

STATE: **SOUTH DAKOTA**  
 General Reference: South Dakota Codified Laws

Basis for a DWI Charge:

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| Standard DWI Offense:<br>Illegal Per Se Law (BAC/BrAC): | Under the influence of an alcoholic beverage §32-23-1(2)<br>$\geq .08$ <sup>1090</sup> §32-23-1(1)<br><u>Persons Under 21 Years Old: <math>\geq .02</math> or Any Evidence of Marijuana or a Controlled Drug or Substance in the Body</u> §32-23-21   |
| Presumption (BAC):                                      | $< .05$ BAC – Presumed not intoxicated<br>$> .05$ BAC - $< .08$ BAC – No presumption but such fact may be considered with other competent evidence in determining guilt or innocence.<br>$\geq .08$ §32-23-7 Presumed intoxicated. This presumption also applies to vehicle homicide and vehicle battery offenses.<br>$\geq .17$ BAC – Any driving permit issued shall be conditioned on the person's total abstinence from the use of alcohol. {This stipulation also applies to any repeat offenders with BAC of .08 and above (within 10 years.)} §32-23-9 |
| Types of Drugs/Drugs and Alcohol:                       | Under the influence of (1) Any Substance, (2) Any Controlled Drug, (3) Marijuana or (4) a Combination of These Substances and an Alcoholic Beverage §32-23-1(3) and (4)   |

Chemical Breath Tests for Alcohol Concentration:

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| Preliminary Breath Test Law:                               | Yes §32-23-1.2  |
| Implied Consent Law:                                       | Yes §32-23-10   |
| Arrest Required (Yes/No):                                  | Yes §32-23-10   |
| Implied Consent Law Applies to Drugs (Yes/No):             | Yes §32-23-10   |
| Refusal to Submit to Chemical Test Admitted into Evidence: | Yes §§19-13-28.1 and 32-23-1.1 <sup>1091</sup>  |
| Other Information:   | A chemical test is required for persons who have been arrested for a third or subsequent DWI offense (alcohol or drug-related) that constitutes a felony. "Force" may be used to obtain a blood sample. §32-23-10, <i>State v. Heinrich</i> , 449 N.W.2d 25 (S.D. 1989), <i>State v. Lanier</i> , 452 N.W.2d 144 (S.D. 1990) and <i>State v. Hermann</i> , 652 N.W.2d 725 (S.D. 2002) |

Chemical Tests of Other Substances for Alcohol Concentration That Are Authorized Under the Implied Consent Law:

<sup>1090</sup> Based on "percent by weight" of alcohol in the blood. However, §32-23-7 provides that "[p]ercent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath."

<sup>1091</sup> This statute was held constitutional in *South Dakota v. Neville*, 459 U.S. 553 (1981) and *State v. Hoenscheid*, 374 N.W.2d 128 (S.D. 1985).

Blood: **Yes** §32-23-10  
 Urine: **No** §32-23-10  
 Other: "Other bodily substances" §32-23-10

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): **No**  
 Anti-Plea-Bargaining Statute (Yes/No): **No** But an illegal per se charge may be reduced or dismissed only when written reasons for such have been filed with the court. §32-23-1.3

Pre-Sentencing Investigation Law (PSI) (Yes/No): **Yes Limited** For first offenders where the BAC is  $\geq .17$ , the court must require them to undergo an evaluation to determine if they are addicted to alcohol. §32-23-2.1 The courts have general authority to order discretionary pre-sentence investigation reports. §23A-27-5

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:  
 Criminal Sanctions (Fine/Jail): **None**  
 Administrative Licensing Action (Susp/Rev): **None**  
 Other: **None**

Refusal to Take Implied Consent Chemical Test:  
 Criminal Sanction (Fine/Jail): **None**  
 Administrative Licensing Action (Susp/Rev): **Revocation 1 year**<sup>1092</sup> A restricted hardship license is available. §§32-23-11 and 32-23-18

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:  
 Imprisonment:  
 Term (Day, Month, Years), **First offense** – Class 1 Misdemeanor – Not more than **1 year** (county jail); **second offense** (within five years - Class 1 Misdemeanor) – Not more than **1 year** (county jail); **third offense** - Class 6 felony (within 5 years) – Not more than **2 years** (State penitentiary); **fourth and subsequent offense** (within five years -Class 5 felony) – Not more than **5 years**<sup>1093</sup> (State penitentiary). §§22-6-1, 22-6-2, 32-23-2, 32-23-3, 32-23-4, 32-23-4.1 and 32-23-4.6. **Vehicle Battery**<sup>1094</sup> (Class 4 felony) – Not more than **10 years** (State penitentiary) §§22-6-1 and 22-16-42

<sup>1092</sup> Under §32-23-11.1, a driver's license is not subject to revocation for refusal to submit to a chemical test under the implied consent law if either (1) the driver pleads guilty to a DWI offense, (2) the DWI charge is dismissed prior to a hearing on the refusal and the person is not convicted of a reckless (§32-24-1) or careless (§32-24-8) driving offense, or (3) a hearing is not requested prior to the revocation being ordered.

