

CHAPTER 35-4 -- SALE OF BEVERAGES

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35-4-1. Beverages to which chapter applies.

The provisions of this chapter, unless the context otherwise clearly requires, shall be construed to relate to all alcoholic beverages.

Source: SDC 1939, § 5.0201; SL 1971, ch 211, § 39; SL 1987, ch 261, § 15.

35-4-2. Classes of licenses enumerated--Fees.

The classes of licenses, with the fee of each class, are as follows:

- (1) Repealed by SL 2018, ch 223, § 13;
- (2) Wholesalers of alcoholic beverages--five thousand dollars;
- (3) Off-sale--not less than three hundred dollars. The renewal fee for the license may not exceed five hundred dollars;
- (4) On-sale--not less than one dollar for each person residing within the municipality as measured by the last preceding federal census. The renewal fee for the license may not exceed fifteen hundred dollars;
- (5) Off-sale licenses issued to municipalities under local option--not less than two hundred fifty dollars;
- (6) On-sale licenses issued outside municipalities--not less than the amount the nearest municipality to the applicant is charging for a like license. The renewal fee shall be the same as is charged for a like license in the nearest municipality. If the municipality to which the applicant is nearest holds an on-sale license, pursuant to § 35-3-13 and does not charge a specified fee, then the fee shall be the minimum amount that could be charged as if the municipality had not been authorized to obtain on-sale licenses pursuant to § 35-3-13. The renewal fee shall be the same as could be charged for a like license in the nearest municipality;
- (7) Repealed by SL 2018, ch 213, § 46;
- (8) Transportation companies--twenty-five dollars;
- (9) Carrier--one hundred dollars. The fee licenses all conveyances the licensee operates in this state;
- (10) Repealed by SL 2018, ch 213, § 46;
- (11) On-sale dealers at publicly operated airports--two hundred fifty dollars;
- (12) Wine and cider retailers, being both package dealers and on-sale dealers--five hundred dollars;
- (13) Convention facility on-sale--not less than one dollar for each person residing within the municipality as measured by the last preceding federal census. The renewal fee for the license may not exceed fifteen hundred dollars;
- (14) Repealed by SL 2018, ch 224, § 11;
- (15) Wholesalers of malt beverages--four hundred dollars;
- (16) Malt beverage and wine produced by a farm winery licensee, being both package dealers and on-sale dealers--three hundred dollars;
- (17) Repealed by SL 2018, ch 213, § 46;
- (17A) Repealed by SL 2018, ch 213, § 46;
- (18) Repealed by SL 2018, ch 213, § 46;
- (19) Repealed by SL 2018, ch 213, § 46 and ch 222, § 11;
- (20) Repealed by SL 2018, ch 213, § 46;
- (21) Retail on premises manufacturer--two hundred fifty dollars;

(22) Repealed by SL 2018, ch 223, § 13; and

(23) Off-sale delivery--one hundred fifty dollars.

Source: SDC 1939, § 5.0203; SL 1945, ch 17, § 2; SL 1947, ch 19; SDC Supp 1960, § 5.0204 (13), (14) as enacted by SL 1961, ch 14; SL 1964, ch 9; SL 1965, ch 12; SL 1966, ch 10; SDC Supp 1960, § 5.0204 (15) as enacted by SL 1967, ch 6; SL 1968, ch 2, § 1; SL 1970, ch 206, § 1; SL 1970, ch 207, § 1; SL 1971, ch 211, §§ 40, 41, 121; SL 1973, ch 236, § 1; SL 1975, ch 228; SL 1981, ch 270, § 1; SL 1985, ch 291, §§ 1, 3, 4A; SL 1986, ch 300; SL 1987, ch 261, § 16; SL 1988, ch 292, § 1B; SL 1989, ch 312; SL 1990, ch 296; SL 1993, ch 265; SL 1994, ch 285, § 1; SL 1995, ch 207, § 2; SL 2001, ch 194, § 1; SL 2003, ch 190, § 1; SL 2003, ch 191, § 1; SL 2006, ch 194, § 12; SL 2008, ch 182, § 1; SL 2008, ch 183, § 1; SL 2009, ch 48, § 3; SL 2011, ch 172, § 1; SL 2014, ch 175, § 1; SL 2014, ch 176, § 1; SL 2017, ch 166, § 1; SL 2017, ch 169, § 2; SL 2018, ch 213, § 46; SL 2018, ch 215, § 4; SL 2018, ch 219, § 1; SL 2018, ch 222, § 11; SL 2018, ch 223, § 13; SL 2018, ch 224, § 11.

35-4-2.1. Repealed by SL 2018, ch 213, § 47.

35-4-2.2. Repealed by SL 2008, ch 182, § 2.

35-4-2.3. Repealed by SL 2010, ch 180, § 20.

35-4-2.4. Eligibility of municipality for wine, cider, or malt beverage license.

Any municipality that holds an off-sale license under subdivision 35-4-2(5) is eligible for a license under either subdivision 35-4-2(12) or (16), or both. Any municipality that holds an on-sale license under chapter 35-4 is eligible for a license under either subdivision 35-4-2(12) or (16), or both.

Source: SL 1987, ch 261, § 39; SL 2010, ch 180, § 21; SL 2018, ch 213, § 48.

35-4-2.5. Repealed by SL 2018, ch 213, § 49.

35-4-2.6. Repealed by SL 1990, ch 30, § 9.

35-4-2.7. Repealed by SL 2018, ch 213, § 50.

35-4-2.8. Possession of more than one license--Exercise of privileges.

Any retail licensee licensed under this chapter may also hold other retail license types issued pursuant to this chapter at the same licensed premises. A licensee holding two or more licenses pursuant to this section may exercise the privileges granted under each license.

Source: SL 1988, ch 292, § 1; SL 2008, ch 182, § 3; SL 2010, ch 183, § 7; SL 2018, ch 213, § 51.

35-4-2.9. Repealed by SL 2018, ch 219, § 2.

35-4-2.10. Repealed by SL 2009, ch 177, § 8.

35-4-2.11. Distribution of license and transfer fees and penalties.

Fifty percent of all license and transfer fees received pursuant to subdivision 35-4-2(16) shall remain in the municipality in which the licensee paying the fee is located. If the licensee is located outside the corporate limits of a municipality, fifty percent of the fees remain in the county in which the licensee is located. The remainder of all license and transfer fees and penalties received shall be credited to the state general fund.

Source: SL 2010, ch 180, § 50; SL 2011, ch 172, § 3; SL 2018, ch 213, § 52.

35-4-2.12. Regulation of alcoholic beverages aboard conveyances.

Any municipality may regulate the furnishing or consumption of alcoholic beverages aboard conveyances licensed pursuant to subdivisions 35-4-2(9).

Source: SL 2014, ch 175, § 2.

35-4-3. Repealed by SL 1971, ch 211, § 121.

35-4-4. Repealed by SL 2017, ch 164, § 2.

35-4-4.1. Repealed by SL 2018, ch 213, § 53.

35-4-5. Repealed by SL 1971, ch 211, § 121.

35-4-5.1. Manufacturers and retailers may not be granted wholesale license.

No manufacturer or retailer, or a copartner or a majority stockholder of a parent or subsidiary corporation or holder of a controlling interest in a manufacturer or retailer, may be granted a wholesale license or be granted a renewal of a wholesale license under this chapter.

Source: SL 1970, ch 211, § 1; SL 1971, ch 211, § 43; SL 2008, ch 37, § 166; SL 2010, ch 180, § 23; SL 2018, ch 213, § 54.

35-4-5.2 to 35-4-5.4. Repealed by SL 1971, ch 211, § 121.

35-4-5.5. Repealed by SL 2010, ch 180, § 24.

35-4-6. Repealed.

