

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

**REVISED
AGENDA ITEM: 10 – G
DATE: June 22-23, 2022**

SUBJECT

Expanded Alcohol Sales (First and Final Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 6:14](#) – Sale of Alcoholic Beverages at Institutions
[SDCL § 35-2-6.1](#) – State educational institutions--License to operate on campus prohibited--Exceptions

BACKGROUND / DISCUSSION

The Board previously discussed expanding alcohol sales at its [March 2022](#) meeting. At that time, the Board directed staff to conduct additional due and bring back a proposal to consider on the topic at a future meeting. As noted in March, this conversation was prompted by a letter from the Student Federation and interest from student government on each of the six campuses.

After consultation with the six campuses and conducting a review of the various approaches utilized by campuses across the country, the proposed revisions to BOR Policy 6:14 were developed to provide the institutions with the flexibility to authorize periodic retail sales of alcohol in general admission areas of performing arts and athletic events, subject to the requirements set forth in Section 3.B.2.

IMPACT AND RECOMMENDATION

The proposed revisions to BOR Policy 6:14 would provide the institutions with the flexibility to allow for periodic retail sales of alcohol in general admission areas of performing arts and athletic events.

Staff recommends approval.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 6:14 – Alcohol Sales

DRAFT MOTION 20220622_10-G:

I move to (1) waive the two-reading requirement of By-Laws Section 5.5.1, and (2) approve the first and final reading of the proposed revisions to BOR Policy 6:14, as presented in Attachment I.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Sale of Alcoholic Beverages at Institutions

NUMBER: 6:14

1. Background

- A. South Dakota Codified Law (“SDCL”) 35-2-6.1 prohibits the issuance of a license to sell alcoholic beverages on the campus of any state educational institution. However, SDCL 35-2-6.1 contains two exceptions to this blanket prohibition.
1. The first exception allows the issuance of an alcoholic beverage license to engage in the periodic retail sale of malt beverages or wine for consumption on-site at a location and time, authorized by the Board of Regents, that involves the performing arts, intercollegiate athletics, fund raising, a reception, a conference, or an occasional or scheduled event at a facility used for performing arts, intercollegiate athletics, events, or receptions.
 2. The second exception allows the issuance of a special events license for a special event authorized by the Board of Regents that involves the performing arts, intercollegiate athletics, fund raising, a reception, a conference, or an occasional or scheduled event.
- B. The two exceptions to the blanket prohibition requires authorization by the Board of Regents. Therefore, the authority to use an alcoholic beverage license or a special events license at an event occurring on any property owned, leased, or operated by the Board of Regents, or on the campus of any state educational institution governed by the Board of Regents, is contingent on compliance with all Board policies, including this policy, and is limited by the terms and conditions contained in this policy.
- C. This policy allows, but does not require, the sale of beer and wine at certain events and locations as specifically authorized by, and under the express terms of, this policy.

2. Definitions

- A. For purposes of this policy, the term “Alcoholic Beverages” means beer and wine.
- B. For purposes of this policy, the term “Institutional Facilities” means any property owned, leased, or operated by the Board of Regents, or on the campus of any state

educational institution governed by the Board of Regents.

- C. For purposes of this policy, the term “Permit” means an authorization from the chief executive officer of the institution to procure an alcoholic beverage license for periodic retail sales or a special events license.
- D. For purposes of this policy, the term “Permitted Event” means a specifically designated event, a series of specifically designated periodic events, and special events.
- E. For purposes of this policy, the term “Vendor” means the contracted entity authorized by the institution to procure and obtain an alcoholic beverage license or a special events license that will supply and sell the Alcoholic Beverages at a Permitted Event.

3. Conditions for the Sale of Alcoholic Beverages at Institutions

- A. The Board of Regents expressly authorizes the chief executive officer of each institution to determine whether to grant a Permit to procure an alcoholic beverage license or a special events license. The grant of any such Permit shall be determined by the chief executive officer of the institution in accordance with the provisions set forth in this policy and not as a matter of right to any other person or party. In doing so, the chief executive officer of the institution must ensure that the decision to allow the sale of alcoholic beverages is consistent with this policy, applicable law, and the proper image and mission of the institution. Permits shall be conditioned upon the issuance of the appropriate license to sell alcohol by the local authority as required by South Dakota law and in compliance with law and policies.
- B. The delegation of authority to the chief executive officer of the institution to issue Permits to procure an alcoholic beverage license for periodic retail sales or a special events license are subject to the following terms and conditions:
 - 1. A Permit may be granted only for a Permitted Event. Each Permitted Event shall be defined by (1) the activity planned, (2) the area or location in which the activity will take place, and (3) the period of time during which the activity will take place.
 - a. The area or location in which the activity will take place must be defined with particularity and must encompass a ~~restricted~~-space or area suitable for properly controlling the sale, possession, and consumption of Alcoholic Beverages.
 - b. The time period for the activity must be a single contiguous time period for a separate defined occurrence (e.g., a dinner, a conference, a reception, a concert, a sporting competition within the ~~donor-defined~~ areas, etc.). A series of events may only be permitted in conformity with the state and local licensing regulations. An event that lacks a pre-determined end time shall not be a Permitted Event.

