

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: TRADE REGULATION AND LICENSING

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PEDDLERS AND TRANSIENT MERCHANTS

§ 110.01 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

GOODS. Merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

ITINERANT MERCHANT. Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the municipality and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the municipality.

PEDDLER. Any person, not an itinerant merchant, who:

(1) Travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or

(2) Without traveling from place to place, sells or offers goods for sale from any public place within the municipality.

SOLICITOR. Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

§ 110.02 LICENSE REQUIREMENT.

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the municipality.

(B) The fee for the license required by this subchapter shall be as set from time to time by the governing body.

(C) No license issued under this subchapter shall be transferable.

(D) All licenses issued under this subchapter shall expire 90 days after the date of issuance thereof. Penalty, see § 10.99

§ 110.03 APPLICATION PROCEDURE.

(A) All applicants for licenses required by this subchapter shall file an application with the clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation. The applicant may be requested to provide information concerning the following items:

(1) The name and address of the applicant;

(2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the municipality;

(b) The local address of such individual;

(c) The permanent address of such individual;

(d) The capacity in which such individual will act;

(3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;

(4) The time period or periods during which it is proposed to carry on applicant's business;

(5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;

(b) If goods, their invoice value and whether they are to be sold by sample as well as from stock;

(c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;

(6) The nature of the advertising proposed to be done for the business;

(7) Whether or not the applicant, or the individual identified in division (A)(2)(a) above, or the person identified in division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to that requested under division (A) above:

(1) A description of the applicant;

(2) A description of any vehicle proposed to be used in the business, including its registration number, if any.

(C) All applicants for licenses required by this subchapter shall attach to their application, if required by the municipality, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C), a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

Penalty, see § 10.99

§ 110.04 STANDARDS FOR ISSUANCE.

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant has done any of the following will constitute valid reasons for disapproval of an application:

- (1) Has been convicted of a crime of moral turpitude; or
- (2) Has made willful misstatements in the application; or
- (3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like; or
- (4) Has committed prior fraudulent acts; or
- (5) Has a record of continual breaches of solicited contracts.

§ 110.05 REVOCATION PROCEDURE.

Any license or permit granted under this subchapter may be revoked by the clerk after notice and hearing, pursuant to the standards in § 110.06. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his or her last known address, at least ten days prior to the date set for the hearing.

§ 110.06 STANDARDS FOR REVOCATION.

A license granted under this subchapter may be revoked for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the license application; or

(B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license; or

(C) Any violation of this subchapter; or

(D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or

(E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

§ 110.07 APPEAL PROCEDURE.

(A) Any person aggrieved by a decision under §§ 110.04 or 110.06 shall have the right to appeal to the governing body. The appeal shall be taken by filing with the governing body, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The governing body shall set the time and place for a hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 110.05.

(B) The order of the governing body after the hearing shall be final.

§ 110.08 EXHIBITION OF IDENTIFICATION.

(A) Any license issued to an itinerant merchant under this subchapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the municipality shall be used to conduct the business licensed, separate licenses shall be issued for each place.

(B) The clerk shall issue a license to each peddler or solicitor licensed under this subchapter. The license shall contain the words Licensed Peddler or Licensed Solicitor, the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he or she is engaged in the business licensed.

Penalty, see § 10.99

§ 110.09 MUNICIPAL POLICY ON SOLICITING.

It is hereby declared to be the policy of the municipality that the occupants of the residences in the municipality shall make the determination of whether solicitors shall be, or shall not be, invited to their respective residences.

§ 110.10 NOTICE REGULATING SOLICITING.

(A) Notice of the refusal of invitation to solicitors, to any residence, shall be given on a weatherproof card, approximately three inches by four inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

NO SOLICITORS INVITED

(B) The letters shall be at least one-third of an inch in height. For the purpose of uniformity, the cards shall be provided by the chief of police to persons requesting, at the cost thereof.

(C) The card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.

§ 110.11 DUTY OF SOLICITORS TO ASCERTAIN NOTICE.

(A) It shall be the duty of every solicitor upon going onto any premises in the municipality upon which a residence is located to first examine the notice provided for in § 110.10 if any is attached, and be governed by the statement contained on the notice. If the notice states NO SOLICITORS INVITED, then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.
Penalty, see § 10.99

§ 110.12 PROHIBITED SOLICITATION.

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of § 110.10 above.

Penalty, see § 10.99

Statutory reference:

Authority to regulate and license transient merchants, peddlers, see SDCL § 9-34-7

MISCELLANEOUS REGULATIONS

§ 110.25 SOLICITING TELECOMMUNICATION SERVICES; EXEMPTION.

(A) It shall be unlawful for hawkers, peddlers, solicitors, pawnbrokers, ticket scalpers, and employment agencies to conduct business without first applying for and receiving a license to conduct such business.

(B) This section does not apply to the peddling or soliciting of telecommunications services subject to the provisions of SDCL §§ 49-13-1 *et seq.* or 49-31-1 *et seq.*

Penalty, see § 10.99

Statutory reference:

Authority to regulate, see SDCL § 9-34-18

§ 110.26 SECONDHAND AND JUNK STORES.

(A) It shall be unlawful to operate a secondhand store or junk store without first applying for and receiving a license from the municipality.

