



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

807R0085

SENATE COMMERCE

ENGROSSED NO. **HB 1001** - 2/25/2010

Introduced by: Representatives Turbiville, Carson, Faehn, Kirkeby, Lederman, Rounds, and Sorenson and Senators Tieszen, Maher, Nelson, and Olson (Russell) at the request of the Interim Committee on Alcoholic Beverage Control and Licensing Laws

1 FOR AN ACT ENTITLED, An Act to allow municipalities and counties to issue certain special  
2 alcoholic beverage licenses and to repeal certain special alcoholic beverage licenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any municipality or county may issue:

- 7 (1) A special malt beverage retailers license in conjunction with a special event within  
8 the municipality or county to any civic, charitable, educational, fraternal, or veterans  
9 organization or any licensee licensed pursuant to subdivision 35-4-2(4), (6), or (16)  
10 in addition to any other licenses held by the special events license applicant;
- 11 (2) A special on-sale wine retailers license in conjunction with a special event within the  
12 municipality or county to any civic, charitable, educational, fraternal, or veterans  
13 organization or any licensee licensed pursuant to subdivision 35-4-2(4), (6), or (12)



1 or chapter 35-12 in addition to any other licenses held by the special events license  
2 applicant;

3 (3) A special on-sale license in conjunction with a special event within the municipality  
4 or county to any civic, charitable, educational, fraternal, or veterans organization or  
5 any licensee licensed pursuant to subdivision 35-4-2(4), (6), or (16) in addition to any  
6 other licenses held by the special events license applicant; or

7 (4) A special off-sale package wine dealers license in conjunction with a special event  
8 within the municipality or county to any civic, charitable, educational, fraternal, or  
9 veterans organization or any licensee licensed pursuant to subdivision 35-4-2(3), (5),  
10 (12), (17A), or (19) or chapter 35-12 in addition to any other licenses held by the  
11 special events license applicant. A special off-sale package wine dealers licensee may  
12 only sell wine manufactured by a farm winery that is licensed pursuant to chapter 35-  
13 12.

14 Any license issued pursuant to this section may be issued for a period of time established  
15 by the municipality or county. However, no period of time may exceed fifteen consecutive days.  
16 The local governing body may establish rules to regulate and restrict the operation of the special  
17 license.

18 Section 2. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 Any license issued pursuant to section 1 of this Act shall be issued to the person and the  
21 location specified on the application. Notwithstanding § 35-4-2, the governing body of the  
22 municipality or the board of county commissioners, as appropriate, shall determine the fee for  
23 this license. Each application shall be accompanied by the fee prior to consideration by the  
24 governing body of the municipality or the board of county commissioners. The fee provided for

1 in this section shall be retained by the governing body of the municipality or the board of county  
2 commissioners issuing the license.

3 Section 3. That § 35-4-11.4 be repealed.

4 ~~— 35-4-11.4. Any municipality or county may issue a special malt beverage retailers license  
5 and a special retail on-sale wine retailers license to any civic, charitable, educational, or fraternal  
6 organization in conjunction with a special event within the municipality or within the county.  
7 Educational does not include any elementary, secondary, or higher educational institution in the  
8 public school system of this state. Any license issued pursuant to this section may be issued for  
9 a period of time established by the municipal governing body or board of county commissioners.  
10 However, such period of time may not exceed fifteen consecutive days. If an organization  
11 receiving a license pursuant to this section conducts a street dance in conjunction with the  
12 special event, the organization shall provide qualified security personnel as deemed necessary  
13 by the governing body which issued the license to maintain order during the street dance.~~

14 Section 4. That § 35-4-11.5 be repealed.

15 ~~— 35-4-11.5. Any license issued pursuant to § 35-4-11.4 shall be issued to the organization and  
16 location specified on the application. Notwithstanding subdivisions 35-4-2(12) and (16), the  
17 governing body or the board of county commissioners, as appropriate, shall determine the fee  
18 for this license, which may not exceed fifty dollars per day. Each application shall be  
19 accompanied by the fee prior to consideration by the governing body or board of county  
20 commissioners. Notwithstanding § 35-5-21.1, the fee provided for in this section shall be  
21 retained by the governing body or board of county commissioners issuing the license.~~

22 Section 5. That § 35-4-11.7 be repealed.

23 ~~— 35-4-11.7. Any county with a population of not less than twenty thousand, or more than  
24 twenty-eight thousand, according to the last federal census, or any municipality located therein,~~

1 may issue to any licensee licensed within the county or municipality pursuant to subdivision 35-  
2 4-2(4), (6), or (16), a special events temporary malt beverage license in addition to any other  
3 licenses held by the special events license applicant. Any license issued pursuant to this section  
4 may be issued for a period of time established by the municipal governing body or board of  
5 county commissioners. However, such period may not exceed fifteen consecutive days.

6 Section 6. That § 35-4-11.8 be repealed.

7 ~~— 35-4-11.8. A license issued pursuant to § 35-4-11.7 shall be issued to the person and  
8 location specified on the application. The fee for this license shall be the same as the fee  
9 established in subdivision 35-4-2(16). Each application shall be accompanied by the fee prior  
10 to consideration by the governing body or board of county commissioners. Notwithstanding  
11 § 35-5-21.1, the fee provided for in this section shall be retained by the governing body or board  
12 of county commissioners issuing such license.~~

13 Section 7. That § 35-4-14.2 be repealed.

14 ~~— 35-4-14.2. Any municipality may issue an on-sale license to be operated at a convention hall  
15 established pursuant to chapter 9-52 or 9-53. Such license shall be issued without regard to the  
16 population limitations established pursuant to § 35-4-11. In addition, any municipality with a  
17 population exceeding one hundred thousand or any municipality hosting an annual event  
18 attended by one hundred thousand or more persons may issue an on-sale license to be operated  
19 at a sporting event held at a publicly owned sports arena or facility that seats a minimum of one  
20 thousand persons. Before a license may be issued in a municipality hosting an annual event, the  
21 municipal finance officer shall estimate the previous year's attendance at the event and provide  
22 the estimate to the governing body of the municipality. Any license issued pursuant to this  
23 section shall be issued for a period not to exceed five consecutive days and the license shall  
24 expire at twelve midnight on the fifth day after issuance. No license may be issued, pursuant to~~

1 the provisions of this section, in a municipality which operates a license pursuant to § 35-4-14.1.  
2 No public hearing is required for the issuance of a license pursuant to this section if the  
3 individual applying for the license holds an on-sale alcoholic beverage license in the  
4 municipality or holds an operating agreement for a municipal on-sale alcoholic beverage license.  
5 No person who holds an operating agreement for a municipal license pursuant to § 35-4-14.1  
6 may receive a license pursuant to this section.

7 Section 8. That § 35-4-14.3 be repealed.

8 ~~35-4-14.3. Notwithstanding the provisions of §§ 35-4-11 and 35-4-19, any municipality may~~  
9 ~~issue a special events temporary on-sale license in addition to any other licenses held by the~~  
10 ~~special events license applicant, if the licensee is recognized as an exempt organization under~~  
11 ~~section 501(c)(19) of the United States Internal Revenue Code, as amended and in effect on~~  
12 ~~January 1, 2009, and the licensee holds a license within the municipality pursuant to subdivision~~  
13 ~~35-4-2(16). No public hearing is required for the issuance of a license pursuant to this section~~  
14 ~~if the individual applying for the license holds an alcoholic beverage license in the municipality~~  
15 ~~or holds an operating agreement for a municipal alcoholic beverage license. Any license issued~~  
16 ~~pursuant to this section may be issued for a period of time, not to exceed two consecutive days,~~  
17 ~~established by the municipal governing body.~~

18 Section 9. That § 35-4-14.4 be repealed.

19 ~~35-4-14.4. Any license issued pursuant to § 35-4-14.3 shall be issued to the person and~~  
20 ~~location specified on the application and the licensee shall comply with the provisions of § 35-4-~~  
21 ~~60. However, if such license is issued in a municipality which holds a license pursuant to~~  
22 ~~subdivision 35-4-2(5), the licensee may only dispense alcoholic beverages obtained through the~~  
23 ~~municipal off-sale establishment. Notwithstanding § 35-5-21.1, the fee provided for in this~~  
24 ~~section shall be retained by the municipal governing body issuing such license. Each application~~

1 shall be accompanied by the fee prior to consideration by the municipal governing body.

2 Section 10. That § 35-4-104 be repealed.

3 ~~—35-4-104. Any municipality or county may issue a special malt beverage retailers license and~~  
4 ~~a special retail on-sale wine retailers license to a community playhouse operating as a nonprofit~~  
5 ~~organization for use in conjunction with a theatrical production. Any license issued pursuant to~~  
6 ~~this section may be issued for a period of time established by the municipal governing board or~~  
7 ~~board of county commissioners up to a period of one year. However, such use may not exceed~~  
8 ~~sixty days per year. The selling, serving, or dispensing of malt beverages and wine may not~~  
9 ~~occur more than one hour before the commencement of a performance or at any time after the~~  
10 ~~performance is concluded.~~

11 Section 11. That § 35-4-105 be repealed.

12 ~~—35-4-105. A license issued pursuant to § 35-4-104 shall be issued to the organization and~~  
13 ~~location specified on the application. Notwithstanding subdivisions 35-4-2(12) and (16), the fee~~  
14 ~~for each license is one hundred dollars. Each application shall be accompanied by the fee prior~~  
15 ~~to consideration by the governing body or board of county commissioners. Notwithstanding~~  
16 ~~§ 35-5-21.1, the fee provided for in this section shall be retained by the governing body or board~~  
17 ~~of county commissioners issuing such license.~~

18 Section 12. That § 35-4-108 be repealed.

19 ~~—35-4-108. Any municipality or county may issue a special off-sale package wine dealers~~  
20 ~~license to any fair board or any public, civic, charitable, educational, or fraternal organization~~  
21 ~~in conjunction with a special event within the municipality or within the county. Educational~~  
22 ~~does not include any elementary, secondary, or higher educational institution in the public~~  
23 ~~school system of this state. No special off-sale package wine dealers license may be issued~~  
24 ~~pursuant to this section, unless the licensee only sells wine manufactured by a farm winery that~~

1 is licensed pursuant to chapter 35-12. Any license issued pursuant to this section may be issued  
2 for a period of time established by the municipal governing body or board of county  
3 commissioners. However, the period of time may not exceed fifteen consecutive days.

4 Section 13. That § 35-4-109 be repealed.

5 ~~35-4-109. Any license issued pursuant to § 35-4-108 shall be issued to the board or~~  
6 ~~organization and the location specified on the application. Notwithstanding subdivision 35-4-~~  
7 ~~2(19), the governing body or the board of county commissioners, as appropriate, shall determine~~  
8 ~~the fee for this license, which may not exceed fifty dollars per day. Each application shall be~~  
9 ~~accompanied by the fee prior to consideration by the governing body or board of county~~  
10 ~~commissioners. Notwithstanding § 35-5-21.1, the fee provided for in this section shall be~~  
11 ~~retained by the governing body or board of county commissioners issuing the license.~~

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

495R0080

SENATE COMMERCE

ENGROSSED NO. **HB 1002** - 2/25/2010

Introduced by: Representatives Turbiville and Lederman and Senators Nelson, Maher, Olson (Russell), and Tieszen at the request of the Interim Committee on Alcoholic Beverage Control and Licensing Laws

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the days and hours  
2 that alcoholic beverages may be sold on a licensed premise and who may sell, serve, or  
3 dispense alcoholic beverages on a licensed premise and to revise certain provisions  
4 concerning the power of municipalities and counties to regulate the sale and use of alcoholic  
5 beverages.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

7 Section 1. That § 35-4-81 be amended to read as follows:

8 35-4-81. No on-sale or off-sale licensee, licensed under subdivisions 35-4-2(3), (4), (5), (6),  
9 (9), (11), ~~and~~ (13), or (18), may sell, serve, or allow to be consumed on the premises covered  
10 by the license, alcoholic beverages between the hours of two a.m. and seven a.m. or on Sunday  
11 after two a.m., on Memorial Day after two a.m., or at any time on Christmas Day. However, any  
12 municipality or county may, by ordinance, allow the sale, service, and consumption of alcoholic  
13 beverages on Sundays and Memorial Day. A violation of this section is a Class 2 misdemeanor.

14 Section 2. That § 35-4-81.1 be repealed.



1 ~~35-4-81.1. No off-sale licensee, licensed under subdivisions 35-4-2(3), (5), and (19), may~~  
2 ~~sell, or allow to be sold, alcoholic beverages between the hours of twelve midnight and seven~~  
3 ~~a.m. of the following day, or sell, or allow to be sold, distilled spirits or wine on Memorial Day~~  
4 ~~or Christmas Day. In addition, no off-sale licensee may sell, or allow to be sold, alcoholic~~  
5 ~~beverages on Sunday unless the municipality or the county by ordinance allows such sales on~~  
6 ~~Sunday.~~

7 Section 3. That § 35-4-81.2 be amended to read as follows:

8 35-4-81.2. No licensee licensed under subdivisions 35-4-2(12), (16) ~~and~~, (17), (17A), and  
9 (19) may sell, serve, or allow to be consumed on the premises covered by the license, any ~~malt~~  
10 ~~beverage~~ alcoholic beverages between the hours of two a.m. and seven a.m. ~~No licensee licensed~~  
11 ~~under subdivision 35-4-2(12) may sell, serve, or allow to be consumed on the premises covered~~  
12 ~~by the license, any wine between the hours of two a.m. and seven a.m.~~ A violation of this  
13 section is a Class 2 misdemeanor.

