



## **ALCOHOLIC BEVERAGE LICENSING AND TAXING PROVISIONS**

### **Introduction**

State and local regulations concerning to whom, where, and when alcohol may be sold in this state have been in place since the 1930s when national prohibition of the sale and consumption of alcoholic beverages ended. The state's regulations include licensing requirements for each stage of alcohol sales, limitations on which licensees may sell to whom and from whom a licensee may purchase alcohol, restrictions on the hours when alcohol may be sold, restrictions on the types of advertising that a wholesaler may undertake, and prohibition of certain types of sales inducements that a manufacturer or wholesaler may provide to a retailer.

The Department of Revenue licenses and regulates the wholesale sale of alcohol and the Secretary of Revenue issues licenses to manufacturers, distillers, farm wineries, wholesalers, solicitors, transporters, carriers, and dispensers, and retail licenses issued to counties and cities. The governing boards of cities and counties license and regulate the retail sale of alcohol. The secretary and the city and county governing bodies may approve or disapprove issuance of a license

depending on whether the applicant is deemed suitable to hold such license and whether the proposed location is considered suitable.

### **County and Municipal Licensing**

Alcoholic beverage licenses are valid for one year, and the reissuance of a license is treated the same as a new license with the exception of the license fee. The licensing period for malt beverage licenses is the state's fiscal year, and they expire at twelve o'clock midnight on the thirtieth day of June. All other licenses are on a calendar year, and they expire at twelve o'clock midnight on the thirty-first day of December. State law either establishes the actual license fee or establishes the guidelines cities and counties must use when setting the fees. The unit of government that issues the license receives the annual license fee, which is deposited in the state general fund for those licenses issued by the state, or in the general fund of the city or county issuing a license except malt beverage wholesalers, retailers, or package dealers. The annual license fees for malt beverages is equally divided between the state and the unit of government issuing the license.

The following table displays the types of alcoholic beverage licenses issued in South Dakota and the corresponding fee. The renewal fees listed in the table are the maximum that may be charged.

<b>Alcoholic Beverage Licenses and Fees</b>	
Distillers	\$ 4,000
Wholesalers	\$ 5,000
Off-sale	Not to exceed: <ul style="list-style-type: none"> <li>▪ \$500 in a 1<sup>st</sup> class municipality (<i>population - 5,001 and over</i>)</li> <li>▪ \$400 in a 2<sup>nd</sup> class municipality (<i>population - 501 to 5,000</i>)</li> <li>▪ \$300 in a 3<sup>rd</sup> class municipality (<i>population - 0 to 500</i>)</li> </ul>
On-sale	Not less than: <ul style="list-style-type: none"> <li>▪ \$1 for each person in a 1<sup>st</sup> class municipality (\$1500 renewal fee in 1<sup>st</sup> class municipality)</li> <li>▪ \$1200 in a 2<sup>nd</sup> class municipality</li> <li>▪ \$900 in a 3<sup>rd</sup> class municipality</li> </ul>
Off-sale issued to cities under local option	\$ 250
On-sale issued outside municipalities	Not less than maximum charged in nearest municipality for like license (the renewal fee is the same as for like license in nearest municipality unless located over 15 miles from the nearest municipality)
Solicitors	\$ 25
Transportation companies	\$ 25
Carrier	\$ 100
Dispensers	\$ 10
On-sale at publicly operated airports	\$ 250
On-sale dealers in wine for Sunday	\$ 500
Convention facility on-sale	Not less than \$1 for each person within the municipality <ul style="list-style-type: none"> <li>▪ \$1500 renewal fee in a 1<sup>st</sup> class municipality</li> <li>▪ \$1200 renewal fee in a 2<sup>nd</sup> class municipality</li> <li>▪ \$900 renewal fee in a 3<sup>rd</sup> class municipality</li> </ul>
Manufacturers of malt beverages	\$ 500
Farm winery	\$100 (\$100 renewal fee)
Wholesalers of malt beverages	\$ 400
Malt beverage retailers	\$ 250
Malt beverage package dealers	\$ 150
On-sale dealers in light wine	\$ 200

On-sale and off-sale retail licenses may be issued only after there has been a public hearing on the issuance of the license. The county and municipal governing board must publish a notice of the hearing in the official newspapers of the municipality or county. The board must provide an opportunity for any person to comment on the issuance or denial of any license. The maximum number of retail licenses a county or municipality may issue is limited based on the population of the municipality or county. A municipality may own and operate on-sale and off-sale licenses by either contract or direct employment.