(B) It shall be unlawful for secondhand or junk stores to purchase and/or receive from a minor any article without the written consent of the minor's parents or guardians.

(SDCL § 9-34-9) Penalty, see § 10.99

§ 110.27 DELIVERY PERSONS, TAXI DRIVERS AND PORTERS.

It shall be unlawful for any parcel delivery person, bus drivers, cab drivers, taxi drivers, porters, and others in similar occupations to engage in such occupations without first applying for and receiving a license from the municipality.

(SDCL § 9-34-10) Penalty, see § 10.99

§ 110.28 TATTOOING AND BODY PIERCING.

(A) Any municipality may regulate the practice of tattooing, saline tattoo removal, and body piercing by licensing practitioners of tattooing, saline tattoo removal, or body piercing; inspecting tattoo, saline tattoo removal, and body piercing establishments; and establishing standards for sanitation that are at least as stringent as those adopted by the Department of Health under SDCL § 34-1-17.

(B) Terms used in this section mean:

BODY PIERCING. To place a permanent or temporary foreign object in a person's body for a decorative or other nonmedical purpose by a person not directly under the supervision of a licensed physician as defined by SDCL § 36-4-11.

SALINE TATTOO REMOVAL. Inserting a saline solution in skin to lighten or remove an existing tattoo. The term does not include the use of other acids or of lasers as described in SDCL § 36-4-8.2.

TATTOOING. To make marks or designs into the skin by puncturing it and inserting indelible colors. The term includes microblading and similar techniques used to partially or fully simulate natural hair.

(SDCL § 9-34-17) Penalty, see § 10.99

§ 110.29 EXHIBITIONS, SHOWS AND AMUSEMENTS.

It shall be unlawful for anyone to conduct in exhibitions, shows and amusements without first applying for and obtaining a license from the municipality.

Penalty, see § 10.99

CHAPTER 111: AUCTION SALES

Section

- 111.01 Definitions
- 111.02 Requirements
- 111.03 Exempt sales
- 111.04 Auction receipts

§ 111.01 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AUCTION SALE. The offering for sale or selling of personal property to the highest bidder or offering for sale or selling of personal property at a high price and then offering the personal property at successive lower prices until a buyer is secured.

NEW MERCHANDISE. Any merchandise not previously sold at retail.
(SDCL § 37-14-2)

§ 111.02 REQUIREMENTS.

The requirements of this subchapter are in addition to and not in lieu of any other state or local license.
(SDCL § 37-14-5)

§ 111.03 EXEMPT SALES.

The provisions of this chapter do not extend to the sale at public auction of livestock, farm machinery, or farm produce or any other item commonly sold at farm sale, to any auction sale held under authority of or under the supervision and direction of any court of this state, or to any person, firm, or corporation who has been engaged in business in this state for a period of at least one year, conducting a closing out or stock reduction sale of the business.
(SDCL § 37-14-4)

§ 111.04 AUCTION RECEIPTS.

(A) Any money that an auction cashier receives on behalf of a client from an auction sale shall be deposited in a separate account maintained for auction sale proceeds only.

(SDCL § 37-14-18)

(B) Any money that an auction cashier receives on behalf of a client from an auction sale shall be given to the client within 20 working days of the auction sale. This section does not apply to any bad check or if there is a prior written agreement between the client and the cashier.

(SDCL § 37-14-19)

(C) Divisions (A) and (B) do not apply to any livestock auction agency licensed pursuant to SDCL Chapter 40-15 or to any real estate sale.

(SDCL § 37-14-20)

CHAPTER 112: PAWNBROKERS

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- 112.02 Sale of pledge during time for redemption
- 112.03 Conduct of business without license
- 112.04 Refusal to disclose purchaser and price of article sold
- 112.05 Refusal to exhibit stolen goods

§ 112.01 EXCESSIVE INTEREST.

No pawnbroker who receives goods in pledge for loans shall charge any rate of interest above that allowed by law.

(SDCL § 37-16-1) Penalty, see § 10.99

§ 112.02 SALE OF PLEDGE DURING TIME FOR REDEMPTION.

No pawnbroker shall sell any article received by him or her in pledge before the time to redeem the same has expired.

(SDCL § 37-16-2) Penalty, see § 10.99

§ 112.03 CONDUCT OF BUSINESS WITHOUT LICENSE.

All pawnbrokers in this municipality shall apply for and receive a license to carry on the business of a pawnbroker pursuant to SDCL § 9-34-8.

(SDCL § 37-16-3) Penalty, see § 10.99

§ 112.04 REFUSAL TO DISCLOSE PURCHASER AND PRICE OF ARTICLE SOLD.

Any pawnbroker shall not refuse to disclose the purchaser and price received by him or her for any article received by him or her in pledge and subsequently sold.

(SDCL § 37-16-4) Penalty, see § 10.99

§ 112.05 REFUSAL TO EXHIBIT STOLEN GOODS.

Any pawnbroker and junk dealer who, having received any goods which have been stolen, shall not refuse to exhibit them upon demand during usual business hours to the owner of such goods or his or her agents authorized to demand an inspection.

