



2020 South Dakota Legislature

House Bill 1250

Introduced by: **Representative Mills**

1 **An Act to increase the state's percentage of video lottery revenues, to provide for**
 2 **the deposit of certain excess revenues, and to repeal provisions regarding**
 3 **video lottery.**

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

5 **Section 1.** That a NEW SECTION be added:

6 **42-7A-66. Video lottery repeal and recovery fund--Creation.**

7 There is created in the state treasury the video lottery repeal and recovery fund.
 8 The fund consists of all moneys deposited into the fund in accordance with § 42-7A-63,
 9 together with any interest or other earnings of the fund. The purpose of the fund is to
 10 replace lost revenue for the general fund following the repeal of video lottery. Moneys in
 11 the fund may not be expended unless video lottery is repealed.

12 **Section 2.** That § 42-7A-63 be AMENDED:

13 **42-7A-63. State's percentage of net machine income--Uses.**

14 The commission shall maximize revenues to the state from video lottery. One-half
 15 of one percent of the state's net machine income shall be deposited into the video lottery
 16 operating fund. The state's percentage of net machine income shall be fifty percent. ~~The~~
 17 ~~state's percentage of net machine income shall be directly deposited to the general fund,~~
 18 ~~except for one-half of one percent of net machine income authorized for deposit into the~~
 19 ~~video lottery operating fund.~~ Beginning July 1, 2021, the state's percentage of net machine
 20 income is fifty-five percent. The remainder of the state's net machine income shall be
 21 deposited into the general fund, except that:

22 (1) During the twelve-month period beginning July 1, 2021, the amount deposited into
 23 the general fund under this section may not exceed one hundred nineteen million
 24 eight hundred thousand dollars;

1 (2) During the twelve-month period beginning July 1, 2022, and during each twelve-
2 month period until July 1, 2026. the amount deposited into the general fund under
3 this section is four million dollars less than the amount deposited into the general
4 fund during the immediately preceding twelve-month period; and

5 (3) During the twelve-month period beginning July 1, 2026, the amount deposited into
6 the general fund under this section is ninety-three percent of the amount deposited
7 into the general fund during the immediately preceding twelve-month period. For
8 each twelve-month period thereafter, the amount deposited into the general fund
9 under this section may not exceed a percent that is one percentage point less than
10 the percent of the amount deposited into the general fund during the immediately
11 preceding twelve-month period.

12 Any amount in excess of the amount authorized for deposit into the general fund
13 in subdivisions (1) to (3), inclusive, shall be deposited into the video lottery repeal and
14 recovery fund.

15 **Section 3.** Section 4 to 16, inclusive, of this Act, are effective upon the repeal of video lottery,
16 which shall occur on or before July 1, 2029.

17 **Section 4.** That §§ 42-7A-37 to 42-7A-48 be REPEALED.

18 **Section 5.** That §§ 42-7A-62 to 42-7A-64 be REPEALED.

19 **Section 6.** That § 10-58-11 be REPEALED.

20 **10-58-11. Exemption for video lottery machines--Gross receipts specifically**
21 **exempted.**

22 **Section 7.** That § 35-4-103 be REPEALED.

23 **35-4-103. Annual additional license fee for video lottery machines on**
24 **licensed premises.**

25 **Section 8.** That § 42-7A-1 be AMENDED:

26 **42-7A-1. Definitions.**

27 Terms used in this chapter mean:

28 (1) "Associated equipment," any proprietary device, machine, ~~or part used in the~~
29 ~~manufacture or maintenance of a video lottery machine,~~ including integrated circuit

