

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

528B0420

## HOUSE BILL NO. 1137

Introduced by: Representatives Cutler, Brooks, Brown (Richard), Collier, Crisp, Fiegen, Fitzgerald, Hunt, Konold, Kooistra, Kredit, Matthews, Peterson (Bill), Pummel, Sperry, Van Gerpen, Waltman, and Wick and Senators Paisley, Dennert, Dunn (Rebecca), Lawler, Morford, and Symens

1 FOR AN ACT ENTITLED, An Act to repeal the video lottery and to increase the sales and use  
2 tax.

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

4 Section 1. That § 10-45-2 be amended to read as follows:

5 10-45-2. There is hereby imposed a tax upon the privilege of engaging in business as a  
6 retailer, a tax of ~~four~~ five percent upon the gross receipts of all sales of tangible personal  
7 property consisting of goods, wares, or merchandise, except as taxed by § 10-45-3 and except  
8 as otherwise provided in this chapter, sold at retail in the State of South Dakota to consumers  
9 or users.

10 Section 2. That § 10-45-3 be amended to read as follows:

11 10-45-3. There is hereby imposed a tax of ~~three~~ four percent on the gross receipts from the  
12 sale or resale of farm machinery and attachment units other than replacement parts; or irrigation  
13 equipment used exclusively for agricultural purposes by licensed South Dakota retailers;  
14 provided, however, that whenever any trade-in or exchange of used farm machinery is involved

1 in the transaction, the tax shall only be due and collected on the cash difference.

2 Section 3. That § 10-45-5 be amended to read as follows:

3 10-45-5. There is imposed a tax at the rate of ~~three~~ four percent upon the gross receipts of  
4 any person from engaging in the business of leasing farm machinery or irrigation equipment used  
5 for agricultural purposes and ~~four~~ five percent upon the gross receipts of any person from  
6 engaging or continuing in any of the following businesses or services in this state: abstracters;  
7 accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car  
8 washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration;  
9 cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel  
10 supply; membership or entrance fees for the use of a facility or for the right to purchase tangible  
11 personal property or services; photography; photo developing and enlarging; tire recapping;  
12 welding and all repair services; cable television; and rentals of tangible personal property except  
13 leases of tangible personal property between one telephone company and another telephone  
14 company, motor vehicles as defined by § 32-5-1 leased under a single contract for more than  
15 twenty-eight days and mobile homes provided, however, that the specific enumeration of  
16 businesses and professions made in this section does not, in any way, limit the scope and effect  
17 of § 10-45-4.

18 Section 4. That § 10-45-5.3 be amended to read as follows:

19 10-45-5.3. There is imposed, at the rate of ~~three~~ four percent, an excise tax on the gross  
20 receipts of any person engaging in oil and gas field services (group no. 138) as enumerated in  
21 the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division  
22 of the Office of Management and Budget, Office of the President.

23 Section 5. That § 10-45-6 be amended to read as follows:

24 10-45-6. There is hereby imposed a tax of ~~four~~ five percent upon the gross receipts from  
25 sales, furnishing, or service of gas, electricity, and water, including the gross receipts from such

1 sales by any municipal corporation furnishing gas, and electricity, to the public in its proprietary  
2 capacity, except as otherwise provided in this chapter, when sold at retail in the State of South  
3 Dakota to consumers or users.

4 Section 6. That § 10-45-6.1 be amended to read as follows:

5 10-45-6.1. There is hereby imposed on amounts paid for local telephone services, toll  
6 telephone services and teletypewriter services, a tax of ~~four~~ five percent of the amount so paid.  
7 The taxes imposed by this section shall be paid by the person paying for the services. If a bill is  
8 rendered the taxpayer for local telephone service or toll telephone service, the amount on which  
9 the tax with respect to such services shall be based shall be the sum of all charges for such  
10 services included in the bill; except that if a person who renders the bill groups individual items  
11 for purposes of rendering the bill and computing the tax, then the amount on which the tax for  
12 each such group shall be based shall be the sum of all items within that group, and the tax on the  
13 remaining items not included in any such group shall be based on the charge for each item  
14 separately. If the tax imposed by this section with respect to toll telephone service is paid by  
15 inserting coins in coin operated telephones, the tax shall be computed to the nearest multiple of  
16 five cents, except that, where the tax is midway between multiples of five cents, the next higher  
17 multiple shall apply. The tax so paid shall be remitted at the same time as the sales tax imposed  
18 by this chapter.

19 Section 7. That § 10-45-8 be amended to read as follows:

20 10-45-8. There is imposed a tax of ~~four~~ five percent upon the gross receipts from all sales  
21 of tickets or admissions to places of amusement and athletic events, except as otherwise provided  
22 in this chapter.

