



Issue Memorandum 94-32

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**A SUMMARY OF ALCOHOLIC BEVERAGE LICENSING PROVISIONS**

There have been two periods during which there was a prohibition on the sale and consumption of alcohol in this state. The first was at the time of the state's creation when the state constitution contained a prohibition against alcohol. This period lasted from 1889 to 1896. The second period of prohibition was from the passage of the Eighteenth Amendment to the United States Constitution. This period lasted from 1919 through 1933, when the Eighteenth Amendment was repealed by the Twenty-first Amendment.

The Twenty-first Amendment to the United States Constitution states that "*The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited* [italics added.]" A result of these periods was the creation of a system of regulation that made the sale of alcoholic beverages in South Dakota one of the most strictly regulated of any industry. Ever since Prohibition, South Dakota has maintained a set of state and local regulations over to whom, where, and when alcohol may be sold in this state.

South Dakota's regulation begins with this prohibition: "No person shall produce, transport, store or sell any alcoholic beverage except as authorized under the provisions of this title." SDCL 35-1-4. The state's regulations include licensing

requirements for each stage of alcohol sales, a limitation on which licensees can sell to whom and from whom a licensee may purchase alcohol, a restriction on the hours when alcohol may be sold, a restriction on the types of advertising that a wholesaler may undertake, and a prohibition on certain types of sales inducements that a manufacturer or wholesaler may provide to a retailer.

The responsibility for the regulation is divided between the counties and cities who license and regulate the retail sale of alcohol and the state Department of Revenue which licenses and regulates the wholesale sale of alcohol. The Secretary of Revenue issues licenses to manufacturers, distillers, wholesalers, solicitors, transporters, carriers, and dispensers, and retail licenses issued to counties and cities. The governing boards of counties and cities issue licenses to retailers. The secretary and the county and city governing bodies can approve or disapprove issuance of a license "depending on whether" the secretary or governing board "deems the applicant a suitable person to hold such license and whether" the secretary or governing board "considers the proposed location suitable." SDCL 35-2-1.1 and 35-2-1.2.

**COUNTY AND MUNICIPAL LICENSING**

The following table provides 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>
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Distillers	\$ 4,000
Wholesalers	\$ 5,000
Off-sale	Not to exceed \$500 in 1st class municipality, \$400 in the 2nd class, and \$300 3rd class
On-sale	Not less than \$1 for each person within 1st class municipality, \$1500 renewal fee in 1st class; \$1200 in 2nd class; \$900 in 3rd class
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
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, \$1500 renewal fee in 1st class; \$1200 in 2nd class; \$900 in 3rd class
Manufacturers of malt beverages	\$ 500
Wholesalers of malt beverages	\$ 400

Malt beverage retailers	\$ 250
Malt beverage package dealers	\$ 150
On-sale dealers in light wine	\$ 200

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 licenses 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.

On- and off-sale retail licenses can 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.

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 which sets the number or they 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.

The city or county may not 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. However, in a municipality with a population of one thousand or less no more than two off-sale licenses may be issued. 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.

## **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. The only exception is for micro-breweries, which can manufacture and sell at retail. Retail

licensees may buy or receive alcohol only from wholesale licensees.

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- 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 licenses are at hotel-motel convention facilities. A hotel-motel convention facility is a facility which is 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 may have 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- 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. The employees of wholesale or transporter licensees who only deliver alcoholic beverages are not considered solicitors. A transportation company or transporter is any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverages. Those who transport alcohol by carriers in interstate commerce where the shipment originates outside the state and is destined to a point outside the state are not required to be licensed.

No alcohol brand owner may sell any distilled spirits in this state unless the brand owner has filed a verified statement with the Department of Revenue affirming that the net price currently available to South Dakota wholesalers is no greater than the lowest price at which the distilled spirits is sold by the brand owner to any wholesaler anywhere else in this country. The Secretary of Revenue may require the alcohol brand owner to file written schedules of prices and discounts and other pricing information with the net price affirmation schedule.

## **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.

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 retailers licensee 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.

## **CONCLUSION**

Strict regulation of the sale of alcohol has long been a factor in this state. The limitations in statute on the number of alcoholic beverage licenses has led to the creation of several special licenses. 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. The lack of limitations on malt beverage licenses in conjunction with the video lottery has significantly increased the competition in the retail sale of alcohol.

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**This issue memorandum was written by Scott C. Peterson, Principal 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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