

**IN RE:**

**OFFICIAL POLICY  
OF THE SOUTH DAKOTA  
LOTTERY COMMISSION**

**RULING 93-1  
LOCATION OF VIDEO LOTTERY  
MACHINES IN BARS OR LOUNGES**

**ISSUE:** What criteria must be met for a business to qualify as a bar or lounge for licensing as a video lottery establishment?

**BACKGROUND:** The law concerning the placement of video lottery machines has been amended several times since the initial passage of the video lottery legislation in 1989. The law has always required that the placement of video lottery machines be restricted to no more than ten in number in businesses with an on-sale alcoholic beverage license. However, the initial legislation imposed no other restrictions on the placement of machines within those locations nor did it attempt to define the primary business activity of a business licensed as a video lottery establishment.

**1991 AMENDMENTS**

In an attempt to restrict the placement of video lottery machines, the legislature in 1991 amended the law to prohibit machine placement in general access areas. The law required all licensed video lottery establishments holding a malt-beverage or wine license to place machines in an area restricted to persons 21 years of age or older. This could be accomplished by either constructing a permanent wall separation at least four-feet high between the general access area and the restricted area of the machine placement or by restricting the entire business premises to persons 21 years or older. The 1991 legislation also limited the types of on-sale businesses that could be video lottery establishments to restaurants, bars, lounges, and lodging establishments. A restaurant, bar or lounge was defined as a business where "seating, food preparation or other activities directly related to the sale of malt beverages for consumption on the premises constitutes at least 75% of the square footage of the business premises where alcoholic beverages are served in the ordinary course of business." SDCL 42-7A-37.1. The requirement that a licensed establishment be a restaurant, bar, lounge or lodging establishment only applied to businesses making application for a license after January 1, 1991. The South Dakota Lottery notified in writing all licensed establishments affected by the new legislative requirements and gave establishments until September 30, 1991 to either restrict the entire business premises to persons 21 years of age or older or to construct a minimum four-foot wall separation between the general access area and the area where the machines were located. On applications received after January 1, 1991, the South Dakota Lottery initiated a pre-inspection review to determine whether the business activity constituted a restaurant, bar or lounge under the new statutory definitional requirements. The new law requirements did allow for a restaurant, bar, or lounge to be physically connected to another distinct business within the same building provided that there was a floor to ceiling wall separation between the two businesses and the restaurant, bar or lounge had a separate entrance and exit.

**1992 AMENDMENTS**

In 1992, the legislature again amended the statutory provisions restricting machine placement. Deleted from the definition of a licensed establishment were restaurants and lodging establishments. A licensed establishment is now defined as a "bar or lounge owned or managed by an individual, partnership, corporation, or association licensed to sell alcoholic beverages for consumption upon the premises where sold." SDCL 42-7A-1(6). The 1992 amendment also deleted the 75% square footage space requirements for associated on-sale business activities. Bar or lounge is now defined in SDCL 42-7A-37.1 as "an enterprise primarily maintained and operated for the selling, dispensing, and consumption of alcoholic beverages on the premises and may also include the sale and service of food." The new law provisions also struck down the minimum four-foot wall requirements between general and restricted areas. It does allow for a bar or lounge to be connected to another enterprise or business within the same building. While there may be interior access between a bar or lounge and a connected enterprise, the two businesses must be separated by a floor-to-ceiling opaque wall separation. The 1992 amendment did not grandfather in those video lottery establishments licensed prior to July 1, 1992. It did provide, however, a one-year extension from the effective date of the legislation for those establishments to be in compliance. The new law

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requirements will directly impact those establishments with an on-sale malt beverage or wine license that have constructed a minimum four-foot wall separating the general and restricted area accesses under the 1991 law.

**POLICY:** The history of amendments defining a video lottery establishment reveals the difficulty in establishing a consistent standard for the approval and renewal of such licenses. The legislature did not attempt to set minimum space requirements that a business would have to meet in order for it to qualify as a bar or lounge. Accordingly, nor should the Commission attempt to impose a minimum standard size for a video lottery establishment.

However, it is the responsibility of the Lottery Commission to establish a policy setting forth licensing criteria to serve as a guideline for the renewal and approval of video lottery establishment licenses that is in keeping with the legislative intent. SDCL 42-7A-2 and 42-7A-19. The law requires that video lottery machines must be located in bars or lounges where access is restricted to persons 21 years of age or older.

The law states that a bar or lounge, if connected to another business where general access is permitted, must be separated by a floor to ceiling opaque wall separation. Interior access is allowed between the bar or lounge licensed as a video lottery establishment and the other business enterprise. A sign must be posted at the entrance of the video lottery establishment that the premises are restricted to persons 21 years or older. SDCL 42-7A-37.1.

The legislature defined a bar or lounge as "an enterprise primarily maintained and operated for the selling, dispensing and consumption of alcoholic beverages on the premises and may also include the sale and service of food." SDCL 42-7A-37.1. For purposes of licensing a business location as a video lottery establishment, it must first meet the definitional requirement of a bar or lounge. It must include within the premises an area where malt beverages or wine are sold, dispensed and consumed in the ordinary course of business. The rules adopted by the Commission state that all video lottery machines in licensed establishments must be physically located in an area where alcoholic beverages are regularly dispensed and consumed in the ordinary and usual course of business. ARSD 48:02:11:01(2). For purposes of meeting the statutory and regulatory requirements, alcoholic beverages may be dispensed from an area contiguous to a licensed video lottery establishment.

While video lottery machine placement and play may be an integral business component of the bar or lounge, the premises cannot be designed solely for video lottery machine placement and play. The bar or lounge, in order to qualify for a video lottery establishment license, must also provide service and seating for the on-sale consumption of alcoholic beverages for patrons. Such seating within the bar or lounge must be available other than at video lottery machines and in relative proportion to the area reserved for machine placement.

The interior access between the bar and lounge and other business activity must sufficiently segregate the two businesses as being separate and distinct. The requirement that the wall separations be opaque means building materials used may not allow for activities in the bar and lounge to be viewed from the general access area. Windows or vents may be installed near the ceiling in the wall between the general access area and bar and lounge for light and ventilation purposes. The bar or lounge licensed as a video lottery establishment must be adequately monitored by management and employees at all times. SDCL 42-7A-31.7 and ARSD 48:02:011:01(4). This may be accomplished by the full-time presence of management or employees in the video lottery establishment during business hours or by means of mirrors or cameras approved by the Lottery with periodic physical inspections by employees of a contiguous business enterprise to avoid machine tampering and under age play.

Dated this 22nd day of January, 1993.

**BY THE SOUTH DAKOTA LOTTERY COMMISSION:**

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Gary Richards  
Chairman

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