

# ALCOHOL TOP 12

WHEN SDRA MEMBERS CONTACT OUR OFFICE WITH QUESTIONS ABOUT ISSUES, **ALCOHOL IS BY FAR THE MOST FREQUENT TOPIC.** IN THIS HANDY FACT SHEET, WE HAVE COMPILED THE TOP 12 ALCOHOL ISSUES ON WHICH YOU'RE SEEKING INFORMATION. *(Note: the following information*

*pertains only to state laws. Local ordinances may be more restrictive than state laws.)*

## one | AGE OF SELLERS / SERVERS / BARTENDERS

**18-20 YEAR-OLDS MAY SELL OR SERVE ALCOHOL IN A LICENSED ESTABLISHMENT IF:**

- less than 50% of the gross sales are from the sale of alcohol OR
- the licensee or an employee at least 21 years old is on the premises at the time of sale or service

If neither of those criteria are met, an employee must be 21 or older to sell or serve alcohol in a licensed establishment.

### **TO BARTEND, DRAW, POUR OR MIX ALCOHOLIC BEVERAGES:**

Through June 30, 2022, an individual must be 21 years of age or older to bartend, draw, pour or mix alcoholic beverages in any licensed on-sale establishment. This includes opening or pouring cans or bottles of beer, and uncorking, uncapping and pouring wine.

**EFFECTIVE JULY 1, 2022 (AS A RESULT OF A LAW PASSED DURING THIS YEAR'S LEGISLATIVE SESSION): SOME ESTABLISHMENTS WITH ON-SALE ALCOHOL LICENSES MAY PERMIT EMPLOYEES AGE 18 OR OLDER TO TEND BAR, DRAW, POUR OR MIX ALCOHOLIC BEVERAGES, AS LONG AS THE FOLLOWING CONDITIONS ARE MET:**

- less than 50% of the gross sales are from the sale of alcohol OR
- the licensee or an employee at least 21 years old is on the premises at the time of sale or service AND
- the employee who is mixing or pouring the alcoholic beverage has been certified by a nationally-recognized alcohol management program, such as ServSafe Alcohol, TAM, or TIPS (a list of programs approved for use in South Dakota can be found on the Department of Revenue website at <https://dor.sd.gov/businesses/taxes/alcohol/#training>.)

## two

### **AGE TO BUS TABLES, STOCK SHELVES, BAG ALCOHOL IN A LICENSED ESTABLISHMENT**

State law does not address this issue, so on a state level, in general there is no minimum age for an employee to remove alcoholic beverages from tables as part of their cleaning responsibilities, to stock shelves with alcoholic beverages, to bag alcohol purchases, or carry them out for a customer.

However, it is very important for the employer to make certain that underage workers are not consuming, purchasing, possessing, selling or serving alcohol. (Also, be sure to review child labor law information on page 18.)

## three

### **AGE OF CUSTOMERS**

It is illegal to sell or serve alcohol to anyone under the age of 21 in South Dakota. The exception: state law permits on-sale licensees to serve alcoholic beverages to persons aged 18 or older if they are in the immediate presence of a parent or guardian or spouse who is 21 years of age or older. Many licensees have chosen to establish a policy of refusing service to anyone under the age of 21. It is perfectly legal for an establishment to refuse to serve anyone under the age of 21, even if they say they are with their parents.

It is illegal for a licensee to serve anyone under the age of 18, even if they are with their parent or guardian or spouse who is age 21 or older.

It is legal for a customer under the age of 21 to come into a licensed establishment to purchase non-alcohol items such as a meal or snacks, to play pool, participate in karaoke, etc. A cautionary note: you must not sell any alcoholic beverages to the underage customers, make sure they don't obtain alcohol from other customers, and be alert for potential shoplifting of alcohol.

## four

### **WHEN AND WHERE ALCOHOL CAN BE SOLD/SERVED**

State law permits all alcoholic beverage licensees to sell alcoholic beverages between the hours of 7 a.m. and 2 a.m. seven days a week, 365 days a year unless the local governing entity (municipality or county) has adopted an ordinance that is more restrictive. Be sure to check with the municipality or county that issued your license.

A licensed establishment may sell and serve alcohol anywhere on their licensed property. To determine what area of your premises is licensed, check the legal description of your property on your alcohol license application. Some businesses include their entire property – including the building/s, parking area, patio and lawn - in the legal description; others specify just the building, or just a portion of the building.