- 1 chips, printed wired assembly, printed wired boards, printing mechanisms, video
 2 display monitors, and metering devices;
- 3 (2) "Commission," the South Dakota Lottery Commission;
- 4 (3) "Credit," one, five, ten, or twenty-five cents;
- 5 (4) "Executive director," the executive director of the South Dakota Lottery;
- 6 (5) "Instant lottery," a game that offers preprinted tickets that indicate immediately or
 7 in a grand prize drawing whether the player has won a prize;
- 8 (6) "Licensed establishment," a bar or lounge owned or managed by an individual,
 9 partnership, corporation, or association licensed to sell alcoholic beverages for
 10 consumption upon the premises where sold;
- 11 (7) "Lottery" or "state lottery," any lottery operated pursuant to this chapter;
- 12 (8) "Lottery retailer," any person with whom the South Dakota Lottery has contracted
 13 to sell lottery tickets to the public;
- 14 (9) "Lottery vendor" or "vendor," any person who has entered into a major procurement
 15 contract with the South Dakota Lottery;
- 16 (10) "Major procurement," any contract with any vendor directly involved in providing
 17 facilities, equipment, tickets, and services unique to the lottery, but not including
 18 materials, supplies, equipment, and services common to the ordinary operations of
 19 state agencies;
- 20 ~~(11) "Net machine income," money put into a video lottery machine minus credits paid~~
 21 ~~out in cash;~~
- 22 ~~(12)~~—(12) "On-line lottery," a game linked to a central computer via a telecommunications
 23 network in which the player selects a specified group of numbers or symbols out of
 24 a predetermined range of numbers or symbols as approved by the commission;
- 25 ~~(13)~~(12) "South Dakota Lottery," the state agency created by this chapter to operate
 26 a lottery pursuant to this chapter;
- 27 ~~(14)~~(13) "Ticket," any tangible evidence issued or authorized by the South Dakota
 28 Lottery to prove participation in an instant, on-line, or video lottery game;
- 29 ~~(14A)~~ "Video lottery," any video game of chance played on video lottery machines;
- 30 ~~(15)~~ "Video lottery machine distributor," any individual, entity, partnership, corporation,
 31 or association that distributes or sells video lottery machines or associated
 32 equipment in this state;
- 33 ~~(16)~~ "Video lottery machine manufacturer," any individual, entity, partnership,
 34 corporation, or association that assembles or produces video lottery machines or
 35 associated equipment for sale or use in this state;

- 1 ~~(17) "Video lottery machine operator," any individual, entity, partnership, corporation,~~
2 ~~or association that places video lottery machines or associated equipment for public~~
3 ~~use in this state; and~~
- 4 ~~(18) "Video lottery machines," or "machine," any electronic video game machine that,~~
5 ~~upon insertion of cash, is available to play or simulate the play of a video game,~~
6 ~~including video poker, keno, and blackjack, authorized by the commission utilizing~~
7 ~~a video display and microprocessors in which, by chance, the player may receive~~
8 ~~free games or credits that can be redeemed for cash. The term does not include a~~
9 ~~machine that directly dispenses coins, cash, or tokens.~~

10 **Section 9.** That § 42-7A-4 be AMENDED:

11 **42-7A-4. Functions of executive director.**

12 The executive director may, subject to policy established by the commission:

- 13 (1) Supervise and administer the operation of the state lottery in accordance with the
14 provisions of this chapter;
- 15 (2) Employ all other employees of the South Dakota Lottery;
- 16 (3) Enter into contracts for promotional services; annuities or other methods deemed
17 appropriate for the payment of prizes; data processing and other technical products,
18 equipment and services; and facilities as needed to operate the South Dakota
19 Lottery including, without limitation, tickets and other services involved in major
20 procurements;
- 21 (4) Contract with and license persons for the sale of lottery tickets ~~and the offering of~~
22 ~~video lottery games~~ to the public, as provided by this chapter and rules adopted
23 pursuant thereto;
- 24 (5) Make demographic studies of lottery players and studies of reactions of citizens to
25 existing and potential features of the lottery;
- 26 (6) Require lottery retailers and persons licensed pursuant to this chapter to furnish
27 proof of financial stability or furnish surety in an amount based upon the expected
28 volume of sales of lottery tickets ~~or net machine income;~~
- 29 (7) Provide for secure facilities to house the South Dakota Lottery;
- 30 (8) Provide for separate, distinct, and secure data processing facilities to be used for
31 the reliable operation of the state lottery;
- 32 (9) Examine, or cause to be examined by any agent or representative designated by
33 the executive director, any books, papers, records, or memoranda of any lottery
34 retailer or person licensed pursuant to this chapter for the purpose of ascertaining

- 1 compliance with any provision of this chapter or any rule adopted pursuant to this
2 chapter;
- 3 (10) Issue subpoenas to compel access to or for the production of such books, papers,
4 records, or memoranda in the custody or control of any lottery retailer or person
5 licensed pursuant to this chapter, or to compel the appearance of any of their
6 employees, for the purpose of ascertaining compliance with any provision of this
7 chapter or any rule adopted pursuant to this chapter;
- 8 (11) Administer oaths and take depositions to the same extent and subject to the same
9 limitations as would apply if the deposition was in aid of a civil action in the circuit
10 court;
- 11 ~~(11A) The lottery commission shall operate a video lottery undertaken pursuant to this~~
12 ~~chapter and may not contract or assign this responsibility to any other person;~~
- 13 (12) Impose civil fines not to exceed ten thousand dollars per violation and fifteen
14 thousand dollars for any subsequent violation of any provision of this chapter or
15 any rule adopted pursuant to this chapter; and
- 16 (13) Enter into written agreements or compacts with one or more other states for the
17 operation, marketing and promotion of a joint lottery or joint lottery games.

