licensee may permit persons less than twenty-one years old to sell, serve, or dispense alcoholic  
10 beverages if the licensee or an employee that is at least twenty-one years of age is on the  
11 premises when the alcoholic beverage is sold or dispensed.

12 Section 6. That § 35-4-79.3 be repealed.

13 ~~35-4-79.3. No off-sale licensee licensed under subdivision 35-4-2(3) or (5) may permit any~~  
14 ~~person less than twenty-one years old to sell, serve, or dispense alcoholic beverages on the~~  
15 ~~licensed premises.~~

16 Section 7. That § 35-4-2.8 be amended to read as follows:

17 35-4-2.8. An on-sale licensee, licensed under subdivision 35-4-2(4) or (6), may also be  
18 licensed under subdivision 35-4-2(12) or (16), or both. A licensee holding two or more licenses  
19 pursuant to this section may exercise the privileges granted under the license issued pursuant  
20 to subdivision 35-4-2(12) or subdivision 35-4-2(16) ~~during the time specified in § 35-4-81.2.~~

21 Section 8. That § 9-29-7 be amended to read as follows:

22 9-29-7. ~~Every~~ Each municipality ~~shall have power to~~ may prohibit or regulate the transaction  
23 of business in alcoholic beverages; and the use and consumption ~~thereof, and to~~ of alcoholic  
24 beverages, establish the number of on- and off-sale licenses which may be issued; and the fees

1 to be charged ~~therefor, for the licenses, and~~ provide for reasonable classifications of on-sale and  
2 off-sale licenses and for the issuance of high-point beer on- and off-sale licenses to licensees  
3 holding high-point beer licenses on December 31, 1979, for which the fees to be charged for the  
4 various classifications shall be uniform within each class, consistent with the provisions of Title  
5 35. The secretary of revenue shall be promptly furnished certified copies of all ordinances and  
6 resolutions or amendments thereto adopted relating to the exercise of these powers.

7 ~~— No high-point beer license provided for in this section may be transferred as to site.~~

8 Section 9. That subdivision (8) of § 7-8-20 be amended to read as follows:

9 (8) To regulate the transaction of business in alcoholic beverages; and the use and  
10 consumption ~~thereof~~ of alcoholic beverages, to establish the number of on-sale  
11 licenses which may be issued, to provide for reasonable classification of on-sale  
12 licenses and ~~to~~ fix the fees to be charged for the ~~various classifications which shall~~  
13 ~~be uniform within each class, all~~ licenses consistent with the provisions of Title 35.  
14 ~~The secretary of revenue shall be promptly furnished certified copies of all~~  
15 ~~ordinances and resolutions or amendments thereto adopted relating to the exercise~~  
16 ~~of these powers;~~

17