

TITLE TWO ALCOHOLIC BEVERAGES

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CHAPTER 2-1 DEFINITIONS

2-1-1

DEFINITION OF TERMS

Terms used in this title, unless the context otherwise plainly requires, shall mean:

- A. **ALCOHOLIC BEVERAGE:** any distilled spirits, wine and malt beverages as defined in this title.
- B. **BEER GARDEN:** An out door area accommodating twenty or fewer persons and which is connected to a structure for which a alcoholic beverage license is in effect. A beer garden may also be referred to as an out door patio, a patio, or a deck.
- C. **BULK CONTAINER:** any package or any container within which container are one or more package.
- D. **CARRIER:** a person who for hire transports passengers and who sells or furnishes to passengers for consumption alcoholic beverages aboard any means of conveyance.
- E. **DEPARTMENT:** the department of revenue of the state of South Dakota.
- F. **DISPENSER:** a duly licensed physician, dentist, veterinarian, osteopath, podiatrist, chiropractor, or pharmacist, or a druggist, sanitarium, hospital, clinic, education institution, industrial company, or industrial corporation who purchases alcohol for scientific and medicinal purposes.
- G. **DISTILLED SPIRITS:** ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use containing not less than one half of one percent of alcohol by weight.
- H. **DISTILLER:** any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any distillery or other establishment for the production, rectifying, blending or bottling of distilled spirits.
- I. **MALT BEVERAGE:** a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of

malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of un-malted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one half of one percent of alcohol by weight.

- J. **MANUFACTURER:** any person who owns or who himself or through others, directly or indirectly, operates or aids in operating any establishment for the brewing, production, bottling or blending of malt beverages or wine.
- K. **MUNICIPALITY:** any incorporated City or town, and any unincorporated platted town having a United States post office, provided that the withdrawal of a United States post office from any of the herein described municipalities shall not affect the right of established liquor licenses to be continued, renewed or transferred; and shall not prevent the owner or bona fide lessee of the licensed premises from receiving a renewal or re-issuance of such license.
- L. **OFF SALE:** the sale of any alcoholic beverage, for consumption off the premises where sold.
- M. **ON SALE:** the sale of any alcoholic beverage for consumption only upon the premises where sold.
- N. **ON SALE DEALER:** any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.
- O. **PACKAGE:** the bottle or immediate container of any alcoholic beverage.
- P. **PACKAGE DEALER:** any person other than a distiller, manufacturer, or wholesaler who sells or keeps for sale, any alcoholic beverage for consumption off the premises where sold.
- Q. **POPULATION:** number of inhabitants as determined by the last preceding federal census.
- R. **PUBLIC PLACE:** any place, whether within or without a building, any street, highway, alley, sidewalk or parking lot, commonly and customarily open to or used by the general public, whether open or closed to the public, unless approved by the City Council.
- S. **RETAIL LICENSE:** an on or off sale license issued under the provisions of this title.
- T. **RETAILER OR RETAIL DEALER:** any person who sells alcoholic beverages for other than resale.
- U. **SALE:** the transfer, for a consideration of title to any alcoholic beverage.
- V. **SECRETARY:** the secretary of revenue of the state of South Dakota.
- W. **SOLICITOR:** any person employed by a licensed wholesaler within this state, or by any distiller or manufacturer within or without this state, who contacts a wholesaler or retail dealer within this state for the purpose of selling,

promoting or advertising alcoholic beverages or for any other reason connected with the alcoholic beverage industry but shall not include employees of wholesale or transporter licenses who only deliver such beverages.

- X. **TRANSPORTATION COMPANY OR TRANSPORTER:** any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverages except low point beer, but not including transportation by carriers in interstate commerce where the shipment originates outside of the state and is destined to a point outside of the state.
- Y. **WHOLESALER:** any person who sells alcoholic beverages to retailers for resale.
- Z. **WINE:** any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one half of one percent of alcohol by weight but not more than twenty-four percent of alcohol by weight.

Legislative History:

Application of statutory definitions, § 2-14-4.
1990 Revisions
Ordinance No. 455, 8-18-09

Alcoholic Beverages:

Low point beer is included in the statutory definition of alcoholic beverages. Snow
Land, Inc. v. City of Brookings
(1979) 282 NW 2d 607

Sale on Credit:

A sale of alcoholic beverages as contemplated by this section includes the transfer of the beverage in exchange for dishonored check, as upon dishonor the check becomes an absolute promise to pay.

Opinions of the Attorney General:

Liquor license not granted to anyone in area of un-platted unincorporated town, Report 1953-54, p.23.
Summer resort not "unincorporated town,"
Report 1935-36, p. 258.

(Sale On Credit Continued)

and a sale on credit is within purview of the statute.
State v. Murphy (1951) 74 SD 21, 48 NW 2d 225.

Collateral References:

What constitutes "sale" of liquor in violation of statute or ordinances, 89 ALR 3d 551.