

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

464B0605

## HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB1189** - 2/9/98

Introduced by: Representatives Volesky and Lucas

1 FOR AN ACT ENTITLED, An Act to repeal the video lottery.

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

3 Section 1. That the following Act be enacted by the South Dakota Legislative Assembly and  
4 referred to the vote of the electors of the state at the next general election to be held in the year  
5 1998 for their approval:

6 FOR AN ACT ENTITLED, An Act to repeal the video lottery.

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

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

9 42-7A-1. Terms used in this chapter mean:

- 10 (1) ~~"Associated equipment," any proprietary device, machine or part used in the~~  
11 ~~manufacture or maintenance of a video lottery machine, including but not limited to~~  
12 ~~integrated circuit chips, printed wired assembly, printed wired boards, printing~~  
13 ~~mechanisms, video display monitors and metering devices;~~
- 14 (2) "Commission," the South Dakota Lottery Commission;
- 15 (3) ~~"Credit," five, ten or twenty-five cents;~~

- 1 (4) "Executive director," the executive director of the South Dakota Lottery;
- 2 (5) "Instant lottery," a game that offers preprinted tickets that indicate immediately or in  
3 a grand prize drawing whether the player has won a prize;
- 4 (6) ~~"Licensed establishment," a bar or lounge owned or managed by an individual,  
5 partnership, corporation or association licensed to sell alcoholic beverages for  
6 consumption upon the premises where sold;~~
- 7 (7) "Lottery" or "state lottery," any lottery operated pursuant to this chapter;
- 8 (8) "Lottery retailer," any person with whom the South Dakota Lottery has contracted  
9 to sell lottery tickets to the public;
- 10 (9) "Lottery vendor" or "vendor," any person who has entered into a major procurement  
11 contract with the South Dakota Lottery;
- 12 (10) "Major procurement," any contract with any vendor directly involved in providing  
13 facilities, equipment, tickets and services unique to the lottery, but not including  
14 materials, supplies, equipment, and services common to the ordinary operations of  
15 state agencies;
- 16 (11) ~~"Net machine income," money put into a video lottery machine minus credits paid out  
17 in cash;~~
- 18 (12) "On-line lottery," a game linked to a central computer via a telecommunications  
19 network in which the player selects a specified group of numbers or symbols out of  
20 a predetermined range of numbers or symbols as approved by the commission;
- 21 (13) "South Dakota Lottery," the state agency created by this chapter to operate a lottery  
22 pursuant to this chapter;
- 23 (14) "Ticket," any tangible evidence issued or authorized by the South Dakota Lottery to  
24 prove participation in an instant; or on-line ~~or video lottery~~ game;
- 25 ~~(14A) "Video lottery," any video game of chance played on video lottery machines;~~

1 ~~(15) "Video lottery machine distributor," any individual, partnership, corporation or~~  
2 ~~association that distributes or sells video lottery machines or associated equipment in~~  
3 ~~this state;~~

4 ~~(16) "Video lottery machine manufacturer," any individual, partnership, corporation or~~  
5 ~~association that assembles or produces video lottery machines or associated~~  
6 ~~equipment for sale or use in this state;~~

7 ~~(17) "Video lottery machine operator," any individual, partnership, corporation or~~  
8 ~~association that places video lottery machines or associated equipment for public use~~  
9 ~~in this state; and~~

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

16 Section 2. That § 42-7A-4 be amended to read as follows:

17 42-7A-4. The executive director may, subject to policy established by the commission:

18 (1) Supervise and administer the operation of the state lottery in accordance with the  
19 provisions of this chapter;

20 (2) Employ all other employees of the South Dakota Lottery;

21 (3) Enter into contracts for promotional services; annuities or other methods deemed  
22 appropriate for the payment of prizes; data processing and other technical products,  
23 equipment and services; and facilities as needed to operate the South Dakota Lottery  
24 including, without limitation, tickets and other services involved in major  
25 procurements;