14 Section 4. That § 35-4-79 be amended to read as follows:

15 35-4-79. No on-sale licensee may permit any person less than twenty-one years old to loiter  
16 on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on such  
17 premises. However, an on-sale licensee licensed pursuant to subdivision 35-4-2(4), (6), (11),  
18 (12), (13), or (16) may permit persons eighteen years old or older to sell and serve or dispense  
19 alcoholic beverages if ~~not~~ less than fifty percent of the gross business transacted by that  
20 establishment is from the sale of ~~food~~ alcoholic beverages and the licensee or an employee that  
21 is at least twenty-one years of age is on the premises when the alcoholic beverage is sold or  
22 dispensed. For the purposes of this section, the term, "to sell and serve alcoholic beverages,"  
23 means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers  
24 as a normal adjunct of waiting tables. The term does not include tending bar or drawing or

1 mixing alcoholic beverages.

2 A violation of this section is a Class 2 misdemeanor.

3 Section 5. That § 35-4-79.1 be amended to read as follows:

4 35-4-79.1. No off-sale licensee licensed under subdivision 35-4-2(3), (5), (17), or (17A) may  
5 permit any person less than twenty-one years old to sell, serve, or dispense alcoholic beverages  
6 on the licensed premises unless such sales of alcoholic beverages constitutes less than fifty  
7 percent of the gross business transacted by that establishment. If alcoholic beverage sales  
8 constitute less than fifty percent of the gross business transacted by the establishment, the  
9 licensee may permit persons eighteen years old or older to sell, serve, or dispense alcoholic  
10 beverages.

11 Section 6. That § 35-4-79.3 be repealed.

12 ~~35-4-79.3. No off-sale licensee licensed under subdivision 35-4-2(3) or (5) may permit any~~  
13 ~~person less than twenty-one years old to sell, serve, or dispense alcoholic beverages on the~~  
14 ~~licensed premises.~~

15 Section 7. That § 35-4-2.8 be amended to read as follows:

16 35-4-2.8. An on-sale licensee, licensed under subdivision 35-4-2(4) or (6), may also be  
17 licensed under subdivision 35-4-2(12) or (16), or both. A licensee holding two or more licenses  
18 pursuant to this section may exercise the privileges granted under the license issued pursuant  
19 to subdivision 35-4-2(12) or subdivision 35-4-2(16) ~~during the time specified in § 35-4-81.2.~~

20 Section 8. That § 9-29-7 be amended to read as follows:

21 9-29-7. ~~Every~~ Each municipality ~~shall have power to~~ may prohibit or regulate the transaction  
22 of business in alcoholic beverages; ~~and the use and consumption thereof, and to~~ of alcoholic  
23 beverages, establish the number of on- and off-sale licenses which may be issued; and the fees  
24 to be charged ~~therefor,~~ for the licenses, and provide for reasonable classifications of on-sale and

1 off-sale licenses and for the issuance of high-point beer on- and off-sale licenses to licensees  
2 holding high-point beer licenses on December 31, 1979, for which the fees to be charged for the  
3 various classifications shall be uniform within each class, consistent with the provisions of Title  
4 35. The secretary of revenue shall be promptly furnished certified copies of all ordinances and  
5 resolutions or amendments thereto adopted relating to the exercise of these powers.

6 ~~— No high-point beer license provided for in this section may be transferred as to site.~~

7 Section 9. That subdivision (8) of § 7-8-20 be amended to read as follows:

8 (8) To regulate the transaction of business in alcoholic beverages; and the use and  
9 consumption ~~thereof~~ of alcoholic beverages, to establish the number of on-sale  
10 licenses which may be issued, to provide for reasonable classification of on-sale  
11 licenses and ~~to~~ fix the fees to be charged for the ~~various classifications which shall~~  
12 ~~be uniform within each class, all~~ licenses consistent with the provisions of Title 35:  
13 ~~The secretary of revenue shall be promptly furnished certified copies of all~~  
14 ~~ordinances and resolutions or amendments thereto adopted relating to the exercise~~  
15 ~~of these powers;~~

16

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

400R0380

SENATE ENGROSSED NO. **HB 1051** - 3/2/2010

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: The Committee on Appropriations at the request of the Bureau of Finance and Management

1 FOR AN ACT ENTITLED, An Act to equate, within certain limits, the annual percentage  
2 increase in per student funding for general education and for special education to the  
3 projected change in state general fund revenue, and to require the Legislature to estimate  
4 general fund revenues for the current fiscal year and the next fiscal year.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That § 13-13-10.1 be amended to read as follows:

7 13-13-10.1. Terms used in this chapter mean:

8 (1) "Average daily membership," the average number of resident and nonresident  
9 kindergarten through twelfth grade pupils enrolled in all schools operated by the  
10 school district during the previous regular school year, minus average number of  
11 pupils for whom the district receives tuition, except pupils described in subdivision  
12 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42.1 and plus the  
13 average number of pupils for whom the district pays tuition;

14 (1A) Nonresident students who are in the care and custody of the Department of Social



1 Services, the Unified Judicial System, the Department of Corrections, or other state  
2 agencies and are attending a public school may be included in the average daily  
3 membership of the receiving district when enrolled in the receiving district. When  
4 counting a student who meets these criteria in its general enrollment average daily  
5 membership, the receiving district may begin the enrollment on the first day of  
6 attendance. The district of residence prior to the custodial transfer may not include  
7 students who meet these criteria in its general enrollment average daily membership  
8 after the student ceases to attend school in the resident district;

9 (2) "Adjusted average daily membership," calculated as follows:

10 (a) For districts with an average daily membership of two hundred or less,  
11 multiply 1.2 times the average daily membership;

12 (b) For districts with an average daily membership of less than six hundred, but  
13 greater than two hundred, raise the average daily membership to the 0.8293  
14 power and multiply the result times 2.98;

15 (c) For districts with an average daily membership of six hundred or more,  
16 multiply 1.0 times their average daily membership;

17 (2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled  
18 in all schools operated by the school district on the last Friday of September of the  
19 previous school year minus the number of students for whom the district receives  
20 tuition, except nonresident students who are in the care and custody of a state agency  
21 and are attending a public school and students for whom tuition is being paid  
22 pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
23 tuition. When computing state aid to education for a school district under the  
24 foundation program pursuant to § 13-13-73, the secretary of the Department of

1 Education shall use either the school district's fall enrollment or the average of the  
2 school district's fall enrollment and the school district's fall enrollment from the prior  
3 year, whichever is higher. However, if a school district qualifies to benefit from both  
4 the averaging permitted in this subdivision and the one-time payment provided in  
5 § 13-13-80 in the same fiscal year, the school district may not benefit from both, but  
6 only from the one that provides the most additional funding to the district;

7 (2B) "Current fall enrollment," the number of kindergarten through twelfth grade students  
8 enrolled in all schools operated by the school district on the last Friday of September  
9 of the current school year minus the number of students for whom the district  
10 receives tuition except nonresident students who are in the care and custody of a state  
11 agency and are attending a public school and students for whom tuition is being paid  
12 pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
13 tuition;

14 (2C) "Small school adjustment," calculated as follows:

15 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times  
16 \$4,237.72;

17 (b) For districts with a fall enrollment of greater than two hundred, but less than  
18 six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that  
19 result; and multiply the sum obtained times \$4,237.72;

20 (2D) "State general fund revenue," all continuing receipts deposited into the state's general  
21 fund;

22 (2E) "Projected state general fund increase," the estimated percentage change in state  
23 general fund revenue, as adopted by the standing committees on appropriations  
24 pursuant to section 2 of this Act, for the year of adjustment;

1       (2F) "Adjusted state general fund increase," equals the projected state general fund  
2       increase for school fiscal years 2012 and 2013. Beginning with school fiscal year  
3       2014, it equals the difference between the calculation in (a) and the calculation in (b)  
4       as follows:

5       (a) Calculate the percentage change in the projected state general fund revenue for  
6       the year of adjustment compared to the actual state general fund revenue for  
7       the fiscal year five years prior to the year of adjustment. However, if the year  
8       of adjustment is school fiscal year 2014 or 2015, the percentage change  
9       comparison is between the year of adjustment and school fiscal year 2011;

10       (b) Calculate the percentage change in the per student allocation for the fiscal year  
11       prior to the year of adjustment compared to the per student allocation for the  
12       fiscal year five years prior to the year of adjustment. However, if the year of  
13       adjustment is school fiscal year 2014 or 2015, the percentage change  
14       comparison is between the year prior to the year of adjustment and school  
15       fiscal year 2011;

16       (3) "Index factor," is equal to the adjusted state general fund increase subject to the  
17       following limitations:

18       (a) It cannot be greater than seven percent or less than zero percent; and

19       (b) It cannot exceed the annual percentage change in the consumer price index for  
20       urban wage earners and clerical workers as computed by the Bureau of Labor  
21       Statistics of the United States Department of Labor for the year before the year  
22       immediately preceding the year of adjustment or ~~three percent, whichever is~~  
23       less four percent, whichever is greater;

24       (3A) "General fund adjustment," beginning with school fiscal year 2014, the difference

1 between the percentage that would have been used as the index factor for the year  
2 before the year immediately preceding the year of adjustment if the projected state  
3 general fund increase had equaled the actual percentage change in state general fund  
4 revenue for that year and the index factor that was actually used in that year to  
5 calculate the per student allocation;

6 (4) "Per student allocation," for school fiscal year ~~2009~~ 2011 is ~~\$4,664.66~~ \$4,804.60.  
7 Each school fiscal year thereafter, the per student allocation is the previous fiscal  
8 year's per student allocation increased by the index factor plus the general fund  
9 adjustment;

10 (5) "Local need," is the sum of:

11 (a) The per student allocation multiplied by the fall enrollment; and

12 (b) The small school adjustment, if applicable, multiplied by the fall enrollment;  
13 and

14 (c) The payment distributed pursuant to § 13-13-80, if applicable;

15 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by  
16 applying the levies established pursuant to § 10-12-42;

17 (7) "General fund balance," the unreserved fund balance of the general fund, less general  
18 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers  
19 out of the general fund for the previous school fiscal year;

20 (8) "General fund balance percentage," is a school district's general fund balance divided  
21 by the school district's total general fund expenditures for the previous school fiscal  
22 year, the quotient expressed as a percent;

23 (9) "General fund base percentage," is the lesser of:

24 (a) The general fund balance percentage as of June 30, 2000; or

1 (b) The maximum allowable percentage for that particular fiscal year as stated in  
2 this subsection.

3 For fiscal year 2008, the maximum allowable percentage is one hundred percent; for  
4 fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year  
5 2011, forty percent; for fiscal year 2012 and subsequent fiscal years, twenty-five  
6 percent. However, the general fund base percentage can never be less than twenty-  
7 five percent;

8 (10) "Allowable general fund balance," the general fund base percentage multiplied by the  
9 district's general fund expenditures in the previous school fiscal year;

10 (11) "General fund exclusions," revenue a school district has received from the imposition  
11 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
12 from gifts, contributions, grants, or donations; revenue a school district has received  
13 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; revenue a school district  
14 has received as compensation for being a sparse school district under the terms of  
15 §§ 13-13-78 and 13-13-79; any revenue a school district has received under the  
16 provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5);  
17 and any revenue in the general fund set aside for a noninsurable judgment.

18 Section 2. That chapter 4-7 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 The Senate and House of Representatives standing committees on appropriations shall  
21 jointly adopt a statement of estimated revenue for the current fiscal year and for the next fiscal  
22 year. The statement of estimated revenue shall be classified by individual revenue source.  
23 General fund revenue shall be further classified as either continuing receipts or one-time  
24 receipts.

1 Section 3. That § 13-37-35.1 be amended to read as follows:

2 13-37-35.1. Terms used in chapter 13-37 mean:

3 (1) "Level one disability," a mild disability;

4 (2) "Level two disability," cognitive disability or emotional disorder;

5 (3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-  
6 blindness, orthopedic impairment, or traumatic brain injury;

7 (4) "Level four disability," autism;

8 (5) "Level five disability," multiple disabilities;

9 (5A) "Level six disability," prolonged assistance;

10 (6) "Index factor," is ~~the annual percentage change in the consumer price index for urban~~  
11 ~~wage earners and clerical workers as computed by the Bureau of Labor Statistics of~~  
12 ~~the United States Department of Labor for the year before the year immediately~~  
13 ~~preceding the year of adjustment or three percent, whichever is less~~ equal to the index  
14 factor calculated pursuant to section 1 of this Act;

15 (6A) "General fund adjustment," is equal to the general fund adjustment calculated  
16 pursuant to section 1 of this Act;

17 (7) "Local effort," shall be calculated for taxes payable in 2011 and shall be the amount  
18 of revenue that could have been generated for the taxes payable in 2010 using a  
19 special education levy of one dollar and twenty cents per one thousand dollars of  
20 valuation increased by the lesser of three percent or the index factor, as defined in  
21 § 10-13-38, plus a percentage increase of value resulting from any improvements or  
22 change in use of real property, annexation, minor boundary changes, and any  
23 adjustments in taxation of real property separately classified and subject to statutory  
24 adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B, except

1 § 10-6-31.4, only if assessed the same as property of equal value.