(SDCL § 37-16-5) Penalty, see § 10.99

CHAPTER 113: REGULATION AND LICENSING OF LIQUOR OPERATIONS

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Statutory reference:

Licensing policies and procedures, see SDCL §§ 35-2-1 et seq.

GENERAL**§ 113.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALCOHOLIC BEVERAGE. Any distilled spirits, wine, and malt beverages as defined SDCL Title 35.

BULK CONTAINER. Any package, or any container within which container are one or more packages.

CARRIER. A person who for hire transports passengers and who sells or furnishes to passengers for consumption alcoholic beverages aboard any means of conveyance or allows passengers to consume the passenger's own alcoholic beverages aboard the conveyance.

CIDER. Any alcoholic beverage obtained by the fermentation of the juice of apples or pears that contains not less than one-half of 1% of alcohol by volume and not more than 10% of alcohol by weight, including flavored, sparkling, or carbonated cider.

CONTROLLING INTEREST IN. An ownership interest in the licensee of 10% or more.

DEPARTMENT. Department of Revenue of the State of South Dakota.

DISPENSER. A duly licensed physician, dentist, veterinarian, osteopath, podiatrist, chiropractor, or pharmacist; or a druggist, sanitarium, hospital, clinic, educational institution, industrial company, or industrial corporation who purchases alcohol for scientific and medicinal purposes only.

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 1% of alcohol by weight.

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, or any other similar product, and with or without other malted cereals, and with or without the addition of unmalted 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.

MANUFACTURER. Any person who owns, has a controlling interest in, operates, or aids in operating any establishment for the brewing, production, bottling, or blending of any alcoholic beverage, whether occurring within or without this state.

MINIBAR. Any closed container, either refrigerated or nonrefrigerated, having restricted access to the interior by means of a locking device that requires the use of a key, magnetic card, or similar device, or controlled by the licensee at all times.

MUNICIPALITY. Any incorporated city or town, and any unincorporated platted town having a United States post office. However, the subsequent withdrawal of a United States post office does not affect the right of established liquor licenses to be continued, renewed, or transferred and does not prevent the owner or bona fide lessee of the licensed premises from receiving a renewal or reissuance of such license.

OFF-SALE. The sale of any alcoholic beverage, for consumption off the premises where sold.

ON-SALE. The sale of any alcoholic beverage for consumption only upon the premises where sold.

ON-SALE DEALER. Any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

PACKAGE. The bottle or immediate container of any alcoholic beverage.

PACKAGE DEALER. Any person other than a manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

POPULATION. Number of inhabitants as determined by the last preceding federal census.

POWDERED, CONDENSED, or CONCENTRATED ALCOHOL. An alcoholic product that is created using a process that reduces the alcohol to a concentrated form and that allows the alcohol to be reconstituted with water or other liquid.

RELATIVE. Any person who is a husband, wife, son, daughter, brother, sister, father, or mother.

RETAIL LICENSE. An on-sale or off-sale license issued under the provisions of SDCL Title 35.

RETAILER or RETAIL DEALER. Any person who sells alcoholic beverages for other than resale.

SALE. The transfer, for consideration, of title to any alcoholic beverage.

SECRETARY. The secretary of revenue of the State of South Dakota.

SERVE. The taking of an order for an alcoholic beverage and intentionally delivering the alcoholic beverage to a customer for the purpose of consumption on the licensed premises and the customer takes physical possession of the alcoholic beverage.

TRANSPORTATION COMPANY or TRANSPORTER. Any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverages, 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.

WHOLESALER. Any person who sells alcoholic beverages to retailers for resale.

WINE. Any beverage made from the fermentation of grapes, grape juice, other fruit bases, or honey, with or without adding alcoholic beverages; without rectification, except for the purpose of fortification; and contains not less than 0.5% and not more than 24% alcohol by volume.

(SDCL § 35-1-1)

LICENSING AND SALES

§ 113.15 PERMANENT LICENSES.

The following are the fees to be paid for the various classes of licenses:

<i>SDCL § 35-4-2 Division</i>	<i>Class of License</i>	<i>Fees</i>
(2)	Wholesalers	\$5,000
(3)	Off-sale	Not more than \$300
	Off-sale (Renewal)	Not to exceed \$500

<i>SDCL § 35-4-2 Division</i>	<i>Class of License</i>	<i>Fees</i>
(4)	On-sale in municipalities of various classes	Not less than \$1 for each person residing within the municipality as measured by the last preceding federal census
	Renewal fee	Not to exceed \$1,500
(5)	Off-sale licenses issued to municipalities under local option	Not less than \$250
(6)	On-sale licenses issued outside of 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 SDCL § 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 SDCL § 35-3-13. The renewal fee shall be the same as could be charged for a like license in the nearest municipality
(8)	Transportation companies	\$25
(9)	Carrier	\$100 The fee licenses all conveyances the licensee operates in this state
(11)	On-sale dealers (at publicly operated airports)	\$250
(12)	Wine and cider retailers, being both package dealers and on-sale dealers	\$500
(13)	Convention facility (on-sale)	Not less than \$1 for each person residing within the municipality as measured by the last federal census
	Renewal fee	Not to exceed \$1,500
(15)	Wholesalers of malt beverages	\$400
(16)	Malt beverage and wine produced by a farm winery licensee, being both package dealers and on-sale dealers	\$300
(21)	Retail on premises manufacturer	\$250

(SDCL § 35-4-2)

§ 113.16 TEMPORARY LICENSES AND PERMITS.