<sup>1093</sup> A person convicted of a Class 5 or 6 felony may be sentenced to serve not more than 1 year in the county jail in lieu of the indicated incarceration period in the State penitentiary. §22-6-1.1

<sup>1094</sup> Vehicle Battery: Causing serious bodily injury (including to an unborn child) while driving or operating a motor vehicle in a negligent manner while under the influence of an alcoholic beverage, any controlled drug (substance),

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| Mandatory Minimum Term:                                    | <b>Limited</b> <sup>1095</sup>  |
| Fine:  |   |
| Amount (\$ Range):   | <u>First offense</u> – Not more than <b>\$1,000</b> ; <u>second offense</u> (within 5 years) – Not more than <b>\$1,000</b> ; <u>third offense</u> (within 5 years) – Not more than <b>\$2,000</b> ; <u>fourth and subsequent offense</u> (within 5 years) – Not more than <b>\$5,000</b> . Vehicle Battery – Not more than <b>\$10,000</b> .   |
| Mandatory Min. Fine (\$):                                  | <b>None</b>   |
| Other Penalties:   |   |
| Community Service:   | <b>Yes</b> Community service may be condition of probation. §23A-27-18.3  |
| Restitution<br>(e.g., Victim's Fund)                       | <b>Yes</b> §§22-6-1, 22-6-2 and 23A-28-1 et seq. Restitution is to be paid by the defendants to the victims.  |
| Other:   | <b>Costs of Confinement:</b> If they are financially able, offenders may be required to pay for the costs of their confinement in a county jail. §24-11-45  |
| Administrative Licensing Actions:                          |   |
| <u>Pre-DWI Conviction</u> Licensing Action:                |   |
| Administrative Per Se Law:                                 | <b>None</b>   |
| <u>Post DWI Conviction</u> Licensing Action:               |   |
| Type of Licensing Action<br>(Susp/Rev):                    | <u>First offense</u> – <b>Revocation</b> ; <u>second and subsequent offense</u> – <b>Revocation</b> §§32-23-2, 32-23-3, 32-23-4 and 32-23-4.6 Vehicle Battery (Class 4 felony) – <b>Revocation</b> §22-16-42  |
| Term of License Withdrawal<br>(Days, Months, Years, etc.): | <u>First offense</u> – Not less than <b>30 days to 1 year</b> ; <u>second offense</u> – Not less than <b>1 year</b> ; <u>third offense</u> – For such a period as determined "by the court but in no event less than <b>one year</b> from the date sentence is imposed or one year from the date of discharge from incarceration, whichever is later"; <u>fourth offense</u> – For such a period as determined "by the court but in no event less than <b>two years</b> from the date sentence is imposed or two years from the date of discharge |

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marijuana or a combination thereof.

**Persons Less Than 21 Years Old:** A person under 21 years old who operates a motor vehicle with a BAC  $\geq .02$  or with any evidence of marijuana or any controlled drug or substance in the body commits a Class 2 Misdemeanor. The criminal sanctions for this offense are a jail term of not more than **30 days** and/or a fine of not more than **\$200**. In addition, persons under 21 are subject to the following licensing action: first offense – suspension for **6 months**; and, second or subsequent offense – suspension for **1 year**. These licensing actions are not mandatory. Restricted driving privileges are available for employment, education, or court-ordered counseling programs. §2-6-2 and 32-23-21

**Subsequent Offenses:** A subsequent offense is generally one committed within five years of a prior offense. "However, any period of time during which the defendant was incarcerated for a previous violation may not be included when calculating if the time period provided ... has elapsed." §32-23-4.1

<sup>1095</sup> Under §32-23-3, a second offender who was operating a motor vehicle without a license at the time of the offense is subject to a mandatory 3 days of imprisonment. Under §32-23-4, a third offender who was operating a motor vehicle without a license at the time of the offense is subject to a mandatory 10 days of imprisonment. Under §32-23-4.6, a fourth or subsequent offender who was operating a motor vehicle without a license at the time of the offense is subject to a mandatory 20 days of imprisonment.

