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CHAPTER 4

Beer, Ale, Porter, and Wine

ARTICLE 1

General Provisions

**SECTION 61‑4‑10.** Nonalcoholic beverages defined.

 The following are declared to be nonalcoholic and nonintoxicating beverages:

 (1) all beers, ales, porters, and other similar malt or fermented beverages containing not in excess of five percent of alcohol by weight;

 (2) all beers, ales, porters, and other similar malt or fermented beverages containing more than five percent but less than fourteen percent of alcohol by weight that are manufactured, distributed, or sold in containers of six and one‑half ounces or more or the metric equivalent; and

 (3) all wines containing not in excess of twenty‑one percent of alcohol by volume.

HISTORY: 1996 Act No. 415, Section 1; 2007 Act No. 14, Section 1; 2007 Act No. 107, Section 2.

**SECTION 61‑4‑20.** Sales without taxes levied.

 It is unlawful for a person to sell or permit to be sold beer, ale, porter, wine, malt, or other beverage authorized to be sold under this chapter on which the tax levied has not been paid. A person having charge of the sale of one of these beverages who sells or permits it to be sold in violation of the provisions of this section is guilty of a misdemeanor and, upon conviction, for each offense must be fined not less than twenty‑five dollars nor more than one hundred dollars or imprisoned for not less than ten days nor more than thirty days, in the discretion of the court.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑30.** Cash sales.

 Beer or wine sold by wholesalers to the holders of retail licenses in this State must be sold for cash only at the time of delivery or prior to delivery. For purposes of this section, “cash” means money or a bona fide check, money order, or electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on or before delivery of the beer or wine. The electronic transfer must be initiated by the wholesaler no later than one business day after delivery. A holder of a retail permit who issues a check or an irrevocable payment order in payment for beer or wine with insufficient funds at the bank to cover the check violates the provisions of this section. This provision for cash payment applies to cash deposits on empties when beer is delivered in returnable containers. This deposit on bottles or draft beer containers must not be less than the charge from the brewery to the wholesaler.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑40.** Credit sales prohibited.

 A holder of a beer permit or a beer and wine permit may not purchase beer or wine, or both, on credit by a dishonored check, an unpaid note or invoice, or other insufficient manner from a permitted beer and wine wholesaler. However, no action may be taken against the holder for a first violation of this section. If a holder commits a second or subsequent violation, his retailer’s permit may be suspended, canceled, or revoked by the department, or a monetary penalty of not more than twenty‑five dollars may be assessed against him.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑50.** Sales to underage persons.

 (A) It is unlawful for a person to sell beer, ale, porter, wine, or other similar malt or fermented beverage to a person under twenty‑one years of age. A person who makes a sale in violation of this section, upon conviction:

 (1) for a first offense, must be fined not less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days, or both; and

 (2) for a second or subsequent offense, must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than thirty days, or both.

 (B) Failure of a person to require identification to verify a person’s age is prima facie evidence of the violation of this section.

 (C) A person who violates the provisions of this section also is required to successfully complete a DAODAS approved merchant alcohol enforcement education program. The program must be a minimum of two hours and the cost to the person may not exceed fifty dollars.

HISTORY: 1996 Act No. 415, Section 1; 2007 Act No. 103, Section 9.

**SECTION 61‑4‑60.** False information about age.

 It is unlawful for a person to whom beer or wine cannot be lawfully sold to knowingly give false information concerning his age for the purpose of purchasing beer or wine. A person who violates the provisions of this section, upon conviction, must be fined not less than one hundred dollars nor more than two hundred dollars or be imprisoned for not more than thirty days, or both.

HISTORY: 1996 Act No. 415, Section 1; 2007 Act No. 103, Section 10.

**SECTION 61‑4‑70.** Posting signs.

 A person engaged in the business of selling at retail beer or wine must post in each location for which he has obtained a permit a sign with the following words printed thereon: “The possession of beer, wine, or alcoholic liquors, by a person under twenty‑one years of age is a criminal offense under the laws of this State, and it is also unlawful for a person to knowingly give false information concerning his age for the purpose of purchasing beer, wine, or liquor”. The department must prescribe by regulation the size of the lettering and the location of the sign on the seller’s premises.

 A retail seller of beer or wine who fails to display the sign required by this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

 A person found guilty of a violation of Section 61‑6‑1530 and this section may not be sentenced under both sections for the same offense.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑80.** Purchase of beer or wine for a person to whom it cannot lawfully be sold.

 It is unlawful for a person who purchases beer or wine while on licensed premises to give the beer or wine to a person to whom beer or wine cannot lawfully be sold on the premises. A person who violates this section, upon conviction:

 (1) for a first offense, must be fined not less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days, or both; and

 (2) for a second or subsequent offense, must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than thirty days, or both.

HISTORY: 1996 Act No. 415, Section 1; 2007 Act No. 103, Section 11.

**SECTION 61‑4‑90.** Transfer of beer or wine for underage person’s consumption.

 (A) It is unlawful for a person to transfer or give to a person under the age of twenty‑one years for the purpose of consumption of beer or wine in the State, unless the person under the age of twenty‑one is recruited and authorized by a law enforcement agency to test a person’s compliance with laws relating to the unlawful transfer or sale of beer and wine to a minor. A person who violates this section is guilty of a misdemeanor and, upon conviction:

 (1) for a first offense, must be fined not less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days, or both; and

 (2) for a second or subsequent offense, must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than thirty days, or both.

 (B) A person found guilty of a violation of Section 61‑6‑4070 and this section may not be sentenced under both sections for the same offense.

 (C) The provisions of this section do not apply to a:

 (1) spouse over the age of twenty‑one giving beer or wine to his spouse under the age of twenty‑one in their home;

 (2) parent or guardian over the age of twenty‑one giving beer or wine to his children or wards under the age of twenty‑one in their home; or

 (3) person giving beer or wine to another person under the age of twenty‑one in conjunction with a religious ceremony or purpose if the beer or wine was lawfully purchased.

 (D) A person eighteen years of age and over lawfully employed to serve or remove beer, wine, or alcoholic beverages in establishments licensed to sell these beverages are not considered to be in unlawful possession of the beverages during the course and scope of their duties as an employee. The provisions of this subsection do not affect the requirement that a bartender must be at least twenty‑one years of age.

 (E) This section does not apply to an employee lawfully engaged in the sale or delivery of these beverages in an unopened container.

 (F) The provisions of this section do not apply to a student who:

 (1) is eighteen years of age or older;

 (2) is enrolled in an accredited college or university and a student in a culinary course that has been approved through review by the State Commission on Higher Education;

 (3) is required to taste, but not consume or imbibe, any beer, ale, porter, wine, or other similar malt or fermented beverage as part of the required curriculum; and

 (4) tastes a beverage pursuant to item (3) only for instructional purposes during classes that are part of the curriculum of the accredited college or university.

 The beverage must remain at all times in the possession and control of an authorized instructor of the college or university who must be twenty‑one years of age or older. Nothing in this subsection may be construed to allow a student under the age of twenty‑one to receive any beer, ale, porter, wine, or other similar malt or fermented beverage unless the beverage is delivered as part of the student’s required curriculum and the beverage is used only for instructional purposes during classes conducted pursuant to the curriculum.

HISTORY: 1996 Act No. 415, Section 1; 1999 Act No. 1, Section 5; 2007 Act No. 103, Section 12.

**SECTION 61‑4‑100.** Criminal charges brought against both seller and purchaser.

 (A) If a person is charged with a violation of the unlawful sale of beer or wine to minors pursuant to Section 61‑4‑50, the minor also must be charged with a violation of the unlawful purchase or possession of beer or wine pursuant to Section 63‑19‑2440. In addition, if the minor violated false information as to age pursuant to Section 61‑4‑60 or if an adult violated the unlawful purchase of beer or wine for a person who cannot lawfully buy pursuant to Section 61‑4‑80, these persons also must be charged with their violations.

 (B) A person may not be charged with a violation of Section 61‑4‑50 if the provisions of subsection (A) are not met.

 (C) Nothing in this section requires that charges made pursuant to this section be prosecuted to conclusion; but rather this determination must be made in the manner provided by law.

 (D) Notwithstanding the provisions of subsections (A) and (B), a person under the age of twenty‑one may be recruited and authorized by a law enforcement agency to test an establishment’s compliance with laws relating to the unlawful transfer or sale of beer or wine to a minor. The testing must be under the direct supervision of a law enforcement agency, and the agency must have the person’s parental consent. If the requirements of this subsection are met, a person may be charged with a violation of Section 61‑4‑50 without the requirement that the minor also be charged.

HISTORY: 1996 Act No. 415, Section 1; 2007 Act No. 103, Section 13.

**SECTION 61‑4‑110.** Open containers in motor vehicle.

 It is unlawful for a person to have in his possession, except in the trunk or luggage compartment, beer or wine in an open container in a motor vehicle of any kind while located upon the public highways or highway rights of way of this State. This section must not be construed to prohibit the transporting of beer or wine in a closed container, and this section does not apply to vehicles parked in legal parking places during functions such as sporting events where law enforcement officers are on duty to perform traffic control duties. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

 For purposes of this section, beer or wine means any beer or wine containing one‑half of one percent or more of alcohol by volume.

HISTORY: 1996 Act No. 415, Section 1; 2000 Act No. 390, Section 31.

**SECTION 61‑4‑120.** Sunday sales; exception.

 (A) It is unlawful for a person to sell or offer for sale wine or beer in this State between the hours of twelve o’clock Saturday night and sunrise Monday morning. However, an establishment licensed pursuant to Article 5 of Chapter 6 is authorized to sell these products during those hours in which the sale of alcoholic liquors by the drink is lawful. A person who violates the provisions of this section is considered guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. The right of a person to sell wine and beer in this State under a license issued by the State must be forfeited and the license revoked upon his conviction of violating the provisions of this section.

 (B) Notwithstanding subsection (A) and other provisions of law, wine may be sold on Sunday if the wine is produced using grapes grown in this State, the grapes are harvested, processed, fermented, bottled, and sold at the same contiguous location, the seller meets all applicable licensing and taxing requirements, and the local governing body of the county or municipality where the sale occurs adopts an ordinance permitting wine sales on Sunday under these limited circumstances.

HISTORY: 1996 Act No. 415, Section 1; 2003 Act No. 70, Section 4; 2005 Act No. 139, Section 5; 2008 Act No. 243, Section 1, eff May 27, 2008.

Effect of Amendment

The 2008 amendment designated subsection (A) and added subsection (B) relating to Sunday sales of wine produced using grapes grown in the State.

**SECTION 61‑4‑130.** Seizure of contraband beer or wine; retention of possession upon posting of cash bond; forfeiture of bond.