- 1       (4)   Contract with and license persons for the sale of lottery tickets ~~and the offering of~~  
2       ~~video lottery games~~ to the public, as provided by this chapter and rules adopted  
3       pursuant thereto;
- 4       (5)   Make demographic studies of lottery players and studies of reactions of citizens to  
5       existing and potential features of the lottery;
- 6       (6)   Require lottery retailers and persons licensed pursuant to this chapter to furnish proof  
7       of financial stability or furnish surety in an amount based upon the expected volume  
8       of sales of lottery tickets ~~or net machine income~~;
- 9       (7)   Provide for secure facilities to house the South Dakota Lottery;
- 10      (8)   Provide for separate, distinct and secure data processing facilities to be used for the  
11      reliable operation of the state lottery;
- 12      (9)   Examine, or cause to be examined by any agent or representative designated by the  
13      executive director, any books, papers, records, or memoranda of any lottery retailer  
14      or person licensed pursuant to this chapter for the purpose of ascertaining compliance  
15      with any provision of this chapter or any rule adopted pursuant to this chapter;
- 16      (10)  Issue subpoenas to compel access to or for the production of such books, papers,  
17      records or memoranda in the custody or control of any lottery retailer or person  
18      licensed pursuant to this chapter, or to compel the appearance of any of their  
19      employees, for the purpose of ascertaining compliance with any provision of this  
20      chapter or any rule adopted pursuant to this chapter;
- 21      (11)  Administer oaths and take depositions to the same extent and subject to the same  
22      limitations as would apply if the deposition was in aid of a civil action in the circuit  
23      court;
- 24      (11A) ~~The lottery commission shall operate a video lottery undertaken pursuant to this~~  
25      ~~chapter and may not contract or assign this responsibility to any other person;~~

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

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

6 Section 3. That § 42-7A-13 be amended to read as follows:

7 42-7A-13. To be selected as a lottery retailer ~~or video lottery machine operator~~, a natural  
8 person acting as a sole proprietor shall:

9 (1) Be at least eighteen years of age;

10 (2) Be of good character and reputation;

11 (3) Have sufficient financial resources to support the activities required to sell lottery  
12 tickets ~~or place and service video lottery machines~~; and

13 (4) Be current in payment of all taxes, interest, and penalties owed to the State of South  
14 Dakota, excluding items under formal dispute or appeal pursuant to applicable  
15 statutes.

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

18 Section 4. That § 42-7A-15 be amended to read as follows:

19 42-7A-15. For a partnership to be selected as a lottery retailer ~~or video lottery machine~~  
20 ~~operator~~, the partnership shall meet the requirements of subdivisions 42-7A-13(3) and (4), and  
21 each partner thereof shall meet the requirements of subdivisions 42-7A-13(1) and (2) and  
22 subdivisions 42-7A-14(1) to (5), inclusive.

23 Section 5. That § 42-7A-16 be amended to read as follows:

24 42-7A-16. For an association or corporation to be selected as a lottery retailer ~~or video~~  
25 ~~lottery machine operator~~, the association or corporation shall meet the requirements of

1 subdivisions 42-7A-13(3) and (4), and each officer and director and each stockholder who owns  
2 five percent or more of the stock of such association or corporation shall meet the requirements  
3 of subdivisions 42-7A-13(1) and (2) and subdivisions 42-7A-14(1) to (5), inclusive.

4 Section 6. That § 42-7A-21 be amended to read as follows:

5 42-7A-21. The commission shall promulgate rules pursuant to chapter 1-26 governing the  
6 establishment and operation of a state lottery as necessary to carry out the purposes of this  
7 chapter. The commission shall promulgate rules concerning the following:

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

1           ~~minimum, each video lottery machine shall meet the requirements of § 42-7A-37;~~

2   ~~—(11) Machine security testing and inspection procedures;~~

3   ~~—(12) Liability for machine malfunction;~~

4   ~~—(13) Machine maintenance and repair;~~

5   ~~—(14) Financial responsibility of persons licensed under this chapter;~~

6   ~~—(15) Accounting procedures for net machine income;~~

7   ~~—(16) Licensing procedures under this chapter; and~~

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

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

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

23       Beginning in fiscal year 1997 and each year thereafter, the commission shall transfer the first  
24       one million four hundred thousand dollars from the net proceeds from the sale of on-line ~~video~~  
25       lottery tickets collected pursuant to § 42-7A-24 to the general fund. The commission shall then

1 transfer an amount equal to the remaining net proceeds from the sale of on-line lottery tickets  
2 collected pursuant to § 42-7A-24 to the state capital construction fund created in § 5-27-1.