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| Mandatory Minimum Term of Withdrawal:                       | from incarceration, whichever is later." <u>Fifth and subsequent offenses</u> : <b>Revocation</b> for at least <b>three years</b> . §22-16-42.  |
| Other:  | <u>First offense</u> – <b>None</b> <sup>1096</sup> ; <u>second offense</u> – <b>1 year</b> (not mandatory in all situations) <sup>1097</sup> ; <u>third offense</u> – <b>not less than 1 year</b> ; <u>fourth and subsequent offense</u> – <b>2 years minimum</b> , from the date the criminal sentence is imposed or two years from the date of discharge from incarceration, whichever is later. § §32-12-52.1, 32-23-1, 32-23-4.6. |
| Rehabilitation:<br>Alcohol Education:<br>Alcohol Treatment: | Vehicle Battery (Class 4 felony).<br><br>Upon successful completion of an alcohol or drug treatment program a second-time offender may be granted a restricted license. §32-3-3   |

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "disqualified" from operating a CMV for not less than 1 mandatory year (not less than three years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC  $\geq .04$ ; (2) is under the influence of alcohol or a controlled drug or substance; or (3) refuses to submit to a chemical test for alcohol concentration. (Note: The "disqualification" provision, §32-12A-36(5), only applies to a refusal to submit to a chemical test for alcohol concentration; however, the CMV implied consent provision, §32-12A-46, applies to the testing for both alcohol concentrations and drugs.) For either (1) a second violation or (2) a combination of two violations of any of the above-listed items, the "disqualification" is for life (10 years mand). For either (1) a subsequent violation or (2) a combination of three or more violations of any of the above-listed items, the "disqualification" is permanent for life. Operating a CMV with a BAC "between .04 to .10 or more" is a Class 2 Misdemeanor; the sanctions for the offense are (1) a jail term of not more than 30 days, (2) a fine of not more than \$200 and (3) the possible payment of restitution. In addition, a CMV operator who has any "detectable" amount of alcohol in his/her system must be placed "out-of-service" for 24 hours. Note: Persons who have had their non-CMV driving privileges suspended or revoked may obtain a court order granting them CMV driving privileges for employment purposes. §§22-6-2, 32-12A-1(5), (9) and (20), 32-12A-36, 32-12A-37, 32-12A-39, 32-12A-43, 32-12A-44, 32-12A-46 and 32-12A-51.

The State has also adopted by reference 49 CFR Parts 383 and 384. §32-12A-58. These parts contain the following disqualification and out-of-service requirements for CMV operators: Persons are "disqualified" from operating a CMV for 1 year (mand) (3 years if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC  $\geq .04$ , (2) are under the influence of alcohol or a controlled drug or substance or (3) refuse to submit to a chemical test for alcohol concentration. For a second violation or a combination of two violations of any of the above-listed items, the "disqualification" is for life. However, if they successfully complete a rehabilitation program, the disqualification may be reduced to a mandatory period of 10 years. For a third or subsequent violation or a combination of three or more violations of any of the above-listed

<sup>1096</sup> A restricted hardship license is available for employment purposes, education, and for attending court-ordered counseling programs. §32-23-2

<sup>1097</sup> Upon the successful completion of an alcohol treatment program and proof of financial responsibility, the court may grant any DUI offender driving privileges for employment purposes, attendance at school or counseling programs, and may place such conditions on these privileges as it sees fit. §32-23-3

items, the "disqualification" is for life (mand). 49 CFR 383.5 and 383.51. The State has also adopted the out-of-service provisions of 49 CFR Part 392. §49-28A-3 Under 49 CFR 392.5, a person who operates a CMV while having "any measured alcohol concentration" must be placed out-of-service for 24 hours.

Sanctions Following a Conviction for a DWI Offense:

(continued)

Vehicle Impoundment/Confiscation:

Authorized by Specific Statutory Authority: **None**

Terms Upon Which Vehicle

Will Be Released:

Other:

For **any** offense where a driver's license can be revoked or suspended, the registration of all vehicles owned by the driver shall also be suspended, §32-35-44, unless the owner provides and maintains proof of financial responsibility or the vehicle is a government vehicle. §§32-35-45 and 32-45-46.