23 Section 8. That § 10-45-70 be amended to read as follows:

24 10-45-70. There is imposed a tax of ~~four~~ five percent on the gross receipts from the  
25 transportation of tangible personal property. The tax imposed by this section shall apply to any

1 transportation of tangible personal property if both the origin and destination of the tangible  
2 personal property are within this state.

3 Section 9. That § 10-45-71 be amended to read as follows:

4 10-45-71. There is imposed a tax of ~~four~~ five percent on the gross receipts from the  
5 transportation of passengers. The tax imposed by this section shall apply to any transportation  
6 of passengers if the passenger boards and exits the mode of transportation within this state.

7 Section 10. That § 10-46-2.1 be amended to read as follows:

8 10-46-2.1. For the privilege of using services in South Dakota, except those types of services  
9 exempted by § 10-46-17.3, there is imposed on the person using the service an excise tax equal  
10 to ~~four~~ five percent of the value of the services at the time they are rendered. However, this tax  
11 may not be imposed on any service rendered by a related corporation as defined in subdivision  
12 10-43-1(11) for use by a financial institution as defined in subdivision 10-43-1(4) or on any  
13 service rendered by a financial institution as defined in subdivision 10-43-1(4) for use by a related  
14 corporation as defined in subdivision 10-43-1(11). For the purposes of this section, the term  
15 related corporation includes a corporation which together with the financial institution is part of  
16 a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on January 1,  
17 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C.  
18 § 1563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent. For the  
19 purpose of this chapter, services rendered by an employee for the use of ~~his~~ the employer are not  
20 taxable.

21 Section 11. That § 10-46-2.2 be amended to read as follows:

22 10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal  
23 property in this state at the rate of ~~four~~ five percent of the rental payments upon the property.

24 Section 12. That § 10-46-57 be amended to read as follows:

25 10-46-57. There is imposed a tax of ~~four~~ five percent on the privilege of the use of any

1 transportation of tangible personal property. The tax imposed by this section shall apply to any  
2 transportation of tangible personal property if both the origin and destination of the tangible  
3 personal property are within this state.

4 Section 13. That § 10-46-58 be amended to read as follows:

5 10-46-58. There is imposed a tax of ~~four~~ five percent on the privilege of the use of any  
6 transportation of passengers. The tax imposed by this section shall apply to any transportation  
7 of passengers if the passenger boards and exits the mode of transportation within this state.

8 Section 14. The secretary of revenue shall transfer the additional revenue received by the  
9 state from the increase of the sales and use tax imposed by this Act to the property tax reduction  
10 fund.

11 Section 15. That § 42-7A-1 be amended to read as follows:

12 42-7A-1. Terms used in this chapter mean:

- 13 (1) ~~"Associated equipment," any proprietary device, machine or part used in the~~  
14 ~~manufacture or maintenance of a video lottery machine, including but not limited to~~  
15 ~~integrated circuit chips, printed wired assembly, printed wired boards, printing~~  
16 ~~mechanisms, video display monitors and metering devices;~~
- 17 (2) "Commission," the South Dakota Lottery Commission;
- 18 (3) ~~"Credit," five, ten or twenty-five cents;~~
- 19 (4) "Executive director," the executive director of the South Dakota Lottery;
- 20 (5) "Instant lottery," a game that offers preprinted tickets that indicate immediately or in  
21 a grand prize drawing whether the player has won a prize;
- 22 (6) ~~"Licensed establishment," a bar or lounge owned or managed by an individual,~~  
23 ~~partnership, corporation or association licensed to sell alcoholic beverages for~~  
24 ~~consumption upon the premises where sold;~~
- 25 (7) "Lottery" or "state lottery," any lottery operated pursuant to this chapter;

- 1 (8) "Lottery retailer," any person with whom the South Dakota Lottery has contracted  
2 to sell lottery tickets to the public;
- 3 (9) "Lottery vendor" or "vendor," any person who has entered into a major procurement  
4 contract with the South Dakota Lottery;
- 5 (10) "Major procurement," any contract with any vendor directly involved in providing  
6 facilities, equipment, tickets and services unique to the lottery, but not including  
7 materials, supplies, equipment and services common to the ordinary operations of  
8 state agencies;
- 9 (11) ~~"Net machine income," money put into a video lottery machine minus credits paid out~~  
10 ~~in cash;~~
- 11 (12) "On-line lottery," a game linked to a central computer via a telecommunications  
12 network in which the player selects a specified group of numbers or symbols out of  
13 a predetermined range of numbers or symbols as approved by the commission;
- 14 (13) "South Dakota Lottery," the state agency created by this chapter to operate a lottery  
15 pursuant to this chapter;
- 16 (14) "Ticket," any tangible evidence issued or authorized by the South Dakota Lottery to  
17 prove participation in an instant; or on-line ~~or video lottery~~ game;
- 18 ~~— (14A) "Video lottery," any video game of chance played on video lottery machines;~~
- 19 ~~— (15) "Video lottery machine distributor," any individual, partnership, corporation or~~  
20 ~~association that distributes or sells video lottery machines or associated equipment in~~  
21 ~~this state;~~
- 22 ~~— (16) "Video lottery machine manufacturer," any individual, partnership, corporation or~~  
23 ~~association that assembles or produces video lottery machines or associated~~  
24 ~~equipment for sale or use in this state;~~
- 25 ~~— (17) "Video lottery machine operator," any individual, partnership, corporation or~~