Source: SDC 1939, § 5.0204 (3); SL 1971, ch 211, § 45; SL 1980, ch 253; SL 1981, ch 270, § 2; SL 1987, ch 261, § 17; SL 2001, ch 194, § 2; SL 2010, ch 180, § 25; SL 2018, ch 213, § 55; SL 2021, ch 166, § 1.

35-4-6.1. Obsolete.

35-4-7 to 35-4-9. Repealed by SL 1971, ch 211, § 121.

35-4-10. Number of off-sale licenses restricted by population.

No more than two off-sale licenses issued pursuant to subdivisions 35-4-2(3) and (5) may be issued under this chapter to operate in a municipality of one thousand or less and not exceeding one license for every additional fifteen hundred of population or fraction thereof. The number of off-sale licenses may not be less than the total number of licenses allowable as of July 1, 1981, and that have never been revoked or not reissued.

For the purposes of this section, population is equal to the population estimates published by the United States Census Bureau for each even-numbered year, except for the decennial year. For a decennial year, population is equal to the amount determined by the decennial federal census. No license issued pursuant to this section that exceeds the number of licenses that would have been issued upon the decennial federal census may be denied or revoked solely by reason that the license issued exceeds the number of licenses authorized by the decennial federal census.

Source: SDC 1939, § 5.0204 (5); SL 1959, ch 6; SL 1971, ch 211, § 46; SL 1982, ch 271, § 3; SL 1987, ch 261, § 18; SL 1993, ch 266; SL 2010, ch 180, § 26; SL 2018, ch 213, § 56; SL 2022, ch 141, § 2.

35-4-10.1. Repealed by SL 1971, ch 211, § 121.

35-4-10.2. Off-sale licensees permitted to provide free samples--No additional license required--Restrictions--Violation as misdemeanor.

A licensee holding a license pursuant to subdivision 35-4-2(3) or (5) may provide samples of malt beverages, wine, cider, distilled spirits, liqueurs, and cordials to the general public without obtaining an additional license. The licensee may only offer as samples the malt beverages, wine, cider, distilled spirits, liqueurs, and cordials that the licensee currently has in stock and is offering for sale to the general public. The malt beverage, wine, cider, distilled spirits, liqueur, and cordial samples shall be dispensed at no charge and shall be consumed on the licensed premises during the permitted hours of off-sale. No sample of malt beverage or cider may be larger than three fluid ounces. No sample of wine may be larger than fifty milliliters and no sample of distilled spirits, liqueur, or cordial may be larger than twenty-five milliliters. A violation of this section is a Class 1 misdemeanor.

Source: SL 1989, ch 317; SL 1998, ch 220, § 1; SL 2009, ch 176, § 1; SL 2017, ch 167, § 1; SL 2021, ch 165, § 2.

35-4-10.3. Manufacturers and wholesalers permitted to provide samples on licensed retailer premises.

A manufacturer or wholesaler, or an agent acting on behalf of either, may provide samples of malt beverages, wine, distilled spirits, liqueurs, and cordials to the general public. The samples shall be provided on the premises of a retailer licensed to sell the malt beverages, wine, distilled spirits, liqueurs, or cordials being offered and are subject to the limitations established pursuant to § 35-4-10.2.

Source: SL 2017, ch 167, § 2; SL 2018, ch 213, § 57.

35-4-11. Municipal determination of number of licenses and amount of fees--Maximum number of on-sale licenses.

If not fixed by ordinance, the governing body of any municipality may, before the second of September in each year, by resolution, determine the number of on-sale and off-sale licenses that the body will approve for the ensuing calendar year, and the fees to be charged for the various classifications of licenses. The number of on-sale licenses issued pursuant to subdivision 35-4-2(4) may not exceed three each for the first one thousand of population or fraction thereof and may not exceed one each 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, and that have never been revoked or not reissued. The municipal governing body shall also establish the fee for on-sale licenses pursuant to subdivisions 35-4-2(4) and (13). The fee applies to all the on-sale licenses issued in the ensuing calendar year.

For the purposes of this section, population is equal to the population estimates published by the United States Census Bureau for each even-numbered year, except for the decennial year. For a decennial year, population is equal to the amount determined by the decennial federal census. No license issued pursuant to this section that exceeds the number of licenses that would have been issued upon the decennial federal census may be denied or revoked solely by reason that the license issued exceeds the number of licenses authorized by the decennial federal census.

Source: SDC 1939, §§ 5.0203, 5.0204 (4); SL 1945, ch 20, § 1; SL 1947, ch 19; SL 1959, ch 5; SL 1961, ch 13; SL 1963, ch 10; SL 1964, ch 8; SDCL § 35-4-8; SL 1971, ch 211, § 46; SL 1973, ch 237, § 1; SL 1982, ch 271, § 1; SL 1985, ch 291, § 2; SL 1987, ch 261, § 19; SL 2003, ch 193, § 1; SL 2010, ch 180, § 27; SL 2018, ch 213, § 58; SL 2022, ch 141, § 1.

35-4-11.1. Counties--Number of licenses and amount of fees--Number restricted by population--Denial of reissuance.

If not previously fixed by ordinance or continuing resolution, the board of county commissioners shall, before the second of September in each year, determine the number of on-sale and off-sale licenses it will approve for the ensuing calendar year and the fees to be charged for the various classifications of licenses. The number of licenses issued pursuant to subdivision 35-4-2(6) may not exceed three for the first one thousand of population and may not exceed one for each additional fifteen hundred of population or fraction thereof. The number of licenses issued pursuant to subdivision 35-4-2(3) may not exceed two for the first one thousand of population and may not exceed one for each additional fifteen hundred of population or fraction thereof. No county off-sale license may be issued for a retailer located within three miles of the exterior boundary of an incorporated municipality. The population includes only those residing within the county, but outside the incorporated municipalities and improvement districts, created pursuant to chapter 7-25A, within the county. No licensee regularly licensed to do business on July 1, 1981, may be denied reissuance of a license in subsequent years solely by reason of any limitations, based upon population quotas, of the number of licenses authorized or established under the provisions of this title. Licenses issued to concessionaires, and lessees of the State of South Dakota, within the boundaries of state parks, prior to January 1, 1983, may be subtracted when calculating the total number of licenses permitted in this section.

Source: SL 1971, ch 211, § 47; SL 1982, ch 271, § 2; SL 1983, ch 264; SL 1987, ch 261, § 20; SL 1987, ch 262; SL 2000, ch 180, § 2; SL 2001, ch 194, § 3; SL 2010, ch 180, § 28; SL 2018, ch 213, § 59; SL 2021, ch 166, § 2.

35-4-11.2. Convention facility on-sale licenses issued by municipality or county on behalf of improvement district.

Notwithstanding the provisions of § 35-4-11, each municipality or a county on behalf of an improvement district created pursuant to chapter 7-25A may issue two convention facility on-sale licenses pursuant to subdivision 35-4-2(13) for convention facilities substantially constructed within the two years following issuance of the license or previously completed. If located in a municipality or improvement district with a population of twenty thousand or greater, the hotel-motel convention facility shall be used and kept open for the hosting of large groups of guests for compensation and shall have at least one hundred rooms that are suitable lodging accommodations and convention facilities with seating for at least four hundred persons. If located in a municipality or improvement district with a population of less than twenty thousand, the hotel-motel convention facility shall have at least forty rooms that are suitable lodging accommodations and convention facilities with seating for at least one hundred fifty persons. If the population of a municipality or improvement district changes, the facility is only required to meet the criteria established by this section for the license at the time the license was originally issued.

Source: SL 1985, ch 291, § 4; SL 1988, ch 292, § 1C; SL 1993, ch 320, § 13 rejected by referendum held September 14, 1993; SL 2003, ch 194, § 1; SL 2010, ch 180, § 29; SL 2018, ch 213, § 60; SL 2018, ch 220, § 1; SL 2019, ch 163, § 1.

35-4-11.3. Repealed by SL 2010, ch 180, § 30.