Miscellaneous Sanctions

Not Included Elsewhere:

First adjudication of 'delinquency' for any violation while in a motor vehicle –**Revocation for 90 days**; second or subsequent adjudication of 'delinquency' - **Revocation for one year** or until the person's 17<sup>th</sup> birthday, whichever is longer {but with a restricted license available for employment, school or counseling if proof of financial responsibility is shown.} 32-12-52.3

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

**Yes** Vehicular Homicide is a Class 3 felony where death (including the death of an unborn child) is caused by driving or operating a motor vehicle in a negligent manner while under the influence of an alcoholic beverage, any controlled drug (substance), marijuana or a combination thereof. §22-16-41

Sanctions:

Criminal Sanction:

Imprisonment (Term):

Mandatory Minimum Term:

Not more than **15 years** §22-6-1

**None**

Fine (\$ Range):

Mandatory Minimum Fine:

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

Length of Term of

Licensing Withdrawal:

**Revocation** §22-16-41

Not less than **10 years**, but "such period of time as is determined by the court." §22-16-41

Mandatory Action--Minimum

Length of License

Withdrawal:

**10 years** {However, a restricted hardship license may be available for education, employment, or counseling in some circumstances.} §22-16-41

**Vehicle Battery** – Class 4 felony – Driving under the influence and negligently causing serious bodily injury of another person {**Revocation** – not less than 3 years }. §22-18-36

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense\*: See Footnote No. <sup>1098</sup>.

Sanction:

Criminal:

Imprisonment (Term):

For driving while revoked, Class 1 Misdemeanor – Not more than **1 year**; For driving while suspended, Class 2 Misdemeanor – Not more than **30 days**. §§22-6-2, 32-12-65 and 32-12A-8.

Mandatory Minimum Term of Imprisonment:

A second or subsequent DWI offender who was operating a motor vehicle without a license at the time of the drunk-driving offense is subject to certain mandatory imprisonment sanctions. See Footnote No. <sup>1099</sup>

Fine (\$ Range):

For driving while revoked, Class 1 Misdemeanor – Not more than **\$1,000**<sup>1100</sup>  
For driving while suspended, Class 2 Misdemeanor – Not more than **\$200**

Mandatory Minimum Fine:

**None**

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):

**Suspension** – if the conviction was based on driving while suspended; **Revocation** – if the conviction was based on driving while revoked. §32-12-66.

Length of Term of License Withdrawal Action:

If the conviction was based on driving while suspended, an additional suspension period equal to the original period of

<sup>1098</sup> It is a Class 1 misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 1 year and/or a fine of not more than \$1,000. In addition, for violating an out-of-service order, a person is subject to a civil penalty of from \$1,000 to \$2,500. In the case of driving while disqualified, an offender is subject to an additional CDL disqualification for 1 year. However, for violating a CDL out-of-service order, the disqualification as follows: first violation – 90 days (mand); second violation within 10 years – 1 year (mand); and, third or subsequent violation within 10 years – 3 years (mand). If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 16 persons, the CDL disqualification periods are as follows: first violation-180 days (mand); second violation within 10 years – 3 years (mand); and, third or subsequent violation-5 years (mand). §§22-6-2, 32-12-66, 32-12A-8, 32-12A-52, 32-12A-53, 32-12A-54 and 32-12A-56. The State has adopted by reference 49 CFR Part 383. §32-12-124. This CFR part provides that a person operating a CMV while under an out-of-service order is subject to the following disqualification periods: first violation – 90 days (mand) to 1 year; second violation within 10 years – 1 year (mand) to 5 years; and, third or subsequent violation within 10 years – 3 years (mand) to 5 years. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 15 persons, the CDL disqualification periods are as follows: first violation-180 days (mand) to 2 years; and, subsequent violation within 10 years – 3 years (mand) to 5 years. 49 CFR 383.51.

<sup>1099</sup> Under §22-6-2, for either a Class 1 or 2 Misdemeanor conviction, the court may order the defendant to pay restitution to a victim of the offense pursuant to §23A-28-1 et seq.

<sup>1100</sup> **Costs of Confinement:** If they are financially able, offenders may be required to pay for the costs of their confinement in a county jail. §24-11-45.

\*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

suspension. If the conviction was based on driving while revoked the original revocation period extended for **1 year**. §32-12-66

Mandatory Term of License

Withdrawal Action:

If the conviction was based on driving while suspended, an additional suspension period equal to the original period of suspension.<sup>1101</sup> §32-12-66

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

**No**

Grounds for Being Declared an Habitual Offender:

Term of License Rev While

Under Habitual Offender Status:

Type of Criminal Offense if

Convicted on Charges of

Driving While on Habitual

Offender Status

Sanctions Following a Conviction of Driving While on Habitual Offender Status:

Imprisonment (Term):

Mandatory Minimum Term of

Imprisonment:

Fine (\$ Range):

Mandatory Minimum Fine (\$):

Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic

Accidents:

State Has Such a Law (Yes/No):

**Yes** §34-25-22.1

BAC Chemical Test Is Given to the the Following Persons:

Driver:

**Yes**

Vehicle Passengers:

**Yes**

Pedestrian:

**Yes**

Laws Establishing the Minimum Ages

Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

**21** §§35-4-78, 35-9-1 and 35-9-2

Minimum Age (Years) Possession:

**21**<sup>1102</sup> §§35-4-78, 35-9-1 and 35-9-2. There is an employment exception. §35-4-79.

Minimum Age (Years) Consumption:

**21** §§35-4-78, 35-9-1 and 35-9-2

<sup>1101</sup> Mandatory licensing withdrawal actions apply only to the offense of driving while suspended. There is no additional mandatory licensing action (i.e., 1-year additional revocation period) for driving while revoked.

