

2026 South Dakota Legislature

House Bill 1220**AMENDMENT 1220E
FOR THE HOUSE HEALTH AND HUMAN SERVICES
ENGROSSED BILL**

1 **An Act to regulate the sale of nicotine products, and to provide a penalty therefor.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

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

4 **10-1-28.2.** All lists of taxpayers, licensees, or applicants compiled by the
5 Department of Revenue are confidential except licensees which were licensed under the
6 provisions of chapter 10-47B, 32-6B, 32-6C, 32-7A, or 32-7B, or sections 3 to 14,
7 inclusive, of this Act. It is a Class 2 misdemeanor to disclose any such list except to the
8 extent necessary to carry out the official duties of the department.

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

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

15 Notwithstanding the provisions of § 10-50-52, the fees collected under this section
16 must be deposited in the nicotine enforcement fund established in section 14 of this Act.

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

18 Terms used in this chapter mean:

19 (1) "Alternative nicotine product," a noncombustible product containing nicotine from
20 any source or a nicotine analog that is intended for human consumption, whether
21 chewed, absorbed, dissolved, ingested, inhaled, or consumed by any other means.
22 The term does not include any vapor product, tobacco product, or any product
23 regulated as a drug, food, or device by the United States Food and Drug

- 1 Administration under the Food, Drug and Cosmetic Act, 21 U.S.C chapter 9
2 subchapter V (January 1, 2026);
- 3 ~~(2)~~ "Distributor," a person engaged in the business of selling or otherwise providing a
4 nicotine product for resale, to a retailer for sale to a consumer;
- 5 ~~(2)(3)~~ "Licensee," a person licensed under the provisions of this chapter;
- 6 ~~(4)~~ "Nicotine analog," a substance that:
- 7 (a) Has a chemical structure substantially similar to the chemical structure of
8 nicotine;
- 9 (b) Has, or is represented to have, an effect on the central nervous system
10 similar to the chemical nicotine; or
- 11 (c) Is manufactured, formulated, sold, distributed, or marketed with the intent
12 to avoid provisions of this chapter;
- 13 ~~(3)(5)~~ "Nicotine product," a product intended for human consumption, containing any
14 form of the chemical nicotine, including any salt or complex, from any source,
15 nicotinic alkaloids, nicotine analogs, and any substance intended to mimic or
16 replicate the pharmacological effect of nicotine. The term includes components,
17 parts, or accessories. The term does not include drugs, devices, or combination
18 products, as defined in the Federal Food, Drug, and Cosmetic Act, approved for
19 sale by the United States Food and Drug Administration.
20 Any communication by, or on behalf of, the manufacturer distributor, or retailer of
21 a tobacco product that indicates that the product contains a nicotine analog
22 constitutes presumptive evidence that the product contains a nicotine analog an
23 alternative nicotine product or vapor product, and does not include a tobacco
24 product as defined by § 10-50-1 or cigarettes; and
- 25 ~~(4)(6)~~ "Retailer," a person engaged in the business of selling a nicotine product to an
26 individual for any purpose other than resale; and
- 27 ~~(7)~~ "Vapor product," a noncombustible product containing nicotine or a nicotine analog
28 that employs a heating element, power source, electronic circuit, or other
29 electronic, chemical, or mechanical means, regardless of shape or size, which can
30 be used to produce vapor or aerosol from nicotine or a nicotine analog in a solution.
31 The term includes, but is not limited to, any electronic cigarette, electronic cigar,
32 electronic cigarillo, electronic pipe, or similar product or device, and a consumable
33 nicotine or nicotine analog solution suitable for use in such a device or a vapor
34 product, and any component or part, whether sold with the device or separately.
35 The term does not include any product approved by the United States Food and

1 Drug Administration for sale as a tobacco cessation product and marketed and sold
2 solely for that purpose.

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

4 A person, except a licensed distributor or licensed wholesaler under chapter 10-
5 50, shall secure a license pursuant to this chapter, prior to selling nicotine products in this
6 state for resale. If a person owns or operates more than one place of business selling
7 nicotine products for resale, the person must secure a separate license for each place of
8 business selling nicotine products.

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

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

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

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

19 All moneys collected by the department under this section must be forwarded to
20 the state treasurer for deposit in the nicotine enforcement fund established under section
21 14 of this Act.

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

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

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

28 A nicotine product distributor shall maintain, for at least three years, all
29 documentation detailing the manufacturer, address of the manufacturer, ~~ingredients,~~ and
30 sales, of all nicotine products. A nicotine product distributor shall submit to an inspection

1 of inventory, products, and documentation, and shall provide a copy of the documentation
2 to the department, upon request.

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

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

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

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

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

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

16 A nicotine product retailer may buy or receive nicotine products only from a nicotine
17 product distributor, ~~or a licensed distributor or licensed wholesaler under chapter 10-50.~~

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

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

20 A person who is engaged in the business of selling or distributing nicotine products
21 may not ship or transport, or cause to be shipped or transported, nicotine products directly
22 to any consumer in this state, ~~except as provided in this section or in chapter 10-50C.~~
23 This section applies regardless of whether the person engaged in the business of selling
24 or distributing nicotine products is located within or outside of this state.

25 ~~A person may ship or transport, or cause to be shipped or transported, alternative~~
26 ~~nicotine products directly to any consumer in this state if:~~

27 ~~(1) Prior to sale of the alternative nicotine product to the purchaser, the seller verifies~~
28 ~~that the purchaser is at least twenty-one years of age through a commercially~~
29 ~~available database, or aggregate of databases, that is regularly used by~~
30 ~~government and businesses for the purpose of age and identity verification, or by~~

- 1 obtaining a copy of a valid government-issued document that provides the name,
2 address, and date of birth of the purchaser;
3 (2) Prior to shipping or sending the purchased products, the seller has received
4 payment for the sale from the purchaser by a credit card or debit card issued in
5 the purchaser's name, or by a check that is associated with a bank account in the
6 purchaser's name and the name matches the name of the purchaser whose age
7 was verified under subdivision (1);
8 (3) The seller uses a method of mailing, shipping, or delivery that requires the
9 signature of a person who is at least twenty-one years of age before the package
10 is released to the purchaser; and
11 (4) The seller holds a South Dakota sales and use tax license issued by the Department
12 of Revenue.

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

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

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

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

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

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

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

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

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

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

AMENDED