 If beer or wine is sold or delivered to a person from a place of business between the hours of twelve o’clock Saturday night and sunrise Monday morning, all beer and wine found in the place of business is contraband and must be seized by a peace officer and handled as contraband liquor. However, the person owning or claiming the beer or wine may retain possession of it by delivering to the peace officer a cash bond in an amount equal to the cost price of the beer or wine. The cost price must not be less than the average price charged for a like quantity of beer or wine by a licensed wholesaler. The peace officer receiving the bond must deliver a written receipt to the person posting the bond. If the peace officer is a representative of the division, the cash bond must be deposited with the State Treasurer. If the peace officer is a representative of a municipality, the cash bond must be deposited with the municipal treasurer. In all other cases, the cash bond must be deposited with the treasurer of the county in which the beer or wine was located when declared contraband. If the department or court determines that the person charged with the violation which required the posting of a bond was not guilty of the offense charged, the bond must be returned to the person posting the bond. If the person charged is found guilty, the bond must be forfeited to the State, county, or municipality, as the case may be.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑140.** Open containers on Sundays.

 A person who drinks beer or wine or possesses beer or wine in an open container between the hours of twelve o’clock Saturday night and sunrise Monday morning at a place licensed to sell beer or wine is considered guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑150.** Sales by unlicensed persons.

 If beer or wine is sold to anyone by a person who does not have a valid license to make the sale, all beer and wine found on the premises of the person is contraband and must be seized by a peace officer and treated as contraband liquor.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑160.** Discount pricing for on‑premises consumption.

 No person who holds a biennial permit to sell beer or wine for on‑premises consumption may advertise, sell, or dispense these beverages for free, at a price less than one‑half of the price regularly charged, or on a two or more for the price of one basis. Beer or wine may be sold at a price less than the price regularly charged from four o’clock p.m. until eight o’clock p.m. only. The prohibition against dispensing the beverages for free does not apply to dispensing to a customer on an individual basis, to a fraternal organization in the course of its fund‑raising activities, to a person attending a private function on premises for which a biennial permit has been issued, or to a customer attending a function sponsored by the person who holds a biennial permit. However, no more than two functions may be sponsored each year, and must be authorized by the department. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars or imprisoned not less than three months, in the discretion of the court.

 A person found guilty of a violation of Section 61‑6‑4550 and this section may not be sentenced under both sections for the same offense.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑170.** Beverages resembling vegetable, fruit, or soft drinks.

 It is unlawful for a person, with or without a beer or wine permit, to sell or to offer for sale a beverage generally used as and for a soft drink rather than as a medicine or for cooking purposes having an alcoholic content, when the beverage resembles in color and general appearances a vegetable drink, a fruit drink, or a soft drink. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both. In addition, these beverages are contraband and must be seized by an authorized agent or inspector of the division, or by a peace officer, and disposed of in a manner provided for the disposition of unlawful alcoholic liquors.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑180.** Labeling.

 It is unlawful for a person to sell or otherwise introduce into commerce nonalcoholic and nonintoxicating beverages lawful under the provisions of this title, unless labeled in accordance with the provisions of the Federal Alcoholic Administration Act and rules and regulations promulgated thereunder. A violation of this section subjects the nonalcoholic and nonintoxicating beverages found in the possession of a person violating this section to seizure, confiscation, and sale, as provided in Section 61‑6‑4310.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑190.** Warrants for unpaid penalties.

 If a penalty imposed under this chapter remains due and unpaid for a period of ten days, the department must issue a warrant under its bond and official seal in accordance with Article 1 of Chapter 53 of Title 12.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑200.** Transfers of beer or wine.

 Notwithstanding any other provision of law, a holder of a retail permit to sell beer and wine may transfer beer and wine to other businesses. In order for this transfer to be lawful, all businesses involved in the transfer must hold a retail beer and wine permit issued to the same individual, partnership, or corporation. In addition, a particular brand of beer may be transferred only between retail stores located within the territorial restrictions described in the distribution agreement between the brewery and the wholesaler on file with the department pursuant to Section 61‑4‑1300. Transfers of beer and wine between retail beer and wine locations in a manner not authorized by this section, purchase of beer or wine by a retailer from another retailer for the purpose of resale, and sale of beer or wine by a retailer to a retailer for the purpose of resale are unlawful. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑210.** Temporary retail permits.

 (A) A person who purchases or acquires by lease, inheritance, divorce decree, eviction, or otherwise a retail business which sells beer or wine from a holder of a retail permit to sell beer or wine at the business, upon initiating the application process for a biennial retail beer or beer and wine permit, may be issued a temporary retail beer or beer and wine permit by the department at the time of the purchase or acquisition if the location for which the temporary permit is sought is not considered by the department to be a public nuisance and:

 (1) the applicant currently holds a valid beer or beer and wine permit; or

 (2) the applicant has had a criminal history background check conducted by the division within the past thirty days.

 (B) A temporary beer or beer and wine permit issued pursuant to subsection (A) is valid until a biennial retail beer or beer and wine permit is approved or disapproved by the department, but in no case is it valid for more than one hundred twenty days from the date of issuance.

 (C) Notwithstanding subsection (B), the department may revoke a temporary retail beer or beer and wine permit if the applicant fails to pursue the biennial retail beer or beer and wine permit in a timely manner, as set forth by regulation of the department.

 (D) The department shall collect a fee of twenty‑five dollars for each temporary beer or beer and wine permit. The funds generated by this fee must be deposited in the general fund of the State.

HISTORY: 1996 Act No. 415, Section 1; 1998 Act No. 442, Section 5D.

**SECTION 61‑4‑220.** Food service.

 A restaurant with a Class A or B license issued by the Department of Health and Environmental Control (DHEC) may serve food or beverages at its adjoining facilities located outside the restaurant if the food is prepared in a kitchen of the restaurant which is subject to inspection by DHEC and is placed on individual plates or in individual serving dishes inside the restaurant, and if uncovered containers in which the beverages are served are filled only to satisfy the order of a customer.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑230.** Refusal to permit inspection.

 A person who, upon demand of an officer or agent of the division:

 (1) refuses to allow full inspection of the premises or any part of the premises which is licensed to sell beer or wine; or

 (2) refuses to allow full inspection of the stocks and invoices of the licensee; or

 (3) who prevents or in any way hinders an inspection is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than sixty days, or both.

 A person found guilty of a violation of Section 61‑6‑4190 and this section may not be sentenced under both sections for the same offense.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑240.** Temporary possession, consumption, or sale permits.

 Temporary permits for the possession, consumption, and sale of beer or wine may be issued pursuant to Section 61‑4‑550, 61‑6‑500, 61‑6‑2000, or 61‑6‑2010, as appropriate, and in accordance with these statutes.

HISTORY: 1996 Act No. 415, Section 1; 2010 Act No. 259, Section 2, eff June 11, 2010.

Editor’s Note

2010 Act No. 259, Section 5,provides as follows:

“This act takes effect upon approval by the Governor and applies to applications for special functions beginning on January 1, 2011.”

Effect of Amendment

The 2010 amendment deleted “61‑6‑510,” following “61‑6‑500,”.

**SECTION 61‑4‑250.** Penalties.

 For violations of this chapter, or of Chapter 21 or 33 of Title 12, and for a violation of any regulation pertaining to beer or wine, the department may, in its discretion, impose a monetary penalty upon the holder of a beer or wine license in lieu of suspension or revocation.

 In these cases, the amount of any penalty imposed must be determined within the limits prescribed in this section in each case by the department after a hearing as provided in the South Carolina Revenue Procedures Act and the Administrative Procedures Act. For these violations:

 (1) retail beer and wine licensees are subject to a penalty of not less than twenty‑five dollars nor more than one thousand dollars; and

 (2) wholesale beer and wine licensees are subject to a penalty of not less than one hundred dollars nor more than one thousand five hundred dollars.

 The department in its discretion may suspend payment of a fine or a monetary penalty imposed under this section.

 If the department imposes a monetary penalty under this section which is not paid or a contested case hearing requested within thirty days after demand by the department, the license or licenses may be suspended or revoked by the department.

 Penalties provided for in this section are in addition to any fines and penalties imposed upon the licensees by any court of competent jurisdiction for violation of the laws of this State.

 Penalties provided for in this section must be paid to the State Treasurer for credit to the general fund of the State for public school use.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑260.** Monies received.

 Except as otherwise provided in this chapter, all monies received by the department or the division under the provisions of this chapter must be deposited with the State Treasurer to the credit of the general fund of the State.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑270.** Revocation of permits.

 In addition to the penalties provided in this chapter, the department may revoke the permit of a person failing to comply with any requirements hereof.

HISTORY: 1996 Act No. 415, Section 1.

ARTICLE 3

Producers and Wholesalers of Beer and Wine

**SECTION 61‑4‑300.** “Producer” defined.

 “Producer” as used in this article means a brewery or winery or a manufacturer, bottler, or importer of beer or wine into the United States.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑310.** Certificate of registration.

 (A) A producer must apply to the department on forms the department prescribes for a certificate of registration, which must be approved and issued before the shipment of beer or wine by the producer to a point within the State. A producer, at the same time application is made for a certificate of registration, must remit to the department a fee of two hundred dollars.

 (B) The department, in its discretion upon consideration of the information contained in the application for a certificate of registration, must issue or reject the application.

 (C) A certificate of registration is valid from the date of issue until the second August thirty‑first after the issuance of the license. Beer and wine wholesalers must purchase beer, ale, or wine from manufacturers or importers who hold a certificate of registration issued by the department. Nothing in this section or Section 61‑4‑940 prohibits the transfer or purchase and sale, for resale to retailers only, between wholesalers authorized by the registered producer or an exclusive agent in the State to distribute the same brand or brands of wine, beer, or ale.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑320.** Suspension or revocation of certificate of registration.

 A certificate of registration provided for in this article may be suspended or revoked by the department upon a showing of a violation of law or of a regulation.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑330.** Books and records audit.

 The department and the division have the right within statutory limitations to audit and examine the books and records, papers, and memoranda of a producer with respect to the administration and enforcement of laws administered by the department and the division.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑340.** Shipping; brand registration.

 No person other than a registered producer may ship, move, or cause to be shipped or moved, beer, ale, porter, malt beverage, or wine from outside the State to a point in the State, and only in accordance with the provisions of this chapter. No brand may be registered by the producer unless the person registering the brand is either the American producer or the primary American source of supply in the United States of the brand as herein defined, and it is unlawful for a wholesaler in this State to order, purchase, or receive beer, ale, porter, malt beverage, or wine from a producer who is not the primary American source of supply for the brand ordered, purchased, or received. The term primary American source of supply means the manufacturer, distiller, vintner, brewer, producer, winery, or owner of vinous or spirituous beverages at the time they become a marketable product, or bottler, or the exclusive agent of these persons, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. The provisions of this section do not apply to a person who produces beer, ale, porter, malt beverage, or wine solely in this State and who subsequently ships or sells this beer, ale, porter, malt beverage, or wine solely in this State.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑350.** Seizure and sale of contraband beer or wine.

