

# Alcohol Regulations



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## Introduction

Beer, malt beverage, wine, cider, and spirits, it has all been regulated in some form, in every state across the United States since Prohibition. Each state varies in their specific regulation of alcoholic beverages; however, each state follows some form of the three-tier system. The three-tier system regulates the distribution of alcohol between the manufacturers, wholesale distributors, and retailers. With some limited exceptions, the manufacturer can only sell their

products to wholesale distributors who may only sell to retailers, and only retailers may sell to the end consumer. While there are many variations of alcoholic beverage regulations across the country, this memo focuses on areas of craft brewer production limits, direct shipment, bring your own beverage (BYOB) laws, and charitable pouring in South Dakota and the surrounding six states.

## Craft Brewer Production Limits

In most states a smaller brewery, often referred to as a craft brewer or micro brewer, receives certain benefits or exceptions to the three-tier system. The most prevalent exception to the three-tier system is when states allow a small brewer to function as both a manufacturer and a distributor, which allows the brewer to operate in two of the three tiers simultaneously. Additionally, some states will allow a small brewer to operate a brew pub which allows the small brewer to sell the alcohol to produces directly to consumers for on-sale consumption on the licensed premises. The term, "on-sale" means the alcohol is being sold for consumption on the licensed premises. This is different than "off-sale" where the alcohol is sold for consumption off of the licensed premises. The privilege to sell alcohol directly to consumers allows the small brewer to operate as a manufacturer and a retailer simultaneously.

What often determines who is or is not a craft brewer is the amount of malt beverage the brewery is permitted by law to produce. Those levels for South Dakota and surrounding states are summarized as follows:

State	Small/Craft/Micro Brewer Production Limits	Brew Pub (On-sale)	Statute
South Dakota	5,000 barrels per year	Yes	§35-5-3.2
Iowa	No Limit	Yes. Class "B" License required	§123.130 to §123.134.
Minnesota	Small Brewer=20,000 barrels per year	Yes. If less than 3,500 barrels per year.	§340A.101, §340A.24, and §340A.28
Montana	Sample Room=60,000 barrels per year	Yes. If less than 2,000 barrels per year.	§16-3-213
Nebraska	Microbrewery=20,000 barrels per year	Yes. Limited to restaurants and hotels.	§53-123.14, and §53-103.21
North Dakota	Tap Room=25,000 barrels per year	Yes. Microbrew pub if less than 10,000 barrels per year.	§5-01-01 & §5-01-21
Wyoming	Microbrew=50,000 barrels per year	Yes	§12-1-101

South Dakota has the smallest limit at 5,000 barrels per year, while Montana has the highest limit at 60,000 barrels per year. Some states, such as Minnesota and North Dakota, have different levels of small brewers. For example, in Minnesota a brewer selling less than 3,500 barrels per year, either on-sale or off-sale, has the added benefit of being able to operate a brew pub which allows them to sell their product both on-sale and off-sale. A small brewer has a production limit of 20,000 barrels a year, 500 barrels of which can be sold for off-sale. After 20,000 barrels,

a brewer is no longer considered a small brewer and must obtain a general brewer's license. Montana has the highest production limit, not more than 2,000 barrels may be sold for on-sale consumption at a brew pub.

## Direct Shipment

Another common exception to the three-tier system is the direct shipment of alcohol. This allows an out-of-state manufacturer to ship directly to consumers, once again allowing a manufacturer to operate in two of the three tiers simultaneously. In this situation, a manufacturer is not considered a distributor because distributors typically sell product to a retailer, which is not allowed under direct ship statutes.

South Dakota currently allows for the direct shipment of wine to consumers. The entity shipping the wine is required to receive a direct ship license. The licensee may not ship more than 12 cases, with no more than nine liters per case, to any individual in a year. All of the surrounding six states allow for direct shipment of wine. The amounts vary by state and are:

State	Allowed Amounts of Direct Ship Wine	Case Equivalent	Direct Ship of Beer or Spirits	Statute
South Dakota	12 cases annually, no more than 9 liters per case		No	§35-12B-5
Iowa	No limit, only certain labeling requirements		No	§123.187
Minnesota	2 cases annually, no more than 9 liters per case		No	§340A.417
Montana	18 cases annually, no more than 9 liters per case		Yes. Beer only	§16-4-1101
Nebraska	9 liters <i>per month, per individual</i>	1 case per month, 12 cases per year	Yes. Beer and Spirits	§53-123.15
North Dakota	7.13 gallons (27 liters) <i>per month total</i>	36 cases	Yes. Beer and Spirits	§5-01-16
Wyoming	36 liters per household annually	4 cases	No	§12-2-204

The limits on direct ship wine set by individual states often varies based on how much the shipper can sell to an individual. For example, South Dakota, Minnesota, Montana, and Nebraska limit the amount per individual. Nebraska has a per month limit rather than an annual limit. In contrast, North Dakota does not appear to limit the amount sold to an individual, but limits the total amount the shipper may ship in any given month.