# five

## DELIVERING ALCOHOL

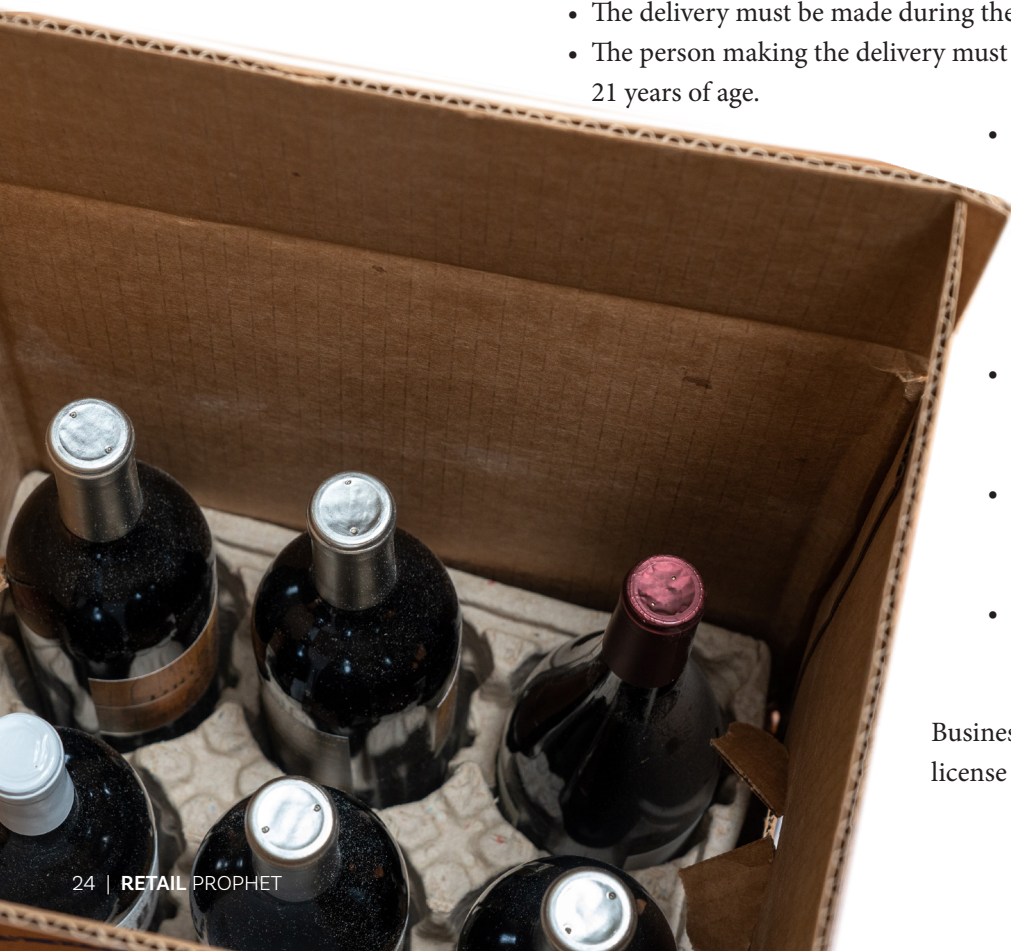
Only businesses that have an off-sale delivery license can deliver alcohol to customers in South Dakota, and there are some restrictions that apply.

Under state law 35-4-127, only businesses that have an off-sale liquor license [35-4-2(3)] or an off-sale municipal liquor license [35-4-2(5)] are eligible to apply for an off-sale delivery license.

### BUSINESSES THAT HAVE THE DELIVERY LICENSE MUST FOLLOW THESE REQUIREMENTS:

- The alcohol may be delivered only to a consumer within the boundaries of the municipality that issued the license. That means, for example, that if you're licensed in Spearfish, you could only deliver within the city limits of Spearfish; you couldn't deliver alcohol to Sturgis, Lead, Deadwood, Belle Fourche, or anywhere outside the city limits of Spearfish.
- The alcohol must be purchased in person, on-site at the licensee's off-sale premises.
- The customer must purchase a minimum of \$150 of alcohol. They may include other things in the purchase – ice, snacks, groceries, etc. – but there must be at least \$150 worth of alcohol.
- The delivery must be made during the legal hours of operation.
- The person making the delivery must be an employee of the licensee who is at least 21 years of age.
- The employee delivering the alcohol must verify that the person receiving the alcohol is at least 21 years of age by checking a valid, age-bearing photo identification that has been issued by the state of South Dakota, by another state or by the federal government.
- The employee delivering the alcohol must obtain the signature of the individual who receives the delivery.
- Documentation verifying the identification of the person signing for the delivery must be retained by the licensee for at least one year.
- Under 35-4-2(23), there is a fee of \$150 for the off-sale delivery license.

Businesses that want to obtain an off-sale delivery license should contact their city finance officer.