2 For taxes payable in 2012, 2013, 2014, and 2015, the total amount of local effort  
3 shall be increased by the lesser of three percent or the index factor, established  
4 pursuant to § 10-13-38 plus a percentage increase of value resulting from any  
5 improvements or change in use of real property, annexation, minor boundary  
6 changes, and any adjustments in taxation of real property separately classified and  
7 subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and  
8 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value;

9 (8) "Allocation for a student with a level one disability," for the school fiscal year  
10 beginning July 1, ~~2009~~ 2010, is \$4,057. For each school year thereafter, the allocation  
11 for a student with a level one disability shall be the previous fiscal year's allocation  
12 for such child increased by ~~the lesser of the index factor or three percent~~;

13 (9) "Allocation for a student with a level two disability," for the school fiscal year  
14 beginning July 1, ~~2009~~ 2010, is \$9,471. For each school year thereafter, the allocation  
15 for a student with a level two disability shall be the previous fiscal year's allocation  
16 for such child increased by ~~the lesser of the index factor or three percent~~;

17 (10) "Allocation for a student with a level three disability," for the school fiscal year  
18 beginning July 1, ~~2009~~ 2010, is \$15,220. For each school year thereafter, the  
19 allocation for a student with a level three disability shall be the previous fiscal year's  
20 allocation for such child increased by ~~the lesser of the index factor or three percent~~;

21 (11) "Allocation for a student with a level four disability," for the school fiscal year  
22 beginning July 1, ~~2009~~ 2010, is \$13,164. For each school year thereafter, the  
23 allocation for a student with a level four disability shall be the previous fiscal year's  
24 allocation for such child increased by ~~the lesser of the index factor or three percent~~;

- 1 (12) "Allocation for a student with a level five disability," for the school fiscal year  
2 beginning July 1, ~~2009~~ 2010, is \$16,539. For each school year thereafter, the  
3 allocation for a student with a level five disability shall be the previous fiscal year's  
4 allocation for such child increased by ~~the lesser of the index factor or three percent~~;
- 5 (12A) "Allocation for a student with a level six disability," for the school fiscal year  
6 beginning July 1, ~~2009~~ 2010, is \$8,438. For each school year thereafter, the allocation  
7 for a student with a level six disability shall be the previous fiscal year's allocation  
8 for such child increased by ~~the lesser of the index factor or three percent~~;
- 9 (13) "Child count," is the number of students in need of special education or special  
10 education and related services according to criteria set forth in rules promulgated  
11 pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education in  
12 accordance with rules promulgated pursuant to § 13-37-1.1;
- 13 (14) "Fall enrollment," the number of kindergarten through twelfth grade pupils enrolled  
14 in all schools operated by the school district on the last Friday of September of the  
15 previous school year minus the number of students for whom the district receives  
16 tuition, except any nonresident student who is in the care and custody of a state  
17 agency and is attending a public school and any student for whom tuition is being  
18 paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
19 tuition;
- 20 (15) "Nonpublic school," a sectarian organization or entity which is accredited by the  
21 secretary of education for the purpose of instructing children of compulsory school  
22 age. This definition excludes any school that receives a majority of its revenues from  
23 public funds;
- 24 (16) "Nonpublic fall enrollment," until June 30, 2008, the number of children under age

1 sixteen, and beginning July 1, 2009, the number of children under age eighteen, who  
2 are approved for alternative instruction pursuant to § 13-27-2 on the last Friday of  
3 September of the previous school year plus:

4 (a) For nonpublic schools located within the boundaries of a public school district  
5 with a fall enrollment of six hundred or more on the last Friday of September  
6 of the previous school year, the number of kindergarten through twelfth grade  
7 pupils enrolled on the last Friday of September of the previous regular school  
8 year in all nonpublic schools located within the boundaries of the public  
9 school district;

10 (b) For nonpublic schools located within the boundaries of a public school district  
11 with a fall enrollment of less than six hundred on the last Friday of September  
12 of the previous school year, the number of resident kindergarten through  
13 twelfth grade pupils enrolled on the last Friday of September of the previous  
14 school year in all nonpublic schools located within the State of South Dakota;

15 (17) "Special education fall enrollment," fall enrollment plus nonpublic fall enrollment;

16 (18) "Local need," an amount to be determined as follows:

17 (a) Multiply the special education fall enrollment by 0.1062 and multiply the  
18 result by the allocation for a student with a level one disability;

19 (b) Multiply the number of students having a level two disability as reported on  
20 the child count for the previous school fiscal year by the allocation for a  
21 student with a level two disability;

22 (c) Multiply the number of students having a level three disability as reported on  
23 the child count for the previous school fiscal year by the allocation for a  
24 student with a level three disability;

1 (d) Multiply the number of students having a level four disability as reported on  
2 the child count for the previous school fiscal year by the allocation for a  
3 student with a level four disability;

4 (e) Multiply the number of students having a level five disability as reported on  
5 the child count for the previous school fiscal year by the allocation for a  
6 student with a level five disability;

7 (f) Multiply the number of students having a level six disability as reported on the  
8 child count for the previous school fiscal year by the allocation for a student  
9 with a level six disability;

10 (g) Sum the results of (a) through (f);

11 (19) "Effort factor," for taxes payable in 2011, 2012, 2013, 2014, and 2015, the effort  
12 factor is the amount of taxes payable for the year divided by the amount of local  
13 effort as calculated in subdivision (7). The maximum effort factor is 1.0.

14 Section 4. That § 13-37-35.2 be amended to read as follows:

15 13-37-35.2. In fiscal year 2004 and every three years thereafter, the Department of Education  
16 shall recalculate the amounts of the allocations for the disability levels defined in § 13-37-35.1.  
17 The recalculation shall be based on statewide average expenditures as reported to the  
18 Department of Education in school district annual reports by disability for the previous three  
19 school fiscal years. The recalculated allocations for the disability levels shall be prorated so that  
20 the new statewide local need equals the statewide local need that would have resulted if the  
21 disability levels had not been recalculated.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

682R0391

SENATE ENGROSSED NO. **HB 1104** - 3/2/2010

Introduced by: Representatives Deadrick and Juhnke and Senator Garnos

1 FOR AN ACT ENTITLED, An Act to limit the source of recovery in certain civil actions for  
2 childhood sexual abuse injuries.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-10-25 be amended to read as follows:

5 26-10-25. Any civil action based on intentional conduct brought by any person for recovery  
6 of damages for injury suffered as a result of childhood sexual abuse shall be commenced within  
7 three years of the act alleged to have caused the injury or condition, or three years of the time  
8 the victim discovered or reasonably should have discovered that the injury or condition was  
9 caused by the act, whichever period expires later. However, no person who has reached the age  
10 of forty years may recover damages from any person or entity other than the person who  
11 perpetrated the actual act of sexual abuse.



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

608R0471

## SENATE ENGROSSED NO. **HB 1118** - 3/2/2010

Introduced by: Representatives Solum, Cutler, Jensen, Krebs, Novstrup (David), Rounds, Steele, and Verchio and Senators Olson (Russell), Maher, Nelson, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding fees for health  
2 services provided to South Dakota injured workers treated by out-of-state medical providers  
3 and expenses when death results from injuries to South Dakota workers.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 62-7-8 be amended to read as follows:

6 62-7-8. Except as otherwise provided, fees for health services, including hospital services,  
7 depositions, and reproduction of medical and hospital information, under this title are subject  
8 to approval of the department. The department shall, by rule promulgated pursuant to chapter  
9 1-26, establish standards and procedures for determining if charges for health services, including  
10 hospital services are excessive and for determining if a provider of health services is performing  
11 procedures or providing services at a level or with a frequency that is excessive. The department  
12 shall consult with the examining boards of all providers in establishing such standards and  
13 procedures. For services rendered by an out-of-state provider, any fee that exceeds the maximum  
14 allowed by the fee schedule of the state where service was provided is deemed excessive. No



1 provider of health services, including hospital services, may enforce any judgment against, or  
2 collect or attempt to collect from, the employee, the employer, or the employer's insurer any  
3 amount in excess of the amount established by the applicable fee schedule or approved under  
4 the provisions of this section.

5 Section 2. That § 62-4-16 be amended to read as follows:

6 62-4-16. The employer shall pay the burial expense and the expense of a headstone grave  
7 marker for an employee whose death resulted from an injury, in an amount not to exceed the  
8 sum of ~~seven thousand five hundred~~ ten thousand dollars. If the death occurred in a foreign state  
9 or outside the community where the employee is to be buried, the employer shall also pay the  
10 cost of transporting the body of the employee to the community where the employee is to be  
11 buried.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

474R0003

## HOUSE COMMERCE ENGROSSED NO. **SB 2-** **3/1/2010**

Introduced by: Senators Nelson, Maher, and Tieszen and Representatives Rounds, Carson, Faehn, Kirkeby, Lederman, Sorenson, and Turbiville at the request of the Interim Committee on Alcoholic Beverage Control and Licensing Laws

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding alcoholic beverage  
2 control and licensing laws.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-1-1 be amended to read as follows:

5 35-1-1. Terms used in this title, ~~unless the context otherwise plainly requires, shall~~ mean:

- 6 (1) "Alcoholic beverage," any distilled spirits, wine and malt beverages as defined in this  
7 title;
- 8 (2) "Bulk container," any package, or any container within which container are one or  
9 more packages;
- 10 (3) "Carrier," a person who for hire transports passengers and who sells or furnishes to  
11 passengers for consumption alcoholic beverages aboard any means of conveyance;
- 12 (3A) "Cider," any alcoholic beverage obtained by the fermentation of the juice of apples  
13 that contains not less than one-half of one percent of alcohol by volume and not more  
14 than ten percent of alcohol by weight, including flavored, sparkling, or carbonated



1 cider;

2 (3B) "Controlling interest in," a controlling interest in the licensee is an ownership interest  
3 of ten percent or more;

4 (4) "Department," the Department of Revenue and Regulation of the State of South  
5 Dakota;

6 (5) "Dispenser," a duly licensed physician, dentist, veterinarian, osteopath, podiatrist,  
7 chiropractor, or pharmacist; or a druggist, sanitarium, hospital, clinic, educational  
8 institution, industrial company, or industrial corporation who purchases alcohol for  
9 scientific and medicinal purposes only;

10 (6) "Distilled spirits," ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey,  
11 rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures  
12 thereof, for nonindustrial use containing not less than one-half of one percent of  
13 alcohol by weight;

14 (7) "Distiller," any person who owns, ~~or who himself or through others, directly or~~  
15 ~~indirectly~~ has a controlling interest in, operates, or aids in operating any distillery or  
16 other establishment for the production, rectifying, blending, or bottling of distilled  
17 spirits;

18 (8) "Malt beverage," a beverage made by the alcoholic fermentation of an infusion or  
19 decoction, or combination of both, in potable brewing water, of malted barley with  
20 hops, or their parts, or their products, and with or without other malted cereals, and  
21 with or without the addition of unmalted or prepared cereals, other carbohydrates or  
22 products prepared therefrom, and with or without the addition of carbon dioxide, and  
23 with or without other wholesome products suitable for human consumption  
24 containing not less than one-half of one percent of alcohol by weight;

- 1 (9) "Manufacturer," any person who owns, ~~or who himself or through others, directly or~~  
2 ~~indirectly~~ has a controlling interest in, operates, or aids in operating any  
3 establishment for the brewing, production, bottling, or blending of malt beverages or  
4 wine;
- 5 (10) "Minibar," any closed container, either refrigerated or nonrefrigerated, access to the  
6 interior of which is restricted by means of a locking device which requires the use of  
7 a key, magnetic card, or similar device, or controlled by the licensee at all times;
- 8 (11) "Municipality," any incorporated city or town, and any unincorporated platted town  
9 having a United States post office, ~~provided that. However, the subsequent~~  
10 ~~withdrawal of a United States post office from any of the herein described~~  
11 ~~municipalities shall~~ does not affect the right of established liquor licenses to be  
12 continued, renewed, or transferred; and ~~shall~~ does not prevent the owner or bona fide  
13 lessee of the licensed premises from receiving a renewal or reissuance of such  
14 license;
- 15 (12) "Off-sale," the sale of any alcoholic beverage, for consumption off the premises  
16 where sold;
- 17 (13) "On-sale," the sale of any alcoholic beverage for consumption only upon the premises  
18 where sold;
- 19 (14) "On-sale dealer," any person who sells, or keeps for sale, any alcoholic beverage for  
20 consumption on the premises where sold;
- 21 (15) "Package," the bottle or immediate container of any alcoholic beverage;
- 22 (16) "Package dealer," any person other than a distiller, manufacturer, or wholesaler, who  
23 sells, or keeps for sale, any alcoholic beverage for consumption off the premises  
24 where sold;

- 1 (17) "Population," number of inhabitants as determined by the last preceding federal  
2 census;
- 3 (17A) "Relative," any person who is a husband, wife, son, daughter, brother, sister, father,  
4 mother, uncle, aunt, nephew, niece, brother-in-law, sister-in-law, father-in-law,  
5 mother-in-law, son-in-law, or daughter-in-law;
- 6 (18) "Retail license," an on- or off-sale license issued under the provisions of this title;
- 7 (19) "Retailer," or "retail dealer," any person who sells alcoholic beverages for other than  
8 resale;
- 9 (20) "Sale," the transfer, for a consideration, of title to any alcoholic beverage;
- 10 (21) "Secretary," the secretary of revenue and regulation of the State of South Dakota;
- 11 (22) "Solicitor," any person employed by a licensed wholesaler within this state, or by any  
12 distiller or manufacturer within or without this state, who contacts a wholesaler or  
13 retail dealer within this state for the purpose of selling, promoting, or advertising  
14 alcoholic beverages or for any other reason connected with the alcoholic beverage  
15 industry but ~~shall~~ does not include employees of wholesale or transporter licensees  
16 who only deliver such beverages;
- 17 (23) "Transportation company," or "transporter," any common carrier or operator of a  
18 private vehicle transporting or accepting for transportation any alcoholic beverages,  
19 but not including transportation by carriers in interstate commerce where the  
20 shipment originates outside of the state and is destined to a point outside of the state;
- 21 (24) "Wholesaler," any person who sells alcoholic beverages to retailers for resale;
- 22 (25) "Wine," any liquid either commonly used, or reasonably adapted to use, for beverage  
23 purposes, and obtained by the fermentation of the natural sugar content of fruits or  
24 other agricultural products containing sugar and containing not less than one-half of

1           one percent of alcohol by weight but not more than twenty-four percent of alcohol  
2           by weight.