- c. The area or location of the Permitted Event, the ~~restricted~~-space or area designated therein for sale, possession, and consumption of Alcoholic Beverages, and the applicable time periods for the Permitted Event must each be set forth in the Permit and in the application for a Permit.
- d. The application for a Permit must require the submission of a plan that addresses security.

2. Except as otherwise allowed by paragraph 3.B.3 below, any Permit issued for performing arts or student athletic events (including without limitation NCAA, NIT, NAIA and intramural student athletic events) occurring on Institutional Facilities ~~is may be:~~ limited to specially designated box seat or loge areas to which access is controlled and limited to such patrons, ~~and may not include the sale of alcoholic beverages in any other areas (including without limitation general admission areas);~~ or allowed in general admission areas, subject to following conditions:

- a. The sale of alcoholic beverages may start no sooner than one hour before the scheduled start of the event and must end at least thirty minutes prior to the scheduled end of the event (e.g., end of the third quarter of a football game).
- b. The point of sale for alcoholic beverages must be separate and apart from required food service general concessions.
- c. No attendee under the age of 21 may purchase, consume, or possess alcoholic beverages. A valid ID is required to purchase, consume, or possess alcoholic beverages.
- d. A limit of two alcoholic beverages may be purchased at one time by an individual bearing a legal ID.
- e. No one who is visibly intoxicated may be served, consume, or possess an alcoholic beverage.
- f. Anyone engaged in the sale or serving of alcoholic beverages shall be trained in the following areas:
 - 1. Recognizing fake IDs and acceptable forms of identification;
 - 2. Preventing service to minors;
 - 3. Signs of intoxication; and
 - 4. Handling disorderly and/or intoxicated customers.
- g. Attendees may be ejected without refund, arrested, or refused sale or possession of alcoholic beverages for any of the following:

1. Unruly, disruptive or illegal behavior;
2. Giving alcoholic beverages to a minor;
3. Intoxication or impairment;
4. Abusive or offensive language or gestures;
5. Throwing of any objects;
6. Failure to follow instructions given by event personnel, security, and/or law enforcement; or
7. Any other conduct deemed inappropriate by event personnel, security, and/or law enforcement.

h. Adequate security personnel shall be in place to monitor attendee behavior and ensure compliance with this policy and applicable law.

i. There must be at least one alcohol free zone, of comparable viewing to alcohol zones, designated and appropriately marked for the event where no alcoholic beverage may be sold, consumed, or possessed.

2.3. A separate pre-game Permit may be issued for a Permitted Event that occurs in conjunction with student athletic events under the following terms and conditions:

- a. The area must be for the Permit holder to entertain guests for home sporting events. Attendance is limited to adult patrons and guests who have received a personal written invitation and must not be open to access by the general public.
- b. The Permitted Event must be conducted during pre-game only, last no more than three-hours, and end no later than at beginning of the sporting event.
- c. The Permitted Event must be conducted in a secured area surrounded by a fence or other method to control access to and from the area. There must be no more than two (2) entry points manned by security personnel where identification is checked to verify age ~~and special colored wrist bands are issued. A color-coded wrist band system must identify attendees and invited guests, as well as those of drinking age.~~ No one under the legal drinking age shall be admitted into the alcohol service and consumption area of a-the Permitted Event. The area shall be clearly marked and shall be separated in a fashion that entry into the area and exit from the area can be controlled to ensure that only those authorized to enter the area do so and that no Alcoholic Beverages leave the area.
- d. For pre-game Permitted Events held in specially designated box seat or loge areas, adult patrons and guests may be accompanied by youth for whom they are responsible, but only if such youth are, at all times,

under the supervision and control of such adult patrons. Only patrons who hold tickets to seats in those areas shall be allowed into the area during games.

~~3.4.~~ A Permitted Event must be one requiring paid admission through purchase of a ticket or through payment of a registration fee, or one where admission is by written, personal invitation. Events generally open to participation by the public without admission charges or without written personal invitation shall not be eligible for a Permit. Only persons who have purchased a ticket or paid a registration fee for attendance at a Permitted Event, or who have received a written invitation to a Permitted Event, and who are of lawful age to consume alcoholic beverages, will be authorized to possess and consume alcoholic beverages at the Permitted Event.

