

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

772Z0635

## HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1200** - 2/21/2018

Introduced by: Representatives Mickelson and Steinhauer and Senator Cronin

1 FOR AN ACT ENTITLED, An Act to revise certain on-sale full-service restaurant alcoholic  
2 beverage license provisions and to authorize municipalities and counties to lease on-sale  
3 full-service restaurant alcoholic beverage licenses.

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

5 Section 1. That § 35-4-111 be amended to read:

6 35-4-111. Notwithstanding the provisions of § 35-4-11 or 35-4-11.1 or the on-sale license  
7 fees established pursuant to subdivisions 35-4-2(4) and (6), the governing board of any  
8 incorporated municipality or the board of county commissioners of any county may, by  
9 ordinance, issue ~~additional~~ or lease on-sale licenses for full-service restaurants if the  
10 municipality or county charges ~~at least the minimum~~ fee required by § 35-4-116 or lease rate  
11 required by section 3 of this Act.

12 A full-service restaurant on-sale license issued or leased in a municipality is subject to the  
13 license renewal fees as provided for in subdivision 35-4-2(4), and shall be treated for all other  
14 regulatory purposes in this title as a license issued or leased pursuant to subdivision 35-4-2(4).

15 A full-service restaurant on-sale license issued or leased in a county is subject to the license



1 renewal fees as provided for in subdivision 35-4-2(6), and shall be treated for all other  
2 regulatory purposes in this title as a license issued or leased pursuant to subdivision 35-4-2(6).

3 Section 2. That § 35-4-116 be amended to read:

4 35-4-116. Any municipality or county adopting the ordinance pursuant to § 35-4-111 may  
5 issue ~~additional~~ on-sale licenses to full-service restaurants. Any municipality adopting ~~such the~~  
6 ordinance shall charge at least one dollar for each person residing within the municipality as  
7 measured by the last preceding decennial federal census. Any county adopting ~~such the~~  
8 ordinance shall charge at least one dollar for each person residing within the county but outside  
9 the boundary of any municipality as measured by the last preceding decennial federal census.

10 Each municipality or county shall set the on-sale license fee within ninety days of adopting  
11 the ordinance pursuant to § 35-4-111 ~~or within thirty days after the resolution of any appeal~~  
12 ~~pursuant to § 35-4-120. The fee may not be less than the minimum on-sale license fee provided~~  
13 ~~for in subdivision 35-4-2(4) or (6).~~ After the fee for an on-sale license issued pursuant to §§ 35-  
14 4-110 to 35-4-120, inclusive, has been determined, no municipality or county may change the  
15 fee for a period of ten years unless a growth in population reported by the federal decennial  
16 census requires an increase in the fee.

17 Section 3. That § 35-4-117 be amended to read:

18 35-4-117. ~~Any municipality or county adopting the ordinance pursuant to § 35-4-111 shall~~  
19 ~~set the price of a new full-service restaurant on-sale license, pursuant to § 35-4-116, at or above~~  
20 ~~the current fair market value. However, such full-service restaurant on-sale license fee may not~~  
21 ~~be less than the minimum on-sale license fee provided for in subdivision 35-4-2(4) or (6). For~~  
22 ~~purposes of this section, the term, current fair market value, means the documented price of the~~  
23 ~~on-sale license most recently sold between January 1, 2003, and January 1, 2008, through an~~  
24 ~~arm's-length transaction, less the value of any real or personal property included in the~~

1 transaction. Each on-sale license holder as of January 1, 2008, who acquired the on-sale license  
2 within the last five years shall report to the municipality or county the date and price paid for  
3 its on-sale license. If there are no documented sales of on-sale licenses between January 1, 2003,  
4 and January 1, 2008, the municipality or county may request from any on-sale license holder  
5 within the municipality or county, the date and price originally paid for its on-sale license to  
6 determine the current fair market value. Any municipality or county adopting the ordinance  
7 pursuant to §35-4-111 may lease an on-sale license to a full-service restaurant. The full-service  
8 restaurant shall annually pay to the municipality or county a lease rate of seven percent of the  
9 fee established by §35-4-116. A license leased under this section may not be owned by the  
10 lessee. Any on-sale full-service restaurant license purchased before the effective date of this Act  
11 may be purchased by the municipality or county that issued the license. Any license purchased  
12 by the municipality or county may be issued pursuant to §§ 35-4-111 and 35-4-116 or leased  
13 pursuant to this section.

14 Section 4. That § 35-4-118 be amended to read:

15 35-4-118. Each municipality or county adopting an ordinance pursuant to § 35-4-111 shall  
16 maintain a registry of each on-sale license that is being offered for sale or lease at the price  
17 established in § 35-4-117 and furnish a copy of the registry to anyone who requests a new full-  
18 service restaurant on-sale license. ~~The municipality or county may only issue a new license~~  
19 ~~pursuant to §§ 35-4-110 to 35-4-120, inclusive, if no on-sale license is on the registry or a~~  
20 ~~person desiring to purchase an on-sale license listed on the registry provides documentation~~  
21 ~~showing that the person is unable to purchase the on-sale license at the price established in § 35-~~  
22 ~~4-117 and on terms satisfactory to both the potential buyer and seller. The price of any on-sale~~  
23 ~~license registered as, for sale, with the municipality or county shall be sold at the current fair~~  
24 ~~market price set by the municipality or county pursuant to § 35-4-117. Nothing in §§ 35-4-110~~

1 to ~~35-4-120~~, inclusive, precludes the sale of an on-sale license by a licensee not listed on the  
2 registry.

3 Section 5. That § 35-4-120 be repealed.

4 ~~— 35-4-120. Upon the adoption of an ordinance pursuant to § 35-4-111, any person who~~  
5 ~~purchased an on-sale license issued pursuant to subdivision 35-4-2(4) or (6) between January~~  
6 ~~1, 2003, and January 1, 2008, and who owned the license on January 1, 2008, shall report to the~~  
7 ~~municipality or county that issued the license the amount paid for the license. If the municipality~~  
8 ~~or county that issued the on-sale license adopts an ordinance pursuant to § 35-4-111, and~~  
9 ~~requests from any other licensee the amount originally paid for any other on-sale license~~  
10 ~~pursuant to § 35-4-117, the licensee shall report that amount to the municipality or county. The~~  
11 ~~declared purchase price shall be made under oath and shall include the documents establishing~~  
12 ~~the amount paid for the on-sale license. If the transaction included other personal property or~~  
13 ~~real property, the full market value of such property on the date of the transaction shall be~~  
14 ~~deducted from the total purchase price to establish the amount paid for the license. The person~~  
15 ~~who owned the license on January 1, 2008, has the burden of establishing the amount paid for~~  
16 ~~the license. If the amount reported is used to determine current fair market value pursuant to~~  
17 ~~§ 35-4-117, any licensee who contends that the amount does not accurately reflect the fair~~  
18 ~~market value of the license on the date of purchase may file an objection to the report. The~~  
19 ~~objection shall be filed with the municipality or county within thirty days of the date the license~~  
20 ~~fee is set pursuant to § 35-4-116. If an objection is filed, the governing board of the municipality~~  
21 ~~or county shall conduct a hearing to determine the fair market value of the license. The~~  
22 ~~determination of the governing board may be appealed to circuit court.~~