



## **ABL Rules and Regulations for Catering & Bartending in South Carolina**

### **Definitions**

- A “caterer” or “bartending service provider” is a for-profit business that is hired by an event host to provide food or services (to include bartending services) at a function for a predetermined fee.
- A “special event” is a gathering of people for a limited period of time where beer, wine, or liquor is sold and consumed and for which a special event permit issued by SCDOR is required. Examples include a fair, festival, musical event, concert, show, pageant, sporting event, competition, or fundraiser. See the Frequently Asked Questions section for what constitutes a sale of beer, wine, or liquor.
- An “unlicensed event” is a private gathering of people, not open to the public, for limited period of time where beer, wine, or liquor may be consumed but not sold and therefore does not require a special event permit issued by SCDOR. Examples include a wedding reception, private party, or other social gathering not open to the public.
- A “sale” is any transfer, exchange, or barter, conditional, or otherwise, of tangible personal property for a consideration per S.C. Code § 12-36-100.

### **Authorized Alcohol Services by a Caterer or Bartending Service Provider at an Unlicensed Event**

- A caterer or bartending service provider may provide bartending services but is not permitted to sell alcohol.
- A caterer or bartending service provider may serve as the designated agent or representative of the host or sponsor of an unlicensed event. As the designated agent or representative the caterer or bartending service provider may purchase and deliver to the function location any alcoholic beverages to be consumed on the premises.
- A caterer or bartending service provider may only be reimbursed for the costs of purchasing the alcohol and may not charge the host a markup (which would constitute an illegal sale).
- A caterer or bartending service provider may be compensated by a predetermined service fee but shall not be compensated directly from alcohol sales, admission tickets, donations, or sponsorships at any time from the private function.

See S.C. Code Reg. § 7-403(B)

## **Authorized Alcohol Services by a Caterer or Bartending Service Provider at a Licensed Special Event**

- A caterer or bartending service provider may provide bartending services for the special event permit holder, but is not permitted to sell beer, wine, and liquor.
- The caterer or bartending service provider must be compensated only by a predetermined service fee, and shall not be compensated directly from alcohol sales, admission tickets, donations, or sponsorships at any time from the event.
- If a caterer or bartending service provider is the organizer of a special event, the caterer or bartending service provider may obtain a Special Event Permit to sell and serve beer and wine only if the caterer or bartending service provider accepts payment directly from customers and serves the beer and/or wine only at the event. Only a bona fide nonprofit organization may qualify for and receive a special event permit to sell liquor.

## **Frequently Asked Questions**

### **When is a Special Event permit required?**

An event requires a special event permit when there is a sale of alcohol at the event. In South Carolina a sale of an alcoholic beverage (beer, wine, and liquor) has taken place when any of the following occurs:

- There is a per drink charge
- An admission fee is charged to enter the event and the fee includes the cost of one or more alcoholic beverages for the entrant to consume at the event
- A donation (whether it be with money, goods, or services) is accepted with respect to the event which, because of the donation, provides one or more alcoholic beverages to the donor at the event for no additional charge or fee
- Tickets are sold with respect to the event and the purchase price of the ticket includes the cost of one or more alcoholic beverages for the ticket holder to consume at the event
- Alcoholic beverages are provided as part of a meal for which donations are received or a ticket is purchased
- Sponsorship is accepted to an event where beer, wine or liquor is provided

See SC Revenue Ruling # 12-3; See S.C. Code §§ 12-21-2410 and 61-6-4710

### **Should a caterer or bartending service provider obtain a Special Event Permit?**

A caterer or bartending service provider does not need a Special Event Permit for a special event if the caterer or bartending service provider is neither selling alcohol at the event nor selling tickets or attendance packages for the event. Instead, the party engaged in either of those practices should obtain the special event permit. A caterer or bartending service provider which has not obtained a Special Event Permit can only charge for services rendered, such as

bartending and food service. The charge cannot be calculated from the sales or proceeds of the event. A beer and wine special event vendor that is either selling beer and wine or selling tickets to an event at which beer and wine is served, should obtain a Beer and Wine Special Event Permit.

A nonprofit organization which is both the facilitator of an event and the alcohol vendor at the event should obtain a special event permit explicitly authorizing the sale of liquor at the event.<sup>1</sup> A Beer and Wine Special Event Permit does not allow the special event permit holder to sell or provide liquor at an event. A caterer or bartending service provider is not eligible for a special event liquor permit because it is not a nonprofit entity.

See S.C. Code §§ 61-4-550 and 61-6-2000

**If I am donating a portion of the proceeds from my event to a nonprofit organization, can the nonprofit obtain the special event permit or license for the event?**

No. A nonprofit organization must be hosting, organizing, or facilitating the event, and be the vendor selling beer, wine, and liquor in order to obtain the special event permit.

