2026 South Dakota Legislature

Senate Bill 221

AMENDMENT 221F
FOR THE SENATE ENGROSSED BILL

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

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

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 2 to ~~21~~ 18, 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 a NEW SECTION be added to a NEW CHAPTER in title 10:

Terms used in this chapter mean:

(1) "Alternative nicotine product," a noncombustible product containing nicotine from any source or a nicotine analog that is intended for human consumption, whether chewed, absorbed, dissolved, ingested, inhaled, or consumed by any other means. The term does not include any vapor product or any product regulated as a drug, food, or device by the United States Food and Drug Administration under the Food, Drug and Cosmetic Act, 21 U.S.C chapter 9 subchapter V (January 1, 2026);

(2) "Department," the Department of Revenue;

(3) "Licensee," a person licensed under the provisions of this chapter;

(4) "Nicotine Analog," a substance that:

(a) Has a chemical structure substantially similar to the chemical structure of nicotine;

(b) Has, or is represented to have, an effect on the central nervous system similar to the chemical nicotine; and

(c) Is manufactured, formulated, sold, distributed, or marketed with the intent to avoid the provisions of this chapter;

~~(3)~~(5) "Nicotine product," an alternative nicotine product, tobacco product, or vapor product;

~~(4)~~(6) "Retailer," a person engaged in the business of selling a nicotine product to an individual for any purpose other than resale;

(7) "Secretary," the secretary of the department;

~~(5)~~(8) "Tobacco product," cigarettes, cigars, snuff, chewing tobacco, and any other products made up or composed of tobacco in whole or in part;

~~(6)~~(9) "Vapor product," a noncombustible product containing nicotine or a nicotine ~~analogue~~ analog that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, ~~that~~ which can be used to produce vapor or aerosol from nicotine or a nicotine analog in a solution. The term includes, but is not limited to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and a consumable nicotine or nicotine analog solution suitable for use in a vapor product, and any component or part, whether sold with the product or separately. The term does not include any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product and marketed and sold solely for that purpose;

~~(7)~~(10) "Vending machine," a device that dispenses nicotine products to an individual for any purpose other than resale. The term does not include a self-service display; and

~~(8)~~(11) "Vending machine retailer," a person engaged in the business of selling a nicotine product from vending machines.

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

Any communication by, or on behalf of, the manufacturer, distributor, or retailer of a nicotine product, which indicates that the product contains a nicotine analog, constitutes presumptive evidence that the product contains a nicotine analog.

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

A retailer shall secure a license under this chapter to sell a nicotine product in this state. A separate application and a separate license are required for each place of business of a retailer where a nicotine product is sold at retail~~, and for each licensed establishment~~

~~within which a retailer places a~~. Each vending machine that sells a nicotine product pursuant to section 8 of this Act requires a separate license.

An application for a license required under this section must be made to the ~~Department of Revenue~~ department, on forms prescribed by the secretary. The application must contain:

(1) The contact information and date of birth of the applicant;

(2) ~~The name and mailing address of the registered agent of the applicant;~~

~~(3)~~ The physical address and mailing address of the place of business of the retailer; ~~and~~

~~(4)~~(3) All past and current violations of state or federal law by the applicant relating to the sale, possession, or transportation of a nicotine product; and

(4) Any information required by the department pursuant to rules promulgated under this chapter.

For retailers where at least fifty percent of the annual gross income in a year for the place of business is estimated to be generated from the sales of nicotine products, the application must be accompanied by a fee of ~~five~~ three hundred dollars.

For retailers where less than fifty percent of the annual gross income in a year for the place of business is estimated to be generated from the sales of nicotine products, the application must be accompanied by a fee of two hundred ~~fifty~~ dollars.

A vending machine retailer that places a vending machine in a licensed establishment pursuant to section 8 of this Act, shall pay a fee of one hundred dollars for each ~~licensed establishment within which the retailer places a~~ vending machine.

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

A license issued under section 4 of this Act is valid through December ~~thirtieth~~ thirty-first following the issuance of the license, unless the license is revoked sooner by the secretary pursuant to this chapter. A license is valid ~~for an additional three days~~ if ~~the~~ a pending application to renew a license is in the possession of the department ~~before midnight on the date of expiration~~ and if the pending application is not subject to denial pursuant to section 7 of this Act.

A license issued under section 4 of this Act may be transferred ~~if the new licensee obtains written approval from the department and is eligible for a license under this chapter~~.

The transferee shall make an application in the same manner as provided in section 4, and the application must be acted upon in the same manner as an original application.

No transfer of any license to another person may be granted until all taxes incurred by the transferor as a result of the operation of the licensed premises, including municipal and state sales and use taxes, state reemployment assistance or unemployment insurance tax, or any other state tax, are paid or are not delinquent. No transfer of any license to another person may be granted until all property taxes which are the liability of the licensee levied on the licensed premises are paid or are not delinquent.

