AN ACT

ENTITLED, An Act to prohibit the sale of loose leaf incense to minors, to prohibit certain marketing techniques, to regulate the sale of certain types of incense, to provide penalties therefor, and to declare an emergency.

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

Section 1. For purposes of this Act, a retailer is any person who sells merchandise at retail.

Section 2. No retailer may sell, in a single transaction, one quarter of a gram or more of loose leaf incense. Any person who sells loose leaf incense in violation of this section is guilty of a Class 1 misdemeanor.

Section 3. No retailer may willfully and knowingly supply, deliver, give possession, or sell any amount of loose leaf incense to a person under twenty-one years of age. A violation of this is a Class 1 misdemeanor.

Section 4. Any retailer who offers loose leaf incense for sale shall display and offer the product for sale behind the counter or in a locked case so that a customer wanting access to the product must ask a store employee for assistance. A violation of this section is a Class 1 misdemeanor.

Section 5. If offering for sale loose leaf incense, a retailer shall, before making such a sale, require and make a record of the identification of the person purchasing the product. For purposes of this Act, the term, identification, means a document issued by a governmental agency which contains a description of the person or a photograph of the person, or both, and gives the person's date of birth, such as a driver license, passport, or military identification card. The retailer shall maintain the record of identification, including the purchaser's name and date of birth. On August 1, 2012, and no later than the fifth day of every month thereafter, the retailer shall send any such records to the Office of the Attorney General. No retailer may use or maintain the record for any private or commercial purpose or disclose the record to any person, except as authorized by law. The

retailer shall disclose the record, upon request, to a law enforcement agency for a law enforcement purpose.

Section 6. No manufacturer, distributor, or retailer may advertise to the public, directly or indirectly, that loose leaf incense can be ingested. A violation of this section is a Class 1 misdemeanor.

Section 7. A retailer shall label each package of loose leaf incense sold in this state with a warning label that reads as follows: "This product is not meant to be ingested. The side effects of ingesting this product are unknown." A violation of this section is a Class 1 misdemeanor.

Section 8. For purposes of this Act, loose leaf incense includes loose potpourri, loose herbal incense, herbal smoking blends, or similar dried, leafy substances sold or marketed, directly or indirectly, as a relaxation, smoking, or herbal enhancement product. Herbal dietary supplements or remedies and United States Food and Drug Administration approved herbal teas or products are not included as loose leaf incense under this Act.

Section 9. A retailer shall ensure that each package of loose leaf incense sold is labeled with each ingredient present in the product, including all chemicals and additives.

Section 10. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1273

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Chief Clerk

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_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1273
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State