

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

564P0675

## HOUSE BILL NO. 1283

Introduced by: Representatives Brunner and Peters and Senators Maher and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to create a special class of alcoholic beverage licenses for  
2 full service restaurants and to provide for compensation of certain alcoholic beverage  
3 licenses.

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

5 Section 1. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Notwithstanding the provisions of §§ 35-4-11 and 35-4-11.1, each municipality or county  
8 may, by ordinance, issue an unlimited number of on-sale full service restaurant licenses. For  
9 purposes of this section, the term, full service restaurant, means any establishment which has  
10 facilities for the preparation and serving of food for consumption on the premises. The on-sale  
11 full service restaurant license may only be issued if the licensee derives less than fifty percent  
12 of the licensee's gross receipts from the sale of alcoholic beverages.

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

15 An on-sale full service restaurant licensee may:



- 1 (1) Not transfer the license to a location different from the location for which the license  
2 was originally issued; and
- 3 (2) Transfer the license to a different owner only at the same location for which the  
4 license was originally issued.

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

7 The limitations on multiple retail alcoholic beverage licenses provided in § 35-4-4 do not  
8 apply to any license issued under the provisions of this Act.

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

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

18 Each municipality or county shall set the on-sale license fee within ninety days of adopting  
19 the ordinance pursuant to section 1 of this Act or within thirty days after the resolution of any  
20 appeal pursuant to section 5 of this Act. After the fee for an on-sale license issued pursuant to  
21 this Act has been determined, no municipality or county may change the fee for a period of five  
22 years unless a growth in population reported by the federal decennial census requires an increase  
23 in the fee.

24 Section 5. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as

1 follows:

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

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

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

15 Section 6. A municipality or county may provide the compensation required by this Act from  
16 any source of revenue that the municipality or county determines appropriate. Any  
17 compensation paid by the municipality or county pursuant to this Act shall be:

- 18 (1) The difference between the documented amount paid by the licensee for the on-sale  
19 license, as determined pursuant to section 5 of this Act, and the fee imposed pursuant  
20 to section 4 of this Act;
- 21 (2) Paid within five years of date of the ordinance adopted pursuant to section 1 of this  
22 Act; and
- 23 (3) With interest calculated from the date the municipality or the county sets the price  
24 of the on-sale license fee pursuant to section 4 of this Act and the date of final

1 payment of the compensation at the Category E rate of interest as established in § 54-  
2 3-16.