18 **Section 10.** That § 42-7A-13 be AMENDED:

19 **42-7A-13. Qualifications of lottery retailer.**

20 To be selected as a lottery retailer ~~or video lottery machine operator~~, a natural
21 person acting as a sole proprietor shall:

- 22 (1) Be at least eighteen years of age;
- 23 (2) Be of good character and reputation;
- 24 (3) Have sufficient financial resources to support the activities required to sell lottery
25 tickets ~~or place and service video lottery machines~~; and
- 26 (4) Be current in payment of all taxes, interest, and penalties owed to the State of
27 South Dakota, excluding items under formal dispute or appeal pursuant to
28 applicable statutes.

29 A lottery retailer ~~or video lottery machine operator~~ may not be a lottery vendor or an
30 employee or agent of any lottery vendor doing business with the South Dakota Lottery.

31 **Section 11.** That § 42-7A-15 be AMENDED:

1 **42-7A-15. Partnership as lottery retailer.**

2 For a partnership to be selected as a lottery retailer ~~or video lottery machine~~
3 ~~operator~~, the partnership shall meet the requirements of subdivisions 42-7A-13(3) and
4 (4), and each partner thereof shall meet the requirements of subdivisions 42-7A-13(1)
5 and (2) and subdivisions 42-7A-14(1) to (5), inclusive.

6 **Section 12.** That § 42-7A-16 be AMENDED:

7 **42-7A-16. Association or corporation as lottery retailer.**

8 For an association or corporation to be selected as a lottery retailer ~~or video lottery~~
9 ~~machine operator~~, the association or corporation shall meet the requirements of
10 subdivisions 42-7A-13(3) and (4), and each officer and director and each stockholder who
11 owns five percent or more of the stock of such association or corporation shall meet the
12 requirements of subdivisions 42-7A-13(1) and (2) and subdivisions 42-7A-14(1) to (5),
13 inclusive.

14 **Section 13.** That § 42-7A-21 be AMENDED:

15 **42-7A-21. Promulgation of rules--Establishment and operation of state**
16 **lottery.**

17 The commission shall promulgate rules pursuant to chapter 1-26 governing the
18 establishment and operation of a state lottery as necessary to carry out the purposes of
19 this chapter. The commission shall promulgate rules concerning the following:

- 20 (1) The types of ticket lottery games to be conducted as authorized pursuant to this
21 chapter;
- 22 (2) The manner of selecting the winning tickets. However, if a lottery game utilizes a
23 drawing of winning numbers, a drawing among entries, or a drawing among
24 finalists, such drawings shall always be open to the public and shall be recorded on
25 both video and audio tape;
- 26 (3) The manner of payment of prizes to the holders of winning tickets;
- 27 (4) The frequency of the drawings or selections of winning tickets;
- 28 (5) The types of locations at which tickets may be sold;
- 29 (6) The methods to be used in selling tickets;
- 30 (7) Additional qualifications for the selection of lottery retailers, ~~video lottery machine~~
31 ~~manufacturers, distributors, or operators~~ and the amount of application fees to be
32 paid by each;

- 1 (8) The amount and method of compensation to be paid to lottery retailers, including
 2 special bonuses and incentives;
- 3 (9) Deadlines for claims for prizes by winners of each lottery game. However, in no
 4 instance may such deadline be for more than one year;
- 5 ~~(10) The mechanical and electronic specifications for each video lottery machine. At a
 6 minimum, each video lottery machine shall meet the requirements of § 42-7A-37;~~
- 7 ~~(11) Machine security testing and inspection procedures;~~
- 8 ~~(12) Liability for machine malfunction;~~
- 9 ~~(13) Machine maintenance and repair;~~
- 10 ~~(14) Financial responsibility of persons licensed under this chapter;~~
- 11 ~~(15) Accounting procedures for net machine income;~~
- 12 ~~(16)~~(11) Licensing procedures under this chapter; and
- 13 ~~(17)~~(12) Such other matters necessary or desirable for the efficient or economical
 14 operation of the lottery or for the convenience of the public.