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

A licensee may apply to the ~~Department of Revenue~~ department for a renewal of the license within:

(1) ~~Thirty~~ Sixty days prior to the expiration of the license; or

(2) Three days after the expiration of the license.

For retailers where at least fifty percent of the annual gross income in a year for the place of business is generated from the sales of nicotine products, the renewal application must be accompanied by a fee of ~~five~~ three hundred dollars.

For retailers where less than fifty percent of the annual gross income in a year for the place of business is generated from the sales of nicotine products, the renewal application must be accompanied by a fee of two hundred ~~fifty~~ dollars.

A vending machine retailer that places a vending machine in a licensed establishment pursuant to section 8 of this Act, shall pay a fee of one hundred dollars for each ~~licensed establishment within which the retailer places a~~ vending machine.

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

The ~~Department of Revenue~~ department shall deny an application made under section 4 or 6 of this Act if the applicant:

(1) ~~The application includes~~ Provides any false information;

(2) ~~The applicant is~~ Is under the age of twenty-one years; ~~or~~

(3) ~~The applicant has violated any state or federal law relating to the sale, possession, or transportation of a nicotine product~~Is not current on the remittance of all applicable state and local taxes; or

(4) Has been convicted of a felony in this or any other jurisdiction, unless at least ten years have passed since satisfactory completion of the sentence or probation imposed by the court in each felony conviction.

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

A vending machine retailer may place a vending machine within an establishment licensed pursuant to chapter 35-4, or within a licensed gaming establishment as defined in § 42-7B-4, if the vending machine is placed in an area of the establishment in which access is denied to persons under the age of twenty-one years.

A vending machine must be equipped with an age-verification system. Age verification is required to purchase a nicotine product from the vending machine.

For purposes of this Act, the vending machine retailer is responsible for compliance with all provisions of this Act. The establishment in which the vending machine is placed is not a retailer or vending machine retailer, unless nicotine products are otherwise sold at the establishment without the use of a vending machine.

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

A licensee may not:

(1) Ship, or cause to be shipped, a nicotine product to an individual to be consumed by the individual, except as otherwise provided in chapter 10-50C or under provisions of House Bill 1220, as enacted by the One Hundred First Legislature;

(2) Sell, or offer to sell, a nicotine product to a person under the age of twenty-one years;

(3) Sell, or offer to sell, a nicotine product in a vending machine, except as provided in section 8 of this Act;

(4) Sell a nicotine product by phone, voice transmission, mail, internet, electronic-application-based service, curbside pick-up, or by any third-party means, except as otherwise provided in chapter 10-50C or under provisions of House Bill 1220, as enacted by the One Hundred First Legislature;

(5) Provide free samples of nicotine products to an individual;

(6) Purchase a nicotine product from a person that is not a licensed distributor or licensed wholesaler under chapter 10-50 or under the provisions of House Bill 1220, as enacted by the One Hundred First Legislature; or

(7) ~~Market, advertise, sell,~~ Sell or cause to be sold a nicotine product where the product, container, or packaging includes a video game or mobile game capable of interfacing with an external gaming system or mobile application, or has a gaming functionality.

A licensee is responsible for, and may be subject to enforcement action for, any violation of this chapter committed by the licensee's employee, agency, agent, or clerk, while acting within the scope of employment or agency.

For purposes of this section, a sale of a nicotine product from a vending machine does not constitute a sale described under subdivision (4) of this section.

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

~~A licensee shall post a sign, within plain view of any area on the premises where an individual may purchase nicotine products, stating in text, at least one inch in height, that it is illegal to sell nicotine products to any individual under the age of twenty-one.~~

~~Adjacent to the sign, the licensee shall display a valid license issued under this chapter.~~

~~A vending machine constitutes the point of sale for nicotine products sold from the vending machine. The electronic display of the license and sign on the vending machine, as required by this section, meets the requirements of this section.~~

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

A licensee shall keep complete records of all nicotine products held in the licensee's inventory and all nicotine products sold by the licensee, in a manner set forth in rules promulgated by the secretary ~~of the Department of Revenue~~ pursuant to chapter 1-26.

The records must include information detailing the name, source, origin, manufacturer, and address of the person supplying, and a copy of the purchase invoice, of the nicotine products in the licensee's inventory.

The licensee shall preserve the records for three years.

If the records are not stored at the licensee's place of business, the licensee must, upon request of the secretary, make the records available, in electronic form, within five business days.

Nicotine products sold from, or contained in, a vending machine are inventory of the licensed retailer, and are not the inventory of the establishment within which the vending machine is placed. The requirements of this section apply only to the retailer, and may be maintained at the retailer's principal location.