The municipality is authorized to issue the following licenses:

(A) *Airport license to be used for convention or entertainment purposes.*

(1) Any municipality with a population in excess of 35,000 which operates an airport pursuant to SDCL Chapter 50-7 and holds a license pursuant to SDCL §§ 35-4-14, shall also be authorized to use the license at any bona fide convention activity or entertainment activity including, but not limited to: any theatrical or musical performance, rodeo or traveling show if the event is held at a convention hall.

(2) The selling, serving or dispensing of any alcoholic beverage may not occur earlier than one hour before the commencement of the event, or at any time after the event is concluded. All sales must occur within areas designated for that purpose.

(B) *Five-day convention hall licenses.*

(1) Such license shall be issued without regard to population limitations established by law.

(2) Any municipality with a population exceeding 100,000 or any municipality hosting an annual event attended by 100,000 or more people may issue an on-sale license to be operated at a sporting event held at a publicly owned sports arena or facility seating a minimum of 1,000 persons. Before a license may be issued in a municipality hosting an annual event, the municipal finance officer shall estimate the previous year's attendance and provide the estimate to the governing body.

(3) Any license issued pursuant to this subdivision may be issued for a period not to exceed five consecutive days and will expire at 12:00 midnight on the fifth day after issuance.

(4) No public hearing is required if the individual applying for the license holds an on-sale alcoholic beverage license in the municipality or holds an operating agreement for municipal on-sale alcoholic beverage license. No person who holds an operating agreement for a municipal license pursuant to SDCL § 35-4-14.1 may receive a license pursuant to this section.

(C) *Special malt beverage retailer's license and special retail on-sale wine dealer's license.*

(1) This license may be issued to any civic, charitable, educational or fraternal organization in conjunction with a special event.

(2) The fee is \$5 per day for a period not to exceed 15 consecutive days.

(3) This license shall be issued in the same manner as other malt beverage licenses, except that the state does not have to grant approval and the license fee remains in the municipality.

(D) *Spiking permit.*

(1) It is unlawful for a person to consume any intoxicating liquor or mix an alcoholic beverage in any public place other than an on-sale establishment.

(2) The governing body may grant authorization for persons to consume or blend alcoholic beverages on property that is publicly owned or owned by a nonprofit corporation. The permit period shall not exceed 24 hours and the hours or authorization shall not exceed those permitted for on-sale licenses.

(E) *Organizational special events.* The municipality may issue a special events temporary on-sale liquor license if the applicant is recognized as an exempt organization under the US Internal Revenue Code, and the licensee holds a malt beverage retailer license within the municipality. The license may be issued for a period of time not to exceed two consecutive days.

§ 113.17 OFF-SALE LICENSES TO OPERATE WITHIN MUNICIPALITY.

(A) Except as provided in SDCL § 35-4-2(12) and (16), off-sale licenses may only be issued under this chapter to operate within a municipality or an improvement district created pursuant to SDCL Chapter 7-25A.

(SDCL § 35-4-6)

(B) No more than two off-sale licenses issued pursuant to SDCL § 35-4-2(3) and (5) may be issued under SDCL Chapter 35 to operate in a municipality of 1,000 or less and not exceeding one license for every additional 1,500 of population or fraction thereof.

(C) 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.

(SDCL § 35-4-10)

§ 113.18 ON-SALE LICENSES.

(A) Pursuant to SDCL § 35-4-11, if not fixed by ordinance, the governing board of the municipality may on or before September 1 in each year, by resolution, 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.

(B) The number of on-sale licenses issued may not exceed three each for the first 1,000 of population or fraction thereof and not exceed one each of such licenses for each additional 1,500 of population or fraction thereof.

(C) The number of licenses allowable may not be less than the total number of licenses allowable or issued as of July 1, 1981. The municipal governing board shall at such meeting establish the fee for on-sale licenses pursuant to § 113.15(A)(4) and (13). Such fee shall apply to all such on-sale licenses issued in the ensuing calendar year. The quotas established in this section do not apply to licenses issued pursuant to § 113.15(A)(12), (16), (17), and (17A).

(D) For the purposes of this section, population is equal to 90% of 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 which exceeds the number of licenses that would have been issued upon the decennial federal census may be denied solely by reason that the license exceeds the number of licenses authorized by the decennial federal census.

(SDCL § 35-4-11)

§ 113.19 CONVENTION FACILITY ON-SALE LICENSES.

(A) Notwithstanding the provisions of SDCL § 35-4-11, each municipality may issue two convention facility on-sale licenses pursuant to SDCL § 35-4-2(13) for convention facilities substantially constructed within the two years following issuance of the license or previously completed.

(B) If located in a municipality with a population of 20,000 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 100 rooms that are suitable lodging accommodations and convention facilities with seating for at least 400 persons.

(C) If located in a municipality with a population of less than 20,000, the hotel-motel convention facility shall have at least 40 rooms that are suitable lodging accommodations and convention facilities with seating for at least 150 persons.

(D) If a municipality's population 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.

(SDCL § 35-4-11.2)

§ 113.20 MALT BEVERAGE LICENSES.