3           Section 2. That § 35-1-7 be amended to read as follows:

4           35-1-7. Any person who, in any application, report, or statement filed with the secretary of  
5 ~~revenue~~, knowingly makes a false statement as to any matter required by any provision of this  
6 title to be set forth in the application, report, or statement, is guilty of a Class 6 felony.

7           Section 3. That § 35-1-5.3 be amended to read as follows:

8           35-1-5.3. It is a Class 2 misdemeanor for any person to consume any ~~intoxicating liquor or~~  
9 ~~to mix or blend any alcoholic beverage with any other beverage, regardless of whether the~~  
10 ~~beverage is an alcoholic beverage, distilled spirits in any public place, other than upon the~~  
11 ~~premises of a licensed on-sale dealer where the alcoholic beverage was purchased from the~~  
12 ~~dealer for on-sale purposes. For purposes of this section, the term, public place, means any~~  
13 ~~place, whether in or out of a building, commonly and customarily open to or used by the general~~  
14 ~~public, and any street or highway. However, this section does not apply if the county~~  
15 ~~commissioners or the governing body of the municipality, charged with the approval of~~  
16 ~~alcoholic beverage license issuance, in their respective jurisdictions, give prior authorization for~~  
17 ~~persons to consume or blend alcoholic beverages, but not to engage in the sale of the alcoholic~~  
18 ~~beverages, in or upon property described by the authorizing governmental subdivision, and if~~  
19 ~~the property is publicly owned, or owned by a nonprofit corporation.~~

20           The board of county commissioners may permit the consumption, but not the sale, of any  
21 alcoholic beverage on property owned by the public or by a nonprofit corporation within the  
22 county, but outside the limits of any municipality. The governing body of a municipality may  
23 permit the consumption, but not the sale, of any alcoholic beverage on the property owned by  
24 the public or by a nonprofit corporation within the municipality. The permit period may not

1 exceed twenty-four hours, and hours of authorized consumption may not exceed those permitted  
2 for on-sale licensees.

3 It is a Class 2 misdemeanor for any person to consume any alcoholic beverage upon the  
4 premises of a licensed on-sale dealer if the alcoholic beverage was not purchased from the on-  
5 sale dealer.

6 Section 4. That § 35-1-5.2 be repealed.

7 ~~— 35-1-5.2. No licensee regularly licensed to do business before July 1, 1971, may be denied~~  
8 ~~renewal of a license in subsequent years solely by reason of any reduction in the number of~~  
9 ~~licenses that may be authorized or established within any municipality by reason of chapter 211~~  
10 ~~of the Session Laws of 1971. Any person holding an on-sale dealer's retail license of any of the~~  
11 ~~existing classes or holding a Class Q license issued under the provisions of former subdivision~~  
12 ~~35-4-2(17) on July 1, 1971, may be issued an on-sale license from the appropriate governing~~  
13 ~~board having jurisdiction, upon application to the governing board for an on-sale license within~~  
14 ~~appropriate classifications established.~~

15 Section 5. That § 35-1-10 be repealed.

16 ~~— 35-1-10. If any section, part, or provision of this title, or the application thereof to any party~~  
17 ~~or class, or to any circumstance, shall be held to be invalid for any cause whatsoever, the~~  
18 ~~remainder of this title or the application to parties or circumstances other than those as to which~~  
19 ~~it is held to be invalid, shall not be affected thereby and shall remain in full force and effect as~~  
20 ~~though no part thereof had been declared to be invalid.~~

21 Section 6. That § 35-1-11 be repealed.

22 ~~— 35-1-11. For the purposes of § 35-1-12, a keg is an eight or sixteen gallon reusable plastic~~  
23 ~~or metal container.~~

24 Section 7. That § 35-1-12 be amended to read as follows:

1 35-1-12. No keg of malt beverage may be sold at retail in this state unless the licensee who  
2 sold ~~such~~ the keg records the name and address of the person to whom the keg is sold and has  
3 provided for the identification of the keg. Each licensee shall maintain such sales records for one  
4 year and shall make ~~such~~ the sales records available to any law enforcement agency upon  
5 request.

6 The identification provided for in this section ~~shall~~ may not be permanent or damaging to  
7 the structure of the keg. For the purposes of this section, the term, keg, means an eight or sixteen  
8 gallon reusable plastic or metal container.

9 Section 8. That § 35-2-1 be amended to read as follows:

10 35-2-1. ~~Applications for licenses~~ Any application for a license provided for by this title shall  
11 be made on forms prescribed by the secretary ~~of revenue~~, and shall be verified by the oath of the  
12 applicant, ~~if an individual, and, if a corporation,~~ If the applicant is not an individual, the oath  
13 of applicant shall be verified by an officer of ~~such corporation.~~ Such the entity applying for the  
14 license. The application must shall contain such information as the secretary requires; and ~~must~~  
15 shall show that the applicant is eligible for the license for which application is made.

16 Section 9. That § 35-2-2 be amended to read as follows:

17 35-2-2. Every application for a license directed to the secretary ~~of revenue~~ as provided by  
18 § 35-2-1.1 shall be accompanied by payment of the required fee for ~~such license except license~~  
19 ~~fees for~~ the license. However, the license fee for a municipal off-sale licenses which license  
20 shall be retained by the municipality. If the application is rejected, ~~such~~ the fee shall be promptly  
21 returned by the secretary to the applicant. If the application is granted, the secretary shall deposit  
22 ~~such~~ the fee in the state treasury.

23 Section 10. That § 35-2-5.1 be amended to read as follows:

24 35-2-5.1. ~~In the event of refusal by~~ If the governing board of the municipality or county ~~to~~

1 ~~does not~~ approve the application, ~~such the governing~~ board shall endorse on the application the  
2 reasons ~~therefor~~ for the denial and return the application and fee to the applicant. No further  
3 application may be received from ~~a person~~ the applicant until after the expiration of one year  
4 from the date of a ~~refused~~ denied application. However, if the application was denied based on  
5 the suitability of the location for the license, no further application may be received from the  
6 applicant until after the expiration of three months from the date of the denied application only  
7 if the application is for a different location.

8 Section 11. That § 35-2-5.2 be amended to read as follows:

9 35-2-5.2. ~~In the event of the approval of such~~ If the governing board of the municipality or  
10 county approves the application, the approval shall be endorsed thereon and also upon the  
11 present license and the governing board shall endorse the approval on the application. The  
12 licensee shall thereupon be is entitled to operate under the license for the succeeding licensing  
13 year if the license is approved by the secretary. However, if any transfer of ownership or  
14 location occurs, or if the licensee ~~shall have~~ has been convicted of any criminal offense during  
15 the past licensing year, the application together with the approval of the ~~local governing body~~  
16 board shall be forwarded to the secretary ~~of revenue who shall have discretion to~~ who may  
17 approve or disapprove the ~~same~~ application. The license fee shall be deposited in the general  
18 fund of the ~~first or second class~~ municipality or county.

19 Section 12. That § 35-2-6.5 be repealed.

20 ~~35-2-6.5. The term "relative" as used in this title means husband, wife, son, daughter,~~  
21 ~~brother, sister, father, mother, brother-in-law, sister-in-law, father-in-law, mother-in-law,~~  
22 ~~son-in-law, or daughter-in-law.~~

23 Section 13. That § 35-2-9 be amended to read as follows:

24 35-2-9. Any licensee authorized to deal in alcoholic beverages, upon termination of the

1 license, may at any time within thirty days after the termination of the license sell the whole or  
2 any part of the alcoholic beverages included in the licensee's stock in trade at the time of the  
3 termination to any wholesaler licensed under this title to deal in the alcoholic beverages so  
4 purchased by the wholesaler. The wholesaler shall make a complete report of the purchase to  
5 the secretary of revenue and regulation.

6 Section 14. That § 35-2-10 be amended to read as follows:

7 35-2-10. The secretary, in compliance with chapter 1-26, may revoke or suspend any license  
8 issued under this title upon proof of violation by the licensee, by the licensee's agents or  
9 employees, or by the manager or contractual operators of retail establishments and their agents  
10 or employees operating under a county or municipal license, of any of the following:

- 11 (1) Any provision of this title;
- 12 (2) Any rule promulgated pursuant to this title; or
- 13 (3) Any ordinance or regulation relevant to alcoholic beverage control that has been  
14 adopted by the political subdivision issuing the license.

15 For any licensee with multiple alcoholic beverage licenses for the same premises, upon  
16 suspension or revocation of any license pursuant to this ~~chapter~~ title, the licensee shall cease  
17 operation under all alcoholic beverage licenses held by the licensee for the same premises for  
18 the same period as the suspension or revocation.

19 Section 15. That § 35-2-11.1 be amended to read as follows:

20 35-2-11.1. The governing board of the municipality or the board of county commissioners  
21 which approved the application for license under § 35-2-1.2 shall recommend to the secretary  
22 of revenue following a hearing that any license issued under this title be suspended or revoked  
23 for violation of any of the provisions of this ~~chapter~~ title or for violations of any ordinance or  
24 regulation of the governing body issuing the license relevant to alcoholic beverage control

1 which occurs on the premises of the licensee. Upon receipt of the recommendation, the secretary  
2 shall proceed in accordance with the provisions of §§ 35-2-10 and 35-2-21.

3 Section 16. That § 35-2-13 be amended to read as follows:

4 35-2-13. An applicant or licensee under this title, or any person or governing board  
5 interested therein, ~~shall have~~ has a right ~~of to a~~ hearing in relation to any action taken upon the  
6 application or license, which hearing shall be held in the county where the license has been  
7 applied for or has been issued, in accordance with the provisions of chapter 1-26. However, if  
8 the parties agree, a hearing to determine whether the secretary ~~of revenue~~ may suspend or revoke  
9 a license may be held at a location other than the county where the license has been applied for  
10 or has been issued. Such hearing may be held ~~by telecommunications technologies~~ pursuant to  
11 § 1-25-1.

12 Section 17. That § 35-2-20 be amended to read as follows:

13 35-2-20. No licensee under this title, whose license is revoked, may be granted any license  
14 under this title for one year after the revocation. If any relative of any such former licensee, ~~as~~  
15 ~~relative is defined by § 35-2-6.5~~, or any of the former licensee's employees or former employees,  
16 applies for any such license before the one-year period has elapsed, the license may be granted  
17 only upon affirmative and satisfactory proof that the former licensee has no interest in the  
18 business.

19 Section 18. That § 35-2-21 be amended to read as follows:

20 35-2-21. If in any proceeding under this ~~chapter~~ title a violation is established, but the  
21 secretary is satisfied that the nature and the circumstances of the violation were such that a  
22 suspension of the license would be adequate, the secretary may, instead of revoking the license,  
23 suspend it for a period not exceeding sixty days. The suspension is effective twenty-four hours  
24 after service of notice of the suspension upon the licensee. During the period of the suspension,

1 the licensee may not exercise any rights or privileges under the license. The secretary may, in  
2 lieu of suspending or revoking the license, accept a monetary offer in compromise in settlement  
3 of any proceeding under this ~~chapter~~ title. The amount of the offer in compromise may not  
4 exceed seventy-five thousand dollars. The secretary may also recover the actual costs of  
5 investigation and prosecution.

6 Section 19. That § 35-2-25 be amended to read as follows:

7 35-2-25. No license granted pursuant to subdivisions 35-4-2(3), (4), (6), (12), (13), (16), ~~and~~  
8 ~~(17), and (17A)~~ and §§ 35-12-2 and 35-13-2 may be issued unless the applicant has first  
9 obtained a sales tax license pursuant to chapter 10-45, or, if applicable, a use tax license  
10 pursuant to chapter 10-46. ~~The provisions of this section do not apply to a municipality which~~  
11 ~~has procured a retail alcoholic beverage license pursuant to chapter 35-3.~~

12 Section 20. That § 35-4-2.3 be repealed.

13 ~~35-4-2.3. No more than one wholesale license may be issued under subdivision 35-4-2(15)~~  
14 ~~for every twenty on- and off-sale licenses issued under subdivisions 35-4-2(16) and (17).~~

15 Section 21. That § 35-4-2.4 be amended to read as follows:

16 35-4-2.4. Any municipality which holds an off-sale license under subdivision 35-4-2(5) is  
17 eligible for a retailer's or package dealer license under subdivisions 35-4-2(16) ~~and~~, (17), and  
18 (17A). Any municipality which holds an on-sale license under chapter 35-4 is eligible for a  
19 retailer's license under subdivision 35-4-2(16). Upon termination of any such license the  
20 governing board of ~~such~~ the municipality is authorized ~~to proceed~~ to liquidate the business  
21 operated ~~thereunder~~ pursuant to the license and the assets of ~~such~~ the business in ~~such~~ a manner  
22 as may be determined by resolution of ~~such~~ the governing board, not inconsistent with the  
23 provisions of this title.

24 Section 22. That § 35-4-2.5 be amended to read as follows:

1       35-4-2.5. ~~The~~ Notwithstanding the provisions of § 35-4-41, the period covered by licenses  
2 issued pursuant to subdivisions 35-4-2(14), (15), (16), ~~and (17), and (17A)~~ shall be from twelve  
3 midnight on the thirtieth day of June to twelve midnight on the thirtieth day of the next June.

4       Section 23. That § 35-4-5.1 be amended to read as follows:

5       35-4-5.1. No distributor of distilled spirits, manufacturer, rectifier, distiller, or jobber, ~~or~~  
6 ~~distributor of distilled spirits~~, or a copartner or a majority stockholder of a parent or subsidiary  
7 corporation ~~directly or indirectly interested~~ or holder of a controlling interest in any of them may  
8 be granted a wholesale license or be granted a renewal of such a license under this chapter.

