



2026 South Dakota Legislature

Senate Bill 221

Introduced by: **Senator Karr**

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 34:**

5 Terms used in this chapter mean:

- 6 (1) "Distributor," a person who sells vapor products for resale;
 7 (2) "Retailer," a person who sells vapor products at retail; and
 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 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

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

- 18 (1) Any ingredients other than:
 19 (a) Vegetable glycerin;
 20 (b) Propylene glycol;
 21 (c) Natural or artificial food-grade flavoring; or
 22 (d) Nicotine; or
 23 (2) Any concentrations exceeding tolerances established under the United States
 24 Pharmacopeia National Formulary, or the Food Chemicals Codex, for:
 25 (a) Vitamin E acetate;

- 1 (b) Arsenic;
- 2 (c) Cyanide; or
- 3 (d) Diacetyl.

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

7 A vapor product may contain trace contaminants if they are within the standard
 8 deviation tolerated in the United States Pharmacopeia National Formulary or the Food
 9 Chemicals Codex.

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

11 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

- 12 A vapor product sold for resale or retail in this state must:
- 13 (1) Be packaged in tamper-evident or child-resistant packaging; and
 - 14 (2) Have a label that contains:
 - 15 (a) A list of ingredients; and
 - 16 (b) The nicotine addiction warning, as provided in 21 C.F.R. § 1143.3 (January
 17 1, 2026).

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

21 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

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

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

29 **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

- 30 A vapor product may not be marketed or advertised on any medium that:
- 31 (1) Lacks age-restriction access controls; or

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

3 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 34:**

4 A distributor or retailer may not distribute or provide any vapor product as a free
5 sample or otherwise without monetary consideration.