 Beer or wine shipped or moved into this State in violation of this chapter is contraband and may be seized and sold as provided in Section 61‑6‑4310.

HISTORY: 1996 Act No. 415, Section 1.

ARTICLE 5

Permits for Sales

**SECTION 61‑4‑500.** Applications.

 A person engaging in the business of selling beer, ale, porter, wine, or a beverage which has been declared to be nonalcoholic and nonintoxicating under Section 61‑4‑10 must apply to the department for a permit to sell these beverages. Each applicant must pay a filing fee of two hundred dollars which is not refundable. A retailer must pay to the department four hundred dollars biennially for a retail permit, and a wholesale dealer must pay to the department two thousand dollars biennially for a wholesale permit. A separate permit is required for each separate place of business.

 A person who initially applies for a permit after the first day of a permit period must pay permit fees in accordance with the schedule provided in Section 61‑6‑1810(C).

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑510.** Special retail beer and wine permits.

 (A) In counties or municipalities where off‑premises beer and wine permits are specifically authorized to be issued pursuant to Section 61‑6‑2010, in lieu of the retail permit fee required pursuant to Section 61‑4‑500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off‑premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61‑4‑120, 61‑4‑130, and 61‑4‑140. The annual fee for this special retail permit is one thousand dollars.

 (B) Revenue generated by the fees must be credited to the general fund of the State except that revenue generated by the fees within a county where a federal military base or installation has been closed, or is designated to be closed and where the federal facility has reduced its permanent civilian employment by seven hundred fifty or more jobs after December 31, 1990, for a period of ten years after the effective date of Chapter 12 of Title 31, must be credited to a special separate and distinct account with the State Fiscal Accountability Authority for support of a redevelopment authority created therein pursuant to Chapter 12 of Title 31. All other requirements for retail permits provided in Sections 61‑2‑120 and 61‑4‑500 apply to the special permits authorized by this section.

 (C)(1) Immediately following the dissolution of a redevelopment authority pursuant to Section 31‑12‑100(A), the fees distributed to the dissolved redevelopment authority pursuant to subsection (B) must be distributed to the municipality or county in which the retailer who paid the fee is located. The revenue may only be used by the municipality or county for the following purposes:

 (a) capital improvements to tourism‑related buildings including, but not limited to, civic centers, convention centers, coliseums, aquariums, stadiums, marinas, parks, and recreational facilities;

 (b) purchase or renovation of buildings which are historic properties as defined in Section 60‑12‑10(4) and (5);

 (c) festivals which have a demonstrable and significant impact on tourism;

 (d) acquiring fee and less than fee interest in land while it is still available to be held in perpetuity as wildlife preserves or believed to be needed by the public in the future for active and passive recreation uses and scenic easements, to include the following types of land: ocean, harbor, and pond frontage in the form of beaches, dunes, and adjoining backlands; barrier beaches; fresh and saltwater marshes and adjoining uplands; land for bicycle paths; land protecting existing and future; public water supply, well fields, highway buffering and aquifer recharge areas; and land for wildlife preserves; and land for future public recreational facilities;

 (e) nourishment, renourishment (resanding) and maintenance of beaches;

 (f) dune restoration, including the planting of grass, sea oats, or other vegetation useful in preserving the dune system;

 (g) maintenance of public beach access;

 (h) capital improvements to the beaches and beach related facilities, such as public parking areas for beach access; dune walkovers and rest room facilities, with or without changing rooms, at public beach parks; and

 (i) construction and maintenance of drainage systems.

 (2) The revenue may not be used for operating expenses of tourism‑related buildings.

HISTORY: 1996 Act No. 415, Section 1; 1996 Act No. 462, Section 24A; 2003 Act No. 70, Section 5.

Code Commissioner’s Note

The 1996 amendment substantially revised [former] Section 61‑9‑312, recodified by 1996 Act No. 415 Section 1 as Section 61‑4‑510, and repealed by Section 5 of the same Act. At the direction of the Code Commissioner, the amendment effected by 1996 Act No. 462 Section 24A to former Section 61‑9‑312 has been set forth in this section. References to code sections that were repealed by 1996 Act No. 415 Section 5 have been revised to conform with the recodification conversion table appearing in 1996 Act No. 415 Section 8, with one exception. A reference that appeared in subsection (A), following “Sections 61‑4‑120, 61‑4‑130, and 61‑4‑140”, to Section “61‑9‑130”, which was repealed by 1996 Act No. 415 Section 5 and was not set forth in the conversion table of that Act, was deleted.

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 61‑4‑515.** Motorsports entertainment complex or tennis specific complex permit for purchase and sale for on‑premises consumption.

 (A) In addition to the permits authorized pursuant to the provisions of this article, the department also may issue a biennial permit to the owner, or his designee, of a motorsports entertainment complex or tennis specific complex located in this State, which authorizes the purchase and sale for on‑premises consumption of beer and wine at any occasion held on the grounds of the complex year round on any day of the week. The nonrefundable filing fee and the fees for the motorsports or tennis complex biennial permit are the same as for other biennial permits for on‑premises consumption of beer and wine, with the revenue therefrom used for the purposes provided in Section 61‑4‑510. Notwithstanding another provision of this article, the issuance of this permit authorizes the permit holder to purchase beer and wine from licensed wholesalers in the same manner that a person with appropriate licenses issued pursuant to this title purchases beer and wine from licensed wholesalers. The department in its discretion may specify the terms and conditions of the permit, pursuant to the provisions of Chapter 4, Title 61, and other applicable provisions under Title 61.

 (B) The department may require such proof of qualifications for the issuance of these permits as it considers necessary, pursuant to the provisions of Chapter 4, Title 61, and these permits may be issued whether or not the motorsports entertainment complex or tennis specific complex is located in a county or municipality which pursuant to Section 61‑6‑2010 successfully has held a referendum allowing the possession, sale, and consumption of beer or wine or alcoholic liquors by the drink for a period not to exceed twenty‑four hours.

 (C) The owner or designee of the motorsports entertainment complex or the tennis specific complex may designate particular areas within the complex where patrons of events who have paid an admission price to attend or guests who are attending private functions at the complex, whether or not a charge for attendance is made, may possess and consume beer and wine provided at their own expense or at the expense of the sponsor of the private function.

 (D) For purposes of this section:

 (1) “Motorsports entertainment complex” has the same meaning as provided in Section 12‑21‑2425.

 (2) “Tennis specific complex” means a tennis facility, and its ancillary grounds and facilities, which satisfies all of the following:

 (a) has at least ten thousand fixed seats for tennis patrons;

 (b) hosted one Women’s Tennis Association Premier tournament in 2013 and continues to host at least one Women’s Tennis Association Premier tournament in each year, or any successor Women’s Tennis Association tournament; and

 (c) engages in tourism promotion.

HISTORY: 2014 Act No. 199 (H.3626), Section 1, eff June 2, 2014.

**SECTION 61‑4‑520.** Retail permits; requirements.

 A retail permit authorizing the sale of beer or wine must not be issued unless:

 (1) The applicant, a partner, or co‑shareholder of the applicant, and each agent, employee, and servant of the applicant to be employed on the licensed premises are of good moral character.

 (2) The applicant is a legal resident of the United States, has been a legal resident of this State for at least thirty days before the date of application, and has maintained his principal place of abode in the State for at least thirty days before the date of application.

 (3) The applicant, within two years before the date of application, has not had revoked a beer or a wine permit issued to him.

 (4) The applicant is twenty‑one years of age or older.

 (5) The location of the proposed place of business of the applicant is in the opinion of the department a proper one.

 (6) The department may consider, among other factors, as indications of unsuitable location, the proximity to residences, schools, playgrounds, and churches. This item does not apply to locations licensed before April 21, 1986.

 (7)(a) Notice of application has appeared at least once a week for three consecutive weeks in a newspaper most likely to give notice to interested citizens of the county, city, or community in which the applicant proposes to engage in business. The department shall determine which newspapers meet the requirements of this section based on available circulation figures. However, if a newspaper is published in the county and historically has been the newspaper where the advertisements are published, the advertisements published in that newspaper meet the requirements of this section. The notice must:

 (i) be in the legal notices section of the newspaper or an equivalent section if the newspaper has no legal notices section;

 (ii) be in large type, covering a space of one column wide and at least two inches deep; and

 (iii) state the type license applied for and the exact location of the proposed business.

 (b) An applicant for a beer or wine permit and an alcoholic liquor license may use the same advertisement for both if the advertisement is approved by the department.

 (8) Notice has been given by displaying a sign for fifteen days at the site of the proposed business. The sign must:

 (a) state the type of permit sought;

 (b) state where an interested person may protest the application;

 (c) be in bold type;

 (d) cover a space at least twelve inches high and eighteen inches wide;

 (e) be posted and removed by an agent of the division.

HISTORY: 1996 Act No. 415, Section 1; 2001 Act No. 89, Section 55; 2003 Act No. 70, Section 6; 2005 Act No. 161, Section 23.D.

**SECTION 61‑4‑525.** Protests against issuance or renewal of permit; attendance at hearing; court costs and other penalties.

 (A) A person residing in the county in which a retail beer and wine permit is requested to be granted, or a person residing within five miles of the location for which a retail beer and wine permit is requested, may protest the issuance or renewal of the permit if he files a written protest setting forth:

 (1) the name, address, and telephone number of the person filing the protest;

 (2) the name of the applicant for the permit and the address of the premises sought to be licensed, or the name and address of the permit holder if the application is for renewal;

 (3) the specific reasons why the application should be denied; and

 (4) whether or not he wishes to attend a contested case hearing before the Administrative Law Court.

 (B) Upon receipt of a timely filed protest, the department shall determine the protestant’s intent to attend a contested hearing before the Administrative Law Court. If the protestant intends to attend a contested hearing, the department may not issue the permanent permit but shall forward the file to the Administrative Law Court.

 (C) If the protestant, during the investigation expresses no desire to attend a contested hearing and offer testimony, the protest is considered invalid, and the department shall continue to process the application and shall issue the permit if all other statutory requirements are met.

 (D) A person who files a protest and fails to appear at a hearing after affirming a desire to attend the hearing may be assessed a fine or penalty to include court costs.

HISTORY: 1998 Act No. 363, Section 1; 2005 Act No. 161, Section 23.E.

**SECTION 61‑4‑530.** “Dry” political subdivisions in neighboring states.

 In considering an application for a permit for the sale of beer or wine at a location within five miles of a political subdivision of another state in which the sale of beer or wine is prohibited, the department must, in addition to the factors required to be considered, consider the proximity of the location to the prohibited area, the likelihood that large crowds may gather from time to time with attendant breaches of the peace, the requirement of increased law enforcement officers, and any other factor which in its judgment should be considered before issuing the permit.

