

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

573P0495

SENATE STATE AFFAIRS

ENGROSSED NO. **HB 1294** - 2/15/2008

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

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 allow municipalities and counties to issue additional on-
2 sale alcoholic beverage licenses under certain circumstances.

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 or 35-4-11.1 or the on-sale license fees
7 established pursuant to subdivisions 35-4-2(4) and (6), the governing board of any incorporated
8 municipality or the board of county commissioners of any county may, by ordinance, issue
9 additional on-sale licenses pursuant to subdivision 35-4-2(4) or (6) if the municipality or county
10 charges at least the minimum fee required by section 2 of this Act.

11 Any municipality issuing a license pursuant to this section is not subject to the quotas
12 established in § 35-4-11. Any county issuing a license pursuant to this section is not subject to
13 the quotas established in § 35-4-11.1. A municipality or county may, by ordinance, require that



1 any license authorized by this section may only be issued to the owner of a restaurant or facility
2 that enhances the economic development needs of the municipality or county.

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

5 Any municipality or county adopting the ordinance pursuant to section 1 of this Act may
6 issue additional on-sale licenses pursuant to subdivision 35-4-2(4) or (6). Each municipality or
7 county shall set the on-sale license fee within ninety days of adopting the ordinance pursuant
8 to section 1 of this Act or within thirty days after the resolution of any appeal pursuant to section
9 3 of this Act. After the fee for an on-sale license issued pursuant to this Act has been
10 determined, no municipality or county may change the fee for a period of ten years unless an
11 increase in population reported by the federal decennial census requires an increase in the fee.

12 Section 3. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Each licensee who owns an on-sale license issued pursuant to subdivision 35-4-2(4) or (6)
15 as of January 1, 2008, and who purchased or had a license transferred to them at any time after
16 January 1, 1998, shall report the amount originally paid for the on-sale license to the
17 municipality or county that issued the license. The declared purchase price shall be made under
18 oath and shall include the documents establishing the amount paid. If the transaction for the
19 purchase of the on-sale license included real or personal property, the full market value of the
20 real or personal property on the date of the original sale shall be deducted from the total
21 transaction price to determine the amount paid by the licensee for the on-sale license. The
22 burden of establishing the amount paid for the license shall be on the licensee. Any licensee
23 contesting the fair market value of the real and personal property may appeal the valuation to
24 circuit court.

1 If no on-sale license issued pursuant to subdivision 35-4-2(4) has been sold or transferred
2 in the ten years prior to January 1, 2008, the municipality shall set the license fee of a new on-
3 sale license at no less than one dollar for each person residing within the municipality as
4 measured by the last preceding decennial federal census. If no on-sale license issued pursuant
5 to subdivision 35-4-2(6) has been sold or transferred in the ten years prior to January 1, 2008,
6 the county shall charge at least one dollar for each person residing within the county but outside
7 the boundary of any municipality as measured by the last preceding decennial federal census.

8 Section 4. Any municipality or county adopting the ordinance pursuant to section 1 of this
9 Act shall set the license fee of a new on-sale license, pursuant to section 2 of this Act, at or
10 above the current fair market value. However, such license fee may not be less than the
11 minimum license fees established pursuant to subdivision 35-4-2(4) or (6). For purposes of this
12 section, the term, current fair market value, means the documented price of the on-sale license
13 most recently sold between January 1, 1998, and January 1, 2008, through an arm's-length
14 transaction, less the value of any real or personal property included in the transaction. Each on-
15 sale license holder as of January 1, 2008, who acquired the on-sale license within the last ten
16 years shall report to the municipality or county the date and price paid for its on-sale license.

17 Section 5. The municipality or county shall maintain a registry of each on-sale license that
18 is being offered for sale at the price established in section 4 of this Act and furnish a copy of the
19 registry to anyone who requests a new on-sale license. The municipality or county may only
20 issue a new license pursuant to this Act if no on-sale license is on the registry or a person
21 desiring to purchase an on-sale license listed on the registry provides documentation showing
22 that the person is unable to purchase any on-sale license listed on the registry at the price
23 established in section 4 of this Act and on terms satisfactory to both the potential buyer and
24 seller. The price of any on-sale license registered as, for sale, with the municipality or county

1 shall be sold at the current fair market price set by the municipality or county pursuant to section
2 4 of this Act. Nothing in this Act precludes the sale of an on-sale license by a licensee not listed
3 on the registry.

4 Section 6. The existing on-sale license holder is responsible for registering with the
5 municipality or county that the on-sale license is for sale pursuant to section 5 of this Act.