

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

573P0495

HOUSE BILL NO. 1294

Introduced by: Representatives Faehn, Brunner, Cutler, Davis, Halverson, Howie, Krebs, McLaughlin, Pitts, Rave, Street, Tidemann, Turbiville, Van Etten, Vehle, Wick, and Willadsen and Senators Turbak Berry, Garnos, Greenfield, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to authorize the issuance of non smoking establishment on-
2 sale 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 Notwithstanding the provisions of § 35-4-11, each first class municipality may issue two
7 nonsmoking establishment on-sale licenses pursuant to subdivision 35-4-2(20). Any
8 establishment licensed pursuant to this section shall be operational within eighteen months
9 following issuance of the nonsmoking establishment on-sale license. If the applicant for the
10 nonsmoking establishment on-sale license possesses one or more on-sale licenses in the first
11 class municipality, the applicant shall either transfer one on-sale license to an unrelated party
12 or forfeit one on-sale license when the application for the nonsmoking establishment on-sale
13 license is granted by the municipality. No licensee that has a license issued pursuant to
14 subdivision 35-4-2(20) may conduct video lottery pursuant to chapter 42-7A upon the location



1 where the license is held.

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

3 35-4-2. Classes of licenses, with the fee of each class, follow:

- 4 (1) Distillers--four thousand dollars. However, no license fee is required for
5 manufacturers of alcohol for use in industry as a nonbeverage. If such manufacturer
6 of industrial alcohol shall at any time manufacture, produce, distill, sell, barter, or
7 dispose of alcohol for any use other than an industrial use, the license fee required
8 by this section shall be allocated to and payable for the portion of the year the
9 manufacturer devoted to such other use for each calendar month or fraction thereof
10 while so engaged, but in no case less than one-twelfth of said license fee;
- 11 (2) Wholesalers of alcoholic beverages--five thousand dollars;
- 12 (3) Off-sale--not less than five hundred dollars in municipalities of the first class, not
13 more than four hundred dollars in municipalities of the second class, and not more
14 than three hundred dollars in municipalities of the third class. The renewal fee for
15 such licenses may not exceed five hundred dollars in municipalities of the first class,
16 four hundred dollars in municipalities of the second class, and three hundred dollars
17 in municipalities of the third class;
- 18 (4) On-sale--in municipalities of various classes: municipalities of the first class, not less
19 than one dollar for each person residing within the municipality as measured by the
20 last preceding federal census, the renewal fee for such license is fifteen hundred
21 dollars; municipalities of the second class, no more than twelve hundred dollars;
22 municipalities of the third class, no more than nine hundred dollars;
- 23 (5) Off-sale licenses issued to municipalities under local option--not less than two
24 hundred fifty dollars;

1 (6) On-sale licenses issued outside municipalities --except as provided in § 35-4-11.9,
2 not less than the maximum that the municipality to which the applicant is nearest is
3 charging for a like license in that municipality, the renewal fee shall be the same as
4 is charged for a like license in the nearest municipality. However, if the nearest
5 municipality is more than fifteen miles from the on-sale license, the fee shall be
6 established pursuant to § 35-4-11.10. If the municipality to which the applicant is
7 nearest holds an on-sale license, pursuant to § 35-3-13 and does not charge a
8 specified fee, then the fee shall be the maximum amount that could be charged as if
9 the municipality had not been authorized to obtain on-sale licenses pursuant to § 35-
10 3-13. However, if the nearest municipality is a municipality of the first class and is
11 authorized to hold an on-sale license pursuant to § 35-3-13, such fee may not be more
12 than one hundred fifty percent of the minimum a municipality not so authorized may
13 charge for a like license. The renewal fee shall be the same as could be charged for
14 a like license in the nearest municipality;

15 (7) Solicitors--twenty-five dollars;

16 (8) Transportation companies--twenty-five dollars;

17 (9) Carrier--one hundred dollars, which fee entitles the licensee to sell or serve alcoholic
18 beverages on all conveyances the licensee operates within the state;

19 (10) Dispensers--ten dollars;

20 (11) On-sale dealers at publicly operated airports--two hundred fifty dollars;

21 (12) On-sale dealers in wine for Sunday--five hundred dollars;

22 (13) Convention facility on-sale--not less than one dollar for each person residing within
23 the municipality as measured by the last preceding federal census, the renewal fee for
24 such license, in municipalities of the first class, is fifteen hundred dollars; the

1 renewal fee for such license, in municipalities of the second class, is no more than
2 twelve hundred dollars; the renewal fee for such license, in municipalities of the third
3 class, is no more than nine hundred dollars;

4 (14) Manufacturers of malt beverages--five hundred dollars;

5 (15) Wholesalers of malt beverages--four hundred dollars;

6 (16) Malt beverage retailers, being both package dealers and on-sale dealers--two hundred
7 fifty dollars;

8 (17) Malt beverage package dealers--one hundred fifty dollars;