35-4-11.4, 35-4-11.5. Repealed by SL 2010, ch 185, §§ 3, 4.

35-4-11.6. Repealed by SL 2018, ch 213, § 61.

35-4-11.7, 35-4-11.8. Repealed by SL 2010, ch 185, §§ 5, 6.

35-4-11.9, 35-4-11.10. Repealed by SL 2018, ch 219, §§ 3, 4.

35-4-11.11. Additional convention facility on-sale licenses authorized.

In addition to the licenses provided by §§ 35-4-11 and 35-4-11.2, any municipality that is authorized by chapter 42-7B to allow legal games of chance may issue up to twelve additional convention facility on-sale licenses to hotel-motel convention facilities. A hotel-motel convention facility as used in this section is a facility that, in a bona fide manner, is used and kept open for the hosting of large groups of guests for compensation which has at least fifty rooms which are suitable lodging accommodations and convention facilities with seating for at least one hundred fifty persons. In a locally designated historical district, in a municipality that is authorized to conduct gaming by chapter 42-7B, any license created by this section shall be available to buildings subject to rehabilitation and restored according to the U.S. Department of the Interior standards for historic preservation projects codified in 36 C.F.R. 67 as of January 1, 1994. Such a rehabilitation project shall have at least thirty rooms that are suitable lodging accommodations.

Source: SL 2000, ch 181, § 1; SL 2002, ch 172, § 1.

35-4-11.12. On-sale licenses for improvement districts.

A county may issue on-sale licenses pursuant to subdivision 35-4-2(6) to be operated only within an improvement district, created pursuant to chapter 7-25A, within the county. The number of licenses issued in the improvement district may not exceed three for the first one thousand of population and may not exceed one for each additional fifteen hundred of population or fraction thereof.

Source: SL 2000, ch 180, § 1; SL 2018, ch 213, § 62.

35-4-11.13. Hunting preserve facility on-sale license.

Notwithstanding the provisions of § 35-4-11.1, each county may issue a hunting preserve facility on-sale license to any facility that has a shooting preserve operating permit issued pursuant to chapter 41-10 and a license issued by the Department of Health pursuant to chapter 34-18. The licensee may only sell alcoholic beverages during the shooting preserve season for consumption on the licensed premises to a guest as part of a hunting or shooting rental package for use of the shooting preserve's facilities and services. The licensee may not offer any alcoholic beverages for retail sale to other members of the general public. The facility shall have rooms that are suitable for lodging to host guests and equipment and seating for the preparation and serving of food for consumption on the premises. For the purposes of this section, the term, premises, means the same facility which is also licensed by the Department of Health pursuant to chapter 34-18. The license fee shall be five hundred dollars per season. The renewal fee shall be five hundred dollars per season. Any license issued pursuant to this section may not be transferred to a different location.

Source: SL 2011, ch 173, § 1.

35-4-12. Repealed by SL 1971, ch 211, § 121.

35-4-13. Continuation of on-sale license despite annexation by municipality or county--Exception to restrictions on number of licenses.

If, due to the annexation of territory by any municipality or county, the premises of an on-sale licensee are transferred from one jurisdiction to another, the licensee may continue to legally operate until the expiration of the license. After the expiration of the license, the licensee may apply for renewal of the license to the governing body that has jurisdiction over the licensed premises. The license application may not be denied on the grounds that, by the issuance of the license, more on-sale licenses are in existence than is permitted by the limitations of this chapter.

Source: SDC 1939, § 5.0204 (14) as added by SL 1965, ch 13; SL 1971, ch 211, § 48; SL 2008, ch 37, § 168; SL 2018, ch 213, § 63.

35-4-13.1. Repealed by SL 2018, ch 213, § 64.

35-4-14. On-sale license for publicly operated airport.

Notwithstanding the provisions of § 35-4-11 or 35-2-5.3, any county or municipality operating an airport under chapter 50-7 or a regional airport authority operating an airport under chapter 50-6A may by resolution, without an election, but subject to referendum, make application for the issuance of an on-sale license at the airport.

An on-sale license issued for a municipal airport may be renewed annually as long as the municipality or regional airport authority operates the airport. No on-sale license issued for a municipal airport after July 1, 2018, may be sold, transferred, or operated at any location other than the municipal airport.

Source: SDC 1939, § 5.0204 (15) as added by SL 1967, ch 6; SL 1971, ch 211, § 49; SL 1993, ch 267; SL 2018, ch 221, § 1.

35-4-14.1. On-sale license--Municipal event center or recreation facility--Limitations--Authority to contract.

Notwithstanding the provisions of § 35-4-11, any municipality may by resolution, without an election but subject to referendum, issue an on-sale license pursuant to subdivision 35-4-2(4) for use at any municipality-owned entertainment venue, event venue, event center, arena, performance hall, theater, outdoor amphitheater, convention center, stadium, athletic venue, recreation facility, municipal auditorium operated pursuant to chapter 9-52, or public convention hall operated pursuant to chapter 9-53. An on-sale license issued pursuant to this section must be used to support the primary public purpose of the municipality-owned facility during the hours the municipality-owned facility is open for its primary purpose. A license issued pursuant to this section must not be used at any municipality-owned facility for the primary purpose of only providing food and beverage services to the public. There is no fee for a license under this section. The governing body of any municipality that has obtained an on-sale license pursuant to this section may contract with any person or entity for purposes of providing food and beverage services at the municipality-owned facility and the use of any license issued pursuant to this section. A license issued pursuant to this section may not be transferred.

Source: SL 1976, ch 227; SL 1985, ch 293; SL 2008, ch 37, § 169; SL 2008, ch 186, § 1; SL 2016, ch 188, § 1, eff. Feb. 18, 2016; SL 2023, ch 132, § 1.

35-4-14.2 to 35-4-14.4. Repealed by SL 2010, ch 185, §§ 7 to 9.

35-4-15 to 35-4-18. Repealed by SL 1971, ch 211, § 121.

35-4-19. Licensed municipalities permitted to issue certain licenses--Operating agreements permitted. Any municipality that has obtained a license under this title may issue licenses pursuant to subdivisions 35-4-2(12) and (16). If a municipality has been issued an off-sale license only, the governing body may approve or disapprove applications for on-sale licenses issued pursuant to subdivision 35-4-2(4). If a municipality has been issued an on-sale and off-sale license, the governing body may, by resolution, enter into an operating agreement with any person for the specific purpose of operating an on-sale establishment or an off-sale establishment, or both for the municipality.

Source: SDC 1939, § 5.0204 (9); SL 1959, ch 7, § 2; SL 1971, ch 211, § 50; SL 1978, ch 265; SL 1987, ch 261, § 21; SL 2007, ch 205, § 1; SL 2010, ch 180, § 31; SL 2018, ch 213, § 65.

35-4-19.1. Full-service restaurant on-sale license provisions applicable to municipalities and operating agreement holders.

The provisions of §§ 35-4-110 to 35-4-120, inclusive, apply to any municipality that enters into operating agreements pursuant to § 35-4-19. Each operating agreement holder is a license holder for the purposes of §§ 35-4-110 to 35-4-120, inclusive, and when applying these provisions.

Source: SL 2009, ch 177, § 11; SL 2018, ch 213, § 66.

35-4-20. Repealed by SL 1971, ch 211, § 121.

35-4-21. Contents of operating agreements.

