



## 2020 South Dakota Legislature

# House Bill 1063

Introduced by: **Representative Perry**

1 **An Act to revise certain provisions regarding the purchase, distribution, and sale of**  
 2 **tobacco products to persons under the age of twenty-one.**

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

4 **Section 1.** That § 34-46-2 be AMENDED:

5 **34-46-2. Unlawful actions.**

6 The following actions are unlawful:

- 7 (1) To knowingly sell or distribute a tobacco product to a person under the age of  
 8 ~~eighteen~~ twenty-one;
- 9 ~~(2) To purchase or attempt to purchase, to receive or attempt to receive, to possess,~~  
 10 ~~or to consume a tobacco product if a person is under the age of eighteen;~~
- 11 ~~(3)~~—To purchase a tobacco product on behalf of, or to give a tobacco product to, any  
 12 person under the age of ~~eighteen~~ twenty-one;
- 13 ~~(4)~~(3) To sell cigarettes other than in an unopened package originating with the  
 14 manufacturer and depicting the warning labels required by federal law;
- 15 ~~(5)~~(4) To sell tobacco products through a vending machine located in a place other than  
 16 ~~the following:~~
- 17 ~~(a)~~—A factory, business, office, or other place not open to the general public;
- 18 ~~(b)~~—A a place that is open to the public but to which persons under the age of  
 19 ~~eighteen~~ twenty-one are denied access at all times;
- 20 ~~(c)~~—An establishment licensed under chapter 35-4 to sell alcoholic beverages for  
 21 consumption on the premises where sold;
- 22 ~~(6)~~(5) To sell cigarettes or smokeless tobacco, or both, through a self-service display other  
 23 than a display that is:
- 24 (a) A vending machine permitted under subdivision ~~(5)~~ of this section (4); or
- 25 (b) Located in a tobacco speciality store; or
- 26 ~~(7)~~(6) To distribute tobacco product samples in or on a public street, sidewalk, or park

1 that is within five hundred feet of a playground, school, or other facility when the  
2 facility is being used primarily by persons under the age of ~~eighteen~~ twenty-one.

3 **Section 2.** That § 34-46-2.2 be AMENDED:

4 **34-46-2.2. Merchants--Notice requirement--Contents.**

5 If a merchant chooses to implement the provisions of ~~§ 34-46-2.1~~, the A merchant  
6 shall conspicuously post a notice, on the merchant's premises, stating that ~~any person~~  
7 ~~who the merchant reasonably believes was under the age of eighteen~~, has attempted to  
8 purchase tobacco products, will be detained and surrendered to a law enforcement officer.  
9 "No person under the age of 21 may be sold tobacco products."

10 **Section 3.** That § 34-46-3 be AMENDED:

11 **34-46-3. Unannounced, random inspections--Persons enlisted--**  
12 **Requirements.**

13 Each county state's attorney or a local law enforcement officer designated by the  
14 state's attorney shall annually conduct unannounced, random inspections at ~~various~~  
15 ~~locations~~ each location where tobacco products are sold or distributed to ensure  
16 compliance with this chapter. Persons under the age of ~~eighteen~~ twenty-one may be  
17 enlisted to test compliance with this chapter. Such persons may be used to test compliance  
18 with this chapter only if the testing is conducted under the supervision of the county state's  
19 attorney or a local law enforcement officer designated by the state's attorney and written  
20 parental consent has been provided. Any other use of persons under the age of ~~eighteen~~  
21 twenty-one to test compliance with this chapter is unlawful and the persons responsible  
22 for such use are subject to the penalties prescribed in § 34-46-5.

23 **Section 4.** That § 34-46-5 be AMENDED:

24 **34-46-5. Violation as misdemeanor--Complete defense.**

25 A violation of § 34-46-2 is a Class 2 misdemeanor. A person is not liable for more  
26 than one violation of subdivision ~~34-46-2(4)~~ 34-46-2(3) on a single day. Reasonable  
27 reliance upon proof of age of the purchaser or the recipient of a tobacco product is a  
28 complete defense to any action brought against a person for the sale or distribution of a  
29 tobacco product to a person under the age of ~~eighteen~~ twenty-one.

30 **Section 5.** That § 34-46-2.1 be REPEALED.

1           **34-46-2.1. Merchant may detain minor who purchases, attempts to**  
2           **purchase or consumes tobacco product--Conditions.**