On or before September first of each year the municipal and county governing boards must determine the number of on-sale and off-sale licenses to be approved for the ensuing calendar year. Each governing board may enact an ordinance that sets the number of licenses, including malt beverage licenses, or may set the number through a resolution adopted each year. The ordinance or resolution must also set the fees to be charged for the various types of licenses.

No municipality or county may issue more than three on-sale licenses for the first one thousand of population or fraction thereof and not more than one more for each additional one thousand five hundred of population or fraction thereof. In a municipality with a population of one thousand or less no more than two off-sale licenses may be issued and not more than one more for each additional one thousand five hundred of population or fraction thereof. The number of licenses allowable may not be less than the total number of licenses allowable or issued as of July 1, 1981. The population-

based quotas do not apply to malt beverage retailers or package dealers.

Only the population which lives outside incorporated municipalities is used when determining the number of licenses a county may issue. Those licenses, which were issued prior to January 1, 1983, to concessionaires and lessees of the state of South Dakota within the boundaries of state parks, may be subtracted when calculating the total number of licenses that a county may issue.

<b>Maximum Number of On-Sale Licenses</b>	
<b>Population</b>	<b>Number of Licenses</b>
1,000	3
2,500	4
4,000	5
10,000	9
14,500	12
23,500	18
29,500	22
59,500	42
119,500	82

A county may issue additional on-sale licenses within an improvement district. The number of such licenses may not exceed three on-sale licenses for the first one thousand of population or fraction thereof and not more than one more for each additional one thousand five hundred of population or fraction thereof. Any county with a population of less than two thousand may also issue one resort facility on-sale license for a resort facility constructed after July 1, 1997. The resort facility must have at least sixty rooms that are suitable for lodging, must serve food, and must

derive less than thirty-three percent of the licensee's gross receipts from the sale of alcoholic beverages.

Any municipality that is authorized by SDCL 42-7B to allow legal games of chance (limited card games and slot machines) may also issue up to twelve additional convention facility on-sale licenses to hotel-motel convention facilities. The convention facility must have at least fifty rooms and convention facilities with seating for at least one hundred fifty persons.

### **License Structure and Other Restrictions**

The relationship between licensees is strictly regulated and commonly referred to as the "Three-Tier System."

Manufacturers and distillers may sell only to other manufacturers and distillers and to wholesalers.

Wholesalers may sell only to other wholesalers and to retailers. Retail licensees may buy or receive alcohol only from wholesale licensees. The only exceptions are for micro-breweries and farm wineries, which can manufacture and sell at retail.

The state may not issue a wholesale license to any manufacturer, rectifier, distiller, jobber, or distributor of distilled spirits, or a copartner or a majority stockholder of a parent or subsidiary corporation. The state may not issue more than one malt beverage wholesale license for every twenty on- and off-sale licenses issued by counties and municipalities.

No person, corporation, or business entity may hold or have an interest in more than three retail on-sale and off-sale licenses, on-sale licenses issued outside municipalities, or convention

facility on-sale licenses. However, there is an exception to the three-license limit. A person may hold more than three on-sale licenses if the licensee derives more than fifty percent of the licensee's gross receipts from the sale of food or if the licenses are at hotel-motel convention facilities. However, the hotel-motel convention facility must be used and kept open for hosting large groups of guests for compensation. The facility must have at least one hundred beds and convention facilities that will seat at least four hundred people. If the facility is located in a second- or third-class municipality, it needs only fifty rooms.

No distiller or wholesale licensee may attempt to promote the sale of alcohol by tie-in sales arrangements or by providing gifts or other concessions of financial value to a customer. Distillers and wholesalers must limit their business practice to promoting sales on the basis of price competition, salesmanship, reliability as a supplier, and other ordinary competitive business practices.

The licensing structure requires a separate license for each type of sales activity. The on-sale license is for those places where alcohol is sold and consumed on the premises where it is sold. A person may not purchase alcohol for consumption elsewhere. An off-sale license is for the sale of alcohol for consumption off the premises where it is sold. Except for free, small samples of wine, liqueurs and cordials, no alcohol may be consumed on the premises where it is sold. Malt beverage retailers may sell malt beverages on-sale and off-sale on the same premises. Malt beverage package dealers may sell malt beverages only off-sale.