An operating agreement under § 35-4-19 shall include:

- (1) The manager is responsible for all operating expenses, including taxes, insurance, and license fees, if any;
- (2) The manager may dispense only alcoholic beverages supplied by the municipal off-sale establishment;
- (3) The agreement shall be for a period not to exceed five years with the provision of one extension also not to exceed five years in the discretion of the governing body;
- (4) The agreement may be canceled by ninety days' written notice by either party;
- (5) The manager shall pay for all alcoholic beverages supplied by the municipal off-sale establishment, the actual cost price, the transportation charges and markup, and any additional compensation or fee as may be mutually agreed upon by both parties;
- (6) A complete and detailed record shall be maintained by the municipality of all alcoholic beverages supplied the on-sale manager. All alcoholic beverages shall be evidenced by prenumbered invoices prepared in triplicate showing the date, quantity, brand, size, and actual cost as set forth in subdivision (5) of this section. The invoices shall bear the signature of the on-sale manager or the manager's authorized representative. One copy of the invoice shall be retained by the off-sale establishment, one copy shall be retained by the on-sale establishment, and one copy shall be filed with the municipal auditor or clerk. All copies shall be kept as permanent records and made available for reference and audit purposes.

Source: SDC 1939, § 5.0204 (9) (b) as added by SL 1959, ch 7, § 2; SL 1971, ch 211, § 51; SL 2008, ch 37, § 170; SL 2018, ch 213, § 67.

35-4-22. Agreement for operation of municipal off-sale establishment.

If a municipality has been issued an off-sale license only, the governing body may, by resolution, enter into an operating agreement with the manager of a legitimate operating business concern for the specific purpose of operating the off-sale establishment for the municipality.

Source: SDC 1939, § 5.0204 (9) (c) as added by SL 1961, ch 15; SL 1971, ch 211, § 52; SL 1985, ch 294; SL 1989, ch 315; SL 1996, ch 224, § 1; SL 2018, ch 213, § 68.

35-4-22.1. License renewal of off-sale licensee outside of boundaries.

An off-sale licensee applying for license renewal, to the governing body that has jurisdiction over the licensed premises, may not be denied the license on the grounds that the location of the premises is outside the boundaries of a municipality or an unincorporated platted area with a United States post office, if the licensee has held or had an interest in an off-sale license at a location outside the

boundaries of a municipality on an unincorporated platted area with a United States post office for more than five years.

Source: SL 1996, ch 224, § 2; SL 2018, ch 213, § 69.

35-4-23. Contents of agreement for operation of municipal off-sale establishment.

An operating agreement pursuant to § 35-4-22 shall include at least the provisions required by subdivisions 35-4-21(1) to (4), inclusive, and (6), and shall also provide that the manager shall receive as full consideration under the agreement a percentage of the fixed markup from the off-sale establishment under his or her management as agreed upon by the governing board of the municipality and the manager after establishing a fixed markup in excess of the actual cost of all liquors supplied by the municipal off-sale licensee. The actual cost shall include cost price and transportation charges. The markup percentage shall be mutually agreed upon by both parties.

Source: SDC 1939, § 5.0204 (9) (c) as added by SL 1961, ch 15; SL 1971, ch 211, § 53; SL 2008, ch 37, § 171.

35-4-24 to 35-4-40. Repealed by SL 1971, ch 211, § 121.

35-4-41. Duration and expiration of licenses--Full fee charged for part of year.

The period covered by licenses under this title is from twelve o'clock midnight on the thirty-first day of December to twelve o'clock midnight on the thirty-first day of the next December. However, the license is valid for an additional three days if a proper application for a new license is in the possession of the secretary before midnight on the thirty-first day of December when the license expires. The full fee shall be charged for any license for a portion of the period, except as provided in subdivision 35-4-2(1).

Notwithstanding the provisions of this section, the period covered by any license issued pursuant to subdivision 35-4-2(16) and any manufacturer license issued under this title shall be from twelve o'clock midnight on the thirtieth day of June to twelve o'clock midnight on the thirtieth day of the next June.

Source: SDC 1939, § 5.0205; SL 1945, ch 17, § 3; SL 1964, ch 10; SL 1971, ch 211, § 54; SL 2008, ch 37, § 172; SL 2018, ch 213, § 70.

35-4-42, 35-4-43. Repealed by SL 1971, ch 211, § 121.

35-4-44. Repealed by SL 2018, ch 213, § 71.

35-4-45. Bonded warehouse permitted to store beverages--Additional bond required.

Any bonded warehouse within this state may, upon compliance with this section, receive alcoholic beverages for storage purposes. Before receiving any alcoholic beverages, the bonded warehouse shall

furnish, in addition to any bond previously furnished under law, a bond in the amount of ten thousand dollars guaranteeing that the bonded warehouse, its officers, employees, and agents will comply with all provisions of this title applicable to the bonded warehouse. The bond shall be in a form prescribed by the secretary and shall be approved by and filed with the secretary.

Source: SDC 1939, § 5.0213; SL 1971, ch 211, § 56; SL 2008, ch 37, § 174; SL 2018, ch 213, § 72.

35-4-46. Repealed by SL 2018, ch 213, § 73.

35-4-47. Sources from which wholesalers may receive beverages.

Except as provided in §§ 35-2-9 and 35-10-16, a licensed wholesaler may only purchase or receive alcoholic beverages from:

- (1) Manufacturers or wholesalers licensed under this title;
- (2) Transportation licensees, including deliveries by the transportation licensees through a freight, express, or parcel post depot within the municipality where the manufacturer or wholesaler licensee operates, and including any transported beverages that have been imported from outside the state; or
- (3) Bonded warehouses as provided in § 35-4-45.

Source: SDC 1939, § 5.0215; SL 1971, ch 211, § 58; SL 2008, ch 37, § 175; SL 2018, ch 213, § 74.

35-4-48. Repealed by SL 2018, ch 213, § 75.

35-4-49. Repealed by SL 2018, ch 224, § 14.

35-4-50. Restrictions on sales by wholesalers.

A licensed wholesaler under this chapter may only sell alcoholic beverages in this state to a manufacturer, wholesaler, and retail licensee under this chapter and only the alcoholic beverages that the respective licensee is authorized to purchase.

Source: SDC 1939, § 5.0217; SL 1947, ch 20; SL 1949, ch 15; SL 1963, ch 12, § 1; SL 1968, ch 3; SL 1971, ch 211, § 61; SL 1987, ch 261, § 24; SL 2018, ch 213, § 77.

35-4-51. Repealed by SL 1971, ch 211, § 121.

35-4-52. Prohibited sales practices by manufacturers and wholesalers.

No manufacturer or wholesaler may attempt to promote the sale of alcoholic beverages by tie-in sales arrangements or by any device such as gifts or other concessions of financial value to a customer. The

manufacturer or wholesaler may promote sales only on the basis of price competition, salesmanship, reliability as a supplier, and other ordinary competitive business practices.

Source: SL 1951, ch 6; SDC Supp 1960, § 5.0217-1; SL 1971, ch 211, § 62; SL 2008, ch 37, § 176; SL 2018, ch 213, § 78.

35-4-53 to 35-4-59. Repealed by SL 1971, ch 211, § 121.

35-4-60. Retailers permitted to purchase only from wholesalers.

Except as provided in this title, a retail licensee may only buy or receive alcoholic beverages from a wholesaler licensed under this chapter.

Source: SDC 1939, § 5.0219; SL 1945, ch 22, § 2; SL 1955, ch 6, § 3; SL 1971, ch 211, § 63; SL 2008, ch 37, § 177; SL 2018, ch 213, § 79.

35-4-60.1. Wholesalers to purchase only from brand owner or brand owner's agent or licensed wholesaler.

No licensed wholesaler may purchase or accept delivery of any brand of alcoholic beverages, unless those alcoholic beverages are purchased from the brand owner or the brand owner's authorized agent, or from another licensed wholesaler operating solely within this state. Alcoholic beverages imported into this state shall come to rest at the warehouse of the licensed wholesaler before sale and delivery to a retail licensee. Alcoholic beverages obtained from any licensed manufacturer located in this state do not need to come to rest at the warehouse of the licensed wholesaler before sale and delivery to a retail licensee if the wholesaler takes physical possession of the alcoholic beverages.

Source: SL 1982, ch 270; SL 1994, ch 286, § 1; SL 2018, ch 224, § 15.