15 **Section 14.** That § 42-7A-24 be AMENDED:

16 **42-7A-24. Transfer of net proceeds--Transfer to state general fund.**

17 Net proceeds from the sale of instant lottery tickets shall be transferred to the state
 18 general fund on an annual basis after July first each year. The commission shall maximize
 19 the net proceeds to the state from the sale of instant and on-line lottery tickets. In no
 20 event may yearly lottery expenses for the sale of lottery tickets, excluding expenditures
 21 from retained earnings, exceed the amount of combined net proceeds transferred to the
 22 state general fund and the state capital construction fund. ~~Net machine income from video
 23 lottery games shall be directly deposited in the general fund upon receipt.~~ Net proceeds
 24 are funds in the lottery operating fund which are not needed for the payment of prizes,
 25 lottery expenses, and total retained earnings up to one and one-half million dollars cash
 26 deemed necessary by the executive director and commission for replacement,
 27 maintenance, and upgrade of business systems, product development, legal, and
 28 operating contingencies of the lottery.

29 In fiscal year 2019, the commission shall transfer twenty-five percent of the net
 30 proceeds from the sale of on-line lottery tickets collected pursuant to § 42-7A-24 to the
 31 general fund and seventy-five percent of the net proceeds from the sale of on-line lottery
 32 tickets shall be transferred to the state capital construction fund created in § 5-27-1. In
 33 fiscal year 2020, the commission shall transfer thirty-five percent of the net proceeds from
 34 the sale of on-line lottery tickets collected pursuant to § 42-7A-24 to the general fund and

1 sixty-five percent of the net proceeds from the sale of on-line lottery tickets shall be
2 transferred to the state capital construction fund created in § 5-27-1. In fiscal year 2021,
3 the commission shall transfer thirty-five percent of the net proceeds from the sale of on-
4 line lottery tickets collected pursuant to § 42-7A-24 to the general fund and sixty-five
5 percent of the net proceeds from the sale of on-line lottery tickets shall be transferred to
6 the state capital construction fund created in § 5-27-1. In fiscal year 2022, the commission
7 shall transfer fifty percent of the net proceeds from the sale of on-line lottery tickets
8 collected pursuant to § 42-7A-24 to the general fund and fifty percent of the net proceeds
9 from the sale of on-line lottery tickets shall be transferred to the state capital construction
10 fund created in § 5-27-1. In fiscal year 2023 and each year thereafter, the commission
11 shall transfer seventy percent of the net proceeds from the sale of on-line lottery tickets
12 collected pursuant to § 42-7A-24 to the general fund and thirty percent of the net
13 proceeds from the sale of on-line lottery tickets shall be transferred to the state capital
14 construction fund created in § 5-27-1.

15 **Section 15.** That § 42-7A-50 be AMENDED:

16 **42-7A-50. Confidentiality of lottery records.**

17 Information and records of the South Dakota Lottery are confidential, except for
18 official purposes, and may not be disclosed except to officers, employees, or legal
19 representatives of the Department of Revenue for the purpose of and only to the extent
20 necessary in the investigation and audit procedures authorized by Title 10 or in accordance
21 with a judicial order. No person may use a subpoena, discovery, or other applicable
22 statutes to obtain such information or records. Information and records considered
23 confidential include:

- 24 (1) Applications, credit, and security checks of lottery retailers, licensees, and persons
25 seeking or doing business with the lottery;
- 26 (2) Marketing, financial, or sales data, the disclosure of which may be harmful to the
27 competitive position of the South Dakota Lottery, its retailers, licensees, or persons
28 seeking or doing business with the lottery;
- 29 (3) Audit work papers, worksheets, and auditing procedures used by the lottery, its
30 agent, or employees; and
- 31 (4) Tax returns of individual licensees.

32 ~~However, this section may not be construed to make confidential the name of any~~
33 ~~video lottery operator including, if the video lottery operator is a partnership, the name of~~
34 ~~any partner and, if the video lottery operator is an association or corporation, the name~~

1 ~~of any director, any officer, and any stockholder who owns five percent or more of the~~
2 ~~stock in the association or a parent or subsidiary corporation.~~

3 **Section 16.** That § 42-7A-56 be AMENDED:

4 **42-7A-56. Public policy declared.**

5 The Legislature hereby finds, and declares to be the public policy of this state that:

- 6 (1) The success of the South Dakota Lottery is dependent upon public confidence and
7 trust that it is conducted honestly and free from criminal and corruptive elements;
8 (2) Public confidence and trust can only be maintained by strict regulation of all
9 persons, locations, practices, associations, and activities related to the sale of
10 lottery products ~~and the operation, manufacturing, and distribution of video lottery~~
11 ~~games and equipment;~~ and
12 (3) No applicant for a license or other affirmative commission action has any right to a
13 license or to the granting of the approval sought. Any license issued or other
14 commission approval granted pursuant to the provisions of this chapter is a
15 revocable privilege, and no holder acquires any vested interest or property right
16 therein or thereunder.