9       Section 24. That § 35-4-5.5 be repealed.

10 ~~— 35-4-5.5. The provisions of § 35-4-5.1, as to the granting of a wholesale license and the~~  
11 ~~renewal of a wholesale license do not apply to any individual, copartnership, or corporation who~~  
12 ~~or which on July 1, 1970, was the holder of a wholesaler's license.~~

13       Section 25. That § 35-4-6 be amended to read as follows:

14       35-4-6. Except as provided in subdivisions 35-4-2(12), (16), (17), (17A), and (19), off-sale  
15 licenses may be issued under this chapter only to operate within a municipality.

16       Section 26. That § 35-4-10 be amended to read as follows:

17       35-4-10. No more than two off-sale licenses may be issued under this chapter to operate in  
18 a municipality of one thousand or less and not exceeding one license for every additional fifteen  
19 hundred of population or fraction thereof. The number of off-sale licenses may not be less than  
20 the total number of licenses allowable or issued as of July 1, 1981.

21       The quotas established in this section do not apply to the licenses issued pursuant to  
22 subdivisions 35-4-2(12), (16) ~~and~~, (17), and (17A).

23       Section 27. That § 35-4-11 be amended to read as follows:

24       35-4-11. If not fixed by ordinance, the governing board of any municipality may, on or

1 before the first of September in each year, by resolution, determine the number of on-sale and  
2 off-sale licenses it that the board will approve for the ensuing calendar year, and the fees to be  
3 charged for the various classifications of licenses. The number of on-sale licenses issued may  
4 not exceed three each for the first one thousand of population or fraction thereof and not exceed  
5 one each of such licenses for each additional one thousand five hundred of population or  
6 fraction thereof. The number of licenses allowable may not be less than the total number of  
7 licenses allowable or issued as of July 1, 1981. The municipal governing board shall at such  
8 meeting establish the fee for on-sale licenses pursuant to subdivisions 35-4-2(4) and (13). The  
9 fee applies to all such on-sale licenses issued in the ensuing calendar year. The quotas  
10 established in this section do not apply to licenses issued pursuant to subdivisions 35-4-2(12),  
11 (~~16~~)and, (~~17~~), and (~~17A~~).

12 For the purposes of this section, population is equal to ninety percent of the population  
13 estimates published by the United States Census Bureau for each even-numbered year, except  
14 for the decennial year. For a decennial year, population is equal to the amount determined by  
15 the decennial federal census. No license issued pursuant to this section which exceeds the  
16 number of licenses that would have been issued upon the decennial federal census may be  
17 denied solely by reason that the license exceeds the number of licenses authorized by the  
18 decennial federal census.

19 Section 28. That § 35-4-11.1 be amended to read as follows:

20 35-4-11.1. If not previously fixed by ordinance or continuing resolution, the board of county  
21 commissioners shall, on or before the first of September in each year, determine the number of  
22 on-sale licenses it will approve for the ensuing calendar year and the fees to be charged for the  
23 various classifications of licenses. The number of licenses issued may not exceed three for the  
24 first one thousand of population and may not exceed one for each additional fifteen hundred of

1 population or fraction thereof, the population to include only those residing within the county  
2 but outside the incorporated municipalities and improvement districts, created pursuant to  
3 chapter 7-25A, within the county. However, any license issued in an improvement district prior  
4 to July 1, 2000, shall be included when calculating the total number of licenses that may be  
5 issued by the county where the improvement district is located. No licensee regularly licensed  
6 to do business on July 1, 1981, may be denied reissuance of a license in subsequent years solely  
7 by reason of any limitations, based upon population quotas, of the number of licenses authorized  
8 or established under the provisions of this title. Licenses issued to concessionaires, and lessees  
9 of the State of South Dakota, within the boundaries of state parks, prior to January 1, 1983, may  
10 be subtracted when calculating the total number of licenses permitted in this section. The quotas  
11 established in this section do not apply to licenses issued pursuant to subdivisions 35-4-2(12),  
12 (16), (17), (17A), and (19).

13 Section 29. That § 35-4-11.2 be amended to read as follows:

14 35-4-11.2. Notwithstanding the provisions of § 35-4-11, each municipality may issue two  
15 convention facility on-sale licenses for convention facilities substantially constructed within the  
16 two years following issuance of such license or previously completed. If located in a first class  
17 municipality, the hotel-motel convention facility shall be used and kept open for the hosting of  
18 large groups of guests for compensation and shall have at least one hundred rooms which are  
19 suitable lodging accommodations and convention facilities with seating for at least four hundred  
20 persons. If located in a second or third class municipality, the hotel-motel convention facility  
21 shall have at least forty rooms which are suitable lodging accommodations and convention  
22 facilities with seating for at least one hundred fifty persons.

23 If a municipality's classification changes from one class to another class, the facility is only  
24 required to meet the criteria established by this section for the license at the time it was

1 originally issued.

2 Section 30. That § 35-4-11.3 be repealed.

3 ~~—35-4-11.3. The provisions of § 35-4-11.2 apply to any municipality that was a municipality~~  
4 ~~of the first class on December 31, 1979.~~

5 Section 31. That § 35-4-19 be amended to read as follows:

6 35-4-19. No retailer license under this chapter, except for licenses issued pursuant to  
7 subdivisions 35-4-2(12), (16)~~and~~, (17), and (17A), other than to the municipality, may be  
8 granted to operate in any municipality which has obtained a license under this chapter except  
9 that:

10 (1) If a municipality has been issued an off-sale license only, then the governing board  
11 may approve or disapprove applications for on-sale licenses as may be provided in  
12 Title 35; and

13 (2) If a municipality has been issued an on-sale and off-sale license, then the governing  
14 board may by resolution enter into an operating agreement with any person for the  
15 specific purpose of operating the on-sale establishment or the off-sale establishment,  
16 or both for the municipality.

17 Section 32. That § 35-4-46 be amended to read as follows:

18 35-4-46. A distiller in business outside of South Dakota ~~and who is~~ not licensed under this  
19 title may, ~~by payment of an annual fee of one hundred dollars to the state treasurer, receive~~  
20 purchase a permit from the secretary, a permit to ship alcoholic beverages into South Dakota  
21 to a bonded warehouses under warehouse pursuant to § 35-4-45. The permit may be purchased  
22 for an annual fee of one hundred dollars, and the fee shall be deposited in the general fund. Any  
23 alcoholic beverages to be stored in such a bonded warehouses and to warehouse may only be  
24 delivered therefrom to a distiller or wholesaler licensee only licensee.

1 Section 33. That § 35-4-60.2 be amended to read as follows:

2 35-4-60.2. A licensee licensed under subdivision 35-4-2(16) ~~or (17), or (17A)~~ shall  
3 purchase the malt beverages that the licensee sells from the municipality if the municipality in  
4 which the licensee is located is licensed under subdivision 35-4-2(5) and if the municipality has  
5 by ordinance required that such purchases be made from the municipality. A municipality  
6 selling malt beverages to any licensee licensed under subdivision 35-4-2(16) ~~or (17), or (17A)~~  
7 may not charge the licensee more than five percent above the municipality's cost for malt  
8 beverages plus freight unless the municipality has operating agreements in effect on April 1,  
9 1988, for its on-sale alcoholic beverage licensees licensed pursuant to subdivision 35-4-2(4) and  
10 imposes a mark-up higher than five percent for malt beverages. The municipality shall charge  
11 all such licensees the same price for malt beverages.

12 Section 34. That § 35-4-78 be amended to read as follows:

13 35-4-78. No licensee may sell any alcoholic beverage:

14 ~~—(1)—To any person under the age of twenty-one years; or~~

15 ~~—(2)—To to any person who is obviously intoxicated at the time. A violation of this section~~  
16 is a Class 1 misdemeanor.

17 However, no licensee is civilly liable to any injured person or ~~his~~ the injured person's estate  
18 for any injury suffered, including any action for wrongful death, or property damage suffered  
19 because of the intoxication of any person due to the sale or consumption of any alcoholic  
20 beverage in violation of the provisions of this section.

21 Section 35. That § 35-9-1 be amended to read as follows:

22 35-9-1. It is a Class 1 misdemeanor to sell or give for use as a beverage any alcoholic  
23 beverage to any person under the age of eighteen years unless:

24 (1) It is done in the immediate presence of a parent or guardian or spouse, who is at least

1 twenty-one years of age, while not on the premises of an establishment licensed for  
2 the retail sale of alcoholic beverages pursuant to § 35-4-2 or at a special event for  
3 which an alcoholic beverage license has been issued pursuant to § 35-4-11.4; or

4 (2) It is done by prescription or direction of a duly licensed practitioner or nurse of the  
5 healing arts for medicinal purposes.

6 However, no licensee is civilly liable to any injured person or the injured person's estate for  
7 any injury suffered, including any action for wrongful death, or property damage suffered  
8 because of the sale or consumption of any alcoholic beverage in violation of the provisions of  
9 this section.

10 Section 36. That § 35-9-1.1 be amended to read as follows:

11 35-9-1.1. It is a Class 2 misdemeanor to sell or give for use as a beverage any alcoholic  
12 beverage to any person who is eighteen years of age or older but less than twenty-one years of  
13 age unless it is done in the immediate presence of a parent or guardian or spouse over  
14 twenty-one years of age or by prescription or direction of a duly licensed practitioner or nurse  
15 of the healing arts for medicinal purposes.

16 However, no licensee is civilly liable to any injured person or the injured person's estate for  
17 any injury suffered, including any action for wrongful death, or property damage suffered  
18 because of the sale or consumption of any alcoholic beverage in violation of the provisions of  
19 this section.

20 Section 37. That § 35-4-78.1 be repealed.

21 ~~—35-4-78.1. A licensee, licensed pursuant to subdivision 35-4-2(3), (4), (5), (6), (11), (12),~~  
22 ~~(13), (16), (17), or (18), is not in violation of § 35-4-78, and no criminal penalty may be~~  
23 ~~imposed on the licensee if:~~

24 ~~—(1) The person making the sale in violation of § 35-4-78 is an employee or agent of the~~

1           licensee;

2   ~~—(2)—The employee or agent does not own a controlling interest in the licensee; and~~

3   ~~—(3)—The licensee or person having a controlling interest in the licensee is not present at~~  
4           the time of the sale.

5           Section 38. That § 35-4-78.2 be repealed.

6   ~~—35-4-78.2. If a sale is in violation of § 35-4-78 and does not constitute a criminal offense~~  
7   ~~against the licensee, the state's attorney for the county in which the sale took place may as part~~  
8   ~~of any proceeding against the person making the sale request that the court require the licensee~~  
9   ~~to pay a fine in accordance with §§ 35-4-78.1 to 35-4-78.4, inclusive.~~

10          Section 39. That § 35-4-78.3 be repealed.

11   ~~—35-4-78.3. Upon a request from the state's attorney and notice to the licensee, the court shall~~  
12   ~~conduct a hearing to determine if the licensee is liable under §§ 35-4-78.1 to 35-4-78.4,~~  
13   ~~inclusive, and upon a finding that the licensee is liable, the court may order the licensee to pay~~  
14   ~~a fine not to exceed:~~

15   ~~—(1)—Five hundred dollars upon the first violation within two years;~~

16   ~~—(2)—Seven hundred fifty dollars upon the second violation within two years; and~~

17   ~~—(3)—One thousand dollars for the third violation within two years.~~

18          Section 40. That § 35-4-78.4 be repealed.

19   ~~—35-4-78.4. For the purpose of §§ 35-4-78.1 to 35-4-78.4, inclusive, a controlling interest in~~  
20   ~~the licensee means an ownership interest of ten percent or more.~~

21          Section 41. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23          No criminal penalty may be imposed on a licensee licensed pursuant to this title if:

24          (1)   The person making the sale in violation of § 35-9-1 or 35-9-1.1 is an employee or

1 agent of the licensee;

2 (2) The employee or agent does not own a controlling interest in the licensee; and

3 (3) The licensee or person having a controlling interest in the licensee is not present at  
4 the time of the sale.

5 Section 42. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 If a sale is in violation of § 35-9-1 or 35-9-1.1 and does not constitute a criminal offense  
8 against the licensee, the state's attorney for the county in which the sale took place may as part  
9 of any proceeding against the person making the sale request that the court require the licensee  
10 to pay a fine in accordance with sections 41 to 43, inclusive, of this Act.

11 Section 43. That chapter 35-9 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Upon a request from the state's attorney and notice to the licensee, the court shall conduct  
14 a hearing to determine if the licensee is liable under sections 41 to 43, inclusive, of this Act and  
15 upon a finding that the licensee is liable, the court may order the licensee to pay a fine not to  
16 exceed:

17 (1) Five hundred dollars upon the first violation within two years;

18 (2) Seven hundred fifty dollars upon the second violation within two years; and

19 (3) One thousand dollars for the third violation within two years.