 These special considerations, however, do not apply where the application is made with respect to a location within the corporate limits of a municipality.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑540.** Issuance of permits; bonds.

 When a verified application is filed with the department and the department determines that (1) the requisite qualifications and conditions are met, (2) the applicant is a fit person to sell beer or wine, and (3) the location of the proposed place of business is a proper one, the department must issue a permit to the applicant to sell beer or wine on the premises described in the application upon the payment of the fee prescribed by law. A misstatement or concealment of fact in an application is a sufficient ground for the revocation of the permit.

 The department may, in those cases where it considers necessary, require an applicant to post a cash bond or surety bond with a bonding company approved by the Department of Insurance as an additional condition for a permit. The bond must be in an amount as determined by the department and is subject to forfeiture in whole or in part for violations of law relating to the sale of beer or wine.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑550.** Special permits for use at fairs and special functions

 (A) The department may issue permits running for a period not exceeding fifteen days for a fee of ten dollars per day. These special permits may be issued only for locations at fairs and special functions.

 (B) The department shall require the applicant to obtain a criminal records check conducted by the State Law Enforcement Division within ninety days prior to an application. The department shall deny the application if the criminal records check is not submitted with the application and filing fee or if it was obtained more than ninety days before.

 (C) The department shall require the applicant to complete the law enforcement notification provision contained in an application form and submit it with the application. The law enforcement notification provision shall be prepared by the department for inclusion in the application and, at a minimum, must contain sufficient information to inform the department that either the chief of police, if the event is located within the city limits, or the county sheriff has been notified of the temporary permit application and given an opportunity to object.

 (D) The department may issue up to twenty‑five temporary permits to sell beer and wine on one application for special functions in a twelve‑month period to the same applicant, if that applicant is also applying for up to twenty‑five temporary licenses to sell alcoholic liquors by the drink, pursuant to Section 61‑6‑2000(D). This does not prohibit the applicant from applying for additional special permits within the same twelve‑month period.

HISTORY: 1996 Act No. 415, Section 1; 2010 Act No. 259, Section 1, eff June 11, 2010; 2011 Act No. 67, Section 5.A, eff July 1, 2011.

Editor’s Note

2010 Act No. 259, Section 5,provides as follows:

“This act takes effect upon approval by the Governor and applies to applications for special functions beginning on January 1, 2011.”

Effect of Amendment

The 2010 amendment rewrote this section.

The 2011 amendment rewrote the section.

**SECTION 61‑4‑560.** Operation without a permit.

 A person who operates a retail or wholesale business without obtaining a permit required in this article is guilty of a misdemeanor and, upon conviction, is subject to a fine of not less than ten dollars nor more than one hundred dollars or imprisonment of not less than ten days nor more than thirty days, in the discretion of the court. Each day that a wholesale or retail business is carried on without a permit constitutes a separate offense.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑570.** Wine service for consumption on premises.

 Notwithstanding any other provision of law, an establishment that holds a valid beer and wine license and a license to sell alcoholic liquors by the drink may sell wine which is not in excess of twenty‑one percent of alcohol by volume, to be consumed on the premises.

HISTORY: 1996 Act No. 415, Section 1; 2005 Act No. 139, Section 6.

**SECTION 61‑4‑580.** Prohibited acts.

 (A) No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder’s permit:

 (1) sell beer or wine to a person under twenty‑one years of age;

 (2) sell beer or wine to an intoxicated person;

 (3) permit gambling or games of chance except game promotions including contests, games of chance, or sweepstakes in which the elements of chance and prize are present and which comply with the following:

 (a) the game promotion is conducted or offered in connection with the sale, promotion, or advertisement of a consumer product or service, or to enhance the brand or image of a supplier of consumer products or services;

 (b) no purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize;

 (c) all materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation; and

 (d) this subsection is not an exception or limitation to Section 12‑21‑2710 or other provisions of the South Carolina Code of Laws in which gambling or games of chance are unlawful and prohibited;

 (4) permit lewd, immoral, or improper entertainment, conduct, or practices. This includes, but is not limited to, entertainment, conduct, or practices where a person is in a state of undress so as to expose the human male or female genitals, pubic area, or buttocks cavity with less than a full opaque covering;

 (5) permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State;

 (6) sell, offer for sale, or possess any beverage or alcoholic liquors the sale or possession of which is prohibited on the licensed premises under the law of this State;

 (7) conduct, operate, organize, promote, advertise, run, or participate in a “drinking contest” or “drinking game”. For purposes of this item, “drinking contest” or “drinking game” includes, but is not limited to, a contest, game, event, or other endeavor which encourages or promotes the consumption of beer or wine by participants at extraordinary speed or in increased quantities or in more potent form. “Drinking contest” or “drinking game” does not include a contest, game, event, or endeavor in which beer or wine is not used or consumed by participants as part of the contest, game, event, or endeavor, but instead is used solely as a reward or prize. Selling beer or wine in the regular course of business is not considered a violation of this section; or

 (B) a violation of any provision of this section is a ground for the revocation or suspension of the holder’s permit.

HISTORY: 1996 Act No. 415, Section 1; 1997 Act No. 98, Section 3; 1999 Act No. 52, Section 1; 2013 Act No. 5, Section 2, eff March 22, 2013.

Code Commissioner’s Note

The first paragraph was designated (A) and the former subsection (8) was designed subsection (B) to correct a technical error in 2013 Act No. 5, Section 2.

Effect of Amendment

The 2013 amendment added subsection (3)(d), relating to Section 12‑21‑2710, added subsection identifier (8) to the former last sentence, and made other nonsubstantive changes.

**SECTION 61‑4‑590.** Revocation or suspension of permits; department investigation and determination.

 (A) The department has jurisdiction to revoke or suspend permits authorizing the sale of beer or wine. The department may, on its own initiative or on complaint signed and sworn to by two or more freeholders resident for the preceding six months in the community in which the licensed premises are located or by a local peace officer, all of whom are charged with the duty of reporting immediately to the department a violation of the provisions of Section 61‑4‑580, revoke or suspend the permit pursuant to the South Carolina Revenue Procedures Act. The decision of the Administrative Law Court is not automatically superseded or stayed by the filing of a petition for judicial review.

 (B) In addition to the notice requirements contained in the Administrative Procedures Act, the department may not suspend or revoke a licensee’s permit authorizing the sale of beer or wine until the division has conducted and completed an investigation, and the department has made a departmental determination, as defined in Section 12‑60‑30, that the licensee’s permit should be revoked or suspended.

HISTORY: 1996 Act No. 415, Section 1; 2007 Act No. 103, Section 22; 2007 Act No. 107, Section 1.

**SECTION 61‑4‑600.** Surrender of license.

 Upon the revocation, cancellation, or suspension of a license or permit to sell beer or wine at wholesale or retail, the licensee must immediately surrender his license to the department. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty dollars nor more than one hundred dollars or imprisoned for not less than ten days nor more than thirty days, or both, in the discretion of the court.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑610.** Unlawful sales.

 It is unlawful for a licensee to sell beer or wine at wholesale or retail, to sell or offer to sell beer or wine after the license has been revoked or canceled, or during the period of a suspension of the license. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty dollars nor more than one hundred dollars or imprisoned for not less than ten days nor more than thirty days, or both, in the discretion of the court.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑620.** Permits for retail sale of beer and wine; Sunday sales permitted when establishment closes on Saturday for religious reasons.

 A person who sells beer and wine pursuant to a permit issued in accordance with Sections 61‑4‑500, 61‑4‑520, and 61‑4‑540 of the 1976 Code and who closes his business establishment or refrains from operating his business on Saturdays for religious reasons may be allowed, upon the filing of an affidavit of closing on Saturdays for religious reasons with and the payment of an additional fee of fifty dollars to the department, to open for business and sell beer and wine on Sundays, as specified in Sections 61‑4‑120, 61‑4‑130, and 61‑4‑140 in those counties which authorize Sunday beer sale permits. The opening of the business establishment or operation of business on Saturdays in contradiction of the affidavit is grounds for the revocation of the permit issued pursuant to this section and Sections 61‑4‑500, 61‑4‑520, and 61‑4‑540. The fifty‑dollar additional fee must be used to pay the administrative and enforcement costs of this special permit.

HISTORY: 1997 Act No. 155, Part II, Section 63A.

**SECTION 61‑4‑630.** Sunday sales

 Notwithstanding any other provision of law, an establishment possessing a beer and wine permit that is located in a county or municipality that has conducted a favorable referendum allowing the sale and consumption of alcoholic liquors by the drink on Sunday under the provisions of Section 61‑6‑2010, during those same hours authorized by permits issued under Section 61‑6‑2010, may sell, possess, and permit the consumption of beer and wine on the premises.

HISTORY: 2011 Act No. 67, Section 6, eff June 17, 2011.

ARTICLE 7

Provisions Affecting Wine Only

**SECTION 61‑4‑700.** Wine labeling.

 27 Code of Federal Regulations part 4, relating to “Labeling and Advertising of Wine”, is adopted for the labeling and advertising of wine sold or offered for sale in this State, except insofar as 27 Code of Federal Regulations part 4 differs from laws of the State or from regulations of the department.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑710.** Labels, standards, and identity.

 It is unlawful for a person to import, sell, or offer for sale in this State wines of which the labels, standards, or identity do not conform to the provisions of 27 Code of Federal Regulations part 4. Imitation, concentrate, and substandard wines, as defined in 27 Code of Federal Regulations part 4, are prohibited from sale in this State.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑720.** Sale of wine by winery located in state; wine taste samples.

 Notwithstanding another provision of law, a licensed winery located in this State is authorized to sell wine on the winery premises and deliver or ship this wine to consumer homes in or outside the State so long as the wine is produced on its premises and contains an alcoholic content of sixteen percent or less. These wineries are authorized to provide, with or without cost, wine tasting samples to prospective customers.

HISTORY: 1996 Act No. 415, Section 1; 2001 Act No. 76, Section 1; 2004 Act No. 267, Section 2.A; 2012 Act No. 121, Section 1, eff February 22, 2012.

Effect of Amendment

The 2012 amendment rewrote this section.

**SECTION 61‑4‑725.** Wine sales by temporary permit; authorized hours.

 Notwithstanding any other provision of law, a licensed winery located in a county or municipality that has conducted a favorable referendum under the provisions of Section 61‑6‑2010, during those same hours authorized by permits issued under Section 61‑6‑2010, may sell, possess, and permit the consumption of wine on the premises.

HISTORY: 2005 Act No. 145, Section 5.A.

**SECTION 61‑4‑730.** Sales by permitted wineries.

 (A) Permitted wineries that produce and sell wine produced on its premises with at least sixty percent of the juice from fruit and berries that are grown in this State may sell the wine at retail, wholesale, or both, and deliver or ship the wine to licensed retailers in this State or to consumer homes in and outside the State. Wine must be delivered between 7:00 a.m. and 7:00 p.m.