The municipality may issue as many malt beverage licenses as it deems necessary.

§ 113.21 TIMES WHEN SALES PROHIBITED.

(A) No on-sale or off-sale licensee, licensed under § 113.15(A)(3), (4), (5), (6), (9), (11), (13), or (18), may sell, serve, or allow to be consumed on the premises covered by the license, alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m. or on Sunday after 2:00 a.m., on Memorial Day after 2:00 a.m., or at any time on Christmas Day. However, this municipality may, by ordinance, allow the sale, service, and consumption of alcoholic beverages on Sundays, Christmas Day and/or Memorial Day. (SDCL § 35-4-81)

(B) No on-sale or off-sale licensee licensed under § 113.15(A)(12), (16), (17), (17A),(19) and (20) may sell, serve, or allow to be consumed on the premises covered by the license, any alcoholic beverages between the hours of 2:00 a.m. and 7:00 a.m. (SDCL § 35-4-81.2) Penalty, see § 10.99

§ 113.22 APPLICATION FOR LICENSE.

(A) An application for any license shall be on the form prescribed by the Department of Revenue. All applications for retail licenses, except those cited in SDCL § 35-2-1.1 shall be submitted to the governing body. The municipality shall approve or disapprove the application based on the grounds that the applicant is a suitable person and that the proposed location is suitable.

(B) The governing body shall review the following factors in determining whether or not a video lottery machine shall be permitted in establishments issued an on-sale alcoholic beverage license pursuant to SDCL § 35-4-2(12) and (16):

- (1) The number of current establishments currently licenses for video lottery;
- (2) The proximity of the business to other establishments licensed for video lottery;
- (3) The type of business and manner in which the applicant proposes to operate it;
- (4) The location of the business in relation to other businesses, residential areas, or activities within the same general area;
- (5) The extent to which minors frequent a business connected to the one proposed; and
- (6) The effect the proposed business has on economic development.

(C) The governing body is to certify on each application filed with the Department for a license granted under § 113.15(A)(12) and (16) whether the business premises is authorized for video lottery machine placement.

(D) An existing video lottery license may not be denied renewal or transfer based upon the criteria set out in division (B). The lottery may issue a video lottery license to those establishments certified pursuant to this section. Notwithstanding the above provisions, the municipality may not restrict the number of alcoholic beverage licenses issued under § 113.15(A)(12) and (16) and certified for video lottery to a number less than those licensed as video lottery establishments on March 1, 1994.

(SDCL § 42-7A-64)

§ 113.23 HEARING ON APPLICATION.

(A) The municipality shall hold a hearing on the application for a license. Notice of the hearing must be published one time, one week prior to the hearing in the official newspaper. Any resident who requests written notice of the hearing must be notified accordingly.

(B) (1) If the application is denied after the hearing, the fee is returned to the applicant. If after the hearing, the application is granted, the fee is deposited in the general fund and the application is forwarded to the secretary of the Department, who can accept or reject the application.

(2) If the application is for a malt beverage license, only one-half of the fee is deposited in the general fund. The other one-half is forwarded to the secretary of the Department.

(C) A license cannot be reissued to the same applicant for a one-year period if the license has not been actively used by the applicant during the previous two years.

§ 113.24 RENEWAL OF LICENSE.

(A) If the applicant already holds a license and is applying for the same class of license at the same location for the next license year, then only the approval of the governing body is necessary to issue the license for the new year.

(B) One copy of the application is forwarded to the Department and a new card will be issued by the Department with an appropriate expiration date. The mayor or chairperson the governing board shall sign the new card in the lower right hand corner to properly validate the card.

§ 113.25 TRANSFER OF LICENSE.

(A) The procedure for a transfer of license is the same as for application for a new license. The fee for a transfer is \$150. An affidavit of bulk sale and the existing license card must be submitted with the application for transfer.

(B) The application to transfer the license shall only be permitted if all municipal and state sales and use taxes incurred by the licensee as a result of the operation have been paid, and all property taxes, which are the liability of the licensee are paid or are not delinquent.

§ 113.26 DISTRIBUTION OF LICENSE AND TRANSFER FEES AND PENALTIES.

Fifty percent of all license and transfer fees received pursuant to subdivision SDCL § 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, 50% 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.

(SDCL § 35-4-2.11)

§ 113.27 OFF-SALE LICENSEES PERMITTED TO PROVIDE FREE SAMPLES; NO ADDITIONAL LICENSE REQUIRED; RESTRICTIONS.

(A) A licensee holding a license pursuant to SDCL § 35-4-2(3) or (5) may provide samples of malt beverages, wine, 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, distilled spirits, liqueurs, and cordials that the licensee currently has in stock and is offering for sale to the general public.

(B) The malt beverage, wine, 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.

(C) No sample of malt beverage may be larger than three fluid ounces. No sample of wine may be larger than 50 milliliters and no sample of distilled spirits, liqueur, or cordial may be larger than 25 milliliters.

(SDCL § 35-4-10.2)

§ 113.28 OFF-SALE DELIVERY LICENSE.

(A) A licensee licensed pursuant to SDCL § 35-4-2(3) or (5) may apply for an off-sale delivery license as provided by SDCL § 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 \$150.

