

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

735P0205

SENATE STATE AFFAIRS ENGROSSED NO. **SB 126** - 2/4/2008

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 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 or the minimum license fees established pursuant to subdivision
13 35-4-2(4). Any county issuing a license pursuant to this section is not subject to the quotas



1 established in § 35-4-11.1 or the minimum license fees established pursuant to subdivision
2 35-4-2(6). A municipality or county may, by ordinance, require that any license authorized by
3 this section may only be issued to the owner of a restaurant or facility that enhances the
4 economic development needs of the municipality or county.

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

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

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

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

22 Each licensee who owns an on-sale license issued pursuant to subdivision 35-4-2(4) or (6)
23 as of January 1, 2008, shall report the amount originally paid for the on-sale license to the
24 municipality or county that issued the license. The declared purchase price shall be made under

1 oath and shall include the documents establishing the amount paid. If the transaction for the
2 purchase of the on-sale license included real or personal property, the full market value of the
3 real or personal property on the date of the original sale shall be deducted from the total
4 transaction price to determine the amount paid by the licensee for the on-sale license. The
5 burden of establishing the amount paid for the license shall be on the licensee. Any licensee
6 contesting the fair market value of the real and personal property may appeal the valuation to
7 circuit court.

8 Section 4. Any municipality or county adopting the ordinance pursuant to section 1 of this
9 Act shall set the price of a new on-sale license, pursuant to section 1 of this Act, at or above the
10 current fair market value. For purposes of this section, the term, current fair market value, means
11 the documented price of the on-sale license most recently sold prior to January 1, 2008, through
12 an arm's-length transaction, less the value of any real or personal property included in the
13 transaction. Each on-sale license holder as of January 1, 2008, shall report to the municipality
14 or county the date and price paid for its on-sale license.

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

24 Section 6. The existing on-sale license holder is responsible for registering with the

1 municipality or county that the on-sale license is for sale pursuant to section 6 of this Act.