

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

735P0205

## SENATE BILL NO. 126

Introduced by: Senators Olson (Ed), Dempster, Hanson (Gary), Heidepriem, Katus, Koetzle, McCracken, Nesselhuf, Schmidt (Dennis), Sutton, and Turbak Berry and Representatives Lust, Ahlers, Brunner, Cutler, Dreyer, Dykstra, Gilson, Gosch, Halverson, Howie, McLaughlin, Novstrup (David), Peters, Pitts, Rave, Tidemann, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to allow municipalities and counties to issue additional on-  
2 sale alcoholic beverage licenses and to compensate certain existing on-sale license holders.

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 (1) Charges at least the minimum fee required by section 2 of this Act; and  
11 (2) Compensates each on-sale licensee licensed pursuant to subdivision 35-4-2(4) or (6)  
12 existing within the municipality or county as of January 1, 2008, as provided in  
13 section 3 of this Act.



1 Any municipality issuing a license pursuant to this section is not subject to the quotas  
2 established in § 35-4-11 or the minimum license fees established pursuant to subdivision  
3 35-4-2(4). Any county issuing a license pursuant to this section is not subject to the quotas  
4 established in § 35-4-11.1 or the minimum license fees established pursuant to subdivision  
5 35-4-2(6). A municipality or county may, by ordinance, require that any license authorized by  
6 this section may only be issued to the owner of a restaurant or facility that enhances the  
7 economic development needs of the municipality or county.

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

10 Any municipality or county adopting the ordinance pursuant to section 1 of this Act may  
11 issue additional on-sale licenses pursuant to subdivision 35-4-2(4) or (6). Any municipality  
12 adopting such ordinance shall charge at least one dollar for each person residing within the  
13 municipality as measured by the last preceding decennial federal census. Any county adopting  
14 such ordinance shall charge at least one dollar for each person residing within the county but  
15 outside the boundary of any municipality as measured by the last preceding decennial federal  
16 census.

17 Each municipality or county shall set the on-sale license fee within ninety days of adopting  
18 the ordinance pursuant to section 1 of this Act or within thirty days after the resolution of any  
19 appeal pursuant to section 3 of this Act. After the fee for an on-sale license issued pursuant to  
20 this Act has been determined, no municipality or county may change the fee for a period of five  
21 years unless a growth in population reported by the federal decennial census requires an increase  
22 in the fee.

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

1 Each municipality or county adopting the ordinance pursuant to section 1 of this Act shall  
2 compensate any licensee who:

- 3 (1) Owns an on-sale license issued pursuant to subdivision 35-4-2(4) or (6) as of  
4 January 1, 2008; and
- 5 (2) Applies for the compensation within thirty days of the effective date of the ordinance  
6 provided in section 1 of this Act.

7 The application for compensation shall be made under oath and shall include documents  
8 establishing the amount paid by the licensee for the on-sale license. If the transaction for the  
9 purchase of the on-sale license included real or personal property, the fair market value of the  
10 real or personal property shall be deducted from the total transaction price to determine the  
11 amount paid by the licensee for the on-sale license. The burden of establishing the amount paid  
12 for the license shall be on the applicant. Any licensee contesting the fair market value of the real  
13 and personal property may appeal the valuation to circuit court.

14 Section 4. A municipality or county may provide the compensation required by this Act  
15 from any source of revenue that the municipality or county determines appropriate. Any  
16 compensation paid by the municipality or county pursuant to this Act shall be:

- 17 (1) The difference between the documented amount paid by the licensee for the on-sale  
18 license, as determined pursuant to section 3 of this Act, and the fee imposed pursuant  
19 to section 2 of this Act;
- 20 (2) Paid within five years of date of the ordinance adopted pursuant to section 1 of this  
21 Act; and
- 22 (3) With interest calculated from the date the municipality or the county sets the price  
23 of the on-sale license fee pursuant to section 2 of this Act and the date of final  
24 payment of the compensation at the Category E rate of interest as established in § 54-

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3-16.