<sup>1102</sup> There is an exception for either the possession or the consumption of alcoholic beverages by persons under 21 years of age for religious ceremonies or medical purposes.

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No** Liability is prohibited via statutory law. §§35-4-78 and 35-11-1.

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

Case law providing for dram shop liability has been abrogated by statutory law. §35-11-1.

Dram Shop Actions-Social Hosts:  
Other:

**No** Liability is prohibited via statutory law. §35-11-2.  
**None**

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

**Class 1 Misdemeanor** §§22-6-2 and 35-4-78

Term of Imprisonment:

Not more than **1 year** (county jail)

Fine (\$ Range):

Not more than **\$1,000**

Note: If they are financially able, offenders may be required to pay for the costs of their confinement in a county jail. §24-11-45

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes Revocation/Suspension** §35-2-10

Length of Term of License Withdrawal:

**Revocation – 1 year or Suspension – not more than 60 days**<sup>1103</sup> §§35-2-20 and 35-2-21

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

**Class 1 Misdemeanor** Licensees who sell alcoholic beverages to persons under 21 years old §§22-6-2 and 35-4-78<sup>1104and1105</sup>

<sup>1103</sup> In lieu of either a revocation or a suspension, the licensee may be allowed to pay a "monetary offer in compromise." This "compromise" cannot exceed \$75,000. §35-2-21

<sup>1104</sup> I. Under §35-9-1, it is a Class 1 misdemeanor for a person to sell or give alcoholic beverages to a person under 18 years old except in situations where alcoholic beverages are sold or served to a minor in the "immediate presence" of a parent or guardian. Under §35-9-1.1, it is a Class 2 misdemeanor for a person to sell or serve alcoholic beverages to a person over 18 but under 21 years old unless it is done in the "immediate presence" of a parent or guardian. For a violation of §§35-9-1.1 and 35-9-2, a person is also subject to the following action: For a first violation, driving privileges must be revoked for 30 days to 1 year (restricted driving privileges may be granted for reasons of employment or education). For a second or subsequent violation, driving privileges must be revoked for 60 days (mand) to 1 year. §35-9-7

II. It is a Class 2 misdemeanor for an "on-sale" licensee to allow a person who is under 21 years old to consume alcoholic beverages on the licensee's premises. §35-4-79

III. The sanctions for a Class 2 misdemeanor are imprisonment of not more than 30 days (county jail) and/or a fine of not



Term of Imprisonment: Not more than **1 year** (county jail)  
 Fine (\$ Range): Not more than **\$1,000**  
 Note: If they are financially able, offenders may be required to pay for the costs of their confinement in a county jail. §24-11-45

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes Revocation/Suspension<sup>1106</sup>** §35-2-10  
 Length of Term License Withdrawal: **Revocation – 1 year or Suspension – not more than 60 days** §§35-2-20 and 35-2-21

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No): **Yes** §35-1-9.1  
 Anti-Consumption Law (Yes/No): **Yes** §35-1-9.1

more than \$200. §22-6-2

<sup>1105</sup> **Administrative Fines:** No criminal liability may be imposed on a person holding a “controlling interest” in a business licensed to sell alcoholic beverages at retail, if an employee of the business violates §35-4-78 and the person having such an interest is not present when the violation occurred. A person is considered to have “controlling interest” with an ownership interest in the business ≥10 percent. Nevertheless, such a person may be assessed an administrative fine as follows: first violation – \$500; second violation (within 2 years) – \$700; and, third violation (within 2 years) – \$1,000. §§35-4-78.1, 35-4-78.2, 35-4-78.3 and 35-4-78.4

<sup>1106</sup> A license cannot be suspended/revoked for an employee’s action if (1) the licensee did not see the violation, (2) the employee has received training in preventing underage drinking, (3) there is written policy requiring the examination of “age-bearing identification” and (4) neither the licensee nor the employee has had a prior violation within 12 months. §35-2-10.1; *License Suspension of Cork ‘n Bottle, Inc.*, 654 N.W.2d 432 (S.D. 2002).