The establishment within which the vending machine is placed is not subject to the requirements of this section, but must allow access to the vending machine for purposes of compliance with this chapter.

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

The secretary~~ of the Department of Revenue or an agent of the secretary~~ may, during normal business hours, inspect the records and premises of any licensee, and may conduct an investigation to determine whether the licensee has violated any provision of this chapter or rule promulgated thereunder. The secretary~~ or agent of the secretary~~ shall conduct an inspection or investigation under this section, in accordance with rules promulgated by the secretary pursuant to chapter 1-26.

An establishment within which a vending machine is placed is not subject to the provisions of this section solely for the purpose of determining whether the retailer has violated any provisions of this chapter or any rule promulgated thereunder.

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

~~Except as otherwise provided in this section, the secretary of the Department of Revenue, or an agent of the secretary, shall conduct an inspection of each licensee at least once every two years.~~ If the secretary receives information of a violation by any licensee of any provision of this chapter, the secretary must investigate the alleged violation. If there is substantial evidence to support that a violation of any provision of this chapter has occurred, the secretary must proceed in accordance with the provisions of this chapter.

If a licensee has been determined by the department to have violated any provision of this chapter, the secretary~~ or an agent of the secretary~~ must conduct an inspection of the licensee within six months of the determination.

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

~~The Department of Revenue shall publish on the department's website the following information for each licensee:~~

~~(1) The licensee's name;~~

~~(2) The name and mailing address of the registered agent of the licensee;~~

~~(3) The physical address of the licensee's place of business;~~

~~(4) The registered agent; and~~

~~(5) The date on which the license was initially issued.~~

~~If a licensee is determined to have violated a provision of this chapter or chapter 34-46, the secretary of the department must publish notice of the violation on the department's website.~~

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

If a licensee is determined to have violated a provision of sections 8 to ~~11~~ 10, inclusive, of this Act or a provision of chapter 34-46, the secretary ~~of the Department of Revenue~~ must assess a penalty according to the following schedule:

(1) For a first violation, a fine not exceeding five hundred dollars;

(2) For a second violation within a thirty-six-month period, a fine of one thousand dollars;

(3) For a third violation within a thirty-six-month period, a fine of two thousand dollars, and ~~in addition to the fine assessed under this subdivision the licensee:~~

~~(a) May not sell, or offer to sell, a nicotine product for the following thirty days; and~~

~~(b) Must post a sign adjacent to the sign required in section 10 of this Act, stating in text at least one inch in height that due to a violation of state law, nicotine products may not be sold at this location at this time; and~~ the secretary shall suspend the license for thirty days;

(4) For a fourth violation within a thirty-six-month period, a fine of five thousand five hundred dollars, and ~~in addition to the fine assessed under this subdivision,~~ the secretary shall revoke the license.

Except as otherwise provided in this section, the secretary may, in accordance with chapter 1-26, revoke or suspend a license issued under this chapter for failure of the licensee to comply with a provision of this chapter or rules promulgated thereunder, or if the licensee is convicted of a felony.

A fine assessed under this section is due within thirty days of the department providing notice of the fine to the licensee.

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

~~A fine assessed under section 15 of this Act is due within thirty days of the Department of Revenue providing notice of the fine to the licensee.~~

~~If the department determines that a licensee has failed to pay any fine, fee, or tax imposed by this chapter, or any other fine, fee, or tax imposed by this state or a political subdivision of this state by the due date, the secretary must suspend the license of the retailer until the payment has been made.~~

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

If the license of a retailer is revoked pursuant to section ~~15~~ 13 of this Act, the retailer must ~~destroy~~:

(1) Destroy all nicotine products possessed by the retailer, at the time of the revocation, in accordance with all state and federal requirements related to hazardous materials; or

(2) Return all nicotine products to the licensed distributor or licensed wholesaler under chapter 10-50 or under the provisions of House Bill 1220, as enacted by the One Hundred First Legislature, from which the nicotine products were purchased by the licensee.

The retailer shall submit verification of the destruction or return to the ~~Department of Revenue~~ department, in a manner provided in rules promulgated by the secretary ~~of the department~~.

A retailer who fails to comply with this section within ~~seven~~ sixty days from the revocation of the license is subject to a fine of five thousand dollars, imposed by the department.

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

If a licensee is determined to have violated any provision of this chapter, the licensee may appeal an action or decision of the secretary ~~of the Department of Revenue~~, in the same manner as provided in chapter 1-26.

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

The ~~Department of Revenue~~ department shall promulgate rules, in accordance with chapter 1-26, to:

(1) Establish a procedure for an initial and a renewal license application under this chapter, and the information required in the application;

(2) Provide for the manner in which nicotine products must be destroyed or returned and the manner in which verification of the destruction or return must be submitted;

(3) Provide the process for assessing and collecting fines under this chapter;

(4) Establish standards for the keeping of records, as required in section ~~11~~ 10 of this Act; and

(5) Establish a process for the inspection of records and premises, as authorized in section ~~12~~ 11 of this Act.