35-4-60.2. Purchase from municipality of malt beverages by certain licensees--Price charged.

A licensee licensed under subdivision 35-4-2(3), (4), or (16) shall purchase any malt beverages that the licensee sells from the municipality if the municipality in which the licensee is located is licensed under subdivision 35-4-2(5) and if the municipality has adopted by ordinance a requirement that purchases of malt beverages by licensees under this section be made from the municipality. A municipality selling malt beverages to any licensee licensed under subdivision 35-4-2(3), (4), or (16) may not charge the licensee more than five percent above the municipality's cost for malt beverages plus freight unless the municipality has an operating agreement in effect on April 1, 1988, for its on-sale alcoholic beverage licensees licensed pursuant to subdivision 35-4-2(4) and imposes a mark-up higher than five percent for malt beverages. The municipality shall charge all licensees under this section the same price for malt beverages. The provisions of this section for a licensee licensed pursuant to subdivision 35-4-2(3) or (4) only apply if the licensee is located in a municipality with a population that exceeds eight thousand.

Source: SL 1987, ch 261, § 40; SL 1988, ch 293, § 1; SL 2008, ch 37, § 178; SL 2010, ch 180, § 33; SL 2017, ch 168, § 1; SL 2018, ch 213, § 80.

35-4-60.3. Certain licensees permitted to purchase from wholesalers and retailers.

Notwithstanding the provisions of § 35-4-60, a civic, charitable, educational, fraternal, or veterans organization licensed pursuant to § 35-4-124 may purchase alcoholic beverages from any licensed wholesaler, or licensed retailer with off-sale privileges.

Source: SL 2018, ch 217, § 3.

35-4-61. Repealed by SL 2018, ch 213, § 81.

35-4-62 to 35-4-65. Repealed by SL 1971, ch 211, § 121.

35-4-66. Restrictions on transportation of beverages.

Alcoholic beverages may be transported only by:

- (1) A transporter licensee in the course of delivery to persons authorized under this title to receive the alcoholic beverages;
- (2) A manufacturer or wholesaler in the manufacturer or wholesaler licensee's own vehicles, carrying the manufacturer or wholesaler licensee's own merchandise;
- (3) A manufacturer carrying only samples, sealed or unsealed;
- (4) An individual, in interstate transportation carrying alcoholic beverages in quantities of one gallon or less, or in intrastate transportation carrying any quantity, but in either case carrying alcoholic beverages purchased by the individual for personal use only or produced by the individual pursuant to § 35-1-5.4;
- (5) A common carrier in interstate commerce if the shipment originates outside the state and is destined for a point outside the state;
- (6) A carrier licensee, in exercise of the privileges granted pursuant to the license or purchased by passengers for personal use while on the conveyance;
- (7) An established religious organization, in interstate transportation carrying alcoholic beverages in quantities of four gallons or less, or in intrastate transportation carrying any quantity, but in either case only alcoholic beverages purchased by the established religious organization for sacramental use;
- (8) An off-sale delivery licensee;
- (9) A wine carrier as defined in § 35-12B-1; or
- (10) A retailer, carrying the retailer's own merchandise purchased from a wholesaler to the retailer's licensed premises.

Source: SDC 1939, § 5.0220; SL 1945, ch 23; SL 1971, ch 211, § 65; SL 1972, ch 200; SL 1977, ch 288; SL 2008, ch 37, § 179; SL 2010, ch 182, § 1; SL 2017, ch 169, § 3; SL 2018, ch 213, § 82; SL 2018, ch 215, § 5; SL 2019, ch 164, § 1; SL 2021, ch 165, § 3.

35-4-67. Restrictions on importation of beverages.

Except as provided in subdivisions 35-4-66(1), (3), (4), (5), (6), and (7), no person may bring alcoholic beverages into this state.

Source: SDC 1939, § 5.0224; SL 1943, ch 12; SL 1945, ch 24; SL 1971, ch 211, § 66; SL 1987, ch 261, § 26; SL 2010, ch 182, § 2; SL 2018, ch 213, § 83.

35-4-68 to 35-4-70. Repealed by SL 1971, ch 211, § 121.

35-4-71. Sale of alcohol by dispensers restricted.

No dispenser may resell alcohol except as compounded into medicinal or other preparations that are not capable of ordinary use as a beverage.

Source: SDC 1939, § 5.0223; SL 1971, ch 211, § 67; SL 2008, ch 37, § 180.

35-4-72, 35-4-73. Repealed by SL 1971, ch 211, § 121.

35-4-74. Delivery prohibited except by off-sale delivery licensees--Violation as misdemeanor.

Except pursuant to the provisions of § 35-4-127, no off-sale licensee may make any delivery of alcoholic beverages outside of the premises described in the license. A violation of this section is a Class 2 misdemeanor.

Source: SDC 1939, § 5.0226 (1); SL 1947, ch 21; SL 1963, ch 13; SL 1968, ch 4; SL 1971, ch 211, § 68; SL 1992, ch 158, § 57; SL 2008, ch 37, § 181; SL 2017, ch 169, § 4.

35-4-75. Service by on-sale licensees restricted to premises--Violation as misdemeanor.

No on-sale licensee may serve alcoholic beverages except on the premises authorized by the license. A violation of this section is a Class 2 misdemeanor.

Source: SDC 1939, § 5.0226 (5); SL 1953, ch 10; SL 1963, ch 15; SL 1971, ch 211, § 69; SL 1992, ch 158, § 58; SL 2008, ch 37, § 182.

35-4-75.1 to 35-4-77. Repealed by SL 1971, ch 211, § 121.

35-4-77.1. Sale or consumption of alcoholic beverages on sidewalk abutting licensed premises permitted by ordinance.

Notwithstanding the provisions of § 35-4-75, the governing body of the municipality charged with the approval of alcoholic beverage license issuance may, by ordinance, permit the sale and consumption of alcoholic beverages on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises. The sidewalk or walkway subject to a public right-of-way shall be immediately adjacent to and

abutting the licensed premises. This section does not apply to any federal-aid eligible highway unless approved in accordance with the applicable requirements for the receipt of federal aid.

Nothing in this section prevents the governing body from imposing conditions or restrictions that the governing body considers appropriate.

The sidewalk or walkway subject to a public right-of-way where the sale and consumption of alcoholic beverages is permitted does not constitute a public place as defined in § 35-1-5.3, if the sidewalk or walkway subject to a public right-of-way has been properly authorized for sale and consumption of alcoholic beverages pursuant to this section. The hours of authorized sale and consumption on the sidewalk or walkway subject to a public right-of-way shall be consistent with the hours permitted for the on-sale license.

A violation of any provision of this title by an alcoholic beverage license holder conducting business on a sidewalk or walkway subject to a public right-of-way pursuant to this section constitutes a violation of this title as if the violation had occurred in or on the licensed premises.

Source: SL 2008, ch 187, § 1; SL 2016, ch 189, § 1; SL 2018, ch 213, § 84.

35-4-78. Sale of alcoholic beverage to obviously intoxicated person prohibited--Violation as misdemeanor--Civil liability.

No licensee may sell or serve any alcoholic beverage to any person who is obviously intoxicated. A violation of this section is a Class 1 misdemeanor.

However, no licensee is civilly liable to any injured person or the injured person's estate for any injury suffered, including any action for wrongful death, or property damage suffered because of the intoxication of any person due to the sale or consumption of any alcoholic beverage in violation of the provisions of this section.

Source: SDC 1939, §§ 5.0226 (2), 5.9905; SL 1971, ch 211, § 70; SL 1977, ch 190, § 125; SL 1985, ch 295, § 2; SL 1987, ch 261, § 27; SL 2010, ch 180, § 34; SL 2018, ch 213, § 85.

35-4-78.1 to 35-4-78.4. Repealed by SL 2010, ch 180, §§ 37 to 40.

