

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

276C0197

## HOUSE BILL NO. 1110

Introduced by: Representatives Lucas, Crisp, Hanson, Kazmerzak, Kooistra, McIntyre,  
Waltman, and Weber and Senators Dennert and Symens

1 FOR AN ACT ENTITLED, An Act to restrict the locations where video lottery machines may  
2 be placed, to require a corporate income tax to be imposed, to create an impact fund, and  
3 to provide property tax relief.

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

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

6 42-7A-1. Terms used in this chapter mean:

- 7 (1) "Associated equipment," any proprietary device, machine or part used in the  
8 manufacture or maintenance of a video lottery machine, including ~~but not limited to~~  
9 integrated circuit chips, printed wired assembly, printed wired boards, printing  
10 mechanisms, video display monitors, and metering devices;
- 11 (2) "Commission," the South Dakota Lottery Commission;
- 12 (3) "Credit," five, ten, or twenty-five cents;
- 13 (4) "Executive director," the executive director of the South Dakota Lottery;
- 14 (5) "Instant lottery," a game that offers preprinted tickets that indicate immediately or in  
15 a grand prize drawing ~~whether~~ if the player has won a prize;
- 16 (6) "Licensed establishment," a bar or lounge owned or managed by an individual,

1 partnership, corporation, or association licensed to sell alcoholic beverages for  
2 consumption upon the premises where sold, but not a business licensed to sell  
3 alcoholic beverages pursuant to subdivision 35-4-2 (12) or (16);

4 (7) "Lottery" or "state lottery," any lottery operated pursuant to this chapter;

5 (8) "Lottery retailer," any person with whom the South Dakota Lottery has contracted  
6 to sell lottery tickets to the public;

7 (9) "Lottery vendor" or "vendor," any person who has entered into a major procurement  
8 contract with the South Dakota Lottery;

9 (10) "Major procurement," any contract with any vendor directly involved in providing  
10 facilities, equipment, tickets and services unique to the lottery, but not including  
11 materials, supplies, equipment and services common to the ordinary operations of  
12 state agencies;

13 (11) "Net machine income," money put into a video lottery machine minus credits paid out  
14 in cash;

15 (12) "On-line lottery," a game linked to a central computer via a telecommunications  
16 network in which the player selects a specified group of numbers or symbols out of  
17 a predetermined range of numbers or symbols as approved by the commission;

18 (13) "South Dakota Lottery," the state agency created by this chapter to operate a lottery  
19 pursuant to this chapter;

20 (14) "Ticket," any tangible evidence issued or authorized by the South Dakota Lottery to  
21 prove participation in an instant, on-line or video lottery game;

22 (14A) "Video lottery," any video game of chance played on video lottery machines;

23 (15) "Video lottery machine distributor," any individual, partnership, corporation, or  
24 association that distributes or sells video lottery machines or associated equipment in  
25 this state;

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

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

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

13 Section 2. That § 42-7A-37.1 be amended to read as follows:

14 42-7A-37.1. A business licensed pursuant to subdivision 35-4-2 (12) ~~and or~~ (16) may not be  
15 a licensed establishment for video lottery placement pursuant to subdivision 42-7A-1 (6) ~~unless~~  
16 ~~it is a bar or lounge. For the purposes of this section, a bar or lounge is an enterprise primarily~~  
17 ~~maintained and operated for the selling, dispensing and consumption of alcoholic beverages on~~  
18 ~~the premises and may also include the sale and service of food. A bar or lounge may be physically~~  
19 ~~connected to another enterprise within the same building, which enterprise may be owned or~~  
20 ~~operated by the same person. There may be interior access between a bar or lounge and a~~  
21 ~~connected enterprise. However, there shall be a floor to ceiling opaque wall separation between~~  
22 ~~the two enterprises. A separation wall may be constructed to provide visual and physical access~~  
23 ~~for employees from areas in the building not open to the public. The bar or lounge shall have a~~  
24 ~~separate entrance and exit. A separate entrance and exit is not required if entrance to the bar may~~  
25 ~~only be obtained from the other distinct enterprise and the public may not enter the other~~

1 ~~enterprise by first passing through the bar or lounge. All video lottery machines shall be~~  
2 ~~adequately monitored during business hours. Adequate monitoring shall be accomplished by the~~  
3 ~~personal presence of an employee or by an employee using video cameras or mirrors and periodic~~  
4 ~~inspections of the bar or lounge. No new license may be issued to any establishment after July~~  
5 ~~1, 1992, unless such establishment complies with this section. No license may be renewed to any~~  
6 ~~establishment after July 1, 1993, unless such establishment complies with this section.~~

7 Section 3. That § 42-7A-44 be amended to read as follows:

8 42-7A-44. The placement of video lottery machines in licensed establishments shall be subject  
9 to the rules of the commission promulgated pursuant to chapter 1-26. No more than ten video  
10 lottery machines may be placed in any licensed establishment. ~~The bar or lounge with an on-sale~~  
11 ~~license issued pursuant to subdivision 35-4-2 (12) or (16) shall be restricted to persons~~  
12 ~~twenty-one years of age or older.~~ The entrance to the area where video lottery machines are  
13 located shall display a sign that the premises are restricted to persons twenty-one years or older.  
14 Notwithstanding the restrictions in §§ 35-4-79 to 35-4-79.2, inclusive, persons a person under  
15 the age of twenty-one may only enter the premises where video lottery machines are located  
16 provided ~~they are~~ the person is accompanied by a parent, guardian, or spouse of twenty-one  
17 years or older.