## six

### “TO GO” ALCOHOL PURCHASES

Licensees only have the privileges granted to them by their license.

#### IN GENERAL, THAT MEANS:

- If you only have an on-sale license, you cannot sell alcohol to go for consumption off the licensed premises.
- If you have a license that allows off-sale alcohol sales, you can sell the products authorized by your license for consumption off the licensed premises.
- You cannot send customers out the door with a “to-go” spirit drink such as a margarita because there is a specific statute prohibiting consumption of distilled spirits in public. HOWEVER, there is not a similar statute regarding malt beverages so the Department of Revenue has advised establishments that if you have a license that allows both on- and off-sale of malt beverages you can fill growlers full of malt beverages to be consumed off the licensed premises.

In order to sell growlers, an establishment would need to be licensed in one of these ways:

- An on/off sale malt beverage and wine produced by a farm winery license; or
- Both an on-sale liquor license and an off-sale liquor license; or
- A microbrewery license

## seven

### MUNICIPAL LICENSES AND MARKUP FEES

State law permits municipalities to hold on- and off-sale alcoholic beverage licenses, and to enter into operating agreements with retail businesses for the sale of alcohol. The retail partner must purchase the alcohol products through the municipality, and the municipality may charge a markup fee on the alcohol. For malt beverages, the markup fee is capped at 5% of the cost of the alcohol purchased unless the agreement was in place prior to April 1, 1988. For on- and off-sale liquor licensees in those communities, there is no limit on the markup fee; it is whatever is agreed upon between the municipality and the licensee in the operating agreement.

## eight

### PAYMENT FOR ALCOHOL PURCHASES

South Dakota administrative rules require that alcohol licensees pay for malt beverages upon delivery. Payment may be made via electronic transfer (EFT) if the wholesaler agrees.

Immediate payment is not required upon delivery of other alcoholic beverages. However, payment terms may not exceed 30 days from delivery of the alcoholic beverages. If payment is not made within 30 days, the wholesaler is required to report the delinquency to the Department of Revenue. No wholesaler may sell alcoholic beverages to a retailer who is delinquent.

# nine

## RETAILER-TO-RETAILER SALES

Licensed retailers must purchase their alcohol from a wholesaler. If a licensed establishment runs out of any type of alcohol, they can't purchase alcohol from a liquor store or other retail licensee to tide them over until their distributor is able to deliver an order.

*NOTE: Businesses that hold an on- or off-sale liquor license may sell wines produced by a South Dakota farm winery licensee, malt beverages produced by a South Dakota microbrewery licensee, or spirits produced by a South Dakota artisan distiller licensee that have been purchased through a distributor or directly from the South Dakota farm winery, microbrewery, or artisan distiller. Businesses that hold a malt beverage and wine license may sell wines produced by a South Dakota farm winery licensee and malt beverages produced by a South Dakota microbrewery licensee that have been purchased through a distributor or directly from the South Dakota farm winery or microbrewery.*

# ten

## PRICING AND DISCOUNTS

Retailers may offer volume discounts to customers as long as the discount doesn't take the purchase below the minimum price allowed under state law.

Under the minimum pricing law, 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.

# eleven

## SAMPLES

Off-sale liquor licensees may offer free samples of alcohol, subject to some limitations:

- The licensee may only offer as samples the malt beverages, wine, distilled spirits, liqueurs, and cordials that the licensee currently has in stock and is offering for sale to the general public.
- The samples must be dispensed at no charge.
- The samples must be consumed on the licensed premises during the permitted hours of off-sale.
- Samples of malt beverages must be three fluid ounces or less.
- Wine samples must be 50 milliliters or less.
- Samples of distilled spirits, liqueur, and cordials must be twenty-five milliliters or less.

A manufacturer or wholesaler can provide samples of malt beverages, wine, distilled spirits, liqueurs, or cordials to the general public on the premises of a retailer licensed to sell those products, subject to the same limitations.

# twelve

## UNLICENSED BUSINESS SERVING ALCOHOL

Many businesses want to serve alcoholic beverages at an open house or other special event.

If a business does not have an alcoholic beverage license, state law prohibits serving any liquor (meaning spirits such as whiskey, tequila, vodka or gin), liqueurs, or cordials.

## HOWEVER, AN UNLICENSED BUSINESS MAY SERVE COMPLIMENTARY WINE, CHAMPAGNE OR MALT BEVERAGES IF YOU MEET THESE CRITERIA:

- There is absolutely no charge for the alcohol
- There is no cover charge or purchase required to attend
- The business does not make any profit on the alcohol; and
- No one under the age of 21 is served



**KEEPING YOU INFORMED** – The Retail Prophet Magazine is a member-exclusive newsletter published by the South Dakota Retailers Association.

