

## 2025 South Dakota Legislature

**House Bill 1069****AMENDMENT 1069G  
FOR THE SENATE COMMERCE AND ENERGY 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 (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 Drug~~  
25 ~~Administration; or~~

26 ~~(2) The vapor product was marketed in the United States on or before August 8,~~  
27 ~~2016, 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 Administration a~~  
30 ~~premarket tobacco product application for the vapor product and the application was~~  
31 ~~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 ~~A licensed wholesaler, vapor product distributor, or vapor product retailer may not~~  
6 ~~market, advertise, sell, or cause to be sold a vapor product if:~~

7 ~~(1) The container, packaging, or advertising depicts a human, animal, creature,~~  
8 ~~vehicle, cartoon character, toy, emoji, or other artwork intended to appeal to a~~  
9 ~~minor;~~

10 ~~(2) The container, packaging, or advertising imitates trademarks or trade dress of a~~  
11 ~~product that is marketed to minors;~~

12 ~~(3) The container, packaging, or advertising includes an image of a public figure;~~

13 ~~(4) The container or packaging is intentionally designed to disguise that the product is~~  
14 ~~a vapor product;~~

15 ~~(5) The container or packaging contains, includes, or is capable of running or~~  
16 ~~interfacing with video games, mobile games, or interactive software on an~~  
17 ~~integrated electronic screen, digital interface, or external gaming system, or is~~  
18 ~~marketed as having gaming functionality;~~

19 ~~(6) The container or packaging does not contain an ingredients listing displayed on the~~  
20 ~~packaging in at least eight-point type in a visible area on the product;~~

21 ~~(7) The packaging does not meet applicable packaging standards provided by 15~~  
22 ~~U.S.C. § 1472a (January 28, 2016); or~~

23 ~~(8) The packaging does not contain a label that meets the nicotine addictiveness~~  
24 ~~warning statement requirements provided by 21 C.F.R. § 1143.3 (February 25,~~  
25 ~~2025).~~

26 ~~A violation of this section is a Class 2 misdemeanor.~~

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

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

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

32 ~~A person shall register with the department prior to selling vapor products at retail.~~  
33 ~~If a person owns or operates more than one place of business selling vapor products at~~

1 retail, the person must secure a separate registration for each place of business selling  
2 vapor products. No fee may be charged for registration under this section.

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

4 A vapor product distributor shall maintain, for at least three years, ~~a copy of the~~  
5 ~~certification~~ all documentation, including all ingredients detailed pursuant to section 5 of  
6 this Act, provided by a manufacturer ~~pursuant to section 5 of this Act.~~ A vapor product  
7 distributor shall ~~submit to an inspection of inventory, products, and documentation, and~~  
8 ~~shall provide a copy of the certification the documentation~~ to the department, upon  
9 request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 A person who is engaged in the business of selling or distributing vapor products  
15 may not ship or transport, or cause to be shipped or transported, vapor products directly  
16 to any consumer in this state. This section applies regardless of whether the person  
17 engaged in the business of selling or distributing vapor products is located within or  
18 outside of this state.

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

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

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

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

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

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

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

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