



## 2026 South Dakota Legislature

# House Bill 1240

Introduced by: **Representative Goodwin**

1 **An Act to establish requirements for the distribution and sale of vapor products, and**  
 2 **to provide a penalty 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) "Distributor," a person who sells vapor products for resale and is licensed in  
 8 accordance with this chapter as a distributor;  
 9 (3) "Retailer," a person who sells vapor products at retail and is licensed in accordance  
 10 with this chapter as a retailer;  
 11 (4) "Secretary," the secretary of the department; and  
 12 (5) "Vapor product," a noncombustible device that contains a consumable nicotine  
 13 liquid and produces a vapor or aerosol for inhalation from the application of a  
 14 heating element to the consumable nicotine liquid, or a consumable nicotine liquid  
 15 suitable for use in the device, whether sold with the device or sold separately, but  
 16 the term does not include any product that has been approved by the United States  
 17 Food and Drug Administration for sale as a tobacco cessation product or for other  
 18 therapeutic purposes, if the product is marketed and sold solely for the approved  
 19 use.

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

21 A person shall obtain a distributor license before selling vapor products in this state  
 22 for resale. To obtain or renew a distributor license, a person shall:

- 23 (1) File an application with the department on a form prescribed by the secretary;  
 24 (2) Pay an application fee of one hundred dollars, except as otherwise provided in this  
 25 section;

- 1       (3) Hold a South Dakota sales and use tax license issued by the department; and  
2       (4) Be current on the remittance of all applicable state and local taxes.

3               The department shall issue a distributor license to any applicant who meets the  
4       requirements of this section. If a person owns or operates more than one place of business  
5       selling vapor products for resale, the person must secure a separate license for each place  
6       of business engaged in the resale of vapor products. The department may not charge an  
7       applicant more than two hundred fifty dollars in total distributor license application fees  
8       per calendar year.

9               A distributor license expires one year from the date of issuance. The department  
10       may renew an expired license if an application for renewal is made within thirty days after  
11       the date of expiration, and the applicant pays a late fee of fifty dollars.

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

13               A distributor shall retain, for at least the last three years:

- 14       (1) Commercial transaction and shipping documentation from the manufacturer of  
15       each vapor product that the distributor obtains for resale, demonstrating  
16       compliance with section 11 of this Act; and  
17       (2) Records documenting batch numbers, inventory logs, distribution of vapor products  
18       to other distributors and retailers, and shipping confirmations.

19               The distributor shall make the documentation and records available to the  
20       department upon request.

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

22               A person shall obtain a retailer license before selling vapor products in this state  
23       at retail. To obtain or renew a retailer license, a person shall:

- 24       (1) File an application with the department on a form prescribed by the secretary;  
25       (2) Pay a fee of two hundred fifty dollars;  
26       (3) Hold a South Dakota sales and use tax license issued by the department; and  
27       (4) Be current on the remittance of all applicable state and local taxes.

28               The department shall issue a retailer license to any applicant who meets the  
29       requirements of this section. If a person owns or operates more than one place of business  
30       selling vapor products for retail, the person must secure a separate license for each place  
31       of business engaged in the retail sale of vapor products.

1           A retailer license expires one year from the date of issuance. The department may  
2           renew an expired license if an application for renewal is made within thirty days after the  
3           date of expiration, and the applicant pays a late fee of fifty dollars.

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

5           A retailer shall retain, for at least the last three years, documentation establishing  
6           that all vapor products in the retailer's inventory were obtained from a distributor.

7           The retailer shall make the records available to the department upon request.

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

9           A person may not:

10          (1) Distribute or offer vapor products for resale without a distributor license;

11          (2) Sell or offer to sell vapor products at retail without a retailer license; or

12          (3) As a retailer, sell or offer to sell, at retail, vapor products that were not obtained  
13          from a distributor.

14          A violation of this section is a Class 1 misdemeanor.

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

16          When selling a vapor product, a retailer shall utilize an integrated point-of-sale  
17          third-party age verification system approved by the department.

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

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

20          A retailer may only sell a vapor product containing any added natural or artificial  
21          food-grade flavoring, other than tobacco, mint, or menthol taste, at a retail location that:

22          (1) Restricts access to individuals twenty-one years of age or older; and

23          (2) Derives at least twenty-five percent of its gross revenue from vapor products, and  
24          tobacco products as defined in § 34-46-1.

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

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

27          Only a retailer or distributor may sell vapor products online or directly to a  
28          consumer, provided that the sale complies with 15 U.S.C. §§ 375 to 378, inclusive  
29          (January 1, 2026).

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

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

3 A retailer may not be held criminally liable for the unlawful purchase of a vapor  
4 product by an individual under the age of twenty-one if:

5 (1) The purchase was completed using fraudulent methods; and

6 (2) The retailer acted in good faith to verify the age and identity of the individual.

7 The court may consider evidence of employee training, written compliance policies,  
8 and reasonable verification procedures when determining if the retailer acted in good faith.

