



2026 South Dakota Legislature

House Bill 1220

SENATE ENGROSSED

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: **Representative Mulder**

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 to a retailer for sale to a consumer;
- 5 (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 (5) "Nicotine product," an alternative nicotine product or vapor product, and does not
14 include a tobacco product as defined by § 10-50-1 or cigarettes;
- 15 (6) "Retailer," a person engaged in the business of selling a nicotine product to an
16 individual for any purpose other than resale; and
- 17 (7) "Vapor product," a noncombustible product containing nicotine or a nicotine analog
18 that employs a heating element, power source, electronic circuit, or other
19 electronic, chemical, or mechanical means, regardless of shape or size, which can
20 be used to produce vapor or aerosol from nicotine or a nicotine analog in a solution.
21 The term includes, but is not limited to, any electronic cigarette, electronic cigar,
22 electronic cigarillo, electronic pipe, or similar product or device, and a consumable
23 nicotine or nicotine analog solution suitable for use in such a device or a vapor
24 product, and any component or part, whether sold with the device or separately.
25 The term does not include any product approved by the United States Food and
26 Drug Administration for sale as a tobacco cessation product and marketed and sold
27 solely for that purpose.

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

29 A person, except a licensed distributor or licensed wholesaler under chapter 10-
30 50, shall secure a license pursuant to this chapter, prior to selling nicotine products in this
31 state for resale. If a person owns or operates more than one place of business selling
32 nicotine products for resale, the person must secure a separate license for each place of
33 business selling nicotine products.

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

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

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

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

11 All moneys collected by the department under this section must be forwarded to
12 the state treasurer for deposit in the nicotine enforcement fund established under section
13 14 of this Act.

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

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

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

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

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

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

27 The secretary may revoke a nicotine product distributor license for failure to comply
28 with any provision of state law.

29 A person aggrieved by the revocation may, in writing, request a contested case
30 hearing before the secretary. The request must be received by the department within
31 fourteen days from the date the notice of revocation was mailed to the licensee by certified

1 mail. If a request for a hearing is not received by the department within the time
2 prescribed, the revocation becomes final. Any hearing must be conducted, and any appeal
3 must be taken, pursuant to the provisions of chapters 1-26 and 1-26D.

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

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

7 A nicotine product retailer may buy or receive nicotine products only from a
8 licensee, or a licensed distributor or licensed wholesaler under chapter 10-50. A violation
9 of this section is a Class 2 misdemeanor.

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

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

16 A person licensed under this chapter or licensed as a distributor or wholesaler under
17 chapter 10-50, may ship or transport, or cause to be shipped or transported, alternative
18 nicotine products directly to any consumer in this state if:

19 (1) Prior to sale of the alternative nicotine product to the purchaser, the person verifies
20 that the purchaser is at least twenty-one years of age through a commercially
21 available database, or aggregate of databases, that is regularly used by
22 government and businesses for the purpose of age and identity verification, or by
23 obtaining a copy of a valid government-issued document that provides the name,
24 address, and date of birth of the purchaser;

25 (2) Prior to shipping or sending the purchased products, the person has received
26 payment for the sale from the purchaser by a credit card or debit card issued in
27 the purchaser's name, or by a check that is associated with a bank account in the
28 purchaser's name and the name matches the name of the purchaser whose age
29 was verified under subdivision (1);

30 (3) The person uses a method of mailing, shipping, or delivery that requires the
31 signature of a person who is at least twenty-one years of age before the package
32 is released to the purchaser;

1 (4) The person holds a South Dakota sales and use tax license issued by the
2 Department of Revenue;

3 (5) The person conspicuously labels each package to be shipped or transported,
4 indicating the package contains an alternative nicotine product and that the
5 signature of an individual who is at least twenty-one years of age is required before
6 the package is released to the purchaser;

7 (6) The person maintains a record of the name, address, date of birth, and telephone
8 number or email, of the purchaser;

9 (7) The person remits all applicable taxes for the alternative nicotine product; and

10 (8) The alternative nicotine product is not being provided for purposes of resale to
11 consumer.

12 A person shipping or transporting an alternative nicotine product shall allow the
13 Department of Revenue to conduct an audit of the records pertaining to shipping or
14 transporting an alternative nicotine product, including the records used to verify the age
15 of the purchaser. The person shall provide copies of the records to the department upon
16 request.

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

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

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

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

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

29 Unless otherwise expressly provided, the penalties or remedies, or both, under
30 sections 11 and 12 of this Act, inclusive, are in addition to any other penalties and
31 remedies available under any other law of this state. Nothing in sections 11 and 12 of this

1 Act, inclusive, prohibits the collection of any applicable tax against a person receiving
2 nicotine products in violation of this chapter.

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

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

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

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

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

12 An alternative nicotine product shipped or transported under section 10 of this Act
13 is only for personal use and may not be resold. A violation of this section is a Class 1
14 misdemeanor.