20 Section 44. That § 35-4-86 be repealed.

21 ~~35-4-86. No person may possess any alcoholic beverage other than in a package upon which~~  
22 ~~the required stamps are affixed. This section, however, does not apply to alcoholic beverages:~~

23 ~~(1) In transit to or in possession of distiller or wholesale licensees;~~

24 ~~(2) In possession of a person authorized to have possession as specified in § 35-4-66;~~

1 ~~— (3) — Purchased outside the state by carrier licensees for service to patrons only;~~

2 ~~— (4) — Seized by or in possession of any officer of this state or any political subdivision of~~  
3 ~~the state pursuant to official duty;~~

4 ~~— (5) — In transit to or stored with a bonded warehouse under the provisions of § 35-4-46;~~

5 ~~— (6) — As to which, under § 35-5-6, no tax is required to be paid.~~

6 ~~— A violation of this section is a Class 2 misdemeanor.~~

7 Section 45. That § 35-4-93 be repealed.

8 ~~— 35-4-93. This chapter and chapter 35-5 shall be known and may be cited, as the South~~  
9 ~~Dakota Liquor Control Law.~~

10 Section 46. That § 35-4-96 be amended to read as follows:

11 35-4-96. The secretary of revenue may require the brand owner, or the authorized agent of  
12 the brand owner, to file ~~written~~:

13 (1) The schedules of prices and discounts, allowance schedules, and other pricing  
14 information ~~and to specifically set forth the~~;

15 (2) The exact brand or trade name, capacity of package, nature of contents, and age and  
16 proof where stated on the label; ~~the~~ and

17 (3) The number of bottles contained in each case and the bottle and case price to  
18 wholesalers, which is individual for each item ~~at such time and in such form as is~~  
19 ~~necessary~~.

20 The schedules and documents shall be filed in a form and manner to be determined by the  
21 secretary to facilitate the enforcement of §§ 35-4-94 to 35-4-98, inclusive.

22 Section 47. That § 35-4-97 be amended to read as follows:

23 35-4-97. Upon a finding that a brand owner, or authorized agent of the brand owner, has  
24 knowingly violated the provisions of §§ 35-4-94 to 35-4-98, inclusive, or that any person has

1 knowingly made a false statement in any affirmation statement made and filed pursuant to  
2 §§ 35-4-94 to 35-4-98, inclusive, the secretary of revenue shall collect a civil penalty of one  
3 hundred dollars per case for each case sold in violation of §§ 35-4-94 to 35-4-98, inclusive. Any  
4 item sold in violation of the provisions of §§ 35-4-94 to 35-4-98, inclusive, may not be sold to  
5 or purchased by any wholesaler for a period of thirty days.

6 Section 48. That § 35-4-98 be amended to read as follows:

7 35-4-98. A filing made pursuant to ~~this section and §§ 35-4-94 to 35-4-97~~ 35-4-98,  
8 inclusive, is confidential. It is a Class 2 misdemeanor to disclose any such filing except to a  
9 wholesaler licensed under Title 35 or in accordance with the manner in which returns and return  
10 information may be disclosed pursuant to §§ 10-1-28.4 and 10-1-28.5.

11 Section 49. That § 35-4-101 be amended to read as follows:

12 35-4-101. Any hotel or motel may operate minibars as defined in ~~subdivision 35-1-1(25)~~  
13 § 35-1-1 in any of its rooms or units if ~~such~~ the hotel or motel has an on-sale liquor license  
14 issued pursuant to subdivision 35-4-2(4), (6), or (13).

15 Section 50. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 Fifty percent of all license and transfer fees received under the provisions of subdivisions  
18 35-4-2(16), (17), and (17A) shall remain in the municipality in which the licensee paying the  
19 fee is located, or if outside the corporate limits of a municipality, then in the county in which  
20 the licensee is located. In addition, fifty percent of wholesaler license fees received under  
21 subdivision 35-4-2(15) shall revert to the municipality in which the licensee is located, or if  
22 outside the corporate limits of a municipality, then to the county in which the licensee is located.  
23 The remainder of all license and transfer fees and penalties received shall be credited to the state  
24 general fund.

1 Section 51. That § 35-5-3 be amended to read as follows:

2 35-5-3. The occupational tax based on the quantities of different kinds of alcoholic  
3 beverages is:

4 (1) Malt beverages, eight dollars and fifty cents per barrel of thirty-one gallons, or a  
5 prorata portion thereof in accordance with the size of the bulk container;

6 (2) All light wines and diluted beverages (except sparkling wines and cider) containing  
7 alcohol by weight to the extent of more than 3.2 percent and not more than fourteen  
8 percent, ninety-three cents per gallon;

9 (3) All wines (except sparkling wines) containing alcohol by weight to the extent of  
10 more than fourteen percent and not more than twenty percent, one dollar and  
11 forty-five cents per gallon;

12 (4) All wines (except sparkling wines) containing alcohol by weight to the extent of  
13 more than twenty percent and not more than twenty-four percent, all natural sparkling  
14 wines containing alcohol and all artificial sparkling wines containing alcohol, two  
15 dollars and seven cents per gallon;

16 (4A) All cider containing alcohol by weight not more than ten percent, twenty-eight cents  
17 per gallon;

18 (5) All other alcoholic beverages not otherwise specified, three dollars and ninety-three  
19 cents per gallon.

20 For the purposes of this section, diluted beverages are alcoholic beverages prepared from  
21 the admixture of spirits or wine with water, dairy products, fruit juices, or vegetable juices, to  
22 which may be added natural flavors, artificial flavors, sweetening agents, or food additives to  
23 produce a beverage distinct and unique from the spirits or wine. In no case does the term, diluted  
24 beverages, include beverages which contain in excess of twelve percent alcohol by weight.

1        Any funds collected from the tax imposed by this section shall be deposited in the alcoholic  
2 beverage fund.

3        Section 52. That § 35-5-21.1 be repealed.

4        ~~35-5-21.1. Fifty percent of all license and transfer fees received under the provisions of~~  
5 ~~subdivisions 35-4-2(16), (17), and (17A) shall remain in the municipality in which the licensee~~  
6 ~~paying the fee is located, or if outside the corporate limits of a municipality, then in the county~~  
7 ~~in which the licensee is located. In addition, fifty percent of wholesaler license fees received~~  
8 ~~under subdivision 35-4-2(15) shall revert to the municipality in which the licensee is located,~~  
9 ~~or if outside the corporate limits of a municipality, then to the county in which the licensee is~~  
10 ~~located. The remainder of all license and transfer fees and penalties received shall be credited~~  
11 ~~to the state general fund. All revenue received from the levy in carrying out § 35-5-3 shall be~~  
12 ~~credited to the alcoholic beverage fund.~~

13        Section 53. That § 35-5-26 be amended to read as follows:

14        35-5-26. The population of any unincorporated ~~towns~~ town in an organized or unorganized  
15 ~~townships~~ township shall include the entire population of the organized or unorganized  
16 ~~township so concerned.~~ The population of the unincorporated ~~towns~~ town in an unorganized  
17 ~~townships~~ township shall be furnished to the ~~state treasurer~~ secretary by the county auditor of  
18 the county in which the unincorporated town is located.

19        Section 54. That § 35-5-11 be repealed.

20        ~~35-5-11. The occupational tax may, if required by the secretary to assure collection of the~~  
21 ~~tax, be evidenced by an identification stamp to be affixed to each original package of alcoholic~~  
22 ~~beverage for use in this state.~~

23        Section 55. That § 35-5-12 be repealed.

24        ~~35-5-12. The secretary shall adopt the design of the identification stamp and shall procure~~

1 ~~the manufacture of the stamp in such quantities as the secretary deems necessary.~~

2 Section 56. That § 35-5-14 be repealed.

3 ~~—35-5-14. Any person who makes, manufactures, counterfeits, duplicates, or in any way~~  
4 ~~imitates any identification stamp provided for in this chapter or who possesses, transfers, utters,~~  
5 ~~or delivers any imitation or counterfeits any identification stamp is guilty of forgery.~~

6 Section 57. That § 35-10-10 be repealed.

7 ~~—35-10-10. If any alcoholic beverage is imported into this state or held in the possession of~~  
8 ~~any person in this state without proper stamps in violation of the provisions of state law, the~~  
9 ~~alcoholic beverage constitutes contraband goods and may be seized by the secretary or any law~~  
10 ~~enforcement officer of the state. Any alcoholic beverage seized under the provisions of this~~  
11 ~~section shall be confiscated and forfeited to the state. The actual owner of the contraband goods~~  
12 ~~has such rights as defined, and the secretary may dispose of, sell, or destroy, the contraband~~  
13 ~~goods in accordance with the provisions of §§ 35-10-11 to 35-10-16, inclusive. The proceeds~~  
14 ~~of any such sale shall be placed in the general fund of the state.~~

15 Section 58. That § 35-10-15 be amended to read as follows:

16 35-10-15. If confiscated alcoholic beverages are lawfully salable, and of sufficient value to  
17 justify an attempted sale, the secretary of revenue shall take custody of the alcoholic beverages,  
18 and ~~may~~ shall, pending sale, store the beverages at any convenient and safe place. ~~All stamps~~  
19 ~~provided by this title, except inspection stamps, shall be canceled and removed.~~

20 Section 59. That § 35-10-16 be amended to read as follows:

21 35-10-16. ~~From time to time as~~ If confiscated alcoholic beverages accumulate in sufficient  
22 quantities, the secretary of revenue shall notify all licensed wholesalers as to kinds and types of  
23 ~~such~~ alcoholic beverages in the secretary's custody for sale. The secretary shall receive bids, and  
24 sales shall be made on the basis of ~~such~~ the bids as the secretary deems advantageous to the

1 state. Any wholesaler purchasing the beverages shall, before resale of the beverages, affix to the  
2 package or bulk container all stamps, other than the inspection stamp, required by this title. All  
3 proceeds of any such sale by the secretary shall be deposited with the state treasurer and credited  
4 to the general fund.

5 Section 60. That § 35-9-1.2 be amended to read as follows:

6 35-9-1.2. Any person charged with a violation of § 35-9-1, ~~35-4-78~~, or 35-9-1.1 may offer  
7 evidence, as a defense, that the person made a reasonable attempt to investigate the age of the  
8 person by examining an age-bearing identification document that would have appeared valid  
9 to a reasonable and prudent person.

10 Section 61. That § 35-9-2 be amended to read as follows:

11 35-9-2. It is a Class 2 misdemeanor for any person under the age of twenty-one years to  
12 purchase, attempt to purchase, or possess or consume alcoholic beverages except pursuant to  
13 § 35-9-1.1 or when consumed in a religious ceremony and given to ~~said~~ the person by an  
14 authorized person, or to misrepresent his or her age with the use of any document for the  
15 purpose of purchasing or attempting to purchase alcoholic beverages from any licensee licensed  
16 under this title.

17 Section 62. That § 35-10-4 be amended to read as follows:

18 35-10-4. For the purposes of any hearing provided for by this title, the secretary ~~of revenue~~  
19 ~~shall have~~ may exercise the powers granted by § 1-26-19.1.

20 Section 63. That § 35-10-8 be amended to read as follows:

21 35-10-8. Any cost penalty provided for by this title shall be included in the judgment of  
22 conviction and has all the force and effect of a judgment in a civil action. If the person against  
23 whom the cost penalty is assessed has furnished a bond as a licensee under this title, the surety  
24 is liable for the cost penalty. The cost penalty may be paid by the defendant to the clerk of the

1 court that rendered the judgment in which the cost penalty was assessed. The payment shall  
2 operate as a satisfaction of the portion of the judgment relating to the cost penalty and shall be  
3 entered upon the judgment record accordingly. If not paid to the clerk, the judgment for the cost  
4 penalty shall be enforced by execution or other process, the same as any civil judgment. The  
5 clerk or any officer collecting the cost penalty shall, without delay, transmit the cost penalty to  
6 the ~~state treasurer~~ secretary with a statement giving full information as to the source of the cost  
7 penalty. The ~~state treasurer~~ secretary shall issue a receipt for the cost penalty to the person  
8 transmitting the cost penalty.

9 Section 64. That § 35-10-14 be amended to read as follows:

10 35-10-14. Upon any adjudication in any form of confiscation of alcoholic beverages, the  
11 officer having custody of the beverages shall make a full report to the secretary ~~of revenue~~  
12 setting forth the quantity, kind, and probable value of the beverages. If the beverages are of such  
13 character that the beverages cannot lawfully be sold, or are of insufficient value to justify an  
14 attempted sale, the secretary shall order the beverages destroyed. The officer in custody of the  
15 beverages shall comply with the order and shall report to the secretary that the order has been  
16 carried out.

**State of South Dakota**  
**EIGHTY-FIFTH SESSION**  
**LEGISLATIVE ASSEMBLY, 2010**

400R0343

**SENATE ENGROSSED NO. SB 58 - 2/3/2010**

Introduced by: The Committee on State Affairs at the request of the Public Utilities  
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain real property taxes for small renewable  
2 energy facilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. For purposes of this Act, a renewable resource is a resource that generates  
5 electricity or energy from facilities using one or more of the following sources:

6 (1) Wind that uses wind as the source of energy to produce electricity;

7 (2) Solar that uses the sun as the source of energy to produce electricity or energy;

8 (3) Hydroelectric that uses water as the source of energy to produce electricity;

9 (4) Hydrogen that is generated from one of the sources listed in this section;

10 (5) Biomass that uses agricultural crops and agricultural wastes and residues, wood and  
11 wood wastes and residues, animal and other degradable organic wastes, municipal  
12 solid waste, or landfill gas as the fuel to produce electricity; or

13 (6) Geothermal that uses energy contained in heat that continuously flows outward from  
14 the earth as the source of energy to produce electricity or energy.

15 Section 2. For purposes of this Act, a renewable energy facility is a facility that uses a  
16 renewable resource as its energy source for the purpose of producing electricity or energy.



1 Section 3. For renewable energy facilities with less than five megawatts of nameplate  
2 capacity, all real property used or constructed for the purpose of producing electricity using a  
3 renewable resource as an energy source is classified for tax purposes as renewable energy  
4 property and shall be assessed and taxed in the same manner as other real property and shall be  
5 locally assessed by the county director of equalization pursuant to § 10-3-16. For the purposes  
6 of this Act, the first fifty thousand dollars of the assessed value of the renewable energy property  
7 or seventy percent of the assessed value of the renewable energy property, whichever is greater,  
8 is exempt from the real property tax. However, for geothermal renewable energy facilities that  
9 produce energy, but not electricity, this exemption is limited to the first four continuous years  
10 for residential geothermal renewable energy facilities and the first three continuous years for  
11 commercial geothermal renewable energy facilities.

