

SC Department of Revenue Guidelines for Breweries

Breweries – Authorization to Sell Beer on the Licensed Beer and Wine

Premises of a Brewery – Code Section 61-4-1515(B)

Overview – 2014 Legislative Amendment

Code Section 61-4-1515, as amended by Act 223 of 2014, allows a brewery licensed by the SC Department of Revenue (SC DOR) under Code Section 61-4-1510 to provide at no charge, or sell, beer samples to persons provided the sales or samplings are held in conjunction with a tour of the brewery and the entire brewing process utilized on the premises. The providing of, or sales of, beer samples are subject to other restrictions set forth in Section (A) of Code Section 61-4-1515.

The 2014 amendment to Code Section 61-4-1515, which added Section (B), also allows a brewery licensed by the SC DOR under Code Section 61-4-1510 to sell beer produced on the premises of the brewery to consumers on site for on-premises consumption. This beer must be sold within a designated area of the brewery's licensed beer and wine premises that has been permitted by the rules and regulations of the SC Department of Health and Environmental Control (SC DHEC) for "eating and drinking establishments and other food services establishments." In addition, the Title to Act 223 of 2014 references this designated area as an "eating area." Section B also allows a brewery holding a SC DHEC retail food establishment permit to apply for a retail on-premises consumption permit from the SC DOR for "the sale of beer and wine of a producer that has been purchased from a wholesaler through the three-tier distribution chain."

SC DHEC Regulation – What is a “Retail Food Establishment”

Effective June 27, 2014, SC DHEC Regulation 61-25 defines a “retail food establishment” as:

... any operation that prepares, processes, packages, serves or otherwise provides food for human consumption, either on or off the premises, regardless of whether there is a charge for the food. These establishments include, but are not limited to, restaurants, delicatessens, snack bars, catering operations, ice cream parlors, school cafeterias, independent living food service operations, licensed healthcare facilities, temporary food establishments, grocery stores, retail meat markets, fish/seafood markets, retail ice merchants, shared use operations, mobile food establishments (to include the associated commissary and mobile units).

SC DHEC Regulation – What is Not a “Retail Food Establishment”

SC DHEC Regulation 61-25 states that (effective June 27, 2014) certain establishments are not required to obtain a retail food establishment permit from SC DHEC, including the following establishments¹:

- (1) Taverns that are primarily engaged in the sale of alcoholic beverages and do not engage in the preparation of food.
- (2) Businesses that serve the following non-time/temperature control for safety foods that use the following considered to have low risk food processes, such as, but not limited to:
 - (a) Popcorn, cotton candy, candy apples;
 - (b) Sno-cones or shaved ice;
 - (c) Soft drinks or beverages;
 - (d) Nachos served with heated cheese product;
 - (e) Commercially dehydrated pre-packaged pork skins; and
 - (f) Pre-formed or prepared pretzels that require baking or warming only.
- (3) Businesses that serve the following low risk food processes of time/temperature control for safety foods.
 - (a) Coffee or coffee based beverages served with pasteurized milk or cream, prepared and served either heated or cold.
 - (b) Beverages individually prepared upon consumer’s request from a commercially pre-packaged powdered mix, prepared without the use of a blender, with no additional ingredients, and served in a single service cup;
 - (c) Commercially pre-packaged, pre-cut frozen french fries;
 - (d) Salt boiled peanuts;
 - (e) Boiled or grilled corn; or

¹ The list in the regulation (SC DHEC Regulation 61-25) of establishments that are not required to obtain a retail permit from SC DHEC includes other types of facilities. However, they are not relevant to the discussion and were, therefore, not included in this document.

(f) Snow cones or shaved ice served with pasteurized cold milk or cream from a non-reusable container.

For the purpose of this provision, the low risk food processes of time/temperature control for safety foods shall not include meat, poultry, fish or game animals.

Conclusion:

Based on the above, the brewery may sell within a designated area of its licensed beer and wine premises beer that was produced on the licensed beer and wine premises if all of the following requirements are met:

- (a) The designated area is an area set aside for on-premises sales and consumption of beer and food.
- (b) The designated area must qualify for and obtain a retail food establishment permit issued by SC DHEC. (Since mobile food units do not possess an “area²” within the brewery’s licensed beer and wine premises governed by SC DHEC regulations for “eating and drinking establishments and other food service establishments,” mobile food units do not qualify under the provisions of Code Section 61-4-1515(B).)
- (c) The designated area has food available for sale at all times in which the designated area is open for business. (Based on the Title to Act 223 of 2014 and its reference to the area as an “eating area,” the designated area must serve more than beverages during the times it is open for business.)

If the designated area is an area listed in SC DHEC Regulation 61-25 as not requiring a “retail food establishment” permit, then beer produced at the licensed beer and wine premises of the brewery cannot be sold in the area under the provisions of Code Section 61-4-1515(B) since the area is not governed by SC DHEC regulations for "eating and drinking establishments and other food services establishments." However, the licensed beer and wine premises may still sell, or provide without charge, samples as authorized under Code Section 61-4-1515(A).

In addition, if the brewery obtains a retail food establishment permit from SC DHEC and therefore meets the requirements of Code Section 61-4-1515(B), the brewery may also sell beer produced by the brewery on other premises or beer and wine produced by another producer if it purchases such beer and wine from a wholesaler through the three tier distribution chain set forth in Code Sections 61-4-735 (wine) and 61-4-940 (beer) and obtains an "on-premises consumption permit" from the SC DOR.

² The Second College Edition of The American Heritage Dictionary defines an “area” to mean in part: “1. A section or region, as of land: *a farming area; the New York area*. 2. A surface, esp. part of the earth’s surface: *a landing area, mountainous areas*. 3. A distinct part or section, as of a building, set aside for a specific function: an area of business and an area for exercise. ...”

Other Requirements for Sales for On-Premises Consumption in the Designated Area

The sale of beer produced on the brewery’s licensed beer and wine premises for on-premises consumption in the designated area discussed above must also meet the following other requirements as established in Code Section 61-4-1515(A), except items (1), (3) and (4), and in Code Section 61-4-1515(B) and (C).

Code Section 61-4-1515 reads, in part:

(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:

* * * *

(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;

* * * *

(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.