~~4.5.~~ The serving of Alcoholic Beverages must be part of a planned food and beverage program for the Permitted Event, rather than a program serving Alcoholic Beverages only. Food must be available at the Permitted Event, and consumption of Alcoholic Beverages and food cannot be the sole purpose of a Permitted Event. Non-alcoholic beverages must be as readily available as Alcoholic Beverages at the Permitted Event.

~~5.6.~~ ~~In no event shall the general public or any participants of a~~ If a Permitted Event includes the periodic retail sale of Alcoholic Beverages, the general public or any participants of the Permitted Event are not ~~be~~ allowed to bring Alcoholic Beverages into the Permitted Event or leave the defined area where possession and consumption is allowed while in possession of an Alcoholic Beverage.

~~6.7.~~ Upon receipt of a Permit from the chief executive officer of the institution, the Permit holder or the Vendor may procure the applicable license to sell Alcoholic Beverages in accordance with the approved Permit.

~~7.8.~~ The Permit shall set forth the time at which sale, service, possession and consumption of Alcoholic Beverages will be permitted, which times shall be strictly enforced. Service and sale of Alcoholic Beverages shall stop at a time in advance of the time of closure of the Permitted Event sufficient to allow an orderly and temperate consumption of the balance of the Alcoholic Beverages then in possession of the participants of the Permitted Event prior to closure of the Permitted Event.

~~8.9.~~ The Permit holder and the Vendor shall assume full responsibility to ensure that no one under the legal drinking age is supplied with any Alcoholic Beverage or allowed to consume any Alcoholic Beverage at the Permitted Event.

- a. The Permit holder must provide proof of insurance coverage including liquor legal liability in the amounts and coverage limits sufficient to

meet the needs of the institution. The default coverage limit shall be \$1,000,000 minimum coverage per occurrence, but the institution may approve a different coverage limit in writing and list such limit in the Permit. The insurance must list the Permit holder, the Vendor, the institution, the Board of Regents, and the State of South Dakota as additional insureds. Proof of insurance must be provided to the institution in the form of a formal endorsement to the policy evidencing the coverage and the required additional insureds.

- b. The Permit holder and the Vendor must indemnify the institution, the Board of Regents and the State of South Dakota for any and all claims that may arise that are related to the sale or consumption of Alcoholic Beverages at the Permitted Event.
- c. For purposes of this section 3.B.9, when the Permit holder is an institutional employee acting within the course and scope of employment, such Permit holder will not be required to be listed in the insurance policy and will not be required to indemnify the institution, the Board of Regents, and the State of South Dakota.
- d. For purposes of this section 3.B.9, when the Vendor has its own insurance coverage including liquor legal liability in the amounts and coverage limits sufficient to meet the needs of the institution, the Permit holder's insurance coverage will not need to (i) include liquor legal liability; or (ii) list the Vendor as additional insured.

9.10. The Permit, any required local catering permit, and applicable state or local licenses to sell Alcoholic Beverages shall be posted in a conspicuous place at the defined area where Alcoholic Beverages are authorized to be sold, prior to any sale of Alcoholic Beverages. Further, the sale, service and consumption of Alcoholic Beverages shall be confined to the specific event, area, or activity identified on the Permit application. Any Alcoholic Beverages allowed at the Permitted Event shall be supplied through Vendors to ensure compliance with any food service and pouring rights agreements. In no event shall the institution supply or sell Alcoholic Beverages directly.

10.11. These terms and conditions shall apply to both institutional and non-institutional groups using Institutional Facilities.

4. Institutional Permit Process and Reporting

- A. Each institution that decides to issue Permits for Permitted Events occurring on Institutional Facilities shall maintain a policy providing for an institutional Permit process. Permission for the sale of Alcoholic Beverages shall be evidenced by issuance of a written Permit by the chief executive officer of the institution, which may be issued only in response to a completed written application. A Permit may only be issued in conformity with this policy.

- B. In addition to the terms and conditions contained in section 3, an institution may develop and apply additional more restrictive terms and conditions for the issuance of a Permit.
- C. The chief executive officer of the institution may deny any application for a Permit if s/he determines that the application for a Permit is, or having Alcoholic Beverages for sale at the event would be, inconsistent with this policy, applicable law, or the proper image and mission of the institution.
- D. Each year by August 1, the chief executive officer of the institution, or designee, shall prepare an annual fiscal year report of institutional Permits approved by the chief executive officer of the institution during the last fiscal year and transmit the report to the Executive Director. This report will contain the following information about the Permitted Event: (1) the date, (2) a brief description of the event, (3) the Permit holder, (4) the Vendor, (5) the Institutional Facility used, and (6) descriptions of any alcohol-related incidents.

SOURCE: BOR, June 2016