

2025 South Dakota Legislature

House Bill 1069**AMENDMENT 1069B
FOR THE INTRODUCED BILL**

1 **An Act to regulate vapor products, to provide for a new tax, and to provide a penalty**
2 **therefor.**

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

4 **Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

5 Terms used in this chapter mean:

6 (1) "Department," the Department of Revenue;

7 (2) "Secretary," the secretary of the Department of Revenue;

8 (3) "Vapor product," a noncombustible device that contains a consumable nicotine
9 liquid and produces a vapor or aerosol for inhalation from the application of a
10 heating element to the consumable nicotine liquid, or a consumable nicotine liquid
11 suitable for use in the device, whether sold with the device or sold separately, but
12 the term does not include any product that has been approved by the United States
13 Food and Drug Administration for sale as a tobacco cessation product or for other
14 therapeutic purposes if the product is marketed and sold solely for the approved
15 use;

16 (4) "Vapor product distributor," a person who sells vapor products for resale and who
17 has obtained a vapor product distributor license pursuant to this chapter, or any
18 licensed distributor or licensed wholesaler under chapter 10-50; and

19 (5) "Vapor product retailer," a person who sells vapor products at retail and who has
20 registered with the department pursuant to this chapter.

21 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

22 A person, except a licensed distributor or licensed wholesaler under chapter 10-
23 50, shall secure a vapor product distributor license pursuant to this chapter, prior to selling
24 vapor products in this state for resale. If a person owns or operates more than one place
25 of business selling vapor products for resale, the person must secure a separate license

1 for each place of business selling vapor products, ~~unless the person obtains a single~~
2 ~~distributor license for all places of business operated by the person.~~

3 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

4 A person located within or outside of this state is eligible for a vapor product
5 distributor license. To receive an initial or renewal vapor product distributor license, an
6 applicant shall:

- 7 (1) File an application with the department on a form prescribed by the secretary;
8 (2) Pay a license fee of one hundred dollars ~~for each place of business not to exceed a~~
9 ~~total of five hundred dollars, or pay a license fee of no more than five hundred~~
10 ~~dollars for a single license for all places of business operated by the person;~~
11 (3) Hold a South Dakota sales and use tax license issued by the department; and
12 (4) Be current on the remittance of all applicable state and local taxes.

13 The department shall issue a vapor product distributor license to any applicant who
14 meets the requirements of this chapter. ~~No fee may be imposed for the application or~~
15 ~~licensure of a vapor product distributor except as provided in this section.~~

16 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

17 Unless otherwise provided in this section, a vapor product distributor license is
18 valid from July first through June thirtieth. A license is valid for an additional three days if
19 an application for a new license is in the possession of the department before midnight on
20 the thirtieth day of June when the license expires.

21 The license fee required to be paid pursuant to section 3 of this Act may not be
22 prorated or refunded for a license that is not held for the entire period for which the license
23 is valid.

24 **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

25 Prior to selling or offering to sell vapor products in this state, a vapor product
26 distributor shall obtain a certification ~~by the manufacturer of the vapor product stating:~~

- 27 ~~(1) The manufacturer, pursuant to 21 U.S.C. § 387j (January 1, 2025), received~~
28 ~~a marketing granted order for the vapor product from the United States Food and Drug~~
29 ~~Administration; or~~
30 ~~(2) The vapor product was marketed in the United States on or before August 8,~~
31 ~~2016, and;~~

1 ~~(a) On or before September 9, 2020, the manufacturer, pursuant to 21 U.S.C. §~~
2 ~~387j (January 1, 2025), submitted to the United States Food and Drug Administration a~~
3 ~~premarket tobacco product application for the vapor product and the application was~~
4 ~~accepted for filing; and~~

5 ~~(b) The application remains under review by the United States Food and Drug~~
6 ~~Administration or a final decision on the application has not yet taken effect. by the~~
7 ~~manufacturer of the vapor product stating that the vapor product complies with state law~~
8 ~~and 15 U.S.C. §§ 375 to 378, inclusive (January 1, 2025). The distributor shall maintain~~
9 ~~records verifying compliance required by this section, including proper labeling, ingredient~~
10 ~~disclosure, and marketing restrictions.~~

11 A manufacturer who provides any misrepresentation or false statement in any
12 certification pursuant to this section is guilty of a Class 1 misdemeanor.

13 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

14 A vapor product distributor selling, offering to sell, or distributing vapor products
15 that do not meet the certification requirements pursuant to section 5 of this Act in violation
16 of this chapter is guilty of a Class 2 misdemeanor.

17 **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

18 A person shall register with the department prior to selling vapor products at retail.
19 If a person owns or operates more than one place of business selling vapor products at
20 retail, the person must secure a separate registration for each place of business selling
21 vapor products. No fee may be charged for registration under this section.