12 Section 4. Renewable energy property is not subject to any discretionary formulas authorized  
13 by Title 10.

14 Section 5. That § 10-4-36 be repealed.

15 ~~10-4-36. For wind energy properties with less than five thousand kilowatts of nameplate~~  
16 ~~capacity, all real property used or constructed for the purpose of producing electricity for~~  
17 ~~commercial purposes that utilizes the wind as an energy source is classified for tax purposes as~~  
18 ~~wind energy property and shall be assessed and taxed in the same manner as other real property~~  
19 ~~and shall be locally assessed by the county director of equalization pursuant to § 10-3-16. For~~  
20 ~~the purposes of §§ 10-4-36 to 10-4-38, inclusive, real property includes the base, foundation,~~  
21 ~~tower, and substations. Real property does not include the wind turbine or blades attached~~  
22 ~~thereto.~~

23 Section 6. That § 10-4-37 be repealed.

24 ~~10-4-37. Any wind energy property of a commercial wind power production facility with~~

1 less than five thousand kilowatts of nameplate capacity shall be assessed under the provisions  
2 of this chapter.

3 Section 7. That § 10-4-38 be repealed.

4 ~~10-4-38. Wind energy property is not subject to any discretionary formulas authorized by~~  
5 ~~Title 10:~~

6 Section 8. That § 10-6-35.8 be repealed.

7 ~~10-6-35.8. Terms used in §§ 10-6-35.8 to 10-6-35.18, inclusive, unless the context otherwise~~  
8 ~~requires, mean:~~

9 ~~(1) "Base credit," the property tax assessment credit as authorized during the last year of~~  
10 ~~qualification under § 10-6-35.15;~~

11 ~~(2) "Biomass," an energy source derived from the conversion of organic matter by~~  
12 ~~biological, thermochemical combustion, and advanced processes. The organic matter~~  
13 ~~may include, but is not limited to, agricultural products, agriculture and forest~~  
14 ~~residues, municipal sewage, and other organic wastes;~~

15 ~~(3) "Commercial application" or "commercial," the use of a renewable resource energy~~  
16 ~~system in commercial, industrial, or agricultural production or processing;~~

17 ~~(4) "Equipment," all the controls, tanks, pumps, heat exchangers, generators, and other~~  
18 ~~hardware necessary to install a renewable resource energy system, except that~~  
19 ~~associated with a secondary system;~~

20 ~~(5) "Passive solar energy system," the equipment used, designed, and installed for~~  
21 ~~conductive, convective, or radiant energy transfer in the heating or cooling of a~~  
22 ~~structure. However, "passive solar energy system" does not include materials that~~  
23 ~~serve primarily as structural components of a structure;~~

24 ~~(6) "Renewable resource energy system" or "system," the equipment which produces~~

1 energy from a renewable resource for on-site consumption, including a passive solar  
2 energy system;

3 ~~—(7)—"Renewable resources," a relatively nondepleting source of energy, including, but not~~  
4 ~~limited to the sun, wind, and geothermal and biomass sources;~~

5 ~~—(8)—"Residential applications" or "residential," the use of a renewable resource energy~~  
6 ~~system for space conditioning, water heating, or electrical generation or any~~  
7 ~~combination thereof, for a structure;~~

8 ~~—(9)—"Secondary system," the equipment and hardware necessary to supplement,~~  
9 ~~complement, or in any manner support a renewable resource energy system;~~

10 ~~—(10)—"Secretary," the secretary of revenue and regulation;~~

11 ~~—(11)—"Structure," a building whose interior space is conditioned by heating or cooling. The~~  
12 ~~term includes but is not limited to dwellings, operating plants, office buildings, and~~  
13 ~~public buildings.~~

14 Section 9. That § 10-6-35.9 be repealed.

15 ~~—10-6-35.9. An owner of any real property is entitled to a property tax assessment credit if~~  
16 ~~the owner attaches or includes a renewable resource energy system as a part of an improvement~~  
17 ~~to real property for either residential or commercial applications.~~

18 Section 10. That § 10-6-35.10 be repealed.

19 ~~—10-6-35.10. No property tax assessment credit may be used for systems which produce~~  
20 ~~energy for sale to persons other than the owner of the real property on which the system is~~  
21 ~~located, unless the system is a biomass renewable resource energy system using an anaerobic~~  
22 ~~digester.~~

23 Section 11. That § 10-6-35.11 be repealed.

24 ~~—10-6-35.11. The property tax assessment credit shall not apply when title to the property has~~

1 ~~been transferred. This section does not apply to transfers of residential property when the new~~  
2 ~~owner will be the first occupant of the structure.~~

3 Section 12. That § 10-6-35.12 be repealed.

4 ~~— 10-6-35.12. The property tax assessment credit for a residential application of a renewable~~  
5 ~~resource energy system or for an ethyl alcohol production system is a sum equal to the assessed~~  
6 ~~valuation of the real property with the renewable resource energy system minus the assessed~~  
7 ~~valuation of the real property without the system. However, a property tax assessment credit~~  
8 ~~shall not be less than the actual installed cost of the renewable resource energy system or the~~  
9 ~~ethyl alcohol production system.~~

10 Section 13. That § 10-6-35.13 be repealed.

11 ~~— 10-6-35.13. The property tax assessment credit for a commercial application is fifty percent~~  
12 ~~of the actual installed cost of the renewable resource energy system.~~

13 Section 14. That § 10-6-35.14 be repealed.

14 ~~— 10-6-35.14. The property tax assessment credit provided for in §§ 10-6-35.12 and 10-6-~~  
15 ~~35.13 shall be adjusted to include any federal income tax credit which may be available at the~~  
16 ~~time the owner applies for the assessment credit.~~

17 Section 15. That § 10-6-35.15 be repealed.

18 ~~— 10-6-35.15. The property tax assessment credit may be applied for three continuous years~~  
19 ~~for a residential application of a renewable resource energy system and three continuous years~~  
20 ~~for a commercial application or an ethyl alcohol production system. At the end of this time, the~~  
21 ~~owner of the real property is entitled to a property tax assessment credit of:~~

22 ~~— (1) — Seventy-five percent of the base credit for the first year subsequent to termination of~~  
23 ~~the credit period;~~

24 ~~— (2) — Fifty percent of the base credit for the second year subsequent to termination of the~~

1 credit period;

2 ~~—(3)—Twenty-five percent of the base credit for the third year subsequent to termination of~~  
3 ~~the credit period.~~

4 Section 16. That § 10-6-35.16 be repealed.

5 ~~—10-6-35.16. An applicant for an energy property tax assessment credit shall file two copies~~  
6 ~~of the statement with the county director of equalization of the county in which the property is~~  
7 ~~located and one copy with the Department of Revenue and Regulation. An owner of more than~~  
8 ~~one renewable resource energy system shall file a separate statement for each system. The~~  
9 ~~statement shall be filed between November first and December tenth of the first year for which~~  
10 ~~the credit is to be applied. The applicant does not need to resubmit the application for the~~  
11 ~~property tax assessment credit unless the property ownership is transferred or the property has~~  
12 ~~a change in use.~~

13 Section 17. That § 10-6-35.17 be repealed.

14 ~~—10-6-35.17. The statement shall be made on forms prescribed by the secretary of the~~  
15 ~~Department of Revenue and Regulation. The forms shall include at least the following~~  
16 ~~information:~~

17 ~~—(1)—The name and current address of the owner;~~

18 ~~—(2)—The legal description of the property;~~

19 ~~—(3)—Whether the credit is for a residential or commercial application of a renewable~~  
20 ~~resource energy system or for an ethyl alcohol production system;~~

21 ~~—(4)—The type of general energy source for the system;~~

22 ~~—(5)—The primary use of the system;~~

23 ~~—(6)—The total installed cost of the system; and~~

24 ~~—(7)—Such other information as the secretary requires.~~

1 ~~Copies of all receipts and such other records as may be necessary to establish the actual~~  
2 ~~installed cost of the system shall be attached to a certified statement.~~

3 Section 18. That § 10-6-35.18 be repealed.

4 ~~10-6-35.18. Upon verification of the statement by the director of equalization of the county~~  
5 ~~in which the real property is located, the auditor shall make the deduction.~~

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

951R0450

## HOUSE TAXATION ENGROSSED NO. **SB 67** - 3/2/2010

Introduced by: Senators Knudson and Heidepriem and Representatives Faehn and Hunhoff  
(Bernie)

1 FOR AN ACT ENTITLED, An Act to revise the property tax levies for the general fund of a  
2 school district.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-12-42 be amended to read as follows:

5 10-12-42. For taxes payable in ~~2010~~ 2011 and each year thereafter, the levy for the general  
6 fund of a school district shall be as follows:

- 7 (1) The maximum tax levy shall be eight dollars and ~~sixty-five and six tenths~~ sixty-three  
8 cents per thousand dollars of taxable valuation subject to the limitations on  
9 agricultural property as provided in subdivision (2) of this section, and owner-  
10 occupied property as provided for in subdivision (3) of this section, ~~and~~  
11 ~~nonagricultural acreage property as provided for in subdivision (4) of this section;~~
- 12 (2) The maximum tax levy on agricultural property for such school district shall be two  
13 dollars and ~~fifty-seven and three tenths~~ fifty-five cents per thousand dollars of taxable  
14 valuation. If the district's levies are less than the maximum levies as stated in this



1 section, the levies shall maintain the same proportion to each other as represented in  
2 the mathematical relationship at the maximum levies; and

3 (3) The maximum tax levy for an owner-occupied single-family dwelling as defined in  
4 § 10-13-40, for such school district may not exceed four dollars and ~~four and two~~  
5 ~~tenths~~ two cents per thousand dollars of taxable valuation. If the district's levies are  
6 less than the maximum levies as stated in this section, the levies shall maintain the  
7 same proportion to each other as represented in the mathematical relationship at the  
8 maximum levies; ~~and~~

9 ~~(4) The maximum tax levy on nonagricultural acreage property as defined in § 10-6-~~  
10 ~~33.14, for such school district shall be three dollars and fifty-seven and three tenths~~  
11 ~~cents per thousand dollars of taxable valuation. If the district's levies are less than the~~  
12 ~~maximum levies as stated in this section, the levies shall maintain the same~~  
13 ~~proportion to each other as represented in the mathematical relationship at the~~  
14 ~~maximum levies.~~

15 All levies in this section shall be imposed on valuations where the median level of  
16 assessment represents eighty-five percent of market value as determined by the Department of  
17 Revenue and Regulation. These valuations shall be used for all school funding purposes. If the  
18 district has imposed an excess levy pursuant to § 10-12-43, the levies shall maintain the same  
19 proportion to each other as represented in the mathematical relationship at the maximum levies  
20 in this section. The school district may elect to tax at less than the maximum amounts set forth  
21 in this section.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

366R0350

## HOUSE TAXATION ENGROSSED NO. **SB 78** 3/2/2010

Introduced by: Senators Gant, Maher, and Tieszen and Representatives Kirkeby and Vanderlinde

1 FOR AN ACT ENTITLED, An Act to revise the total amount of revenue payable to  
2 municipalities from taxes on real property.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-13-35.3 be amended to read as follows:

5 10-13-35.3. Any county or municipality may decrease the total amount of revenue payable  
6 from taxes on real property below the maximum limit allowed by § 10-13-35 in any year. The  
7 decrease may not affect the amount of revenue payable that may be raised in accordance with  
8 §§ 10-13-35.4 and 10-13-35.5.

9 Section 2. That § 10-13-35.4 be amended to read as follows:

10 10-13-35.4. For taxes payable in the year 2003 and each year thereafter, the county auditor  
11 shall calculate what the maximum amount of revenue payable the county or municipality may  
12 request based on growth and the index factor pursuant to § 10-13-35. The calculation shall also  
13 show any accumulative percent of the index factor not used by the county or municipality. This  
14 calculation shall exclude the levy pursuant to § 10-13-36.



1 Section 3. That § 10-13-35.5 be amended to read as follows:

2 10-13-35.5. The county or municipality may increase the total amount of revenue payable  
3 from taxes on real property in any year up to the maximum amount calculated in accordance  
4 with § 10-13-35.4 utilizing any unused index factor from the prior three years. However, such  
5 an amount may not exceed the prior three year index factor total or ten percent, whichever is  
6 less.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

751R0136

## SENATE COMMERCE ENGROSSED NO. **SB 108** - 2/11/2010

Introduced by: Senators Olson (Russell), Dempster, Gant, Merchant, Nelson, Nesselhuf, Peterson, and Tieszen and Representatives Rausch, Blake, Bolin, Cronin, Elliott, Engels, Fargen, Feickert, Gibson, Hamiel, Jensen, Kirkeby, Kirschman, Krebs, Lederman, Lucas, Moser, Novstrup (David), Pitts, Romkema, Schlekeway, Solberg, Solum, Sorenson, Steele, Van Gerpen, and Vanderlinde

1 FOR AN ACT ENTITLED, An Act to prohibit dental insurers from setting fees for noncovered  
2 services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No contract between an insurer and a dentist may require a dentist to provide  
5 services for an insured at a fee set by the contract unless the services are covered services under  
6 the terms of the insured's plan or policy. For the purposes of this section, the term, covered  
7 services, means services reimbursable under the plan, policy, or contract, subject to such  
8 contractual limitations on benefits as may apply, including deductibles, waiting periods,  
9 frequency limitations, or charges over the benefit maximum.



