

On the Introduced bill, delete everything after the enacting clause and insert:

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Section 1. That § 10-1-28.2 be AMENDED:

10-1-28.2. All lists of taxpayers, licensees, or applicants compiled by the Department of Revenue are confidential except licensees which were licensed under the provisions of chapter 10-47B, 32-6B, 32-6C, 32-7A, or 32-7B, or sections 3 to 14, inclusive, of this Act. It is a Class 2 misdemeanor to disclose any such list except to the extent necessary to carry out the official duties of the department.

Section 2. That § 10-50-11 be AMENDED:

10-50-11. Each application for a distributor or wholesaler license shall be accompanied by a fee of ~~one hundred fifty~~ one thousand dollars. If the applicant for a license has not entered upon the business of selling cigarettes or tobacco products until after the first day of January in any year, then the fee for a license during the remainder of the fiscal year is one-half the amount set forth in this section.

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

Terms used in this chapter mean:

- (1) "Distributor," a person engaged in the business of selling a nicotine produce for resale;
- (2) "Licensee," a person licensed under the provisions of this chapter;
- (3) "Nicotine product," a product intended for human consumption, containing any form of the chemical nicotine, including any salt or complex, from any source, nicotinic alkaloids, nicotine analogs, and any substance intended to mimic or replicate the pharmacological effect of nicotine. The term includes components, parts, or accessories. The term does not include drugs, devices, or combination products, as defined in the Federal Food, Drug, and Cosmetic Act, approved for sale by the United States Food and Drug Administration. Any communication by, or on behalf of, the manufacturer distributor, or retailer of a tobacco product that indicates that the product contains a nicotine analog constitutes presumptive evidence that the product contains a nicotine analog; and
- (4) "Retailer," a person engaged in the business of selling a nicotine product to an individual for any purpose other than resale.

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

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

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

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

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

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

All moneys collected by the department under this section must be forwarded to the state treasurer for deposit in the nicotine enforcement fund established under section 14 of this Act.

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

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

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

A nicotine product distributor shall maintain, for at least three years, all documentation detailing the manufacturer, address of the manufacturer, ingredients, and sales, of all nicotine products. A nicotine product distributor shall submit to an inspection of inventory, products, and documentation, and shall provide a copy of the documentation to the department, upon request.

A violation of this section is a Class 2 misdemeanor.

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

The secretary may revoke a nicotine product distributor license or the registration of any nicotine product retailer for failure to comply with any provision of state law.

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

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

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

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

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

A person who is engaged in the business of selling or distributing nicotine products may not ship or transport, or cause to be shipped or transported, nicotine products directly

to any consumer in this state. This section applies regardless of whether the person engaged in the business of selling or distributing nicotine products is located within or outside of this state.

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

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

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

Each shipment, transport, or attempted shipment or transport, of nicotine products in violation of section 10 of this Act constitutes a separate violation.

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

Unless otherwise expressly provided, the penalties or remedies, or both, under sections 11 and 12 of this Act, inclusive, are in addition to any other penalties and remedies available under any other law of this state. Nothing in sections 11 and 12 of this Act, inclusive, prohibits the collection of any applicable tax against a person receiving nicotine products in violation of this chapter.

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

There is created a nicotine enforcement fund. The Department of Revenue shall administer the fund. The purpose of the fund is to defray expenses associated with the enforcement of this chapter.

Moneys collected under this Act must be forwarded to the state treasurer to be deposited into the fund. Interest on moneys credited to the fund must remain in the fund.

Expenditures from the fund must be budgeted through the general appropriation bill.

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