35-4-79. Persons under twenty-one years old not permitted to loiter on on-sale or off-sale premises or to sell, serve, or consume beverages--Violation as misdemeanor.

No on-sale or off-sale licensee may permit any person less than twenty-one years old to loiter on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on the licensed premises.

A violation of this section is a Class 2 misdemeanor.

Source: SDC 1939, § 5.0226 (6); SL 1971, ch 211, § 71; SL 1987, ch 261, § 30; SL 1988, ch 294, § 1; SL 1990, ch 298; SL 1992, ch 158, § 59; SL 2010, ch 183, § 4; SL 2011, ch 172, § 4; SL 2018, ch 213, § 86.

35-4-79.1, 35-4-79.2. Repealed by SL 2018, ch 213, §§ 87, 89.

35-4-79.3. Repealed by SL 2010, ch 183, § 6.

35-4-79.4. Exception to prohibition on sales or service by persons under twenty-one years old--Violation as misdemeanor.

Notwithstanding the provisions of § 35-4-79, any on-sale or off-sale licensee may permit persons eighteen years or older to sell or serve alcoholic beverages if less than fifty percent of the gross business transacted by the establishment is from the sale of alcoholic beverages, or the licensee or an employee of the licensee that is at least twenty-one years of age is on the premises when the alcoholic beverage is sold or served. For purposes of this section, the term, to sell or serve alcoholic beverages, includes tending bar or drawing, pouring, or mixing alcoholic beverages. Any person tending bar or drawing, pouring, or mixing alcoholic beverages pursuant to this section must be certified by a nationally recognized alcohol management program.

A violation of this section is a Class 2 misdemeanor.

Source: SL 2018, ch 213, § 88; SL 2022, ch 142, § 1.

35-4-80. Repealed by SL 1971, ch 211, § 121.

35-4-81. Restriction by ordinance of sales, service, and consumption on certain days.

Any municipality or county may, by ordinance, prohibit or restrict the sale, service, and consumption of alcoholic beverages on Sundays, Christmas Day, or Memorial Day.

Source: SDC 1939, § 5.0226 (3), (4); SL 1961, ch 16; SL 1963, ch 14; SDCL § 35-4-80; SL 1971, ch 211, § 72; SL 1987, ch 261, § 32; SL 1992, ch 158, § 60; SL 2009, ch 173, § 2; SL 2010, ch 183, § 1; SL 2018, ch 213, § 90.

35-4-81.1. Repealed by SL 2010, ch 183, § 2.

35-4-81.2. Times when beverage sales, service, and consumption prohibited--Violation as misdemeanor. No on-sale or off-sale licensee may sell, serve, or allow to be consumed on the premises covered by the license, any alcoholic beverages between the hours of two a.m. and seven a.m. A violation of this section is a Class 2 misdemeanor.

Source: SL 1987, ch 261, § 33; SL 2008, ch 182, § 4; SL 2010, ch 183, § 3; SL 2011, ch 172, § 5; SL 2018, ch 213, § 91.

35-4-82 to 35-4-84. Repealed by SL 1971, ch 211, § 121.

35-4-85. Repealed by SL 2018, ch 213, § 92.

35-4-86. Repealed by SL 2010, ch 180, § 44.

35-4-87, 35-4-88. Repealed by SL 1971, ch 211, § 121.

35-4-89. Repealed by SL 1992, ch 158, § 61.

35-4-90 to 35-4-92. Repealed by SL 1971, ch 211, § 121.

35-4-93. Repealed by SL 2010, ch 180, § 45.

35-4-94 to 35-4-98. Repealed by SL 2018, ch 213, §§ 93 to 97.

35-4-99. Display of health warning sign--Violation as petty offense.

All licensed premises shall prominently display the sign provided for in § 35-4-100. The sign shall be displayed in such a manner as to provide an unobstructed view to the customers of such licensee.

Failure to display such sign is a petty offense.

Source: SL 1986, ch 298, § 1.

35-4-100. Health warning sign--Contents--Copy provided to licensees.

The Department of Social Services shall create a nine inch by twelve inch sign to be displayed pursuant to § 35-4-99. The sign shall explain the dangers faced by pregnant women who consume alcohol. The language in the sign shall be approved by the secretary of health. The Department of Social Services shall provide a copy of the sign to each licensee required by § 35-4-99 to display the sign.

Source: SL 1986, ch 298, § 2; SL 1992, ch 372 (Ex. Ord. 92-2), § 20; SL 2008, ch 37, § 184; SL 2011, ch 1 (Ex. Ord. 11-1), § 163, eff. Apr. 12, 2011.

35-4-101. Minibars authorized in hotels or motels.

Any hotel or motel may operate minibars as defined in § 35-1-1 in any of its rooms or units if the hotel or motel has an on-sale license issued pursuant to subdivision 35-4-2(4), (6), or (13).

Source: SL 1989, ch 311, § 2; SL 2010, ch 180, § 49; SL 2018, ch 213, § 98.

35-4-102. Minibars--Beverage sizes--Age limit--Access.

Any hotel or motel may sell alcoholic beverages, except malt beverages and wine, in sizes not to exceed one hundred milliliters and malt beverages and wine in sizes not to exceed three hundred fifty-five milliliters to its registered guests twenty-one years of age or older, by means of a minibar. Access to the minibar in a particular guestroom shall be made available only by a key, magnetic card, or similar device. The licensee shall verify that each registered guest who is provided a key, magnetic card, or similar device to access a minibar is twenty-one years of age or older.

Source: SL 1989, ch 311, § 3.

35-4-103. Annual additional license fee for video lottery machines on licensed premises.

Any municipality or county may impose on any person who is licensed pursuant to this chapter and who is issued a video lottery establishment license pursuant to § 42-7A-41 an annual additional license fee for the privilege of locating video lottery machines on the licensed premises. The fee may not exceed fifty dollars for each video lottery machine. The fees imposed by this section are in addition to fees imposed under §§ 35-4-2 and 42-7A-41 and shall be paid at the same time and in the same manner as the fees paid in § 35-4-2. All fees received under this section shall be deposited into the general fund of the municipality or county having jurisdiction over the licensee. However, the municipality or county may not impose this additional fee on more than one license per location.

Source: SL 1992, ch 263; SL 1993, ch 268; SL 2018, ch 213, § 99.

35-4-104, 35-4-105. Repealed by SL 2010, ch 185, §§ 10, 11.

35-4-106. License at county or municipal golf course.

Any county or municipality operating a golf course may, by resolution, without an election, but subject to referendum, make application for the issuance of an on-sale license at the golf course.

Source: SL 1994, ch 287; SL 2018, ch 213, § 100.

35-4-107. Resort facility on-sale license--Resort facility defined--Terms of license--Application.

Notwithstanding the provisions of § 35-4-11.1, each county may issue three resort facility on-sale licenses. For the purposes of this section, a resort facility is a facility located in a county with a population of less than two thousand persons at the time the license is initially issued and, in a bona fide manner, is used and kept open for hosting guests for compensation which has at least thirty rooms that are suitable for lodging and which has facilities for the preparation and serving of food for consumption on the premises. The resort facility license may be issued only if the licensee derives less than thirty-

three percent of the licensee's gross receipts from the sale of alcoholic beverages on the premises where the license is held. For the purposes of this section, the term premises means one contiguous piece of real property on which sales are generated by the licensee. This section applies to any resort facility constructed after July 1, 1997.

Source: SL 1997, ch 213, § 1; SL 2001, ch 196, § 1.

35-4-108, 35-4-109. Repealed by SL 2010, ch 185, §§ 12, 13.

35-4-110. Definition of terms pertaining to full-service restaurant on-sale licenses.