 (B) Permitted wineries that produce and sell wine produced on their premises with less than sixty percent of the juice from fruit and berries that are grown in this State may retail from the winery and ship the wine directly to consumer homes in and outside the State, but these wineries are not wholesalers of the wine. These wineries shall use a licensed South Carolina wholesaler to deliver or ship the wine to licensed retailers in this State.

 (C) The South Carolina Department of Agriculture shall periodically inspect the records of permitted wineries for verification of the percentage of juice from fruit and berries grown in this State used in the manufacturing of the wineries’ products. Within ten days of conducting an inspection, the South Carolina Department of Agriculture shall report its findings to the South Carolina Department of Revenue. If a winery is found to be in violation of this statute, the owner of the winery is subject to penalties pursuant to Section 61‑4‑780.

HISTORY: 1996 Act No. 415, Section 1; 2004 Act No. 267, Section 2.B; 2012 Act No. 121, Section 2, eff February 22, 2012.

Effect of Amendment

The 2012 amendment, added the subsection identifiers; in subsection (A) substituted “at least sixty percent” for “a majority”, and substituted “licensed retailers in this State or to consumer homes in and outside” for “the purchaser”; and added subsections (B) and (C).

**SECTION 61‑4‑735.** Regulation of practices between wine manufacturers, importers, wholesalers, and retailers.

 (A) Except as provided in Sections 61‑4‑720 and 61‑4‑730, a manufacturer of wine, vintner, winery, an entity, or a person who sells these products, or a person or entity who imports these products produced outside the United States must not sell, barter, exchange, transfer, or deliver for resale wine to a person not having a wholesale permit issued under Section 61‑4‑500, and a holder of a wholesale permit may not sell, barter, exchange, transfer, or deliver for resale wine to a person not having a retail or wholesale permit, unless that person is the American producer or the primary American source of supply of that wine as defined in Section 61‑4‑340.

 (B) Except as provided in subsection (C), a manufacturer of wine, vintner, winery, importer, or wholesaler of wine, or a person acting on his behalf must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free wine, or service. The holder of a retail permit or a person acting on his behalf may not accept, directly or indirectly, any equipment, fixtures, free wine, or service referred to in this subsection from a manufacturer of wine, winery, importer, or wholesaler of wine, except as provided in subsection (C).

 (C) A wholesaler may furnish at no charge to the holder of a retail permit draft wine equipment replacement parts of nominal value, including washers, gaskets, hoses, hose connectors, clamps, and tap markers, product displays as provided under 27 Code of Federal Regulations, Section 6.83, and point of sale advertising specialties. A wholesaler also may furnish the following services to a retailer: cleaning wine lines, rotating stock, affixing price tags to wine products, building wine displays, setting boxes, conduct not more than two wine tastings in accordance with department rulings or regulations, developing shelf schematics, stocking shelves, providing wine party wagon for temporary use, and assist in wine resets a maximum of three times a year for any store having a retail permit during the hours of 8:00 a.m. to 8:00 p.m. Resets are defined as being a change in the location of the wine department within a store or a rearrangement of the products on shelves within the store’s wine department, which involves more than one wholesaler’s products. All wholesalers must be notified in writing of any resets being requested by a retail store at least fourteen days prior to the reset.

 (D) A producer, winery, vintner, and importer of wine are declared to be in business on one tier, a wholesaler on another tier, and a retailer on another tier. For the purpose of this section, a manufacturer or producer of wine is declared to be a tier one business, a wholesaler or an importer owned solely by a wholesaler is declared to be a tier two business, and a retailer is declared to be a tier three business. Except as provided in Sections 61‑4‑720 and 61‑4‑730, a person or entity in the wine business on one tier or a person acting directly or indirectly on his behalf may not have ownership or financial interest in a wine business operation on another tier. This limitation does not apply to the interest held on July 1, 1993, by the holder of a wholesale permit in a business operated by the holder of a retail permit at premises other than where the wholesale business is operated. For purposes of this subsection, ownership or financial interest does not include the ownership of less than one percent of the stock in a corporation with a class of voting shares registered with the Securities and Exchange Commission or other federal agency under Section 12 of the Securities and Exchange Act of 1934, as amended, or a consulting agreement under which the consultant has no control over business decisions and whose compensation is unrelated to the profits of the business. Notwithstanding this prohibition or the prohibition contained in Section 61‑4‑940(D), a manufacturer or importer of beer or wine may own in whole or in part a business that holds an on‑premises retail beer and wine permit provided that:

 (1) All beverages to be handled or sold by the retail dealer must be purchased from licensed wholesalers and purchased on the same terms and conditions as do other retail dealers.

 (2) Sales of any product produced or distributed by the manufacturer or importer must not exceed ten percent of the annual gross sales of beer or wine by the retail permit holder.

 (E) A manufacturer, producer, importer, or wholesaler of wine may discount product price based on quantity purchases if all discounts are on price only, appear on the sales records, and are available to all retail customers.

 (F) Nothing in this section affects or prohibits the ownership or the operation of a licensed winery in this State that produces, provides taste samples, sells, delivers, or ships domestic wine as authorized and in accordance with the provisions of Sections 61‑4‑720 and 61‑4‑730.

HISTORY: 1998 Act No. 429, Section 1; 2001 Act No. 76, Section 2.

**SECTION 61‑4‑737.** Wine tastings.

 Notwithstanding another provision of law or regulation, the holder of a retail wine permit for off‑premises consumption whose primary product is beer, wine, or distilled spirits may conduct, in accordance with department rulings or regulations, not more than twenty‑four wine tastings at the retail location in a calendar quarter.

HISTORY: 2001 Act No. 76, Section 3; 2007 Act No. 107, Section 3; 2007 Act No. 116, Section 11.

**SECTION 61‑4‑740.** Special orders for out‑of‑State wine.

 A person may order wine produced outside this State which has not been approved or licensed for sale or distribution in this State from an in‑state wholesaler by placing a special order for this wine with the out‑of‑state winery. The wine may then be shipped by the winery to that wholesaler who, after paying the necessary taxes, is authorized to sell this wine to that person through a licensed retailer.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑745.** Transporting into and out of State for personal consumption; limits; labeling.

 (A) Subject to the provisions of Section 61‑4‑747, a person who is at least twenty‑one years of age and who is a legal resident of this State, may cause to be shipped or transported from a manufacturer of wine up to twenty‑four bottles of wine each month for his own consumption or use, and not for resale, into and out of this State without the necessity of acquiring any permits or licenses or other forms of public or private authorization except for the payment of appropriate taxes.

 (B) All containers of wine shipped directly to a resident in this State must be labeled conspicuously with the words “CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY”.

HISTORY: 2003 Act No. 40, Section 3.

**SECTION 61‑4‑747.** Direct shipment to residents for personal consumption; licensing of out‑of‑state shippers; penalties.

 (A) Notwithstanding any other provision of law, rule, or regulation to the contrary, a manufacturer of wine located within this State or outside this State that holds a wine producer and blenders basic permit issued in accordance with the Federal Alcohol Administration Act and obtains an out‑of‑state shipper’s license, as provided in this section, may ship up to twenty‑four bottles of wine each month directly to a resident of this State who is at least twenty‑one years of age for such resident’s personal use and not for resale.

 (B) Before sending a shipment to a resident of this State, an out‑of‑state shipper first shall:

 (1) file an application with the Department of Revenue;

 (2) pay a biennial license fee of four hundred dollars;

 (3) provide to the department a true copy of its current wine producer and blenders basic permit issued in accordance with the Federal Alcohol Administration Act; and

 (4) obtain from the department an out‑of‑state shipper’s license.

 (C) Each out‑of‑state shipper licensee shall:

 (1) not ship more than twenty‑four bottles of wine each month to a person;

 (2) ensure that all containers of wine shipped directly to a resident in this State are labeled conspicuously with the words “CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY”;

 (3) report to the department annually, by August thirty‑first of each year, the total amount of wine shipped into the State the preceding year;

 (4) annually, by January twentieth of each year, pay to the department all sales taxes and excise taxes due on sales to residents of this State in the preceding calendar year, the amount of the taxes to be calculated as if the sale were in this State at the location where delivery is made;

 (5) permit the department to perform an audit of the out‑of‑state shipper’s records upon request; and

 (6) be deemed to have consented to the jurisdiction of the department or another state agency and the courts of this State concerning enforcement of this section and any related laws.

 (D) The out‑of‑state shipper on August thirty‑first of each applicable year must renew its license with the department by paying a renewal fee of four hundred dollars and providing the department a true copy of its current alcoholic beverage license issued in another state.

 (E) The department may promulgate regulations to effectuate the purposes of this section.

 (F) The department shall enforce the requirements of this section by administrative proceedings to suspend or revoke an out‑of‑state shipper’s license if the licensee fails to comply with the requirements of this section, and the department may accept payment of an offer in compromise instead of suspension.

 (G)(1) A shipment of wine from out‑of‑state direct to consumers in this State from persons who do not possess a current out‑of‑state shipper’s license is prohibited. A person who knowingly makes, participates in, transports, imports, or receives such a shipment from out‑of‑state is guilty of a misdemeanor and, upon conviction, must be fined one hundred dollars. A shipment of wine which violates any provision of this item is contraband.

 (2) Without limitation on any punishment or remedy, criminal or civil, a person who knowingly makes, participates in, transports, imports, or receives a shipment as provided in item (1) of this subsection from out‑of‑state commits an unfair trade practice.

HISTORY: 2003 Act No. 40, Section 3; 2005 Act No. 145, Section 40.A.

**SECTION 61‑4‑750.** Adulterated wine.

 The importation into, offering for sale, or sale in this State of a product as “wine” to which any substance has been added, except as authorized by federal law and regulations and except pure fruit or vegetable products derived from the same kind of fruit or vegetable from the juice of which the wine was fermented, is prohibited and is a misdemeanor.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑760.** Inspection of out‑of‑State wine; wine packages.

 The division must provide for the inspection of all wines imported into or offered for sale in this State. The expense of the inspections must be paid from the proceeds of the wine tax. The department may make regulations as to the containers in which wine may be sold at retail and to declare to be “undesirable wine packages” wine sold in a container prohibited in the regulations or wine, the sale of which is prohibited in Sections 61‑4‑710 or 61‑4‑750. The offering for sale or sale in this State of undesirable wine packages under this section is prohibited and is a misdemeanor.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑770.** Wines containing more than sixteen percent alcohol.

 Wines containing more than sixteen percent of alcohol by volume may be sold only in licensed alcoholic liquor stores or in establishments licensed to sell and permit consumption of alcoholic liquors by the drink.

HISTORY: 1996 Act No. 415, Section 1; 2001 Act No. 76, Section 4; 2005 Act No. 139, Section 7.