1 association that places video lottery machines or associated equipment for public use  
2 in this state; and

3 ~~(18) "Video lottery machines," or "machine," any electronic video game machine that,~~  
4 ~~upon insertion of cash, is available to play or simulate the play of a video game,~~  
5 ~~including but not limited to video poker, keno and blackjack, authorized by the~~  
6 ~~commission utilizing a video display and microprocessors in which, by chance, the~~  
7 ~~player may receive free games or credits that can be redeemed for cash. The term~~  
8 ~~does not include a machine that directly dispenses coins, cash or tokens.~~

9 Section 16. That § 42-7A-4 be amended to read as follows:

10 42-7A-4. The executive director may, subject to policy established by the commission:

- 11 (1) Supervise and administer the operation of the state lottery in accordance with the  
12 provisions of this chapter;
- 13 (2) Employ all other employees of the South Dakota Lottery;
- 14 (3) Enter into contracts for promotional services; annuities or other methods deemed  
15 appropriate for the payment of prizes; data processing and other technical products,  
16 equipment and services; and facilities as needed to operate the South Dakota Lottery  
17 including, without limitation, tickets and other services involved in major  
18 procurements;
- 19 (4) Contract with and license persons for the sale of lottery tickets ~~and the offering of~~  
20 ~~video lottery games~~ to the public, as provided by this chapter and rules adopted  
21 pursuant thereto;
- 22 (5) Make demographic studies of lottery players and studies of reactions of citizens to  
23 existing and potential features of the lottery;
- 24 (6) Require lottery retailers and persons licensed pursuant to this chapter to furnish proof  
25 of financial stability or furnish surety in an amount based upon the expected volume

1 of sales of lottery tickets ~~or net machine income~~;

2 (7) Provide for secure facilities to house the South Dakota Lottery;

3 (8) Provide for separate, distinct and secure data processing facilities to be used for the  
4 reliable operation of the state lottery;

5 (9) Examine, or cause to be examined by any agent or representative designated by the  
6 executive director, any books, papers, records or memoranda of any lottery retailer  
7 or person licensed pursuant to this chapter for the purpose of ascertaining compliance  
8 with any provision of this chapter or any rule adopted pursuant to this chapter;

9 (10) Issue subpoenas to compel access to or for the production of such books, papers,  
10 records or memoranda in the custody or control of any lottery retailer or person  
11 licensed pursuant to this chapter, or to compel the appearance of any of their  
12 employees, for the purpose of ascertaining compliance with any provision of this  
13 chapter or any rule adopted pursuant to this chapter;

14 (11) Administer oaths and take depositions to the same extent and subject to the same  
15 limitations as would apply if the deposition was in aid of a civil action in the circuit  
16 court;

17 ~~(11A) The lottery commission shall operate a video lottery undertaken pursuant to this  
18 chapter and may not contract or assign this responsibility to any other person;~~

19 (12) Impose civil fines not to exceed ten thousand dollars per violation and fifteen  
20 thousand dollars for any subsequent violation of any provision of this chapter or any  
21 rule adopted pursuant to this chapter; and

22 (13) Enter into written agreements or compacts with one or more other states for the  
23 operation, marketing and promotion of a joint lottery or joint lottery games.

24 Section 17. That § 42-7A-13 be amended to read as follows:

25 42-7A-13. To be selected as a lottery retailer ~~or video lottery machine operator~~, a natural

1 person acting as a sole proprietor shall:

- 2 (1) Be at least eighteen years of age;
- 3 (2) Be of good character and reputation;
- 4 (3) Have sufficient financial resources to support the activities required to sell lottery  
5 tickets ~~or place and service video lottery machines~~; and
- 6 (4) Be current in payment of all taxes, interest and penalties owed to the State of South  
7 Dakota, excluding items under formal dispute or appeal pursuant to applicable  
8 statutes.

9 A lottery retailer ~~or video lottery machine operator~~ may not be a lottery vendor or an  
10 employee or agent of any lottery vendor doing business with the South Dakota Lottery.