(B) The delivery shall be made during hours of operation pursuant to SDCL § 35-4-81.2 by an employee of the licensee who is at least 21 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.

(SDCL § 35-4-127)

§ 113.29 MANUFACTURE, SALE, OR POSSESSION OF POWDERED, CONDENSED, OR CONCENTRATED ALCOHOL PROHIBITED; EXCEPTIONS.

(A) Unless specifically allowed in this section, the manufacture, sale or possession of alcohol in a powdered, condensed, or other concentrated form as defined in § 113.01 or the sale or possession of an alcoholic beverage that is reconstituted from alcohol in a powdered, condensed, or other concentrated form is prohibited.

(B) 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 § 113.01 and that possession is primarily used for conducting bona fide research.

(SDCL § 35-4-128)

§ 113.30 QUANTITY DISCOUNTS AND CASH DISCOUNTS PERMITTED.

A retailer, as defined in § 113.01 of this chapter, 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 SDCL § 35-4-129.

(SDCL § 35-4-130)

MUNICIPAL LIQUOR OPERATIONS

§ 113.45 MUNICIPAL APPLICATION AND RENEWAL.

(A) Any applicant for a new retail license, except as set forth in SDCL § 35-2-1.1, or the transfer of an existing license shall submit an application to the governing body of the municipality in which the applicant intends to operate, or if outside the corporate limits of a municipality, to the governing body of the county in which the applicant intends to operate. The applicant shall submit the required fee with the application. The governing body may approve the application for a new retail license or the transfer of an existing license if the governing body considers the applicant suitable to hold the license and the proposed location is suitable.

(B) The governing body may disapprove an application for a new retail license or the transfer of an existing license issued under subdivision SDCL § 35-4-2(4), (6), or (13) if:

(1) The approval of the application permits a person, corporation, or business entity to possess more than one-third of the licenses available to be issued in the jurisdiction; and

(2) The governing body determines that possession of more than one-third of licenses available is not in the public interest.

(C) Any application for the reissuance of a retail license may be approved by the municipal or county governing body without a hearing unless in the past year the licensee or one or more of the licensee's employees have been subjected to a criminal penalty for violation of the alcoholic beverage control law or the license has been suspended.

(SDCL § 35-2-1.2)

§ 113.46 MANAGEMENT OF MUNICIPAL LIQUOR LICENSES.

(A) The governing body shall operate and conduct the municipal liquor establishment and if necessary, shall set the prices to be charged on all sales of liquor.

(B) Gross receipts are to be submitted to the municipal finance officer and disbursements from the fund shall only be made with presentation of verified vouchers.

(C) The municipality shall keep a separate accounting of all transactions involving purchases, sales and inventories conducted under each license.

(D) A municipality that holds an off-sale license pursuant to § 113.15(A)(5) is eligible for a license under § 113.15(A)(16) or (17) and any municipality holding a license under SDCL Chapter 35-4 is eligible for a retailer's license under SDCL § 113.15(A)(17).

(E) Upon termination of the license, the governing board shall liquidate the business operated and the assets of the business in such a manner as may be determined by resolution, and is consistent with law.

§ 113.47 OPERATING AGREEMENTS.

(A) *Licenses.*

(1) *On-sale and off-sale license.*

(a) Any municipality that has obtained a license under SDCL Title 35 may issue licenses pursuant to § 113.15 § 35-4-2(12) and (16).

(b) 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 SDCL § 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.

(SDCL § 35-4-19)

(2) *Malt beverage license.* The municipality may also enter into an operating agreement with an individual to operate a malt beverage license that the municipality owns.

(3) *Off-sale license only.* 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.

(SDCL § 35-4-22)

(B) *Provisions of agreement.* An operating agreement under SDCL § 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 90-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 division (5) above. 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. (SDCL § 35-4-21)

(C) *Purchase on credit.* An operator may not purchase alcoholic beverages on credit.

(D) *Number of operating agreements.* The number of operating agreements the municipality may have is limited to the number of licenses a municipality can issue.

§ 113.48 MUNICIPALITY HOLDING REQUIRED LICENSE AUTHORIZED TO SERVE FOOD, PREPARED FOOD, AND BEVERAGES.

Any municipality holding a license pursuant to SDCL Title 35 may serve or provide for the service of food, prepared food, and beverages at any establishment operating under such license. (SDCL § 9-12-20)

AGE REQUIREMENTS

§ 113.60 SALE TO PROHIBITED PERSONS.

(A) No licensee may sell or serve any alcoholic beverage to any person who is obviously intoxicated.

(B) 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.

(SDCL § 35-4-78) Penalty, see § 10.99

§ 113.61 MINORS ON PREMISES.

No on-sale or off-sale licensee may permit any person less than 21 years old to loiter on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on the licensed premises

(SDCL § 35-4-79) Penalty, see § 10.99

§ 113.62 EXCEPTION TO PROHIBITION ON SALES OR SERVICE BY PERSONS UNDER 21 YEARS OLD.

(A) Notwithstanding the provisions of § 113.61, above, any on-sale or off-sale licensee may permit persons 18 years old or older to sell or serve alcoholic beverages if less than 50% of the gross business transacted by the establishment is from the sale of alcoholic beverages, or the licensee or an employee that is at least 21 years of age is on the premises when the alcoholic beverage is sold or served.