The carrier license is for any person or company, such as an airline, who transports passengers for hire and sells or furnishes alcoholic beverages to passengers aboard any means of conveyance. A dispenser license is issued to a duly licensed physician, dentist, veterinarian, osteopath, podiatrist, chiropractor, pharmacist, druggist, sanitarium, hospital, clinic, educational institution, industrial company, or industrial corporation who purchases alcohol for scientific and medicinal purposes only. Dispensers are prohibited from reselling alcohol except as compounded into medicinal or other preparations, which are not capable of ordinary use as a beverage. Dispenser licensees may buy or receive alcohol only from wholesale licensees or from wholesalers outside the state.

A distiller license is issued to any person who owns, operates, or aids in operating any distillery or other establishment for the production, rectifying, blending, or bottling of distilled spirits. The distiller license is not required of any person who manufactures alcohol for use in industry as a nonbeverage. A manufacturer is any person who owns, operates, or aids in operating any establishment for the brewing, production, bottling, or blending of malt beverages or wine.

A solicitor license is issued to any person who is employed by a licensed wholesaler within this state, or by any distiller or manufacturer within or without this state, who contacts a wholesaler or retail dealer to sell, promote, or advertise alcoholic beverages.

### **Special Licenses**

There are several special limited use licenses which municipalities and

counties are permitted to issue. A municipality or county may issue a special malt beverage retailers license to any civic, charitable, educational, or fraternal organization in conjunction with a special event within the municipality or county. The license may be issued for not more than fifteen consecutive days. The fee for this license is five dollars per day.

Any municipality may issue a temporary on-sale license to be operated at a municipal auditorium or convention hall established pursuant to SDCL 9-52 or 9-53. Any municipality with a population exceeding one hundred thousand may also issue a temporary on-sale license to be operated at a sporting event held at a publicly owned sports arena or a facility that seats a minimum of one thousand persons. These temporary licenses may be issued for a period of time not to exceed five consecutive days.

A county with a population between twenty thousand and twenty-eight thousand, or any municipality located in such a county, may issue a special events temporary malt beverage license to an on-sale or malt beverage retailer licensed within the county or municipality. The license may be issued for a period of time not to exceed fifteen consecutive days.

A municipality or county may issue a special malt beverage retailer license and a special retail on-sale wine dealer license to a community playhouse operating as a nonprofit organization for use in conjunction with a theatrical production. The license may be issued for a period of time not to exceed one year, but the license may not be used more than sixty days per year. The malt beverages and wine may not be sold or

consumed more than one hour before the commencement of a performance or at any time after the performance is concluded.

A municipality may issue one on-sale license to be operated at a licensed dog track. The population-based quota on the number of licenses does not apply to this license. A county or municipality operating a golf course may be issued an on-sale license, including a malt beverage retailer's license, at the golf course.

### Hours of Sale

No on-sale licensee may sell, serve, or allow to be consumed on the premises covered by the license, any alcoholic beverage between the hours of two a.m. and seven a.m. or on Sunday after two a.m., or on Memorial Day after one a.m., or at any time on Christmas Day. No off-sale licensee may sell, or allow to be sold, any alcoholic beverage between the hours of twelve p.m. and seven a.m. of the following day, or sell, or allow to be sold, distilled spirits or wine on Memorial Day or Christmas Day. In addition, no off-sale licensee may sell, or allow to be sold, any alcoholic beverage on Sunday unless the municipality or the county by ordinance allows such sales on Sunday.

### Taxation

All alcoholic beverages are subject to an occupational tax at the wholesale level and sales and use tax at the retail level. The occupational tax rate is based on quantity and type of alcoholic beverage sold and wine is further divided into three classes pursuant to its alcoholic content. The rate of the occupational tax has remained essentially unchanged during the last two decades except for a

small incremental increase that was enacted in 1987. In addition to the occupational tax, a wholesale tax of two percent is also imposed on all distilled spirits and wines received by in-state licensed liquor wholesalers. The occupational tax revenue is deposited in the alcoholic beverage fund and the wholesale tax revenue is deposited in the state general fund.

All retail sales of alcoholic beverages are subject to the state sales tax of four percent. In addition, retail sales of alcoholic beverages are subject to a local option municipal sales tax that may vary from one-half to three percent.