Terms used in this section and §§ 35-4-111 to 35-4-120, inclusive, mean:

- (1) "Bar," any permanently installed counter within the restaurant area from which alcoholic beverages are regularly served to customers by a person who is tending bar or drawing or mixing alcoholic beverages;
- (2) "Full-service restaurant," any restaurant at which a waiter or waitress delivers food and drink offered from a printed food menu to patrons at tables, booths, or the bar. Any restaurant that only serves fry orders or foodstuffs such as sandwiches, hamburgers, or salads is not a full-service restaurant;
- (3) "Restaurant," any area in a building maintained, advertised, and held out to the public as a place where individually priced meals are prepared and served primarily for consumption in such area and where at least sixty percent of the gross revenue of the restaurant is derived from the sale of food and nonalcoholic beverages. The restaurant shall have a dining room or rooms, a kitchen, and the number and kinds of employees necessary for the preparing, cooking, and serving of meals.

Source: SL 2008, ch 189, § 2; SL 2009, ch 177, § 1.

35-4-111. Full-service restaurant on-sale licenses.

Notwithstanding the provisions of § 35-4-11 or 35-4-11.1 or the on-sale license fees established pursuant to subdivisions 35-4-2(4) and (6), the governing board of any incorporated municipality or the board of county commissioners of any county may, by ordinance, issue additional on-sale licenses for full-service restaurants if the municipality or county charges at least the minimum fee required by § 35-4-116.

A full-service restaurant on-sale license issued in a municipality is subject to the license renewal fees as provided for in subdivision 35-4-2(4), and shall be treated for all other regulatory purposes in this title as a license issued pursuant to subdivision 35-4-2(4).

A full-service restaurant on-sale license issued in a county is subject to the license renewal fees as provided for in subdivision 35-4-2(6), and shall be treated for all other regulatory purposes in this title as a license issued pursuant to subdivision 35-4-2(6).

Source: SL 2008, ch 189, § 1; SL 2009, ch 177, § 2.

35-4-112. Documentation in support of initial application for full-service restaurant on-sale license.

In the initial application, an applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the municipality or county to prove that the primary source of revenue from the

operation of the restaurant will be derived from the sale of prepared food and nonalcoholic beverages and not from the sale of alcoholic beverages. The supporting documentation concerning the primary source of revenue submitted pursuant to this section is confidential.

Source: SL 2008, ch 189, § 3; SL 2009, ch 177, § 3.

35-4-113. Renewal of full-service restaurant on-sale license--Annual report.

If the municipality or county is renewing a full-service restaurant on-sale license, the municipality or county shall condition the license renewal upon receiving documentation that at least sixty percent of gross revenue from the preceding twelve months operation of the full-service restaurant was derived from the sale of food and nonalcoholic beverages. The full-service restaurant on-sale licensee shall submit an annual report to the municipality or county on the revenues from the full-service restaurant that includes an oath verifying the validity of the information provided in the report. The report and the supporting documentation submitted pursuant to this section are confidential. The report shall contain the annual gross revenues of the licensee for the following two categories:

- (1) Food and nonalcoholic beverage gross revenues; and
- (2) Total gross revenues.

Source: SL 2008, ch 189, § 4; SL 2009, ch 177, § 4.

35-4-114. On-premise consumption required.

A full-service restaurant on-sale licensee may only serve alcoholic beverages for on-premise consumption in the bar and dining room area of the restaurant.

Source: SL 2008, ch 189, § 5.

35-4-115. Advertisement of full-service restaurant.

A restaurant that has a full-service restaurant on-sale license may only be advertised or held out to the public as primarily a food eating establishment. No licensee that has a full-service restaurant on-sale license may allow smoking on the licensed premises.

Source: SL 2008, ch 189, § 6.

35-4-116. Fees for additional on-sale licenses to full-service restaurants.

Any municipality or county adopting the ordinance pursuant to § 35-4-111 may issue additional on-sale licenses to full-service restaurants. Any municipality adopting such ordinance shall charge at least one dollar for each person residing within the municipality as measured by the last preceding decennial federal census. Any county adopting such ordinance shall charge at least one dollar for each person residing within the county but outside the boundary of any municipality as measured by the last preceding decennial federal census.

Each municipality or county shall set the on-sale license fee within ninety days of adopting the ordinance pursuant to § 35-4-111 or within thirty days after the resolution of any appeal pursuant to § 35-4-120.

After the fee for an on-sale license issued pursuant to §§ 35-4-110 to 35-4-120, inclusive, has been

determined, no municipality or county may change the fee for a period of ten years unless a growth in population reported by the federal decennial census requires an increase in the fee.

Source: SL 2008, ch 189, § 7; SL 2009, ch 177, § 5.

35-4-117. Price of full-service restaurant on-sale license set at or above current fair market value. Any municipality or county adopting the ordinance pursuant to § 35-4-111 shall, for a period of ten years following adoption of such ordinance, set the price of a new full-service restaurant on-sale license, pursuant to § 35-4-116, at or above the current fair market value. However, the full-service restaurant on-sale license fee may not be less than the minimum on-sale license fee as provided in subdivision 35-4-2(4) or (6). For purposes of this section, the term, current fair market value, means the documented price of the on-sale license most recently sold through an arm's-length transaction, less the value of any real or personal property included in the transaction. If there are no documented sales of on-sale licenses, the municipality or county may request from any on-sale license holder within the municipality or county, the date and price originally paid for its on-sale license to determine the current fair market value.

Source: SL 2008, ch 189, § 9; SL 2009, ch 177, § 6; SL 2018, ch 213, § 101.

35-4-118. Registry of full-service restaurant on-sale licenses.

Each municipality or county adopting an ordinance pursuant to § 35-4-111 shall maintain a registry of each on-sale license that is being offered for sale at the price established in § 35-4-117 and furnish a copy of the registry to anyone who requests a new full-service restaurant on-sale license. The municipality or county may only issue a new license pursuant to §§ 35-4-110 to 35-4-120, inclusive, if no on-sale license is on the registry or a person desiring to purchase an on-sale license listed on the registry provides documentation showing that the person is unable to purchase the on-sale license at the price established in § 35-4-117 and on terms satisfactory to both the potential buyer and seller. The price of any on-sale license registered as, for sale, with the municipality or county shall be sold at the current fair market price set by the municipality or county pursuant to § 35-4-117. Nothing in §§ 35-4-110 to 35-4-120, inclusive, precludes the sale of an on-sale license by a licensee not listed on the registry.

Source: SL 2008, ch 189, § 10; SL 2009, ch 177, § 7.

35-4-119. Registration that full-service restaurant on-sale license is for sale.

The existing on-sale license holder is responsible for registering with the municipality or county that the on-sale license is for sale pursuant to § 35-4-118.

Source: SL 2008, ch 189, § 11.

35-4-120. Certain licensees to report amount paid for other licenses--Objection to report--Hearing--Appeal.

Upon the adoption of an ordinance pursuant to § 35-4-111, any person who purchased an on-sale license issued pursuant to subdivision 35-4-2(4) or (6) within the last five years shall report to the municipality or county that issued the license the amount paid for the license. If the municipality or

county that issued the on-sale license adopts an ordinance pursuant to § 35-4-111, and requests from any other licensee the amount originally paid for any other on-sale license pursuant to § 35-4-117, the licensee shall report that amount to the municipality or county. The declared purchase price shall be made under oath and shall include the documents establishing the amount paid for the on-sale license. If the transaction included other personal property or real property, the full market value of the other property on the date of the transaction shall be deducted from the total purchase price to establish the amount paid for the license. The person who owned the license as of the date of the adoption of the ordinance has the burden of establishing the amount paid for the license. If the amount reported is used to determine current fair market value pursuant to § 35-4-117, any licensee who contends that the amount does not accurately reflect the fair market value of the license on the date of purchase may file an objection to the report. The objection shall be filed with the municipality or county within thirty days of the date the license fee is set pursuant to § 35-4-116. If an objection is filed, the governing board of the municipality or county shall conduct a hearing to determine the fair market value of the license. The determination of the governing board may be appealed to circuit court.
Source: SL 2009, ch 177, § 9; SL 2018, ch 213, § 102.