(B) For the purposes of this section, the term, ***TO SELL OR SERVE ALCOHOLIC BEVERAGES***, does not include tending bar or drawing, pouring, or mixing alcoholic beverages.

(SDCL § 35-4-79.4)

Penalty, see § 10.99

CHAPTER 114: AMUSEMENTS

Section

- 114.01 Definitions
- 114.02 License required
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Statutory reference:

Authority to license, regulate pool and billiard rooms and bowling alleys, see SDCL § 9-34-14

Authority to license, regulate shows and amusements, see SDCL § 9-34-13

§ 114.01 DEFINITIONS.

For the purpose of this chapter, the following words, terms and phrases shall have the meanings ascribed to them herein, unless the context clearly indicates otherwise:

OUTDOOR. Not totally enclosed within a building or other structure; and ***ENCLOSED*** shall mean totally surrounded by walls, roof or other enclosure so as to prevent the escape of the noise or sound of whatever is going on within. Open windows, doors or the like that allow the noise or sound to escape and potentially disturb the peace of anyone else shall cause the activity within to constitute an outdoor activity.

OUTDOOR DANCE, CONCERT or SIMILAR ENTERTAINMENT. Any such event or happening whether on private or public property, whether the same is a private or exclusive event or open to the public, and whether the same is free of charge or subject to charge, admission or cover fee or similar cost or reimbursement, whether direct or indirect, whatsoever. ***OUTDOOR DANCE, CONCERT or SIMILAR ENTERTAINMENT*** shall be liberally construed, and the governing body shall be the final interpreter as to whether any event of happening shall fit within the definition of ***OUTDOOR DANCE, CONCERT or SIMILAR ENTERTAINMENT.***

§ 114.02 LICENSE REQUIRED.

No person, corporation, organization or other entity shall manage, hold, conduct or otherwise maintain any outdoor dance, concert or similar entertainment within the municipal limits of the municipality or within one mile of the municipal limits of the municipality, without first obtaining a license therefore, as provided herein.

§ 114.03 APPLICATION.

Any applicant for the license described in § 114.02 shall file an application with the governing body (or, if the event is to be on public property under the jurisdiction of a municipal park and recreation board, the application shall be filed with the board) at least 30 days prior to the proposed event, and the application shall contain the following information:

(A) Applicant's name, and street and mailing address.

(B) If applicant is a corporation, names and street and mailing addresses of all officers and directors.

(C) If applicant is a partnership, names and street and mailing addresses of all partners.

(D) If applicant is a noncorporate organization or other joint venture, names and street and mailing addresses of all officers, if any, all directors, if any, and if there are no officers nor directors, names and street and mailing addresses of at least three primary or responsible persons of the organization or venture, all of whom must sign the application.

(E) Location or place of the event, including street address, if any, and the parameters or boundaries, with specificity, including exits.

(F) Date(s) of the event.

(G) Proposed time(s) and hours of operation.

(H) Type of entertainment (dance, concert, or other) with specificity, including name of band or other entertainment.

(I) Approximate or projected number of people who may attend the event(s).

(J) Whether alcoholic beverages will be sold, served, consumed or otherwise provided.

(K) If alcoholic beverages are to be present, whether underage persons will be allowed to attend.

(L) If alcoholic beverages are present and underage persons are allowed, applicant's specific plan to provide proper barriers or separation as required by statutory law.

(M) The number of security persons and their type, kind or level of training, experience or expertise.

(N) The number, kind and location(s) of restroom facilities and trash receptacles.

(O) The plan for parking and traffic flow, (including parking locations) and regulation, with specificity.

(P) The plan for cleanup following the event, including the number of persons involved, the means and method of disposal of trash and refuse, the location of dumping and the proposed deadline that cleanup will be completed.

(Q) Any other information that may be required by the governing board.

§ 114.04 SUPPLEMENTAL ITEMS, LICENSE FEE.

(A) The license applicant, in addition to the application, shall submit at the same time a certificate or other proof of liability insurance in the amount(s) and coverage(s) that the governing board (or municipal park and recreation board) may require; and shall also submit at the same time a security, damage, cleanup, and reimbursement deposit in the form of a bond in favor of the municipality, or a cashier's check or money order made payable to the municipality, or cash, in the amount required by the governing board (or municipal recreation board).

(B) The applicant may also be required to submit additional documents or items in support of or in verification of the application.

(C) Finally, the applicant shall, at the same time, submit an application/license fee of \$100.

§ 114.05 APPLICATION PROCEDURE.

(A) Following submission of the application and all other required items and documents and application/license fee, the applicant shall meet with the public safety committee (or jointly with such committee and the appropriate committee of the municipal recreation board), to answer any questions, provide any additional or supplemental information, to receive suggestions or to otherwise work out any details to the satisfaction of the applicant and applicable committee.

(B) Following one or more committee meetings, the application shall then be considered by the governing board (or municipal park and recreation board) who shall hear the recommendation of the committee and may hear from the applicant.

(C) Following governing body meetings, the governing body may approve the application, approve the application with amendments, or reject the application.

(D) Approval, if any, of the application as is, or as amended, shall constitute the license sought.