**SECTION 61‑4‑780.** Penalties.

 A person who violates any provision of this article or any rule or regulation promulgated by the department or the division under this article, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both, in the discretion of the court. In addition to the punishment specified in this section, the person must forfeit his permit to sell wine and is not, for a period of two years thereafter, authorized to engage in a business taxable under the provisions of this chapter.

HISTORY: 1996 Act No. 415, Section 1.

ARTICLE 9

Provisions Affecting Beer Only

**SECTION 61‑4‑900.** Posting of retail permit.

 The retail permit issued by the department must be conspicuously posted on the premises.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑910.** Penalties; revocation or suspension of permit.

 A person who violates any provision of this article is guilty of a misdemeanor and, upon conviction, is subject to a fine of not less than ten dollars nor more than one hundred dollars, or imprisonment of not less than ten days nor more than thirty days, in the discretion of the court. In addition to the punishment specified in this section, the department may revoke or suspend a retail permit for a violation of this article.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑920.** Penalties for violation of rule or regulation.

 The department must revoke or suspend the license, permit, or brewer’s certificate of approval of a person for the violation of any rule or regulation or invoke a penalty not to exceed one hundred dollars for each violation.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑930.** Wholesaler advertising.

 It is unlawful for a wholesaler to purchase advertising for a retailer or to participate in a joint advertising campaign with a retailer. However, a brewer or wholesaler may advertise on a retailer’s premises and may purchase program advertising from a retailer at customary rates.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑940.** Practices between manufacturer, wholesaler, and retailer.

 (A) A manufacturer or brewer of beer, ale, porter, or other malt beverages or a person who imports these products produced outside the United States must not sell, barter, exchange, transfer, or deliver for resale beer to a person not having a wholesale permit issued under Section 61‑4‑500, and a holder of a wholesale permit must not sell, barter, exchange, transfer, or deliver for resale beer to a person not having a retail or wholesale permit.

 (B) Except as provided in subsection (C), a manufacturer, brewer, importer, or wholesaler of beer, or a person acting on his behalf, must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free beer, or service. The holder of a retail permit, or a person acting on his behalf, must not accept, directly or indirectly, any equipment, fixtures, free beer, or service referred to in this subsection from a manufacturer, brewer, importer, or wholesaler of beer, except as provided in subsection (C). With the consent of a holder of a retail permit, the wholesaler may store for a temporary period at the permit holder’s licensed location equipment primarily utilized by the wholesaler in delivery and stocking of beer including, but not limited to, pallets, carts, and hand trucks.

 (C) A wholesaler may furnish at no charge to the holder of a retail permit draft beer equipment replacement parts of nominal value, including washers, gaskets, hoses, hose connectors, clamps, and tap markers, party wagons for temporary use, and point of sale advertising specialties. A wholesaler may furnish at no charge to the holder of a retail permit product displays pursuant to the provisions of 27 C.F.R., Section 6.83, excluding electronic refrigeration equipment. A wholesaler also may furnish the following services to a retailer: cleaning draught lines, setting boxes, rotating stock, affixing price tags to beer products, and building beer displays.

 (D) A manufacturer, brewer, and importer of beer are declared to be in business on one tier, a wholesaler on another tier, and a retailer on another tier. A person or an entity in the beer business on one tier, or a person acting directly or indirectly on his behalf, may not have ownership or financial interest in the beer business operation on another tier. This limitation does not apply to the interest held on July 1, 1980, by the holder of a wholesale permit in a business operated by the holder of a retail permit at premises other than where the wholesale business is operated. For purposes of this subsection, ownership or financial interest does not include the ownership of less than one percent of the stock in a corporation with a class of voting shares registered with the Securities and Exchange Commission or other federal agency under Section 12 of the Securities and Exchange Act of 1934, as amended, or a consulting agreement under which the consultant has no control over business decisions and whose compensation is unrelated to the profits of the business.

 (E) A manufacturer, brewer, importer, or wholesaler of beer may discount product price based on quantity purchases if all discounts are on price only, appear on the sales records, and are available to all customers.

 (F) No person or entity in the beer business on one tier may require a person or entity in the beer business on another tier to advertise or participate in a discount or special promotion or furnish the items delineated in subsection (C).

HISTORY: 1996 Act No. 415, Section 1; 2010 Act No. 231, Section 1, eff June 7, 2010.

Effect of Amendment

The 2010 amendment in subsection (B), inserted the third sentence relating to the storage of equipment; in subsection (C), inserted the second sentence relating to product displays; and in subsection (F), inserted “or furnish the items delineated in subsection (C)”.

**SECTION 61‑4‑950.** Beer signs.

 Neither the department nor the division has the authority to regulate the size, type, or number of beer signs displayed on the premises of a beer retailer or wholesaler.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑960.** Retailers of beer for off‑premises consumption, beer tastings; penalties.

 (A) Notwithstanding another provision of law or regulation, the holder of a retail permit authorizing the sale of beer for off‑premises consumption whose primary product is beer or wine may conduct, in accordance with department rulings or regulations, not more than twenty‑four beer tastings at any one retail location in a calendar quarter, provided that:

 (1) at least ten days before the tasting, a notice detailing the specific date and hours of the tasting must be sent by first class mail or by electronic mail to the State Law Enforcement Division;

 (2) the tastings must be conducted by the retailer or an agent or independent contractor of the retailer and may not be conducted by a wholesaler or manufacturer or an employee, agent, or independent contractor of a wholesaler or manufacturer. Nothing in this subsection prohibits a manufacturer or employee, agent, or independent contractor of a manufacturer from attending a tasting to provide information and offer educational material on the products to be sampled. For purposes of this subsection, a wholesaler is not considered an employee, agent, or independent contractor of a manufacturer;

 (3) the products must be supplied by the retailer and may not be donated or otherwise supplied at no or reduced cost by the manufacturer or wholesaler;

 (4) a sample may not be offered from more than eight products at any one tasting;

 (5) no more than one container of each of the products to be sampled may be open at any time. Open containers must be visible at all times and must be removed at the conclusion of a tasting;

 (6) the tasting must be held in a designated tasting area of the retail store;

 (7) samples must be no more than two ounces for each product sampled as defined in Section 61‑4‑10(1);

 (8) samples must be no more than one ounce for each product sampled as defined in Section 61‑4‑10(2), provided that no more than two of the total eight samples may contain more than ten percent of alcohol by weight;

 (9) a person shall not be served more than one sample of each product;

 (10) a sample shall not be offered to, or allowed to be consumed by, an intoxicated person or a person under the age of twenty‑one years. A person tasting a sample may not be allowed to loiter on the store premises;

 (11) a sampling may not be offered for more than four hours;

 (12) a retailer, pursuant to this section, may not offer more than one sampling per day; and

 (13) the tasting may not be held in conjunction with a tasting in a retail alcoholic liquor store, pursuant to Section 61‑6‑1035, that is adjacent to and licensed in the same name of the retail permit authorizing the sale of beer.

 (B) A person who violates the provisions of this section must be assessed a fine of one hundred dollars for each violation in addition to other applicable fines and penalties. The revenue from the one hundred dollar fine must be directed to the Department of Revenue for supplementing funds required for the department’s activities concerning licensure and regulation of alcohol.

HISTORY: 2010 Act No. 231, Section 3, eff June 7, 2010; 2013 Act No. 36, Section 2, eff June 6, 2013.

Editor’s Note

2013 Act No. 36, Section 4, provides as follows:

“SECTION 4. This act takes effect upon approval by the Governor, except that, for a brewery licensed in the State at the time this act becomes effective, the requirements for proof of liability insurance shall apply immediately, and a licensed brewery must provide the required documentation within sixty days of the effective date of this act.”

Effect of Amendment

The 2013 amendment deleted former subsection (12), relating to Section 61‑4‑737, and redesignated former subsections (13) and (14) as (12) and (13).

ARTICLE 11

Beer Wholesaler Franchise

**SECTION 61‑4‑1100.** Prohibited practices.

 (1) It is unlawful for a producer who holds a certificate of registration from the department (hereinafter “registered producer”) or an officer, agent, or representative of a registered producer:

 (a) to coerce, attempt to coerce, or persuade a person holding a permit to sell beer, ale, porter, and other similar malt or fermented beverages at wholesale (hereinafter “beer wholesaler”) to enter into an agreement to take any action which would violate a provision of this article or any ruling or regulation in accordance therewith; or

 (b) to unfairly, without due regard to the equities of the beer wholesaler or without just cause or provocation, cancel or terminate a written or oral agreement or contract, franchise, or contractual franchise relationship of the wholesaler existing on May 1, 1974, or thereafter entered into, to sell beer manufactured by the registered producer; this provision is a part of a contractual franchise relationship, written or oral, between a beer wholesaler and a registered producer doing business with the beer wholesaler, just as though the provision had been specifically agreed upon between the beer wholesaler and the registered producer. However, notice of intention to cancel the agreement or contract, written or oral, franchise, or contractual franchise relationship must be given in writing at least sixty days before the date of the proposed cancellation or termination. The notice must contain (i) assurance that the agreement or contract, written or oral, franchise, or contractual franchise relationship is being terminated in good faith and for material violation of one or more provisions which are relevant to the effective operation of the agreement, or contract, written or oral, franchise, or contractual franchise relationship, if any, and (ii) a list of the specific reasons for the termination or cancellation.

 (2) It is unlawful for a beer wholesaler:

 (a) to enter into an agreement or take any action which would violate or tend to violate a provision of this article or any rule or regulation promulgated pursuant thereto;

 (b) to unfairly, without due regard for the equities of a registered producer or without just cause or provocation, cancel or terminate a written or oral agreement or contract, franchise, or contractual franchise relationship of the registered producer existing on May 1, 1974, or thereafter entered into, to sell beer manufactured by the registered producer; this provision becomes a part of a contractual franchise relationship, written or oral, between a beer wholesaler and a registered producer doing business with the beer wholesaler, just as though this provision had been specifically agreed upon between the beer wholesaler and the registered producer. However, notice of intention to cancel the agreement or contract, written or oral, franchise, or contractual franchise relationship must be given in writing at least sixty days prior to the date of the proposed cancellation or termination. The notice must contain (i) assurance that the agreement or contract, written or oral, franchise, or contractual franchise relationship is being terminated in good faith and for material violation of one or more provisions which are relevant to the effective operation of the agreement or contract, written or oral, franchise, or contractual franchise relationship, if any, and (ii) a list of the specific reasons for the termination or cancellation;

 (c) to refuse to sell to a licensed retailer whose place of business is within the geographical limits specified in a distributorship agreement between the beer wholesaler and the registered producer for the brands involved; or

 (d) to store or warehouse beer or other malt beverages to be sold in the State in a warehouse located outside the State.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1110.** Shipment and receipt of malt beverages continued until April 1, 1974.