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

A retailer who sells a nicotine product in this state, without a license issued pursuant to this chapter, is subject to a fine of five ~~thousand~~ hundred dollars, per day, imposed by the ~~Department of Revenue~~ department, except as provided in section 5 of this Act.

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

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

Moneys collected under this chapter 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.

Section 19. That § 34-46-2 be AMENDED:

34-46-2. The following actions are unlawful:

(1) To knowingly sell or distribute a ~~tobacco product~~ nicotine product, as defined in section 2 of this Act, to a person under the age of twenty-one;

(2) To purchase or attempt to purchase, to receive or attempt to receive, to possess, or to consume a ~~tobacco~~ nicotine product, as defined in section 2 of this Act, if a person is under the age of twenty-one;

(3) To purchase a ~~tobacco product~~ nicotine product, as defined in section 2 of this Act, on behalf of, or to give a ~~tobacco~~ nicotine product to, any person under the age of twenty-one;

(4)~~(3)~~ To sell ~~cigarettes~~ nicotine products, as defined in section 2 of this Act, other than in an unopened package originating with the manufacturer and depicting the warning labels required by federal law;

(5)~~(4)~~ To sell ~~tobacco products~~ nicotine products, as defined in section 2 of this Act, through a vending machine ~~located in a place other than a place that is open to~~

~~the public but to which persons under the age of twenty-one are denied access at all times~~, except as otherwise provided in section 8 of this Act;

(6)~~(5)~~ To sell ~~cigarettes or smokeless tobacco, or both,~~ nicotine products, as defined in section 2 of this Act, through a self-service display ~~other than a display that is:~~

~~(a) A vending machine permitted under subdivision (5) of this section; or~~

~~(b) Located in a tobacco speciality store~~; or

(7)~~(6)~~ To distribute ~~tobacco product samples~~ samples of nicotine products, as defined in section 2 of this Act, in or on a public street, sidewalk, or park that is within five hundred feet of a playground, school, or other facility when the facility is being used primarily by persons under the age of twenty-one.

Section 20. That § 34-46-2.2 be AMENDED:

34-46-2.2. ~~A~~ Except as otherwise provided in this section, a merchant shall conspicuously post a notice, on the merchant's premises, stating in text at least one inch in height, that ~~"No~~ no person under the age of ~~21~~twenty-one may be sold ~~tobacco products."~~

~~Any owner, lessee, or person having control of any cigarette vending machine shall post, in a conspicuous place on each machine in use within the state, a warning which shall be printed in bold type letters each of which shall be at least one-half inch high and which shall be kept in easily legible form and repair stating:~~

~~"Any person under 21 years of age is forbidden by law to purchase cigarettes from this machine."~~ ~~or~~ nicotine products, as defined in section 2 of this Act.

For purposes of this section, the notice may be displayed electronically on a vending machine.

Adjacent to the sign, the licensee shall display a valid license issued under this chapter. A vending machine constitutes the point of sale for nicotine products sold from the vending machine.

Section 21. That § 34-46-3 be AMENDED:

34-46-3. Each county state's attorney or a local law enforcement officer designated by the state's attorney shall annually conduct unannounced, random inspections at various locations where ~~tobacco~~ nicotine products, as defined in section 2 of this Act, are sold or distributed to ensure compliance with this chapter. Persons under the age of twenty-one may be enlisted to test compliance with this chapter. Such persons may be used to test compliance with this chapter only if the testing is conducted under

the supervision of the county state's attorney or a local law enforcement officer designated by the state's attorney and written parental consent has been provided. Any other use of persons under the age of twenty-one to test compliance with this chapter is unlawful and the persons responsible for such use are subject to the penalties prescribed in § 34-46-5.

Any evidence of a violation of this chapter or sections 2 to 18, inclusive, of this Act, must be submitted to the secretary of the Department of Revenue.

Section 22. That § 34-46-21 be AMENDED:

34-46-21. No person may sell a ~~vapor~~ nicotine product, as defined in section 2 of this Act, other than in an unopened package originating with the manufacturer and depicting the warning labels required by federal law~~, or sell a vapor product through self-service display other than a display that is:~~

~~(1) A vending machine permitted under subdivision 34-46-2(5); or~~

~~(2) Located in a tobacco specialty store~~.

A ~~violation of~~ person who violates this section is ~~a Class 2 misdemeanor. A person is not liable for more than one violation of this section on a single day~~ subject to a fine of two hundred fifty dollars, imposed by the Department of Revenue. Each violation is subject to a fine.

Section 23. This Act is effective beginning January 1, 2027.

AMENDMENT