Montana, Nebraska, and North Dakota go beyond wine and allow for the direct shipment of beer. In Montana, a shipper is limited to up to 288 bottles, or 12 cases of beer, per year. Nebraska has the same limit as wine: nine liters per month, per person. North Dakota limits the amount of beer to 288 fluid ounces, or one case of beer, per month. To ship any alcohol in North Dakota the shipper is required to use a licensed carrier.

North Dakota and Nebraska also allow for the shipment of spirits. North Dakota sets a limit of 2.38 gallons of any other alcohol, besides wine or beer, per month. Nebraska has the same limit on direct shipment of spirits, as it does for wine and beer.

## BYOB

With one exception, South Dakota does not allow a person to consume an alcoholic beverage not purchased from the license holder on the licensed premises. It is a Class 2 misdemeanor to do so. The exception is a customer may bring a sealed bottle of wine to be consumed with a meal. The licensee may charge a corkage fee for opening the cork of the customer's wine.



North Dakota has a similar prohibition, but makes no exception for wine. An owner of an establishment that allows a customer to bring in their own alcoholic beverage is guilty of a misdemeanor, punishable by 30 days in jail, a one thousand dollar fine, or both.

Nebraska prohibits the consumption of alcoholic beverages in public, unless the premises has a permit. Clarification from the Nebraska Liquor Control Commission states that this applies even if the customer is bringing their own alcohol.

Minnesota does not prohibit the consumption of personal alcoholic beverages at licensed premises, instead Minn. Stat. 340A.512 allows for the license holder to decide. The statute reads: "A licensed retailer of alcoholic beverages may prohibit any person from bringing into the licensed premises any container of alcoholic beverages, or from consuming from such a container on the licensed premises, without the licensee's permission."

Minnesota also allows for the issuance of a consumption and display license, which is only obtainable by certain establishments such as restaurants, hotels, resorts, clubs, and bed and breakfasts. This license allows for the licensee to permit a customer to bring in personally supplied alcohol. An establishment holding a consumption and display license is prohibited from also holding an on-sale intoxicating liquor license.

Iowa and Wyoming do not have any statewide BYOB statutes.

**Charitable Pouring**

In South Dakota, alcohol cannot be donated, under ARSD 64:75:04:17, all alcohol must be purchased through a bona fide sale. This means that a wholesaler is not allowed to donate alcohol to a charity event. Additionally, if a charity wants to serve alcohol at their event they are required to get a special license under SDCL 35-4-124. Due to the charity having to get a license, they would be considered a licensee and therefore would be required to adhere to the same restrictions as other licensees, such as purchasing their alcohol from a wholesaler, rather than a local retailer.

Iowa, Minnesota, Nebraska, and Wyoming all allow wholesalers to donate to non-profits. Iowa also requires that if a wholesaler offers cash or a thing of value to one non-profit retailer it must also be offered to all of them.

State	Can a Wholesaler Donate to Non-Profit?
South Dakota	No
Iowa	Yes
Minnesota	Yes
Montana	No
Nebraska	Yes
North Dakota	No
Wyoming	Yes

Minnesota is like South Dakota in the sense that the non-profit is required to obtain a license. However, the non-profit is not treated like a traditional licensee would be under the three-tier system.

Montana and North Dakota are like South Dakota in the sense that a wholesaler cannot donate to a non-profit.

**Conclusion**

As shown, alcohol regulations can vary dramatically in a relatively small geographic area. In just the seven states addressed, no one state regulates alcoholic beverages in the same way. While each state has some semblance of the three-tier system, they all have their own unique variations and exceptions.

This issue memorandum was written by Jessica LaMie, Legislative Attorney, on 11/13/2017 for the Legislative Research Council. It is designed to provide background information on the subject and is not a policy statement made by the Legislative Research Council.