35-4-121, 35-4-122. Repealed by SL 2018, ch 213, §§ 103, 104.

35-4-123. County fairground on-sale license.

Any county operating a county fairgrounds may, by resolution, without an election, but subject to referendum, issue one on-sale license at the county fairgrounds to an applicant who is authorized by the county to operate as the leaseholder at the county fairgrounds. The selling, serving, or dispensing of any alcoholic beverage at the county fairgrounds may not occur more than one hour before the commencement of any event at the county fairgrounds or at any time after the event is concluded. A license issued pursuant to this section may not be transferred. The license shall be issued without regard to the population limitations established pursuant to §§ 35-4-11 and 35-4-11.1.
Source: SL 2010, ch 186, § 1; SL 2011, ch 174, § 1; SL 2018, ch 213, § 105.

35-4-124. Special alcoholic beverage licenses--Special events.

Any municipality or county may issue:

- (1) A special malt beverage retailers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 35-4-111 or subdivision 35-4-2(4), (6), or (16) in addition to any other licenses held by the special events license applicant;
- (2) A special on-sale wine retailers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 35-4-111 or subdivision 35-4-2(4), (6), or (12) or any farm winery licensee in addition to any other licenses held by the special events license applicant;
- (3) A special on-sale license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 35-4-111 or subdivision 35-4-2(4) or (6) in addition to any other licenses held by the special events license applicant;

- (4) A special off-sale package wine dealers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(3), (5), or (12) or any farm winery licensee in addition to any other licenses held by the special events license applicant. A special off-sale package wine dealers licensee may only sell wine manufactured by a farm winery licensee;
- (5) A special off-sale package wine dealers license in conjunction with a special event, conducted pursuant to § 35-4-124.1, within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization;
- (6) A special off-sale package malt beverage dealers license in conjunction with a special event, conducted pursuant to § 35-4-124.1, within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization; or
- (7) A special off-sale package dealers license in conjunction with a special event, conducted pursuant to § 35-4-124.1, within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization.

The municipality or county may issue a license under this section for a time not to exceed fifteen consecutive days. No public hearing is required for the issuance of a license pursuant to this section if the person applying for the license holds an on-sale alcoholic beverage license or a retail malt beverage license in the municipality or county or holds an operating agreement for a municipal on-sale alcoholic beverage license, and the license is to be used in a publicly-owned facility. The local governing body shall establish rules to regulate and restrict the operation of the special license, including rules limiting the number of licenses that may be issued to any person within any calendar year.

Source: SL 2010, ch 185, § 1; SL 2011, ch 175, § 1; SL 2015, ch 195, § 1, eff. Mar. 13, 2015; SL 2018, ch 213, § 106; SL 2019, ch 162, § 2; SL 2020, ch 156, § 1.

35-4-124.1. Donation of beverages to civic, charitable, educational, fraternal, or veterans organization holding special events license.

A civic, charitable, educational, fraternal, or veterans organization holding a special events license pursuant to subdivision 35-4-124(5) may only sell wine that has been donated by members of the public to be sold at the special event. A civic, charitable, educational, fraternal, or veterans organization holding a special events license pursuant to subdivision 35-4-124(6) may only sell malt beverages that have been donated by members of the public to be sold at the special event. A civic, charitable, educational, fraternal, or veterans organization holding a special events license pursuant to subdivision 35-4-124(7) may only sell alcoholic beverages that have been donated by members of the public to be sold at the special event.

The donor shall purchase any donated alcoholic beverage from a licensed South Dakota retailer.

Source: SL 2015, ch 195, § 2, eff. Mar. 13, 2015; SL 2018, ch 213, § 107.

35-4-125. Application for special alcoholic beverage license--Fee.

Notwithstanding § 35-1-5.5, a municipality or county may allow the sale of alcoholic beverages on public property or property owned by a nonprofit corporation during a special event. Any license issued pursuant to § 35-4-124 shall be issued to the person and the location specified on the application.

Notwithstanding § 35-4-2, the governing body of the municipality or the board of county commissioners, as appropriate, shall determine the fee for this license. Each application shall be accompanied by the fee at the time of submission to the governing body of the municipality or the board of county

commissioners. The fee provided for in this section shall be retained by the governing body of the municipality or the board of county commissioners issuing the license.

Source: SL 2010, ch 185, § 2; SL 2011, ch 175, § 2.

35-4-126. Repealed by SL 2018, ch 223, § 26.

35-4-127. Off-sale delivery license.

A licensee licensed pursuant to subdivision 35-4-2(3) or (5) may apply for an off-sale delivery license as provided by subdivision 35-4-2(23) to deliver alcoholic beverages to a consumer within the boundaries of the municipality that issued the off-sale license. The alcoholic beverage for delivery shall be purchased in person and on-site at the licensee's off-sale premises. The minimum purchase of alcoholic beverages shall be one hundred fifty dollars. The delivery shall be made during hours of operation pursuant to § 35-4-81.2 by an employee of the licensee who is at least twenty-one years old. The employee shall obtain the signature of a person twenty-one years old or older before delivery of the shipment. The employee shall request that the person signing for the delivery display a valid age-bearing photo identification document issued by this state, another state, or the federal government verifying that the person is twenty-one years old or older. Documentation verifying the identification of the person signing for the delivery shall be retained by the licensee for one year.

Any licensee who delivers alcoholic beverages to a person under twenty-one years old is subject to a civil penalty of one thousand dollars for a first offense and two thousand dollars for a second or subsequent offense. Any money collected pursuant to this section shall be deposited in the general fund.

Source: SL 2017, ch 169, § 1; SL 2018, ch 213, § 108.

35-4-128. Manufacture, sale, or possession of powdered, condensed, or concentrated alcohol prohibited--Exceptions--Violation as misdemeanor.

Unless specifically allowed in this section, the manufacture, sale or possession of alcohol in a powdered, condensed, or other concentrated form as defined in § 35-1-1 or the sale or possession of an alcoholic beverage that is reconstituted from alcohol in a powdered, condensed, or other concentrated form is prohibited.

The provisions of this section do not apply to the following:

- (1) Any hospital that possesses a product defined in subdivision 35-1-1(17A) and that possession is primarily used for conducting scientific research; or
- (2) Any state institution, private college or university, or pharmaceutical or biotechnical company that possesses a product defined in subdivision 35-1-1(17A) and that possession is primarily used for conducting bona fide research.

A violation of this section is a Class 1 misdemeanor.

Source: SL 2017, ch 163, § 2.

35-4-129. Sale of alcoholic beverages below cost prohibited--Exception.

No alcoholic beverage may be sold below the wholesale cost of the alcoholic beverage, unless the sale constitutes the termination of the sale of the alcoholic beverage on the licensed premises. Any alcoholic beverage offered for sale at less than wholesale cost may not be offered again for sale on the licensed premises for a period of less than one year after termination of the sale of the product on the licensed premises. The wholesale cost is the consideration paid by a retailer to a wholesaler to acquire an alcoholic beverage and includes the purchase price and freight charges. If no wholesaler is used in the sale, the direct shipper may not sell the alcoholic beverage below the manufacturer's cost.
Source: SL 1989, ch 337; SL 2015, ch 196, § 23, eff. Jan. 1, 2016; SDCL § 37-10A-1; SL 2018, ch 213, §§ 109, 110.

35-4-130. Quantity discounts and cash discounts permitted.

A retailer, as defined in subdivision 35-1-1(19), may offer quantity discounts or cash discounts to a consumer for the purchase of alcoholic beverages. Any quantity discount or cash discount offered by a retailer to a consumer shall comply with the provisions of § 35-4-129.

Source: SL 2019, ch 165, § 1.