See S.C. Code §§ 61-6-2000 and 61-2-185

**As a caterer or bartending service provider, can I charge the nonprofit organization a service fee which is a percentage of the proceeds from the event?**

No. A caterer or bartending service provider cannot charge a fee for services rendered which is a percentage of the proceeds of a special event. Moreover, a nonprofit which receives a special event permit for an event it has organized must retain all proceeds from the event. For instance, the nonprofit must be selling the tickets to the event, and retain all profits (after expenses for the event are paid) from ticket sales. A nonprofit should pay a predetermined flat fee to a caterer, bartending service provider, promoter, etc. for its services. The fee cannot be calculated based off the proceeds from the event.

See S.C. Code §§ 61-6-2000 and 61-2-185

**If I have an On-Premise Beer and Wine Permit or Business Liquor by the Drink License, can I host a ticketed event at my permanently licensed location?**

Yes. An On-Premise Beer and Wine Permittee or Business Liquor by the Drink Licensee may hold ticketed events at the licensed location, specifically. Only the licensee may sell the tickets and make sales at the event. The licensee must also comply with the applicable discount pricing laws when beer, wine, or liquor is provided for in the ticket price.

See S.C. Code §§ 61-4-160 & 61-6-4550

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<sup>1</sup> A nonprofit organization can also obtain a Beer and Wine Special Event Permit to sell beer and wine.

**If I am a caterer or a bartending service provider, can I host, sell tickets for, or make sales at an event occurring at a permanently licensed location for which I am not the licensee?**

In order to hold an event at a permanently licensed location, the event holder must lease the licensed venue from the licensee, and must obtain a special event permit to provide alcohol at the event. The special event permittee must purchase the beer, wine or liquor from a wholesaler, and may not under any circumstances use the beer, wine, or liquor stock of the business which normally operates at the licensed location.

See S.C. Code § 61-6-4710

**If I have an On-Premise Beer and Wine Permit or Business Liquor by the Drink License and I lease my licensed location to a third-party event holder which will either host, sell tickets for, or make sales at an event occurring at a permanently licensed location, may I furnish the event or the event holder with beer, wine, or liquor stored at my licensed location?**

No. The third party must obtain a Special Event permit and procure its own beer, wine or liquor for the event from a licensed wholesaler – it may not use any of the beer, wine, or liquor stock of the business which normally operates at the licensed location.. The alcohol served or sold at a licensed event must be purchased from a licensed wholesaler by the Special Event Permittee.

**For an event which requires a Special Event Permit, may a caterer or bartending service provider pick up beer, wine or liquor on behalf of the event host and transport it to the event venue?**

No. A caterer or bartending service provider must not deliver to an event location unless the caterer or bartending service provider is the holder of the Beer and Wine Special Event Permit for that location. If the event is licensed and the license holder is not the caterer or bartending service provider, only a licensed wholesaler may deliver to the event location.

**For an unlicensed event, may a caterer or bartending service provider pick up beer, wine or liquor on behalf of the event host and transport it to the event venue?**

In some instances, a caterer or bartending service provider could serve as the designated agent or representative of the host or sponsor of a private function, which S.C. Code Reg. 7-403(B) authorizes to transport beer, wine, or liquor to an unlicensed event, specifically. However, the caterer or bartending service provider may not serve as the designated agent or representative of the host or sponsor if the caterer or bartending service provider sold the alcoholic beverages to the host or sponsor. While the caterer or bartending service provider may purchase the alcoholic beverages on behalf of the host or sponsor, it may only be reimbursed for its costs and may not charge the host a markup. Charging a markup on the retail purchase price is the unlicensed sale of alcohol which is strictly prohibited by the ABC Act and subjects the seller to criminal penalties. It is also illegal for a person to purchase liquor from an unlicensed retailer and subjects the purchaser to criminal penalties.

See S.C. Code §§ 61-4-560, 61-6-4010, and 61-6-4050

**Can a business sell beer, wine, or liquor to the host of an unlicensed private event and then deliver it to the host or the private event venue?**

No. Delivery of beer, wine, or liquor from a retail location is generally illegal in South Carolina. S.C. Code Reg. 7-403(B) provides a narrow exception which only allows for delivery to private gatherings. Per that exception, a caterer or bartending service provider may only deliver beer, wine, or liquor which it has not sold to the host of a private gathering, with the host having already purchased the beer, wine, or liquor from another vendor.<sup>2</sup> The caterer or bartending service provider cannot charge a fee for delivery. A licensed retailer must never deliver its product to the customer.

**Does a permanent beer and wine permit or liquor by the drink license authorize a caterer or bartending service provider to sell beer, wine, or liquor at an event or private gathering location other than the licensed business?**

No. Permanent retail licenses authorize sales at the specific, defined business location only. A restaurant that also caters events cannot utilize its permanent license to provide alcoholic beverages at other locations. A licensed business must obtain a Beer and Wine Special Event permit to sell beer or wine at any location other than its licensed premises.