 If a registered producer and a beer wholesaler licensed by the State at the time that they were engaged in the shipment and receipt of malt beverages intended for sale in the State on May 1, 1974, and the shipment and receipt is continued until April 1, 1974, the limitations on the cancellation or termination of an agreement or contract, written or oral, franchise, or contractual franchise relationship provided in Section 61‑4‑1100(1)(b) and in Section 61‑4‑1100(2)(b) are applicable with respect to the shipment and receipt of the malt beverages, so that neither the registered producer nor the beer wholesaler has the right to discontinue the shipment and receipt except under the conditions specified in those subsections.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1115.** Assignment of territory of beer brands binding on successor producer or primary American source of supply.

 For the purpose of this article, when a producer, as defined in Section 61‑4‑300, or the primary American source of supply, as defined in Section 61‑4‑340, who is registered to sell beer to wholesalers in this State, transfers, conveys, or assigns a brand of beer to another producer or primary American source of supply, the assignment of territory of that brand to a wholesaler, required pursuant to Section 61‑4‑1300, is binding on the successor producer or primary American source of supply. The successor producer or primary American source of supply and the existing wholesaler shall, in good faith, enter into a new distribution agreement that is not inconsistent with the laws of this State.

HISTORY: 2001 Act No. 76, Section 5; 2005 Act No. 173, Section 1; 2007 Act No. 14, Section 2.

**SECTION 61‑4‑1120.** Jurisdiction of court to enjoin cancellation or termination.

 The court of common pleas has jurisdiction and power to enjoin the cancellation or termination of a franchise or agreement between a beer wholesaler and a registered producer upon the application of a beer wholesaler or producer who is or might be adversely affected by the cancellation or termination; and in granting an injunction, the court must make provisions necessary to protect the beer wholesaler or registered producer while the injunction is in effect including, but not limited to, a provision that the registered producer must not supply the customers of the beer wholesaler by servicing the customers through other distributors or means or a provision that the beer wholesaler must continue to supply to his customers the products of the registered producer. Application may be made by the beer wholesaler or producer to the appropriate court in the county in which the business of the wholesaler is located. The court may require a bond to be posted by the party seeking the injunction, securing the party enjoined for damages in an amount in the court’s discretion.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1130.** Sale of beer wholesale interest.

 (1) Except as hereinafter provided, a proposed sale of an interest in the business carried on by a beer wholesaler which under the laws of this State would require that the purchaser obtain a permit to operate as a beer wholesaler is subject to the department’s approval of the purchaser as an applicant for a permit authorizing the sale of beer. If the application of the prospective purchaser for the permit is approved, it is unlawful, notwithstanding the terms, provisions, or conditions of a written or oral contract or the franchise agreement between the beer wholesaler and the registered producer, for a registered producer to fail or refuse to approve the transfer or change of ownership.

 (2) Except as hereinafter provided, a proposed voluntary transfer of an interest in the business carried on by a beer wholesaler or a transfer of ownership in the business by reason of death is subject to the registered producer’s approval of the prospective transferee. This approval must not be unreasonably withheld. If the registered producer does not give notice of disapproval by certified mail within sixty days after receipt of notification of the proposed voluntary transfer or within sixty days after the death of the owner of the interest, the right of disapproval may not thereafter be exercised.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1140.** Enforcement.

 The division is empowered to investigate violations of this article and to furnish to the prosecuting attorney of a court having jurisdiction of the offense information with respect to violations of this article. The division has the power to enforce compliance with the provisions of an injunction granted by the court under the terms of this article; and if the court finds that there has been a violation of the provisions of an injunction granted by it, the department may revoke or suspend the permit of a beer wholesaler and may revoke the registration of a registered producer and its right to ship beer into the State.

HISTORY: 1996 Act No. 415, Section 1.

ARTICLE 13

Territorial Restrictions; Distribution Agreements

**SECTION 61‑4‑1300.** Territorial agreements.

 Pursuant to the authority of the State under the Twenty‑First Amendment to the United States Constitution and to promote the public’s interest in fair and efficient distribution of beer, ale, porter, and other similar malt or fermented beverages, and to ensure the public’s interest in uniform and effective control of the distribution of these beverage products in the State, a wholesaler may sell any brand of these beverage products in this State only in the territory described in a distribution agreement filed pursuant to this article authorizing sale by the wholesaler of the brand in that designated area. Within that designated area, the wholesaler must service all holders of retail permits without discrimination. The distribution agreement must be in writing, must specify the brands it covers, and must be filed with the department. If a brewer sells more than one brand, the agreement need not apply to all brands sold by the brewer and may apply to only one brand. No brewer, importer, or other supplier may provide by a distribution agreement for the distribution of the brand filed pursuant to this article to more than one wholesaler for all or any part of the designated territory. However, a wholesaler may, upon approval of the department, service a territory outside the territory designated in its distribution agreement during periods of temporary service interruptions when requested by the brewer and the wholesaler whose service is temporarily interrupted.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1310.** Filings with the department.

 A wholesaler must file (1) a copy of its distribution agreement with the department within sixty days after its adoption, and (2) any amendments to the agreement within sixty days after their adoption.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1320.** Resale price agreements.

 No provision of a distribution agreement may expressly, by implication, or in its operation establish or maintain the resale price of any brand of these beverage products by a wholesaler.

HISTORY: 1996 Act No. 415, Section 1.

ARTICLE 15

Construction and Operation of Breweries and Wineries

**SECTION 61‑4‑1500.** Breweries and wineries.

 A person may construct, maintain, or operate a brewery or winery in this State for the production of any beverage lawful under this chapter.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1510.** Permit applications.

 Before a person constructs, maintains, or operates a brewery or winery as provided by the provisions of this article, the person must apply to the department for a permit. The application must be in writing in a form the department prescribes. Except as otherwise provided in this section, the applicant must pay a biennial permit tax of two hundred dollars upon each brewery and on each commercial winery to be established and operated. The permit tax must be paid to and collected by the department before a permit is issued. Permits as provided by the provisions of this section expire as mandated by Section 61‑2‑120. No refund may be made to a dealer who ceases business after obtaining a permit.

HISTORY: 1996 Act No. 415, Section 1; 2003 Act No. 70, Section 7.

**SECTION 61‑4‑1515.** Breweries, samples and sales of beer; sales of beer for on‑ and off‑premises consumption; penalties.

 (A) A brewery licensed in this State is authorized to offer samples of beer to consumers on its licensed premises, provided that the beer is brewed on the licensed premises with an alcoholic content of twelve percent by weight, or less, subject to the following conditions:

 (1) sales to or samplings by consumers must be held in conjunction with a tour by the consumer of the licensed premises and the entire brewing process utilized at the licensed premises;

 (2) sales or samplings shall not be offered or made to, or allowed to be offered, made to, or consumed by an intoxicated person or a person who is under the age of twenty‑one;

 (3)(a) no more than a total of forty‑eight ounces of beer brewed at the licensed premises, including amounts of samples offered and consumed with or without cost, shall be sold to a consumer for on‑premises consumption within a twenty‑four hour period; and

 (b) of that forty‑eight ounces of beer available to be sold to a consumer within a twenty‑four hour period, no more than sixteen ounces of beer with an alcoholic weight of above eight percent, including any samples offered and consumed with or without cost, shall be sold to a consumer for on‑premises consumption within a twenty‑four hour period;

 (4) a brewery must develop and use a system to monitor the amounts and types of beer sampled or sold to a consumer for on‑premises consumption;

 (5) a brewery must sell the beer at the licensed premises at a price approximating retail prices generally charged for identical beverages in the county where the licensed premises are located;

 (6) a brewery must remit appropriate taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for excise taxes assessed by the department. A brewery also must remit appropriate sales and use taxes and local hospitality taxes;

 (7) a brewery must post information that states the alcoholic content by weight of the various types of beer available in the brewery and the penalties for convictions for:

 (a) driving under the influence;

 (b) unlawful transport of an alcoholic container; and

 (c) unlawful transfer of alcohol to minors.

And, the information shall be in signage that must be posted at each entrance, each exit, and in places in a brewery seen during a tour;

 (8) a brewery must provide DAODAS approved alcohol enforcement training for the employees who serve beer on the licensed premises to consumers for on‑premises consumption, so as to prevent and prohibit unlawful sales, transfer, transport, or consumption of beer by persons who are under the age of twenty‑one or who are intoxicated; and

 (9) a brewery must maintain liability insurance in the amount of at least one million dollars for the biennial period for which it is licensed. Within ten days of receiving its biennial license, a brewery must send proof of this insurance to the State Law Enforcement Division and to the Department of Revenue, where the proof of insurance information shall be retained with the department’s alcohol beverage licensing section.

 (B) In addition to the sampling and sales provisions set forth in subsection (A), a brewery licensed in this State is authorized to sell beer produced on its licensed premises to consumers on site for on‑premises consumption within an area of its licensed premises approved by the rules and regulations of the Department of Health and Environmental Control governing eating and drinking establishments and other food service establishments. These establishments also may apply for a retail on‑premises consumption permit for the sale of beer and wine of a producer that has been purchased from a wholesaler through the three‑tier distribution chain set forth in Section 61‑4‑735 and Section 61‑4‑940.

 (C) The sale of beer that is brewed on the licensed premises for on‑premises consumption pursuant to subsection (B) must comply with the following provisions:

 (1) all provisions of subsection (A) shall apply to sales under subsection (B) and this subsection, except subsection (A)(1), (3), and (4);

 (2) the brewery must comply with all state and local laws concerning hours of operation applicable to eating and drinking establishments and other food service establishments holding permits to sell beer and wine for on‑premises consumption;

 (3) the brewery must comply with the discount pricing provisions of Section 61‑4‑160, applicable to persons holding permits to sell beer and wine for on‑premises consumption;

 (4) the brewery must sell the beer at a price approximating retail prices generally charged for identical beverages by on‑premises retailers in the county where the licensed premises are located; and

 (5) a wholesaler must not provide and a brewery must not accept services, equipment, fixtures, or free beer prohibited by Section 61‑4‑940(B), except those items authorized by Section 61‑4‑940(C). Changes to the brewery laws pursuant to subsection (B) and this subsection do not alter or amend the structure of the three‑tier laws of this State, and the wholesalers and the breweries must not discriminate in pricing at the producer or wholesaler levels.

 (D) A brewery located in this State is authorized to sell beer on its licensed premises for off‑premises consumption, provided that the sealed beer was brewed on the licensed premises with an alcohol content of fourteen percent by weight or less, subject to the following conditions:

 (1) the maximum amount of beer that may be sold to an individual per day for off‑premises consumption shall be equivalent to two hundred eighty‑eight ounces in total;

 (2) the beer only shall be sold in conjunction with a tour by the consumer of the licensed premises and the entire brewing process utilized at the licensed premises;

 (3) the beer sold is for personal use only and cannot be resold;

 (4) the beer cannot be sold to anyone holding a retail beer and wine license for the purpose of resale in their establishment;

 (5) the brewery must sell the beer at the licensed premises at a price approximating retail prices generally charged for identical beverages in the county where the licensed premises are located; and

 (6) the brewery must remit taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for taxes assessed by Section 12‑21‑1020 and Section 12‑21‑1030. The brewery also must remit appropriate sales and use taxes and local hospitality taxes.