In addition to regular email updates, social media posts, and more, the Retail Prophet is one of many ways we keep members up-to-date and informed on today's business topics.

To see more topics we've covered, visit: [sdra.org/pastprophets](https://sdra.org/pastprophets)

**More information:** 605-224-5050 | [sdra.org](https://sdra.org) | [info@sdra.org](mailto:info@sdra.org)

The Watertown Healthy Youth-Tobacco Free Coalition, Codington County States Attorney, Watertown Police Department, and Codington County Sheriff's Office would like to **THANK YOU** for your continued commitment to prevent underage sales and use of alcohol, tobacco, marijuana, and other drug products. We know it takes more than just telling staff not to sell to minors, it takes responsible retailing practices and policies.

Our goal is to help local businesses like yours be compliant and raise the awareness of the consequences of selling/furnishing alcohol, tobacco, marijuana and other drug products to those under the age of 21. To help accomplish this, we are providing you with some resources supported by state and local entities.

- **Enclosed poster “Think for Two”**. South Dakota state law requires all licensed alcohol premises to prominently display a 9x12-inch sign explaining the dangers faced by pregnant women who consume alcohol. This requirement is contained in state law at [35-4-99](#) and [35-4-100](#). The poster can be printed at this link: [https://dss.sd.gov/formsandpubs/docs/BH/BH16-Pregnancy\\_Alcohol\\_Flyer.pdf](https://dss.sd.gov/formsandpubs/docs/BH/BH16-Pregnancy_Alcohol_Flyer.pdf), or call the South Dakota Department of Social Services/Division of Behavioral Health at (605) 367-5236 to request copies.
- Enclosed South Dakota Retailer's Association **Alcohol Top 12 Questions & Answers**. This is provided with permission from the Retailers Association.
- **Enclosed is a cling for your business** provided by SD Department of Health. You can order additional material for free at <https://befreesd.com/advocacy-tools/policy-support-materials/>
- The **“We Card” program** <https://www.wecard.org/> offers materials and on-line trainings and is a resource recommended by several statewide South Dakota business groups.
- FDA Food & Drug Administration **“This is Our Watch”** has free educational tools and a variety of point-of-purchase tools to <https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/our-watch>
- **“We Don't Serve Teens”** website <https://consumer.ftc.gov/features/we-dont-serve-teens> provides information and links to additional resources and is recommended by several statewide South Dakota businesses.
- **Continue to train staff on current laws, policies and procedures in regards to selling alcohol**. On-line training is available through the state of South Dakota and/or we can offer a training in Watertown.
  - For TAM training information or go to: <https://tamusa.org/tam-training/>
  - Contact the SD Retailers Association for training or go to: <https://www.sdra.org/ssalcohol.html>
- The **current licensed taxi businesses** in Watertown are:

Lake Area Taxi	(605) 880-5555
Need-A-Ride	(605) 303-4033
Patty Wagon Rides	(605) 880-3362

We have seen a significant increase in vape product use among our kids in the Watertown area. Over one-third of juvenile violations are tobacco related. Please remind staff it is unlawful for a person to knowingly distribute a tobacco product to a person under the age of 21. It is also unlawful to purchase a tobacco product on behalf of, or to give a tobacco product to, any person under the age of 21. Violation is a Class Two misdemeanor. The definition of tobacco product includes e-cigarettes. It is also unlawful to distribute tobacco product samples in or on a public street, sidewalk, or park that is **within five hundred feet of a playground, school, or other facility when the facility is being used primarily by persons under the age of twenty-one**. [https://sdlegislature.gov/Statutes/Codified\\_Laws/2057906](https://sdlegislature.gov/Statutes/Codified_Laws/2057906).

Also as a friendly reminder, e-cigarettes or other vaping products in the definition of a tobacco product, are also included in **South Dakota's Smoke Free law** making it subject to the same regulations as the smoking ban. As well as businesses providing signage stating that "No person under the age of 21 may be sold tobacco products".

Local businesses play an essential role in reducing teen access. You can take steps to make sure that teens can't buy or be served alcohol and/or tobacco (including vape products). You can serve as a source of information to reduce the possibility. These tools and resources are to help retailers comply with alcohol and tobacco regulations; as well as protecting our youth and youth adults from the harms of alcohol and tobacco use.

For additional resources, or if you have questions, please contact local law enforcement – Watertown Police Department at 605.882.6210 or Codington County Sheriff's Office at 605.882.6280. This letter and the resources listed can also be found by scanning the QR code.