The next table lists the rate of taxation and the second table lists the tax revenue received by the state and municipalities. The revenue received does not include the sales and use tax revenue.

Alcoholic Beverage	Tax Rate (Per Gallon)	Wholesale Tax
All Malt Beverages (By the Barrel)	\$8.50	None
Wines (3.2 to 14%)	\$.90	2%
Wines (14 to 20%)	\$1.40	2%
Wines (20 to 24%)	\$2.07	2%
Cider (0 to 10%)	\$.28	2%
Other Beverages	\$3.97	2%

	Alcoholic Beverage Tax	2% Wholesale Tax
FY1997	\$9,181,271	\$600,431
FY 1998	\$9,180,122	\$594,342
FY 1999	\$10,039,771	\$655,669
FY 2000	\$9,945,580	\$703,612

The municipalities receive twenty-five percent of all the revenues deposited in the alcoholic beverage fund, which is allocated based on the each municipality's population in relation to the total population of all municipalities. The counties used to receive seventeen percent of the revenues deposited in the malt beverage fund (a fund that no longer exists). HB 1333, which was enacted in 1983, repealed this distribution to the counties and created a Medicaid county contribution fund. The Medicaid county contribution fund was repealed shortly thereafter in 1985 and the state assumed responsibility for the Medicaid program.

The South Dakota Association of County Commissioners proposed legislation (SB 129) during the 2000 Legislative Session imposing a tax upon wholesalers and manufacturers of alcoholic beverages. The proposed tax rate was approximately equivalent to a nickel-a-drink tax. In committee, an amendment to SB 129 was adopted changing the proposed tax to a gross receipts tax upon the on-sale alcoholic beverage establishments. The purpose of this proposed tax revenue was to partially finance the cost of county law enforcement and court related activities.

Between 1995 and 1999 the costs for county law enforcement and court related activities increased by 27.4 percent while county general fund revenues increased by 12.3 percent. The primary revenue source for counties is property taxes, and the limits placed on counties through the property tax reduction program require counties to either opt out or reprogram financial resources to pay the escalating expenses for law enforcement and court related activities. The percentage of expenditures of general fund revenues

used for these criminal justice activities has increased from 25.8 percent to 29.3 percent between 1995 and 1999.

The counties contend that a majority of law enforcement and court related expenses are correlated to alcohol consumption. A recent survey of inmates in South Dakota county jails reports that 55 percent of the inmates admitted that they were under the influence of alcohol when arrested and only 19 percent of these inmates ever owned real property. It is estimated that as many as 80 percent of the criminal offenders utilizing county jails and property-tax-supported law enforcement and court systems are the result of alcohol use or alcohol related violations. The U.S. Department of Justice<sup>1</sup> statistics for 1997 further supports these statistics and shows that South Dakota ranks second in the nation for percent alcohol-related arrests at 39 percent. This particular report classifies arrests by a single offense, using the hierarchical rule. Consequently, crimes committed while intoxicated are categorized under the primary offense, which is the most severe crime the person is charged with, for example, burglary. Surveys of the current state prison population show that 78 percent of the female inmates and 76 percent of the male inmates are diagnosed as being dependent on alcohol, drugs, or both alcohol and drugs. These statistics led the South Dakota Association of County Commissioners to the conclusion that law enforcement and court related activities should be partially financed by an alcoholic beverage tax.

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<sup>1</sup> **Sourcebook of Criminal Justice Statistics 1998.** U.S. Department of Justice, Bureau of Justice Statistics. Page 367.

## **Conclusion**

The state strictly regulates the sale of alcohol and limits the number of alcoholic beverage licenses. However, several exceptions and special licenses have been created for certain circumstances. These special licenses provide flexibility to local governments and individuals trying to meet a specific need without destroying the value of the licenses previously issued.

Seven states and the District of Columbia have an on-premise retail tax or surtax. All but one of these states levy this tax in addition to their sales tax.

In eighteen states the government directly controls the sales of distilled spirits and revenue is generated by various taxes, fees, and net liquor profits. In addition, many states do allocate part or all of the revenue generated from alcoholic beverages for specific purposes or special funds, instead of general fund purposes. The proposed legislation by the South Dakota Association of County Commissioners is not unique but raised much concern from the alcoholic beverage industry and individuals who are concerned about any proposed tax increase.

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**This issue memorandum was written by Fred Baatz, Senior Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.**

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