

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

573P0495

SENATE ENGROSSED NO. **HB 1294** - 2/20/2008

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 authorize a class of full-service restaurant on-sale
2 licenses to be issued by first class municipalities.

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

4 Section 1. In addition to the number of on-sale licenses that may be issued pursuant to
5 § 35-4-11, a first class municipality may issue additional on-sale licenses for full-service
6 restaurants. The number of full-service restaurant on-sale licenses that may be issued pursuant
7 to this section may not exceed ten percent of the total number of on-sale licenses allowed or
8 issued pursuant to §§ 35-4-11 and 35-4-13 or three on-sale licenses, whichever is greater.

9 Section 2. Terms used in this Act mean:

10 (1) "Bar," any permanently installed counter within the restaurant area from which
11 alcoholic beverages are regularly served to customers by a person who is tending bar
12 or drawing or mixing alcoholic beverages;

13 (2) "Full-service restaurant," any restaurant at which a waiter or waitress delivers food



1 and drink offered from a printed food menu to patrons at tables, booths, or the bar.
2 Any restaurant that only serves fry orders or food and victuals such as sandwiches,
3 hamburgers, or salads is not a full-service restaurant;

4 (3) "Restaurant," any area in a building maintained, advertised, and held out to the public
5 as a place where individually priced meals are prepared and served primarily for
6 consumption in such area and where seventy percent or more of the gross revenue of
7 the restaurant is derived from the sale of prepared food and nonalcoholic beverages.
8 The restaurant shall have a dining room or rooms, a kitchen, and the number and
9 kinds of employees necessary for the preparing, cooking, and serving of meals.

10 Section 3. An applicant for a full-service restaurant on-sale license shall provide sufficient
11 documentation to the municipality to prove that the primary source of revenue from the
12 operation of the restaurant will be derived from the sale of prepared food and nonalcoholic
13 beverages and not from the sale of alcoholic beverages. The supporting documentation
14 concerning the primary source of revenue submitted pursuant to this section is confidential.

15 Section 4. When the municipality is renewing a full-service restaurant on-sale license, the
16 municipality shall condition the license renewal upon receiving documentation that seventy
17 percent or more of gross sales from the preceding twelve months operation of the full service
18 restaurant is derived from the sale of prepared food and nonalcoholic beverages. The full-service
19 restaurant on-sale licensee shall submit an annual report to the municipality on the sales for the
20 full-service restaurant that includes an oath verifying the validity of the information provided
21 in the report. The report and the supporting documentation submitted pursuant to this section
22 are confidential. The report shall contain the annual gross sales of the licensee for the following
23 two categories:

24 (1) Food and nonalcoholic beverage sales; and

1 (2) Alcoholic beverage sales.

2 Section 5. A full-service restaurant on-sale licensee may only serve alcoholic beverages for
3 on-premise consumption in the bar and dining room area of the restaurant.

4 Section 6. The provisions of § 35-4-81 apply to each full-service restaurant on-sale licensee,
5 except, that no licensee may sell, serve, or allow to be consumed on the premises covered by
6 the license, any alcoholic beverages between the hours of eleven p.m. and eleven a.m.

7 Section 7. A restaurant that has a full-service restaurant on-sale license may only be
8 advertised or held out to the public as primarily a food eating establishment.

9 Section 8. No restaurant that has a full-service restaurant on-sale license may conduct video
10 lottery pursuant to chapter 42-7A upon the location where the license is held.

11 Section 9. No premise licensed under the provisions of subdivision 35-4-2 (4), (6), (11), or
12 (13) prior to July 1, 2008, may be licensed as a full-service restaurant on-sale license prior to
13 July 1, 2020.

14 Section 10. The license fee for a full-service restaurant on-sale license issued by a first class
15 municipality with a population that is:

16 (1) Sixty thousand or more, may not be less than two hundred thousand dollars;

17 (2) Twenty thousand or more but less than sixty thousand, may not be less than one
18 hundred thousand dollars; and

19 (3) Less than twenty thousand, may not be less than seventy-five thousand dollars.

20 Section 11. No on-sale license annexed into a municipality pursuant to § 35-4-13 may be
21 transferred to a new location for a period of three years after the annexation.