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

10 A vapor product sold for resale or retail in this state may not contain:

11 (1) Any ingredients other than:

12 (a) Vegetable glycerin;

13 (b) Propylene glycol;

14 (c) Natural or artificial food-grade flavoring; or

15 (d) Nicotine; or

16 (2) Any concentrations exceeding tolerances established under the United States  
17 Pharmacopeia National Formulary, or the Food Chemicals Codex, for:

18 (a) Vitamin E acetate;

19 (b) Arsenic;

20 (c) Cyanide; or

21 (d) Diacetyl.

22 All ingredients in a vapor product sold for resale or retail in this state must conform  
23 to the monograph specifications published by the United States Pharmacopeia National  
24 Formulary and the Food Chemicals Codex.

25 A vapor product may contain trace contaminants if they are within the standard  
26 deviation tolerances set forth in the United States Pharmacopeia National Formulary or  
27 the Food Chemicals Codex.

28 The Department of Health shall promulgate rules, in accordance with chapter 1-  
29 26, to establish requirements for persons engaged in the manufacturing of vapor products  
30 in this state. The rules must address sanitation, pest control, ventilation, and testing  
31 requirements to ensure compliance with this section and the health and safety of the  
32 public.

33 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 sold for resale or retail in this state must:

3 (1) Be packaged in tamper-evident or child-resistant packaging, as set forth in 15  
4 U.S.C. § 1472a (January 1, 2026) and 16 C.F.R. § 1700.15(b)(1) (January 1,  
5 2026); and

6 (2) Have a label that contains:

7 (a) A list of ingredients; and

8 (b) The nicotine addiction warning, as provided in 21 C.F.R. § 1143 (January 1,  
9 2026).

10 Neither the packaging nor labeling of a vapor product may contain any branding,  
11 imagery, or promotional content, which uses cartoons, celebrities, gaming references, or  
12 similar themes, to target persons under twenty-one years of age.

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

14 A distributor or retailer may not advertise or promote vapor products, brands, or  
15 flavors on the exterior of a licensed location, using billboards, window wraps, exterior-  
16 facing signage, broadcast advertisements, digital media, or any other methods visible to  
17 the public.

18 A retailer or distributor may advertise its business, provided that the advertising is  
19 limited to the business name, location, operating hours, and a statement that vapor  
20 products may only be sold to individuals twenty-one years of age or older.

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

22 A vapor product may not be marketed or advertised on any medium that:

23 (1) Lacks age-restriction access controls; or

24 (2) Contains content primarily directed at or recognized as appealing almost  
25 exclusively to persons under the age of twenty-one.

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

27 A person may not distribute or provide any vapor product as a free sample or  
28 otherwise without monetary consideration.

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

1           A vapor product that does not meet the requirements of this chapter may be  
2           designated as contraband only upon a final determination by the department of  
3           noncompliance, following notice and a reasonable opportunity to cure. Any person in  
4           possession of a contraband vapor product shall ensure it is disposed of in accordance with  
5           chapter 34A-11.

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

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

11           The secretary may, in accordance with chapter 1-26, deny the issuance or renewal  
12           of, or suspend or revoke, a distributor or retailer license for:

13           (1) A material failure to comply with any provision of this chapter, following notice and  
14           a reasonable opportunity to cure; or

15           (2) Obtaining a license or renewal by false or fraudulent representation.

16           A person aggrieved by an adverse action of the secretary may appeal the decision  
17           in accordance with chapter 1-26.

18   **Section 18. That a NEW SECTION be added to a NEW CHAPTER in title 10:**

19           The secretary may impose a civil penalty in the amount of five thousand dollars for  
20           any violation of this chapter. The secretary shall deposit any civil penalty collected under  
21           this section in the vapor product regulatory fund created in section 21 of this Act.

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

23           The department shall promulgate rules, in accordance with chapter 1-26, to  
24           establish:

25           (1) Criteria governing the initial licensure and renewal application process for retailers  
26           and distributors; and

27           (2) Requirements for the inspection of distributors and retailers to ensure compliance  
28           with this chapter.

29           Inspections by the department must be conducted based on reasonable cause,  
30           complaint, or routine regulatory audit, and may not be random, arbitrary, or capricious.

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

1           At the conclusion of each month, the department shall forward twenty percent of  
 2           the fees received from distributor and retailer licenses established in this chapter to the  
 3           state treasurer for deposit in the tobacco prevention and reduction trust fund, created in  
 4           § 34-46-12, for the support of the tobacco prevention and reduction program. The  
 5           remaining eighty percent of the fees received from distributor and retailer licenses  
 6           established in this chapter must be forwarded to the state treasurer for deposit in the fund  
 7           created in section 21 of this Act.

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

9           There is created in the state treasury the vapor product regulatory fund. The fund  
 10          consists of all moneys designated for deposit in the fund.

11          The department shall administer the fund. The purpose of the fund is to defray  
 12          expenses associated with the administration of this chapter by the department and any  
 13          other purpose authorized by law. Interest on moneys credited to the fund must remain in  
 14          the fund. The fund must be budgeted through the general appropriation bill.