9 (18) On-sale dealers in light wine containing not more than six percent alcohol by weight
10 for each day of the week between the hours of seven a.m. and two a.m. to nonprofit
11 corporations established pursuant to chapter 7-27--two hundred dollars; ~~and~~

12 (19) Off-sale package wine dealers in table wines, sparkling wines, sacramental wine, and
13 distilled spirits produced from product provided to an artisan distiller by the
14 respective farm winery to be operated in conjunction with a farm winery established
15 pursuant to chapter 35-2--one hundred fifty dollars; and

16 (20) Non smoking establishment on-sale--not less than one dollar for each person residing
17 within the municipality as measured by the last preceding federal census, the renewal
18 fee for such license, in municipalities of the first class, is fifteen hundred dollars.

19 Section 3. That § 35-4-11 be amended to read as follows:

20 35-4-11. If not fixed by ordinance, the governing board of any municipality may on or before
21 the first of September in each year, by resolution, determine the number of on-sale and off-sale
22 licenses it will approve for the ensuing calendar year, and the fees to be charged for the various
23 classifications of licenses. The number of on-sale licenses issued may not exceed three each for
24 the first one thousand of population or fraction thereof and not exceed one each of such licenses

1 for each additional one thousand five hundred of population or fraction thereof. The number of
2 licenses allowable may not be less than the total number of licenses allowable or issued as of
3 July 1, 1981. The municipal governing board shall at such meeting establish the fee for on-sale
4 licenses pursuant to subdivisions 35-4-2(4) and (13). The fee applies to all such on-sale licenses
5 issued in the ensuing calendar year. The quotas established in this section do not apply to
6 licenses issued pursuant to subdivisions 35-4-2(16)~~and~~, (17), and (20).

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

14 Section 4. That § 35-4-78.1 be amended to read as follows:

15 35-4-78.1. A licensee, licensed pursuant to subdivision 35-4-2(3), (4), (5), (6), (11), (12),
16 (13), (16), (17), ~~or~~(18), or (20), is not in violation of § 35-4-78, and no criminal penalty may be
17 imposed on the licensee if:

- 18 (1) The person making the sale in violation of § 35-4-78 is an employee or agent of the
19 licensee;
- 20 (2) The employee or agent does not own a controlling interest in the licensee; and
- 21 (3) The licensee or person having a controlling interest in the licensee is not present at
22 the time of the sale.

23 Section 5. That § 35-4-79 be amended to read as follows:

24 35-4-79. No on-sale licensee may permit any person less than twenty-one years old to loiter

1 on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on such
2 premises. However, an on-sale licensee licensed pursuant to subdivision 35-4-2(4), (6), (11),
3 (13), ~~or (16)~~, or (20) may permit persons eighteen years old or older to sell and serve or dispense
4 alcoholic beverages if not less than fifty percent of the gross business transacted by that
5 establishment is from the sale of food and the licensee or an employee that is at least twenty-one
6 years of age is on the premises when the alcoholic beverage is sold or dispensed. For the
7 purposes of this section, the term, "to sell and serve alcoholic beverages," means to take orders
8 for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of
9 waiting tables. The term does not include tending bar or drawing or mixing alcoholic beverages.

10 A violation of this section is a Class 2 misdemeanor

11 Section 6. That § 35-4-81 be amended to read as follows:

12 35-4-81. No on-sale licensee, licensed under subdivisions 35-4-2(4), (6), (11), ~~and (13)~~, and
13 (20), may sell, serve, or allow to be consumed on the premises covered by the license, alcoholic
14 beverages between the hours of two o'clock a.m. and seven a.m. or on Sunday after two a.m.,
15 or on Memorial Day after one a.m., or at any time on Christmas Day. A violation of this section
16 is a Class 2 misdemeanor.

17 Section 7. That § 35-2-25 be amended to read as follows:

18 35-2-25. No license granted pursuant to subdivisions 35-4-2(3), (4), (6), (12), (13), (16), ~~and~~
19 (17), and (20) may be issued unless the applicant has first obtained a sales tax license pursuant
20 to chapter 10-45, or, if applicable, a use tax license pursuant to chapter 10-46. The provisions
21 of this section do not apply to a municipality which has procured a retail alcoholic beverage
22 license pursuant to chapter 35-3.

23 Section 8. That § 35-12-10 be amended to read as follows:

24 35-12-10. Notwithstanding the provisions of § 35-4-47 or 35-4-60, a farm winery licensed

1 pursuant to this chapter may sell the wine produced under the license to wholesalers and
2 retailers licensed pursuant to subdivisions 35-4-2(2), (3), (4), (5), (6), (9), (11), (12), (13),
3 ~~and (18), and (20)~~ and artisan distillers licensed pursuant to § 35-13-2. A farm winery may sell
4 to an artisan distiller wine or other products containing alcohol that are produced on the
5 premises of the winery for blending or distillation by the artisan dealer.