18 Section 4. That § 42-7A-64 be repealed.

19 ~~42-7A-64. A municipality or county may consider, in addition to the criteria for the issuance~~  
20 ~~of an on-sale alcoholic beverage license, the following criteria for authorizing video lottery~~  
21 ~~machine placement in establishments issued an on-sale alcoholic beverage license pursuant to~~  
22 ~~subdivisions 35-4-2 (12) and (16):~~

23 ~~(1) The number of establishments currently licensed for video lottery;~~

24 ~~(2) The proximity of the business to other establishments licensed for video lottery;~~

25 ~~(3) The type of business and manner in which the applicant proposes to operate it;~~

1 ~~(4) The location of the business in relation to other businesses, residential areas, or~~  
2 ~~activities within the same general area;~~

3 ~~(5) The extent to which minors frequent a business connected to the one proposed; and~~

4 ~~(6) The effect the proposed business has on economic development.~~

5 ~~The governing board shall certify on each application filed with the department of revenue~~  
6 ~~for a license granted under subdivisions 35-4-2 (12) and (16) whether the business premises is~~  
7 ~~authorized for video lottery machine placement. An existing video lottery license may not be~~  
8 ~~denied renewal or transfer based upon the criteria set forth in this section. The lottery may issue~~  
9 ~~a video lottery license to those establishments certified pursuant to this section. Notwithstanding~~  
10 ~~the above provisions, a county or municipality may not restrict the number of alcoholic beverage~~  
11 ~~licenses issued under subdivisions 35-4-2 (12) and (16) and certified for video lottery to a~~  
12 ~~number less than those licensed as video lottery establishments on March 1, 1994.~~

13 Section 5. That § 35-4-103 be amended to read as follows:

14 35-4-103. Any municipality or county may impose on any person who is licensed pursuant  
15 to subdivision 35-4-2 (4), (6), (11), ~~(12), (13) or (16)~~ or (13) and who is issued a video lottery  
16 establishment license pursuant to § 42-7A-41 an annual additional license fee for the privilege  
17 of locating video lottery machines on the licensed premises. The fee may not exceed fifty dollars  
18 for each video lottery machine. The fees imposed by this section are in addition to fees imposed  
19 under §§ 35-4-2 and 42-7A-41 and shall be paid at the same time and in the same manner as the  
20 fees paid in § 35-4-2. All fees received under this section shall be deposited into the general fund  
21 of the municipality or county having jurisdiction over the licensee. However, the municipality or  
22 county may not impose this additional fee on more than one license per location.

23 Section 6. The Seventy-fifth Legislative Assembly shall impose a corporate income tax which  
24 shall be implemented during the tax year beginning in 2001 and the revenue and interest  
25 generated by such tax, less the cost of administration, is dedicated to replace reduced video

1 lottery revenues, create a video lottery impact fund, and fund property tax relief. The rate of  
2 taxation imposed on corporate income may not exceed six percent of the federal taxable income.

3 If the revenue generated by a corporation income tax exceeds the amount needed to replace  
4 the reduced video lottery revenues during the first three years a corporate income tax is levied,  
5 then an amount not to exceed a total of twenty millions dollars shall be deposited in the video  
6 lottery impact fund established pursuant to section 7 of this Act.

7 Section 7. There is hereby created a special fund within the state treasury to be known as the  
8 video lottery impact fund for the purpose of offsetting economic, social, and physical impacts  
9 resulting from removal of video lottery machines from certain businesses.

10 Section 8. The Board of Economic Development shall administer the video lottery impact  
11 fund in a manner similar to the administration of the revolving economic development and  
12 initiative fund created pursuant to chapter 1-16G. The fund shall consist of all moneys from all  
13 lawful public and private sources including the appropriation provided pursuant to section 6 of  
14 this Act and any grant, gift, fee, or interest received on investments made on money in the fund.  
15 The fund shall be maintained separately for any business directly impacted by the removal of  
16 video lottery machines from the establishment.

17 Section 9. The Board of Economic Development may make a loan to any person who owned  
18 or operated an establishment licensed pursuant to subdivision 35-4-2 (12) or (16) and who had  
19 video lottery machines removed from the person's establishment pursuant to this Act. An  
20 application for a loan may be submitted to the board for a period of time within three years after  
21 the applicant has removed each video lottery machine from the applicant's establishment. Each  
22 applicant shall be sponsored by a bank, small business development center, or economic  
23 development corporation. The sponsoring entity shall submit an analysis of the business plan and  
24 a loan servicing plan acceptable to the board. No loan may exceed fifty thousand dollars and the  
25 interest rate and other terms shall be established by the board. The board may or may not require

1 matching funds from another source. However, each applicant shall provide at least ten percent  
2 cash equity in the project.

3 Section 10. The Board of Economic Development may promulgate rules, pursuant to chapter  
4 1-26, to make loans from the video lottery impact fund, and may establish criteria for the  
5 qualification, application, payment, and repayment for any project.

6 Section 11. During the application period established by section 9 of this Act, the repayment  
7 of loans made and any interest thereon shall be receipted into the video lottery impact fund and  
8 all money in the fund is hereby appropriated for the purposes of making loans as provided  
9 sections 7 to 10, inclusive, of this Act.

10 Section 12. After the application period established by section 9 of this Act is concluded, the  
11 remaining balance in the video lottery impact fund and the repayment of loans made and interest  
12 thereon shall be credited to the revolving economic development and initiative fund created  
13 pursuant to § 1-16G-3.

14 Section 13. Any funds raised in addition to the funds needed to replace the revenue lost from  
15 the removal of video lottery machines in certain establishments and create a video lottery impact  
16 fund pursuant to this Act is dedicated for the purpose funding property tax relief by reducing the  
17 tax levy for the general fund of a school district.

18 Section 14. The effective date of sections 1 to 5, inclusive, of this Act is January 1, 2002.