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

16          On or before each July first, the department and the Department of Health shall  
 17          submit a report to the Legislature regarding:

- 18          (1) The number of retailer and distributor licenses issued by the department;  
 19          (2) Enforcement and regulatory challenges;  
 20          (3) Public health outcomes related to vapor products; and  
 21          (4) The economic impact of vapor products.

22          **Section 23. That § 34-46-1 be AMENDED:**

23                 **34-46-1.** Terms used in this chapter mean:

- 24          (1) ~~"Electronic smoking device," any e-cigarette, e-cigar, e-pipe, e-hookah, or vape~~  
 25                 ~~pen containing or delivering nicotine or any other substance intended for human~~  
 26                 ~~consumption that may be used by a person in any manner for the purpose of~~  
 27                 ~~inhaling vapor or aerosol from the product;~~  
 28          (2) "Proof of age," a driver's license, nondriver identification card, tribal identification  
 29                 card, or other generally accepted means of identification that contains a picture of  
 30                 the individual and appears on its face to be valid;

1 ~~(3)~~(2) "Sample," tobacco products distributed to members of the general public at no cost  
2 for purposes of promoting the product;

3 ~~(4)~~ "Sampling," the distribution of samples to members of the general public in a public  
4 place;

5 ~~(5)~~(3) "Self-service display," a display that contains cigarettes or smokeless tobacco, or  
6 both, and is located in an area openly accessible to the merchant's consumers, and  
7 from which such consumers can readily access cigarettes or smokeless tobacco, or  
8 both, without the assistance of the merchant or an employee or agent of the  
9 merchant. A display case that holds tobacco products behind locked doors does not  
10 constitute a self-service display;

11 ~~(6)~~(4) "Smoke" or "Smoking," the act of inhaling, exhaling, burning, or carrying any  
12 lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated  
13 tobacco or plant product intended for inhalation, whether natural or synthetic, in  
14 any manner or in any form, ~~including the use of an electronic smoking device which~~  
15 ~~creates an aerosol or vapor, in any manner or in any form;~~

16 ~~(7)~~(5) "Tobacco product," ~~any item made of tobacco intended for human consumption,~~  
17 ~~including cigarettes, cigars, pipe tobacco, and smokeless tobacco, and vapor~~  
18 ~~products as defined in § 34-46-20, or any other item made of tobacco and intended~~  
19 ~~for human consumption;~~

20 ~~(8)~~(6) "Tobacco speciality store," a business that derives at least seventy-five percent of  
21 its revenue from the sale of tobacco products; and

22 (7) "Vapor product," a noncombustible device that contains a consumable nicotine  
23 liquid and produces a vapor or aerosol for inhalation from the application of a  
24 heating element to the consumable nicotine liquid, or a consumable nicotine liquid  
25 suitable for use in the device, whether sold with the device or sold separately, but  
26 the term does not include any product that has been approved by the United States  
27 Food and Drug Administration for sale as a tobacco cessation product or for other  
28 therapeutic purposes, if the product is marketed and sold solely for the approved  
29 use.

30 **Section 24. That § 34-46-21 be AMENDED:**

31 **34-46-21.** ~~No person~~ A person may not sell a vapor product ~~other than in:~~

32 (1) In an unopened opened package originating with the manufacturer and depicting  
33 the warning labels required by federal law, or sell a vapor product through; or

34 (2) Through a self-service display other than, except a display that is:

1           ~~(1)~~(a) ~~A~~In a vending machine permitted under subdivision 34-46-2(5) and located  
 2                                   in a retail establishment licensed in accordance with sections 1 to 22,  
 3                                   inclusive, of this Act; or

4           ~~(2)~~(b) Located in a tobacco specialty store that is licensed as a retail establishment  
 5                                   in accordance with sections 1 to 22, inclusive, of this Act.

6           A violation of this section is a Class 2 misdemeanor. A person is not liable for more  
 7           than one violation of this section on a single day.

8           **Section 25. That § 34-46-20 be REPEALED.**

9           ~~For the purposes of this chapter, the term, tobacco product, includes vapor~~  
 10           ~~product. The term, vapor product, means any noncombustible product containing nicotine~~  
 11           ~~that employs a heating element, power source, electronic circuit, or other electronic,~~  
 12           ~~chemical, or mechanical means, regardless of shape or size, that can be used to produce~~  
 13           ~~vapor from nicotine in a solution or other form. The term, vapor product, includes any~~  
 14           ~~electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product~~  
 15           ~~or device and any vapor cartridge or other container of nicotine in a solution or other form~~  
 16           ~~that is intended to be used with or in an electronic cigarette, electronic cigar, electronic~~  
 17           ~~cigarillo, electronic pipe, electronic smoking device, or similar product or device. The term,~~  
 18           ~~vapor product, does not include any product approved by the United States Food and Drug~~  
 19           ~~Administration for sale as tobacco cessation products and marketed and sold solely for~~  
 20           ~~that purpose.~~