

2025 South Dakota Legislature

House Bill 1069**AMENDMENT 1069D
FOR THE HOUSE ENGROSSED BILL**

1 **An Act to regulate vapor products, to authorize 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

1 of business selling vapor products for resale, the person must secure a separate license
2 for each place of business selling vapor products.

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;~~

9 (3) Hold a South Dakota sales and use tax license issued by the department; and

10 ~~(3)(4) Be current on the remittance of all applicable state and local taxes.~~

11 The department shall issue a vapor product distributor license to any applicant who
12 meets the requirements of this chapter.

13 All moneys collected by the department under this section must be forwarded to
14 the state treasurer for deposit in the sales and use tax collection fund.

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

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

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

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

23 (1) The manufacturer, pursuant to 21 U.S.C. § 387j (January 1, 2025), received a
24 marketing granted order for the vapor product from the United States Food and
25 Drug Administration; or

26 (2) The vapor product was marketed in the United States on or before August 8, 2016,
27 and;

28 (a) On or before September 9, 2020, the manufacturer, pursuant to 21 U.S.C.
29 § 387j (January 1, 2025), submitted to the United States Food and Drug
30 Administration a premarket tobacco product application for the vapor
31 product and the application was accepted for filing; and

1 (b) The application remains under review by the United States Food and Drug
2 Administration or a final decision on the application has not yet taken effect.
3 A manufacturer who provides any misrepresentation or false statement in any
4 certification pursuant to this section is guilty of a Class 1 misdemeanor.

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

6 A vapor product distributor selling, offering to sell, or distributing vapor products
7 that do not meet the certification requirements pursuant to section 5 of this Act is guilty
8 of a Class 2 misdemeanor.

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

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

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

15 A vapor product distributor shall maintain, for at least three years, a copy of the
16 certification provided by a manufacturer pursuant to section 5 of this Act. A vapor product
17 distributor shall provide a copy of the certification to the department, upon request.
18 A violation of this section is a Class 2 misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A person who is engaged in the business of selling or distributing vapor products
24 may not ship or transport, or cause to be shipped or transported, vapor products directly
25 to any consumer in this state. This section applies regardless of whether the person
26 engaged in the business of selling or distributing vapor products is located within or
27 outside of this state.

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

1 The attorney general may seek an injunction to restrain a threatened or actual
2 violation of section 13 of this Act.

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

4 The attorney general may bring a civil action in circuit court for any violation of
5 section 13 of this Act. In addition to injunctive or any other relief, the court may impose,
6 for a first violation of section 13 of this Act, a civil penalty in the amount of one thousand
7 dollars or five times the retail value of the vapor products involved, whichever is greater.
8 A subsequent violation of section 13 of this Act is punishable by a civil penalty of five
9 thousand dollars or five times the retail value of the vapor products involved, whichever
10 is greater.

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

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

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

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