**Can a licensed business (such as a restaurant) serve beer or wine - which it has already sold - at a location other than its licensed premises?**

No, not if the business already sold the beer or wine to the customer. Once a licensed business makes a sale of beer or wine to a customer, it may only serve the beer or wine to the customer on the business's licensed premises.<sup>3</sup>

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<sup>2</sup> The location identified by a beer, wine, or liquor retail business (such as a restaurant) on its application for licensure is the *only* location where the actual consumer can lawfully receive beer, wine, or liquor from the same retail business. S.C. Code Reg. 7-200 clarifies that delivery of beer, wine, or liquor to the consumer at any location other than the premises identified on the application is not allowed. See *Heyward v. South Carolina Tax Comm'n*, 240 S.C. 347, 355, 126 S.E.2d 15, 19-20 (1962). The delivery exception provided by S.C. Code Reg. 7-403(B) does not allow a licensed beer, wine, or liquor retailer to deliver beer, wine, or liquor it has sold to a customer. Rather, this exception is meant only to allow a caterer or bartending service provider of a private gathering to transport beer, wine, or liquor – which the host has purchased from a *separate licensed retailer* – to the location where the gathering is taking place, but does not allow for the unlawful delivery of beer, wine, or liquor by licensed retailers. The caterer or bartending service provider delivering the beer, wine, or liquor to a private gathering cannot have been the merchant which sold the beer, wine, or liquor.

<sup>3</sup> A licensed retail business cannot lawfully serve beer, wine, or liquor at a private gathering if the business also sold the beverages to the host. Section 61-2-90 requires an applicant for a license to sell beer, wine, or liquor to include on the application “the exact location where the business is proposed to be operated.” Moreover, S.C. Code Reg. § 7-200.1(B) dictates that all applicants must describe the specific “building[s], floors, rooms, patios, and recreation areas” where “the licensee shall store, sell, and/or serve liquor, beer, or wine” That specified location is the sole authorized operating location of the licensed business. Once a retail business has made a sale, thereby utilizing its license, it may not serve alcohol on any premises other than the premises specified on its license from the Department of Revenue. A retail business may not, then, make an off-premise sale to a customer at its business location and then serve beverages it sold to the customer at any location other than the licensed premises of that business at any future time.

**Where may a licensed business (such as a restaurant) sell and then serve beer and wine?**

A licensed business may only sell and serve the same beer or wine on its licensed premises.<sup>4</sup>

**From whom does a Special Event Permit holder purchase the beer, wine, or liquor that it intends to resell?**

A Special Event Permit holder must only purchase beer, wine, or liquor for the event from a licensed South Carolina wholesaler.

**If a Beer and Wine Special Event Permit is issued for an event, is liquor allowed on the same premises?**

No. You must obtain a Liquor Special Event Permit that authorizes the sale of liquor. Both the Beer and Wine Special Event Permit and the Liquor Special Event Permit must be held by the same individual or entity.

**If the caterer or bartending service provider picks up the beer, wine or liquor from a retail location on behalf of the host, can they take the product to a warehouse or their licensed retail location?**

No. The caterer or bartending service provider must take the product from the retailer and deliver it directly to the host of the event or the venue where the event will take place.

See S.C. Code Reg. § 7-403(B)

**Can a caterer or bartending service provider premix cocktails?**

Yes, as long as the premixing is done at the licensed event location or private gathering at which the caterer or bartending service provider is providing bartending services. Premixed cocktails must only be served by the drink (no bottle service). The caterer or bartending service provider may not upcharge for the liquor but may charge for the mixers.

**Can the wholesaler deliver the product early?**

Yes. Up to three calendar days prior to the event, the alcohol may be picked up by the special event beer and wine vendor or nonprofit liquor event holder from the wholesaler's warehouse, upon presentation of the special event license, or the alcohol may be delivered to the event premises by the wholesaler, so long as the permittee is in control of the event premises at the time of delivery and will remain in control until the conclusion of the event. The permittee must

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provide the special event permit to the wholesaler. A caterer or bartending service provider cannot pick up the alcohol on behalf of the license holder.

**When is the caterer or bartending service provider required to obtain the beer and wine special event permit?**

A caterer or bartending service provider must obtain a Beer and Wine Special Event Permit if the caterer or bartending service provider either is compensated in any manner that is connected to the sale of any alcoholic beverages or has been contracted to obtain at wholesale and sell at retail beer and wine at the event.

**What should be done with left over beer, wine, or liquor from an event where the caterer or bartending service provider served but did not sell the alcohol?**

Any unused beer, wine, or liquor belongs to the event host and should go back with the event host to be kept where it may lawfully be stored.