

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

495R0080

HOUSE COMMERCE ENGROSSED NO. **HB 1002** 1/27/2010

Introduced by: Representatives Turbiville and Lederman and Senators Nelson, Maher, Olson (Russell), and Tieszen at the request of the Interim Committee on Alcoholic Beverage Control and Licensing Laws

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the days and hours
2 that alcoholic beverages may be sold on a licensed premise and who may sell, serve, or
3 dispense alcoholic beverages on a licensed premise and to revise certain provisions
4 concerning the power of municipalities and counties to regulate the sale and use of alcoholic
5 beverages.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

7 Section 1. That § 35-4-81 be amended to read as follows:

8 35-4-81. No on-sale or off-sale licensee, licensed under subdivisions 35-4-2(3), (4), (5), (6),
9 (9), (11), ~~and (12)~~, (13), (16), (17), (17A), (18), and (19), may sell, serve, or allow to be
10 consumed on the premises covered by the license, alcoholic beverages between the hours of two
11 a.m. and seven a.m. ~~or on Sunday after two a.m., on Memorial Day after two a.m., or at any time~~
12 ~~on Christmas Day~~. A violation of this section is a Class 2 misdemeanor.

13 Section 2. That § 35-4-81.1 be repealed.

14 ~~35-4-81.1. No off-sale licensee, licensed under subdivisions 35-4-2(3), (5), and (19), may~~



1 ~~sell, or allow to be sold, alcoholic beverages between the hours of twelve midnight and seven~~
2 ~~a.m. of the following day, or sell, or allow to be sold, distilled spirits or wine on Memorial Day~~
3 ~~or Christmas Day. In addition, no off-sale licensee may sell, or allow to be sold, alcoholic~~
4 ~~beverages on Sunday unless the municipality or the county by ordinance allows such sales on~~
5 ~~Sunday.~~

6 Section 3. That § 35-4-81.2 be repealed.

7 ~~— 35-4-81.2. No licensee licensed under subdivisions 35-4-2(16) and (17) may sell, serve, or~~
8 ~~allow to be consumed on the premises covered by the license, any malt beverage between the~~
9 ~~hours of two a.m. and seven a.m. No licensee licensed under subdivision 35-4-2(12) may sell,~~
10 ~~serve, or allow to be consumed on the premises covered by the license, any wine between the~~
11 ~~hours of two a.m. and seven a.m. A violation of this section is a Class 2 misdemeanor.~~

12 Section 4. That § 35-4-79 be amended to read as follows:

13 35-4-79. No on-sale licensee may permit any person less than twenty-one years old to loiter
14 on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on such
15 premises. However, an on-sale licensee licensed pursuant to subdivision 35-4-2(4), (6), (11),
16 (12), (13), or (16) may permit persons eighteen years old or older to sell and serve or dispense
17 alcoholic beverages if ~~not~~ less than fifty percent of the gross business transacted by that
18 establishment is from the sale of ~~food~~ alcoholic beverages and the licensee or an employee that
19 is at least twenty-one years of age is on the premises when the alcoholic beverage is sold or
20 dispensed. For the purposes of this section, the term, "to sell and serve alcoholic beverages,"
21 means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers
22 as a normal adjunct of waiting tables. The term does not include tending bar or drawing or
23 mixing alcoholic beverages.

24 A violation of this section is a Class 2 misdemeanor.

1 Section 5. That § 35-4-79.1 be amended to read as follows:

2 35-4-79.1. No off-sale licensee licensed under subdivision 35-4-2(3), (5), (17), or (17A) may
3 permit any person less than twenty-one years old to sell, serve, or dispense alcoholic beverages
4 on the licensed premises unless such sales of alcoholic beverages constitutes less than fifty
5 percent of the gross business transacted by that establishment. If alcoholic beverage sales
6 constitute less than fifty percent of the gross business transacted by the establishment, the
7 licensee may permit persons less than twenty-one years old to sell, serve, or dispense alcoholic
8 beverages if the licensee or an employee that is at least twenty-one years of age is on the
9 premises when the alcoholic beverage is sold or dispensed.

10 Section 6. That § 35-4-79.3 be repealed.

11 ~~35-4-79.3. No off-sale licensee licensed under subdivision 35-4-2(3) or (5) may permit any~~
12 ~~person less than twenty-one years old to sell, serve, or dispense alcoholic beverages on the~~
13 ~~licensed premises.~~

14 Section 7. That § 35-4-2.8 be amended to read as follows:

15 35-4-2.8. An on-sale licensee, licensed under subdivision 35-4-2(4) or (6), may also be
16 licensed under subdivision 35-4-2(12) or (16), or both. A licensee holding two or more licenses
17 pursuant to this section may exercise the privileges granted under the license issued pursuant
18 to subdivision 35-4-2(12) or subdivision 35-4-2(16) ~~during the time specified in § 35-4-81.2.~~

19 Section 8. That § 9-29-7 be amended to read as follows:

20 9-29-7. ~~Every~~ Each municipality ~~shall have power to~~ may prohibit or regulate the transaction
21 of business in alcoholic beverages; and the use and consumption ~~thereof, and to~~ of alcoholic
22 beverages, establish the number of on- and off-sale licenses which may be issued; and the fees
23 to be charged ~~therefor, for the licenses, and~~ provide for reasonable classifications of on-sale and
24 off-sale licenses ~~and for the issuance of high-point beer on- and off-sale licenses to licensees~~

1 ~~holding high-point beer licenses on December 31, 1979, for which the fees to be charged for the~~
2 ~~various classifications shall be uniform within each class, consistent with the provisions of Title~~
3 ~~35. The secretary of revenue shall be promptly furnished certified copies of all ordinances and~~
4 ~~resolutions or amendments thereto adopted relating to the exercise of these powers.~~

5 ~~— No high-point beer license provided for in this section may be transferred as to site.~~

6 Section 9. That subdivision (8) of § 7-8-20 be amended to read as follows:

7 (8) To regulate the transaction of business in alcoholic beverages; and the use and
8 consumption ~~thereof~~ of alcoholic beverages, to establish the number of on-sale
9 licenses which may be issued, to provide for reasonable classification of on-sale
10 licenses and ~~to fix the fees to be charged for the various classifications which shall~~
11 ~~be uniform within each class, all~~ licenses consistent with the provisions of Title 35:
12 ~~The secretary of revenue shall be promptly furnished certified copies of all~~
13 ~~ordinances and resolutions or amendments thereto adopted relating to the exercise~~
14 ~~of these powers;~~

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