 (E) In addition to other applicable fines or penalties, a person licensed as a brewery in this State who violates the provisions of this section must be assessed a fine of five hundred dollars for a first violation. For a second violation that occurs within three years of the first violation, a person must be assessed an additional five hundred dollars. For subsequent violations within a three‑year period, the department must suspend the brewery license for a period of not less than thirty days. The revenue from the fines established in this section must be directed to the State Law Enforcement Division for supplementing funds required for the regulation and enforcement of this section.

HISTORY: 2010 Act No. 231, Section 2, eff June 7, 2010; 2013 Act No. 36, Section 1, eff June 6, 2013; 2014 Act No. 223 (H.3512), Section 5A, eff June 2, 2014.

Editor’s Note

2013 Act No. 36, Sections 3, 4, provide as follows:

“SECTION 3. (A) By no later than March 15, 2016, a report, compiled jointly by the Department of Revenue and the State Law Enforcement Division, shall be delivered to the chairs of the Senate Judiciary Committee, the Senate Finance Committee, the House Judiciary Committee, and the House Ways and Means Committee, and reported in the Senate and House Journals, which contains the following information:

“(1) a list of civil and criminal violations and dispositions of those violations related to the provisions of Section 61‑4‑1515, including, but not limited to, sales or transfers of beer to minors or intoxicated persons, suspensions of brewery licenses, unlawful transportation of beer, and offenses of driving under the influence, if known, for the period of time from the enactment of these provisions to February 1, 2016;

“(2) a total of excise and sales taxes paid by the breweries to the Department of Revenue for the period of time from the enactment of these provisions to February 1, 2016;

“(3) a total of all fines and penalties paid by or assessed against persons for violations of Section 61‑4‑1515 for the period of time from the enactment of these provisions to February 1, 2016;

“(4) a monthly total of the numbers of persons touring each of the breweries licensed in this State for the period of time from two months after the enactment of these provisions to February 1, 2016, and each brewery shall be responsible for providing the Department of Revenue with this information electronically on a monthly basis during the above‑described time period; and

“(5) the Department of Revenue shall furnish a list of all licensed breweries upon request by the State Law Enforcement Division or local law enforcement agencies.

“(B) The purpose of this report is to enable the General Assembly to consider the information provided by the report to determine if state laws should be amended and additional revenue for regulation and enforcement of Section 61‑4‑1515 should be appropriated.

“SECTION 4. This act takes effect upon approval by the Governor, except that, for a brewery licensed in the State at the time this act becomes effective, the requirements for proof of liability insurance shall apply immediately, and a licensed brewery must provide the required documentation within sixty days of the effective date of this act.”

Effect of Amendment

The 2013 amendment, rewrote subsections (A) and (C), and in subsection (B), inserted “off‑premises consumption”, substituted “sealed beer was brewed” for “beer was brewed”, and substituted “following conditions” for “following restrictions”.

2014 Act No. 223, Section 5.A, added subsections (B) and (C), redesignated the former subsections accordingly, and made other nonsubstantive changes.

**SECTION 61‑4‑1520.** Violation of rule or regulation.

 Upon violation of a rule or regulation for the operation of breweries and commercial wineries authorized under this article, the license or permit provided for herein must be canceled immediately and becomes null and void.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1530.** Operation of brewery or winery without permit.

 A person who operates a brewery or winery without a permit or after his permit has been canceled by the department is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than five thousand dollars or imprisoned not more than one year, or both.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1540.** Adoption of Chapter 21 of Title 12.

 For the purpose of administration and enforcement of this article, the provisions of Chapter 21 of Title 12, when applicable, are adopted and made a part of this article.

HISTORY: 1996 Act No. 415, Section 1.

ARTICLE 17

Brewpubs

**SECTION 61‑4‑1700.** Definitions.

 For purposes of this article:

 (1) “Brewpub” means a tavern, public house, restaurant, or hotel which produces on the permitted premises a maximum of two thousand barrels a year of beer for sale on the premises.

 (2) “Permitted premises” means those areas normally used by the permittee or licensee to conduct his business and includes, but is not limited to, the selling areas, brewing areas, storage areas, food preparation areas, and parking areas.

 (3) “Person” means an individual, partnership, corporation, or other form of business organization.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1710.** Permits.

 The department may issue a brewpub permit to a person to operate a brewpub in this State subject to the requirements of this chapter and the payment of a biennial brewpub permit fee of two thousand dollars.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1720.** Permit in lieu of certain other permits.

 The brewpub permit provided for in this article is in lieu of a permit required for the manufacture of beer or sale of beer and wine including, but not limited to, a brewer’s and retailer’s permit. The sale of alcoholic liquors for consumption on the premises by the drink requires an appropriate license which may be issued to the holder of a brewpub permit who meets all other qualifications for the license under this title.

HISTORY: 1996 Act No. 415, Section 1; 2005 Act No. 139, Section 8.

**SECTION 61‑4‑1730.** Taxation.

 Beer brewed on a permitted premises pursuant to this article must be taxed as provided in Section 12‑21‑1035. The permittee shall maintain adequate records as determined by the department to ensure the collection of this tax.

HISTORY: 1996 Act No. 415, Section 1; 2001 Act No. 89, Section 54.

**SECTION 61‑4‑1740.** Authority of permittee.

 A brewpub permit authorizes the holder to:

 (1) produce on the permitted premises a maximum of two thousand barrels a year of beer for sale:

 (a) on draft for consumption on the premises;

 (b) in a sanitary container brought to the premises by the purchaser and filled at the tap by the permittee at the time of sale; and

 (c) in bottles for consumption by the purchaser off the premises;

 (2) sell the beer of a producer which has been purchased from a wholesaler through the normal three‑tier distribution chain set forth in Section 61‑4‑940;

 (3) serve food or otherwise be qualified as a public eating establishment. This provision may not be construed to exempt a permittee or licensee from the requirement that food must be served in order for a license for the consumption of alcoholic liquors on the premises to be issued.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1750.** Compliance with DHEC rules and regulations.

 No person holding a brewpub permit may sell beer, ale, porter, or other similar malt or fermented beverages on draft, on tap, from kegs, or from other containers unless approved by the rules and regulations of the Department of Health and Environmental Control governing eating and drinking establishments and other retail food establishments.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1760.** Off‑premises sales or shipment.

 No brewpub permittee may sell or ship the beer produced on the permitted premises for sale in another location.

HISTORY: 1996 Act No. 415, Section 1.

**SECTION 61‑4‑1770.** Suspension or revocation of permit.

 The department may suspend or revoke the permit or license of a person who violates the provisions of this article.

HISTORY: 1996 Act No. 415, Section 1.

ARTICLE 19

Keg Registration

**SECTION 61‑4‑1910.** Definitions.

 For purposes of this article:

 (1) “Keg” means a metal container of beer with a capacity of 5.16 gallons or more that is designed to dispense beer directly from the container in an off‑premises location.

 (2) “Retail licensee” means the holder of a retail beer or wine license issued by the Department of Revenue.

HISTORY: 2007 Act No. 103, Section 3; 2009 Act No. 44, Section 1, eff June 2, 2009.

Effect of Amendment

The 2009 amendment, in item (1) defining “keg”, added “metal”.

**SECTION 61‑4‑1920.** Keg registration requirements; information required; underage transfer statement; identification tag; retention of records; returned kegs; deposit.

 (A) A retail licensee shall not sell a keg of beer without:

 (1) recording the date of sale, the keg identification number, the name, address, and birth date of the purchaser, and the driver’s license or identification card number presented by the purchaser;

 (2) requiring the purchaser to sign a statement attesting to the accuracy of the purchaser’s information, acknowledging that, unless otherwise permitted by law, it is unlawful to transfer beer to a person under the age of twenty‑one, and that, unless otherwise permitted by law, the beer in the keg will not be consumed by a person under the age of twenty‑one; and

 (3) attaching an identification tag to the keg with the name, address, and license number of the retail licensee and the keg identification number. An identification tag must consist of paper, plastic, metal, or durable material that is not easily damaged or destroyed. An identification tag must be attached to the keg at the time of the sale with a nylon tie or cording, wire tie or other metal attachment device, or other durable means of tying or attaching the tag to the keg.

 (B) The Department of Revenue shall prescribe and provide the form to be used that contains the keg identification information and the purchaser’s statement. The Department of Revenue also shall prescribe and provide the keg identification tag and the manner in which the tag must be attached to the keg.

 (C) The retail licensee shall maintain the keg identification form and the purchaser’s statement form for a minimum of ninety days from the date the keg is purchased. These forms must be available during normal business hours for inspection by the Department of Revenue and appropriate law enforcement agencies.

 (D) The retail licensee shall record the date of return of a keg on the proper identification form. After the keg is returned, it shall be the responsibility of the retail licensee to remove the tag. The purchaser shall receive a receipt from the retail licensee that the keg was returned with the tag appropriately affixed. If there is no tag affixed to the keg or if the identification number is not legible, the retail licensee shall indicate this fact on the proper keg identification and purchaser statement form.

 (E) A retail licensee must accept all returned kegs, and upon the licensee’s discretion, may not refund the deposit for a keg that has an altered identification number.

 (F) A retail licensee who violates the provisions of this section is subject to suspension or revocation of his beer or wine license or monetary penalties pursuant to Section 61‑4‑250. A person who violates a provision of this section:

 (1) for a first offense, must be fined not less than two hundred dollars nor more than three hundred dollars; and

 (2) for a second or subsequent offense, must be fined not less than four hundred dollars nor more than five hundred dollars.

HISTORY: 2007 Act No. 103, Section 3.

**SECTION 61‑4‑1930.** Possession of untagged keg; penalty.

 (A) A person may not knowingly possess a keg that does not have the proper tag with all information accurately recorded, unless the person can demonstrate by a preponderance of the evidence that the keg was not correctly tagged by the seller pursuant to the requirements of Section 61‑4‑1920.

 (B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both.

 (C) The provisions of this section do not apply to any manufacturer, shipper, wholesaler, or licensee.

HISTORY: 2007 Act No. 103, Section 3.

**SECTION 61‑4‑1940.** Removal or alteration of tag; penalty.

 (A) A person may not purposefully remove, alter, obliterate, or allow to be removed, altered, or obliterated, a keg tag or other information recorded on the tag.

 (B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both.

 (C) The provisions of this section do not apply to any manufacturer, shipper, wholesaler, licensee, the Department of Revenue, or other appropriate law enforcement agency.

HISTORY: 2007 Act No. 103, Section 3.