11 Section 18. That § 42-7A-15 be amended to read as follows:

12 42-7A-15. For a partnership to be selected as a lottery retailer ~~or video lottery machine~~  
13 ~~operator~~, the partnership shall meet the requirements of subdivisions 42-7A-13(3) and (4), and  
14 each partner thereof shall meet the requirements of subdivisions 42-7A-13(1) and (2) and  
15 subdivisions 42-7A-14(1) to (5), inclusive.

16 Section 19. That § 42-7A-16 be amended to read as follows:

17 42-7A-16. For an association or corporation to be selected as a lottery retailer ~~or video~~  
18 ~~lottery machine operator~~, the association or corporation shall meet the requirements of  
19 subdivisions 42-7A-13(3) and (4), and each officer and director and each stockholder who owns  
20 five percent or more of the stock of such association or corporation shall meet the requirements  
21 of subdivisions 42-7A-13(1) and (2) and subdivisions 42-7A-14(1) to (5), inclusive.

22 Section 20. That § 42-7A-21 be amended to read as follows:

23 42-7A-21. The commission shall promulgate rules pursuant to chapter 1-26 governing the  
24 establishment and operation of a state lottery as necessary to carry out the purposes of this  
25 chapter. The commission shall promulgate rules concerning the following:

- 1 (1) The types of ticket lottery games to be conducted as authorized pursuant to this
- 2 chapter;
- 3 (2) The manner of selecting the winning tickets. However, if a lottery game utilizes a
- 4 drawing of winning numbers, a drawing among entries, or a drawing among finalists,
- 5 such drawings shall always be open to the public and shall be recorded on both video
- 6 and audio tape;
- 7 (3) The manner of payment of prizes to the holders of winning tickets;
- 8 (4) The frequency of the drawings or selections of winning tickets;
- 9 (5) The types of locations at which tickets may be sold;
- 10 (6) The methods to be used in selling tickets;
- 11 (7) Additional qualifications for the selection of lottery retailers, ~~video lottery machine~~
- 12 ~~manufacturers, distributors or operators~~ and the amount of application fees to be paid
- 13 by each;
- 14 (8) The amount and method of compensation to be paid to lottery retailers, including
- 15 special bonuses and incentives;
- 16 (9) Deadlines for claims for prizes by winners of each lottery game. However, in no
- 17 instance may such deadline be for more than one year;
- 18 ~~(10) The mechanical and electronic specifications for each video lottery machine. At a~~
- 19 ~~minimum, each video lottery machine shall meet the requirements of § 42-7A-37;~~
- 20 ~~(11) Machine security testing and inspection procedures;~~
- 21 ~~(12) Liability for machine malfunction;~~
- 22 ~~(13) Machine maintenance and repair;~~
- 23 ~~(14) Financial responsibility of persons licensed under this chapter;~~
- 24 ~~(15) Accounting procedures for net machine income;~~
- 25 ~~(16) Licensing procedures under this chapter; and~~

1 (17) Such other matters necessary or desirable for the efficient or economical operation of  
2 the lottery or for the convenience of the public.

3 Section 21. That § 42-7A-24 be amended to read as follows:

4 42-7A-24. Net proceeds from the sale of instant lottery tickets shall be transferred to the  
5 state general fund on an annual basis after July first each year. The commission shall maximize  
6 the net proceeds to the state from the sale of instant and on-line lottery tickets. In no event may  
7 yearly lottery expenses for the sale of lottery tickets, excluding expenditures from retained  
8 earnings, exceed the amount of combined net proceeds transferred to the state general fund, the  
9 state corrections facility construction fund, and the state capital construction fund. ~~Net machine~~  
10 ~~income from video lottery games shall be directly deposited in the state property tax reduction~~  
11 ~~fund upon receipt.~~ Net proceeds are funds in the lottery operating fund which are not needed for  
12 the payment of prizes, lottery expenses, and total retained earnings up to one and one-half million  
13 dollars cash deemed necessary by the executive director and commission for replacement,  
14 maintenance and upgrade of business systems, product development, legal and operating  
15 contingencies of the lottery.

16 Beginning in fiscal year 1997 and each year thereafter, the commission shall transfer the first  
17 one million four hundred thousand dollars from the net proceeds from the sale of on-line ~~video~~  
18 lottery tickets collected pursuant to § 42-7A-24 to the general fund. The commission shall then  
19 transfer an amount equal to the remaining net proceeds from the sale of on-line lottery tickets  
20 collected pursuant to § 42-7A-24 to the state capital construction fund created in § 5-27-1.

21 Section 22. That §§ 35-4-103, 42-7A-37 to 42-7A-48, inclusive, 42-7A-57, 42-7A-58, 42-  
22 7A-59, and 42-7A-61 to 42-7A-65, inclusive, be repealed.