3 Section 8. That § 42-7A-36 be amended to read as follows:

4 42-7A-36. No person may have in ~~his~~ possession, custody, or under ~~his~~ the person's control  
5 or permit to be kept in any place under ~~his~~ the person's possession or control, any device that  
6 awards credits and contains a circuit, meter or switch capable of removing and recording the  
7 removal of credits when the award of credits is dependent upon chance. A violation of this  
8 section is a Class 6 felony. All devices described in this section are hereby declared to be public  
9 nuisances. ~~The provisions of this section do not apply to devices or electronic video game~~  
10 ~~machines licensed pursuant to this chapter.~~

11 Section 9. That § 42-7A-56 be amended to read as follows:

12 42-7A-56. The Legislature hereby finds, and declares to be the public policy of this state that:

- 13 (1) The success of the South Dakota Lottery is dependent upon public confidence and  
14 trust that it is conducted honestly and free from criminal and corruptive elements;
- 15 (2) Public confidence and trust can only be maintained by strict regulation of all persons,  
16 locations, practices, associations and activities related to the sale of lottery products  
17 ~~and the operation, manufacturing and distribution of video lottery games and~~  
18 ~~equipment;~~ and
- 19 (3) No applicant for a license or other affirmative commission action has any right to a  
20 license or to the granting of the approval sought. Any license issued or other  
21 commission approval granted pursuant to the provisions of this chapter is a revocable  
22 privilege, and no holder acquires any vested interest or property right therein or  
23 thereunder.

24 Section 10. That § 35-4-103, §§ 42-7A-37 to 42-7A-48, inclusive, § 42-7A-57, § 42-7A-58,  
25 § 42-7A-59, and §§ 42-7A-61 to 42-7A-65, inclusive, be repealed.

1 Section 11. That § 10-45-2 be amended to read as follows:

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

7 Section 12. That § 10-45-3 be amended to read as follows:

8 10-45-3. There is hereby imposed a tax of ~~three~~ four percent on the gross receipts from the  
9 sale or resale of farm machinery and attachment units other than replacement parts; or irrigation  
10 equipment used exclusively for agricultural purposes by licensed South Dakota retailers;  
11 provided, however, that whenever any trade-in or exchange of used farm machinery is involved  
12 in the transaction, the tax shall only be due and collected on the cash difference.

13 Section 13. That § 10-45-5 be amended to read as follows:

14 10-45-5. There is imposed a tax at the rate of ~~three~~ four percent upon the gross receipts of  
15 any person from engaging in the business of leasing farm machinery or irrigation equipment used  
16 for agricultural purposes and ~~four~~ five percent upon the gross receipts of any person from  
17 engaging or continuing in any of the following businesses or services in this state: abstracters;  
18 accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car  
19 washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration;  
20 cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel  
21 supply; membership or entrance fees for the use of a facility or for the right to purchase tangible  
22 personal property or services; photography; photo developing and enlarging; tire recapping;  
23 welding and all repair services; cable television; and rentals of tangible personal property except  
24 leases of tangible personal property between one telephone company and another telephone  
25 company, motor vehicles as defined by § 32-5-1 leased under a single contract for more than

1 twenty-eight days and mobile homes provided, however, that the specific enumeration of  
2 businesses and professions made in this section does not, in any way, limit the scope and effect  
3 of § 10-45-4.

4 Section 14. That § 10-45-5.3 be amended to read as follows:

5 10-45-5.3. There is imposed, at the rate of ~~three~~ four percent, an excise tax on the gross  
6 receipts of any person engaging in oil and gas field services (group no. 138) as enumerated in  
7 the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division  
8 of the Office of Management and Budget, Office of the President.

9 Section 15. That § 10-45-6 be amended to read as follows:

10 10-45-6. There is hereby imposed a tax of ~~four~~ five percent upon the gross receipts from  
11 sales, furnishing, or service of gas, electricity, and water, including the gross receipts from such  
12 sales by any municipal corporation furnishing gas, and electricity, to the public in its proprietary  
13 capacity, except as otherwise provided in this chapter, when sold at retail in the State of South  
14 Dakota to consumers or users.