§ 114.06 WAIVER OF REQUIREMENTS.

The governing body (or municipal park and recreation board) shall have the right to waive any requirement otherwise contained in the application, including the insurance, deposit or license fee, or an appropriate amount or percentage thereof, if in its judgment the minimal size of the event or the type of the event or the charitable or civic nature of the event or organization holding or promoting the same warrant any such waiver.

§ 114.07 VIOLATION OF APPLICATION/LICENSE.

It shall be unlawful for any applicant or any person acting on behalf of any applicant to violate any provision of his, her or its application or requirement of the license issued pursuant thereto.

§ 114.08 ACTIVITY FACILITIES.

The applicant shall provide appropriate and safe facilities for the activity or event, including such lighting, restroom facilities, trash receptacles and exits as may be warranted by the estimated crowd size or as otherwise required by the appropriate municipal authorities.

§ 114.09 OFFICIAL SUPERVISION.

The public safety committee of the governing body (and, if applicable, the municipal park and recreation board) and the law enforcement agency or unit of the governing body shall have supervision of all outdoor dances, concerts or similar entertainment. As such, they, along with the governing body, shall have authority to make revisions and changes in the application and in the manner of carrying out the applied-for activity.

Cross-reference:

Recreation Facilities, see Ch. 95

§ 114.10 ADDITIONAL LAW ENFORCEMENT.

The public safety committee and the municipality's law enforcement agency may deem it necessary to provide or contract for additional law enforcement for the municipality or for the area around the event site, at or about the time(s) of the event. It shall be the responsibility of the applicant to pay for such additional enforcement, without question; and the amount therefore may be projected and included in the deposit amount to be submitted with the application, or the municipality may require an additional deposit to be made to cover such additional law enforcement cost prior to the date(s) of the proposed event.

Cross-reference:

Police, see Ch. 33

§ 114.11 TRAFFIC AND PARKING.

(A) The applicant shall ensure that all public rights-of-way, streets, alleys, sidewalks and other regularly traveled grounds, including private driveways and driveway approaches are kept open and not blocked, even temporarily, unless prior specific permission has been granted by the appropriate municipal authorities.

(B) In addition, the applicant shall ensure that no event parking is allowed on and along any such public right-of-way nor in any public park or otherwise on any public property without prior specific permission from municipal authorities.

(C) The applicant shall, if required by the municipality, post appropriate signs to prohibit the blocking of traffic and/or to prohibit unauthorized or unlawful parking, and any other appropriate signs required by the municipality.

Cross-reference:

Streets and sidewalks, see Ch. 94

Traffic and parking, see Title VII

§ 114.12 CLEAN-UP; DAMAGE.

The applicant shall be responsible for all cleanup and trash removal on the event site and in the surrounding area. In addition, applicant shall be responsible for damage to any municipal property, including but not limited to tables, chairs, benches, trees, shrubbery, flowers, and the like on the event site and in the surrounding area.

Cross-reference:

General offenses, see Ch. 130

Offenses against property, see Ch. 133

§ 114.13 DISORDERLY CONDUCT; DISTURBANCES.

The applicant and applicant's representatives shall cooperate fully with the security people and law enforcement officers in matters of crowd control, and especially in the event of potential disturbances or disorderly conduct or similar activity.

Cross-reference:

General offenses, see Ch. 130

§ 114.14 ALCOHOLIC BEVERAGE REGULATIONS.

Applicant shall obey all alcoholic beverage laws and if alcoholic beverages are served, sold or otherwise provided or present, and if underage persons are invited or present, applicant shall specifically follow and obey all laws with regard to the separation of underage persons from those of age.

Cross-reference:

Regulation and licensing of liquor operations, see Ch. 113

§ 114.15 DAYS AND HOURS OF OPERATION.

(A) Applicant shall operate the event(s) only on the day(s) and during the hours approved by the appropriate municipal authorities.

(B) Unless otherwise specifically approved by the municipality no outdoor dances, concerts or similar entertainment events at which alcoholic beverages will be sold, served, consumed, provided or otherwise present shall not be held on the following days nor during or after the following hours:

- (1) Christmas Day.
- (2) If on Christmas Eve, not after 12:00 midnight.

(3) Memorial Day, except if the event is held the day or evening before Memorial Day, the event shall not run beyond 1:00 a.m. of Memorial Day.

(4) Sundays, except if the event is held on a Saturday or Saturday evening, the event shall not run beyond 1:00 a.m. of the Sunday following the Saturday event.

(5) If on a Monday, Tuesday, Wednesday or Thursday, the event shall not run beyond 1:00 a.m. of the following morning.

(6) If on a Friday, the event shall not run beyond 1:00 a.m. of the following morning.

(7) If on a Saturday, the event shall not run beyond 1:00 a.m. of the following morning.

(8) Outdoor dances, concerts or similar entertainments are generally discouraged on all nights except Friday and Saturday, if the event shall run past 11:00 p.m.

§ 114.99 PENALTY.

It shall be unlawful for any applicant or any person acting on behalf of any applicant, or for any other person to violate any provision of this chapter. If any applicant or any person acting on his or her behalf or any other person does violation the provisions of this chapter, they may be fined an amount not to exceed \$200 and imprisoned no longer than 30 days or both.