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

497R0467

## HOUSE EDUCATION ENGROSSED NO. **SB 124** 3/1/2010

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Knudson, Adelstein, Bartling, Brown, Dempster, Garnos, Gray, Hansen (Tom), Hanson (Gary), Heidepriem, Jerstad, Kloucek, Miles, Nelson, Nesselhuf, Olson (Russell), Peterson, Tieszen, and Vehle and Representatives Cutler, Curd, Elliott, Frerichs, Hunhoff (Bernie), Kirkeby, Lederman, Lucas, Lust, McLaughlin, Rausch, Rave, Schlekeway, Sorenson, Thompson, and Turbiville

1 FOR AN ACT ENTITLED, An Act to establish the per student allocation for FY 2011, and to  
2 revise the index factor in the state aid to education formula.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

- 6 (1) "Average daily membership," the average number of resident and nonresident  
7 kindergarten through twelfth grade pupils enrolled in all schools operated by the  
8 school district during the previous regular school year, minus average number of  
9 pupils for whom the district receives tuition, except pupils described in subdivision  
10 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42.1 and plus the  
11 average number of pupils for whom the district pays tuition;  
12 (1A) Nonresident students who are in the care and custody of the Department of Social



1 Services, the Unified Judicial System, the Department of Corrections, or other state  
2 agencies and are attending a public school may be included in the average daily  
3 membership of the receiving district when enrolled in the receiving district. When  
4 counting a student who meets these criteria in its general enrollment average daily  
5 membership, the receiving district may begin the enrollment on the first day of  
6 attendance. The district of residence prior to the custodial transfer may not include  
7 students who meet these criteria in its general enrollment average daily membership  
8 after the student ceases to attend school in the resident district;

9 (2) "Adjusted average daily membership," calculated as follows:

10 (a) For districts with an average daily membership of two hundred or less,  
11 multiply 1.2 times the average daily membership;

12 (b) For districts with an average daily membership of less than six hundred, but  
13 greater than two hundred, raise the average daily membership to the 0.8293  
14 power and multiply the result times 2.98;

15 (c) For districts with an average daily membership of six hundred or more,  
16 multiply 1.0 times their average daily membership;

17 (2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled  
18 in all schools operated by the school district on the last Friday of September of the  
19 previous school year minus the number of students for whom the district receives  
20 tuition, except nonresident students who are in the care and custody of a state agency  
21 and are attending a public school and students for whom tuition is being paid  
22 pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
23 tuition. When computing state aid to education for a school district under the  
24 foundation program pursuant to § 13-13-73, the secretary of the Department of

1 Education shall use either the school district's fall enrollment or the average of the  
2 school district's fall enrollment and the school district's fall enrollment from the prior  
3 year, whichever is higher. However, if a school district qualifies to benefit from both  
4 the averaging permitted in this subdivision and the one-time payment provided in  
5 § 13-13-80 in the same fiscal year, the school district may not benefit from both, but  
6 only from the one that provides the most additional funding to the district;

7 (2B) "Current fall enrollment," the number of kindergarten through twelfth grade students  
8 enrolled in all schools operated by the school district on the last Friday of September  
9 of the current school year minus the number of students for whom the district  
10 receives tuition except nonresident students who are in the care and custody of a state  
11 agency and are attending a public school and students for whom tuition is being paid  
12 pursuant to § 13-28-42.1, plus the number of students for whom the district pays  
13 tuition;

14 (2C) "Small school adjustment," calculated as follows:

15 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times  
16 \$4,237.72;

17 (b) For districts with a fall enrollment of greater than two hundred, but less than  
18 six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that  
19 result; and multiply the sum obtained times \$4,237.72;

20 (3) "Index factor," is the annual percentage change in the consumer price index for urban  
21 wage earners and clerical workers as computed by the Bureau of Labor Statistics of  
22 the United States Department of Labor for the year before the year immediately  
23 preceding the year of adjustment or ~~three~~ two percent, whichever is ~~less~~ greater;  
24 however, the index factor may never exceed five percent;

- 1 (4) "Per student allocation," for school fiscal year ~~2009 is \$4,664.66~~ 2011 is \$4,804.60.  
2 Each school fiscal year thereafter, the per student allocation is the previous fiscal  
3 year's per student allocation increased by the index factor;
- 4 (5) "Local need," is the sum of:  
5 (a) The per student allocation multiplied by the fall enrollment; and  
6 (b) The small school adjustment, if applicable, multiplied by the fall enrollment;  
7 and  
8 (c) The payment distributed pursuant to § 13-13-80, if applicable;
- 9 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by  
10 applying the levies established pursuant to § 10-12-42;
- 11 (7) "General fund balance," the unreserved fund balance of the general fund, less general  
12 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers  
13 out of the general fund for the previous school fiscal year;
- 14 (8) "General fund balance percentage," is a school district's general fund balance divided  
15 by the school district's total general fund expenditures for the previous school fiscal  
16 year, the quotient expressed as a percent;
- 17 (9) "General fund base percentage," is the lesser of:  
18 (a) The general fund balance percentage as of June 30, 2000; or  
19 (b) The maximum allowable percentage for that particular fiscal year as stated in  
20 this subsection.
- 21 For fiscal year 2008, the maximum allowable percentage is one hundred percent; for  
22 fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year  
23 2011, forty percent; for fiscal year 2012 and subsequent fiscal years, twenty-five  
24 percent. However, the general fund base percentage can never be less than twenty-

1 five percent;

2 (10) "Allowable general fund balance," the general fund base percentage multiplied by the  
3 district's general fund expenditures in the previous school fiscal year;

4 (11) "General fund exclusions," revenue a school district has received from the imposition  
5 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received  
6 from gifts, contributions, grants, or donations; revenue a school district has received  
7 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; revenue a school district  
8 has received as compensation for being a sparse school district under the terms of  
9 §§ 13-13-78 and 13-13-79; any revenue a school district has received under the  
10 provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5);  
11 and any revenue in the general fund set aside for a noninsurable judgment.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

398R0379

## SENATE EDUCATION ENGROSSED NO. **SB 156** - 2/18/2010

Introduced by: Senators Gray, Merchant, Olson (Russell), and Tieszen and Representatives Schlekeway, Bolin, Conzet, Fargen, Hoffman, Kopp, Lederman, Lucas, Moser, Olson (Betty), Romkema, Rounds, Russell, Sorenson, Steele, Vanneman, and Verchio

1 FOR AN ACT ENTITLED, An Act to require that determinations in both adult and juvenile  
2 court proceedings relative to a controlled substance violation of a high school student  
3 participating in extracurricular activities be reported to the South Dakota High School  
4 Activities Association and to the school administrator.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That § 13-32-9 be amended to read as follows:

7 13-32-9. Any person adjudicated, convicted, the subject of an informal adjustment or court-  
8 approved ~~juvenile~~ diversion program, or the subject of a suspended imposition of sentence or  
9 suspended adjudication of delinquency for possession, use, or distribution of controlled drugs  
10 or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise  
11 taking into the body any substances as prohibited by § 22-42-15, is ineligible to participate in  
12 any extracurricular activity at any secondary school accredited by the Department of Education  
13 for one calendar year from the date of adjudication, conviction, diversion, or suspended



1 imposition of sentence. The one-year suspension may be reduced to sixty school days if the  
2 person participates in an assessment with a certified chemical dependency counselor or  
3 completes an accredited intensive prevention or treatment program. If the assessment indicates  
4 the need for a higher level of care, the student is required to complete the prescribed program  
5 before becoming eligible to participate in extracurricular activities. Upon a subsequent  
6 adjudication, conviction, diversion, or suspended imposition of sentence for possession, use, or  
7 distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for  
8 ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-  
9 15, by a court of competent jurisdiction, that person is ineligible to participate in any  
10 extracurricular activity at any secondary school accredited by the Department of Education.  
11 Upon such a determination in any juvenile court proceeding the Unified Judicial System shall  
12 give notice of that determination to the South Dakota High School Activities Association and  
13 the chief administrator of the school in which the person is participating in any extracurricular  
14 activity. The Unified Judicial System shall give notice to the chief administrators of secondary  
15 schools accredited by the Department of Education for any such determination in a court  
16 proceeding for any person eighteen to twenty-one years of age without regard to current status  
17 in school or involvement in extracurricular activities. The notice shall include name, date of  
18 birth, city of residence, and offense. The chief administrator shall give notice to the South  
19 Dakota High School Activities Association if any such person is participating in extracurricular  
20 activities.

21 Upon placement of the person in an informal adjustment or court-approved juvenile  
22 diversion program, the state's attorney who placed the person in that program shall give notice  
23 of that placement to the South Dakota High School Activities Association and chief  
24 administrator of the school in which the person is participating in any extracurricular activity.

1       As used in this section, the term, extracurricular activity, means any activity sanctioned by  
2       the South Dakota High School Activities Association.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

763R0544

## SENATE COMMERCE ENGROSSED NO. **SB 169** - 2/18/2010

Introduced by: Senators Turbak Berry, Adelstein, Ahlers, Bradford, Dempster, Gillespie, Heidepriem, Maher, Merchant, Nelson, Olson (Russell), Peterson, Rhoden, and Schmidt and Representatives Cutler, Deadrick, Engels, Faehn, Gibson, Greenfield, Hamiel, Hunhoff (Bernie), Jensen, Juhnke, Kirkeby, Krebs, Lust, Moser, Nygaard, Pitts, Solberg, Solum, Turbiville, and Verchio

1 FOR AN ACT ENTITLED, An Act to limit the subrogation of certain insurers unless and until  
2 the insured is made whole.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-11 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 No insurer under this chapter is entitled to participate in any recovery from any tortfeasor  
7 on account of bodily injury or death or damage to property unless and until its insured has first  
8 been made whole.



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

259R0740

## SENATE ENGROSSED NO. **SB 188** - 2/18/2010

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Nelson, Fryslie, Olson (Russell), and Tieszen and Representatives Turbiville, Conzet, Kirkeby, Krebs, Rausch, Romkema, Rounds, and Solum

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the sale and display  
2 of alcoholic beverages in certain establishments.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-4-121 be amended to read as follows:

5 35-4-121. Any person, corporation, or business entity that is issued a new retail license  
6 under subdivision 35-4-2(3) in a municipality of the first class after June 30, 2008, and derives  
7 more than fifty percent of the licensee's annual gross receipts from the sale of food, prepared  
8 food, and food ingredients at the location where the license is held, shall ~~sell~~ display its  
9 alcoholic beverages, other than malt beverages, in an area which is separated by a physical  
10 barrier from the rest of the establishment. For the purposes of this section, a physical barrier  
11 includes a wall or fence erected for the sole purpose of separating the area in which the alcoholic  
12 beverages are ~~sold~~ displayed from the rest of the establishment.

13 Section 2. That § 35-4-122 be amended to read as follows:

14 35-4-122. Any person, corporation, or business entity that is issued a new retail license



1 under subdivision 35-4-2(3) after June 30, 2009, and derives less than fifty percent of the  
2 licensee's annual gross receipts from the sale of alcoholic beverages at the location where the  
3 license is held shall ~~sell~~ display its alcoholic beverages, other than malt beverages, in an area  
4 which is separated by a physical barrier from the rest of the establishment. For the purposes of  
5 this section, a physical barrier includes a wall or fence erected for the sole purpose of separating  
6 the area in which the alcoholic beverages are ~~sold~~ displayed from the rest of the establishment.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

717R0683

## HOUSE TAXATION ENGROSSED NO. **SB 192** 3/2/2010

Introduced by: Senators Merchant, Brown, Fryslie, Hundstad, and Jerstad and  
Representatives Street, Bolin, Frerichs, Kirkeby, Nygaard, and Rausch

1 FOR AN ACT ENTITLED, An Act to modify distributions from the wind energy tax fund.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 10-35-21 be amended to read as follows:

4 10-35-21. The secretary shall distribute all of the tax deposited in the wind energy tax fund  
5 pursuant to § 10-35-18 and twenty percent of the tax deposited in the wind energy tax fund  
6 pursuant to § 10-35-19 to the county treasurer where the wind farm is located. If the wind  
7 energy tax fund contains less than twenty percent of the gross receipts tax from § 10-35-19, due  
8 to the transmission line rebate under § 10-35-22, the secretary shall distribute the remainder of  
9 funds after the rebate to the county treasurer where the wind farm is located. If a wind farm is  
10 located in more than one county, each county shall receive the same percentage of the tax as the  
11 percentage of wind towers in the wind farm located in the county. Upon receipt of the taxes, the  
12 county auditor shall apportion the tax among all taxing jurisdictions where a wind tower is  
13 located. The tax shall be apportioned in the same manner as agricultural real property taxes  
14 would have been apportioned between the taxing jurisdictions. However, the taxes shall be



1 reapportioned to the township in which the wind farm is located based on the ratio of township  
2 road miles to county road miles within the township as specified in sections 2 and 3 of this Act.

3 The secretary shall distribute the money to the counties on or before the first day of May.

4 Section 2. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The taxes apportioned to the township in which the wind farm is located shall be based on  
7 the ratio of township road miles to county road miles within the township in which the wind  
8 farm is located as defined in section 3 of this Act. If the wind farm is located in more than one  
9 township, the percentage of taxes allocated to each township shall be equal to the percentage  
10 of wind towers in the wind farm located in each township.

11 Section 3. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 The county auditor shall total the taxes apportioned to each township, in which the wind  
14 farm is located, pursuant to § 10-35-21 and the taxes apportioned to the county for such  
15 township area to determine the sum of such taxes available for distribution. The county auditor  
16 shall divide the township road miles by the total of the township road miles plus county road  
17 miles within such township. This ratio shall be multiplied by the sum of taxes available for  
18 distribution and such amount shall be distributed to the township. The remaining balance shall  
19 be distributed to the county. However, in no case may the apportionment distributed to the  
20 township exceed fifty percent of the sum of the taxes available for distribution pursuant to this  
21 section.