22 **Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

23 A vapor product distributor shall maintain, for at least three years, a copy of the
24 certification provided by a manufacturer pursuant to section 5 of this Act record of its
25 vapor product sales, including manufacturer information and product compliance with
26 state law. A vapor product distributor shall provide a copy of the certification to the
27 department, upon request. A retailer shall maintain records verifying that all vapor
28 products purchased by the retailer were purchased from a licensed distributor in
29 compliance with state law and federal law, including 15 U.S.C. §§ 375 to 378, inclusive
30 (January 1, 2025).

31 A violation of this section is a Class 2 misdemeanor.

1 **Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

2 The secretary may revoke a vapor product distributor license or the registration of
3 any vapor product retailer for failure to comply with any provision of this chapter.

4 A person aggrieved by the revocation may, in writing, request a contested case
5 hearing before the secretary. The request must be received by the department within
6 fourteen days from the date the notice of revocation was mailed to the licensee by certified
7 mail. If a request for a hearing is not received by the department within the time
8 prescribed, the revocation becomes final. Any hearing must be conducted, and any appeal
9 must be taken, pursuant to the provisions of chapters 1-26 and 1-26D.

10 A person who sells vapor products without a valid license or registration is guilty
11 of a Class 1 misdemeanor.

12 **Section 10. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

13 A vapor product retailer may buy or receive vapor products only from a vapor
14 product distributor. A violation of this section is a Class 2 misdemeanor.

15 **Section 11. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

16 A vapor product retailer shall maintain, for at least three years, documents
17 establishing that the vapor products in the vapor product retailer's inventory were
18 purchased from a vapor product distributor. A vapor product retailer shall provide a copy
19 of the documents to the department, upon request.

20 A violation of this section is a Class 2 misdemeanor.

21 **Section 12. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

22 A vapor product in this state that does not ~~meet the certification requirements~~
23 ~~pursuant to section 5 of this Act~~ comply with the provisions of this chapter is contraband.
24 Any person in possession of a contraband vapor product shall ensure it is disposed of in
25 accordance with chapter 34A-11 and rules promulgated by the Department of Agriculture
26 and Natural Resources in accordance with chapter 1-26.

27 A person that receives notice that a vapor product is contraband may request a
28 hearing before the secretary within fourteen days of receiving the notice. No disposal or
29 destruction of the vapor product may occur until the hearing process has concluded and
30 a final determination has been made. A decision of the secretary may be appealed to
31 circuit court pursuant to chapter 1-26.

1 The person shall provide proof of proper disposal, on a form prescribed by the
2 secretary, to the department within sixty days of receiving notice from the department or
3 any law enforcement officer of this state that the person is in possession of a contraband
4 vapor product.

5 A person failing to provide proof of proper disposal as required by this section is
6 guilty of a Class 2 misdemeanor.

7 **Section 13. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

8 A person who is engaged in the business of selling or distributing vapor products
9 may not ship or transport, or cause to be shipped or transported, vapor products directly
10 to any consumer in this state. ~~This section applies regardless of whether the person~~
11 ~~engaged in the business of selling or distributing vapor products is located within or~~
12 ~~outside of this state., except as permitted under federal law, including 15 U.S.C. §§ 375~~
13 ~~to 378, inclusive (January 1, 2025). An action to enforce the provisions of this section~~
14 ~~may only be taken on violations of federal law, and may not impose restriction other than~~
15 ~~those provided by federal law.~~

16 **Section 14. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

17 The attorney general may seek an injunction to restrain a threatened or actual
18 violation of section 13 of this Act, if such shipment is not in compliance with federal law
19 governing interstate commerce.

20 **Section 15. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

21 The attorney general may bring a civil action in circuit court for any violation of
22 section 13 of this Act, which is a violation of federal law. In addition to injunctive or any
23 other relief, the court may impose, for a first violation of section 13 of this Act, a civil
24 penalty in the amount of one thousand dollars or five times the retail value of the vapor
25 products involved, whichever is greater. A subsequent violation of section 13 of this Act is
26 punishable by a civil penalty of five thousand dollars or five times the retail value of the
27 vapor products involved, whichever is greater.

28 **Section 16. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

29 Each shipment, transport, or attempted shipment or transport, of vapor products
30 in violation of section 13 of this Act constitutes a separate violation.

1 **Section 17. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

2 Unless otherwise expressly provided, the penalties or remedies, or both, under
3 sections 14 to 16 of this Act, inclusive, are in addition to any other penalties and remedies
4 available under any other law of this state. Nothing in sections 14 to 16 of this Act,
5 inclusive, prohibits the collection of any applicable tax against a person receiving vapor
6 products in violation of this chapter.

AMENDED