15 Section 16. That § 10-45-6.1 be amended to read as follows:

16 10-45-6.1. There is hereby imposed on amounts paid for local telephone services, toll  
17 telephone services and teletypewriter services, a tax of ~~four~~ five percent of the amount so paid.  
18 The taxes imposed by this section shall be paid by the person paying for the services. If a bill is  
19 rendered the taxpayer for local telephone service or toll telephone service, the amount on which  
20 the tax with respect to such services shall be based shall be the sum of all charges for such  
21 services included in the bill; except that if a person who renders the bill groups individual items  
22 for purposes of rendering the bill and computing the tax, then the amount on which the tax for  
23 each such group shall be based shall be the sum of all items within that group, and the tax on the  
24 remaining items not included in any such group shall be based on the charge for each item  
25 separately. If the tax imposed by this section with respect to toll telephone service is paid by

1 inserting coins in coin operated telephones, the tax shall be computed to the nearest multiple of  
2 five cents, except that, where the tax is midway between multiples of five cents, the next higher  
3 multiple shall apply. The tax so paid shall be remitted at the same time as the sales tax imposed  
4 by this chapter.

5 Section 17. That § 10-45-8 be amended to read as follows:

6 10-45-8. There is imposed a tax of ~~four~~ five percent upon the gross receipts from all sales  
7 of tickets or admissions to places of amusement and athletic events, except as otherwise provided  
8 in this chapter.

9 Section 18. That § 10-45-70 be amended to read as follows:

10 10-45-70. There is imposed a tax of ~~four~~ five percent on the gross receipts from the  
11 transportation of tangible personal property. The tax imposed by this section shall apply to any  
12 transportation of tangible personal property if both the origin and destination of the tangible  
13 personal property are within this state.

14 Section 19. That § 10-45-71 be amended to read as follows:

15 10-45-71. There is imposed a tax of ~~four~~ five percent on the gross receipts from the  
16 transportation of passengers. The tax imposed by this section shall apply to any transportation  
17 of passengers if the passenger boards and exits the mode of transportation within this state.

18 Section 20. That § 10-46-2.1 be amended to read as follows:

19 10-46-2.1. For the privilege of using services in South Dakota, except those types of services  
20 exempted by § 10-46-17.3, there is imposed on the person using the service an excise tax equal  
21 to ~~four~~ five percent of the value of the services at the time they are rendered. However, this tax  
22 may not be imposed on any service rendered by a related corporation as defined in subdivision  
23 10-43-1(11) for use by a financial institution as defined in subdivision 10-43-1(4) or on any  
24 service rendered by a financial institution as defined in subdivision 10-43-1(4) for use by a related  
25 corporation as defined in subdivision 10-43-1(11). For the purposes of this section, the term

1 related corporation includes a corporation which together with the financial institution is part of  
2 a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on January 1,  
3 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C.  
4 § 1563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent. For the  
5 purpose of this chapter, services rendered by an employee for the use of ~~his~~ the employer are not  
6 taxable.

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

8 10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal  
9 property in this state at the rate of ~~four~~ five percent of the rental payments upon the property.

10 Section 22. That § 10-46-57 be amended to read as follows:

11 10-46-57. There is imposed a tax of ~~four~~ five percent on the privilege of the use of any  
12 transportation of tangible personal property. The tax imposed by this section shall apply to any  
13 transportation of tangible personal property if both the origin and destination of the tangible  
14 personal property are within this state.

15 Section 23. That § 10-46-58 be amended to read as follows:

16 10-46-58. There is imposed a tax of ~~four~~ five percent on the privilege of the use of any  
17 transportation of passengers. The tax imposed by this section shall apply to any transportation  
18 of passengers if the passenger boards and exits the mode of transportation within this state.

19 Section 24. The effective date of this Act is July 1, 1999.

1 **BILL HISTORY**

2 1/21/98 First read in House and referred to Taxation. H.J. 148

3 2/5/98 Scheduled for Committee hearing on this date.

4 2/5/98 Taxation Report Without Recommendation, AYES 7, NAYS 6. H.J. 402