



## 2020 South Dakota Legislature

# House Bill 1064

Introduced by: **Representative Perry**

1 **An Act to restrict certain vapor products.**

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

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

4 **34-46-1. Definitions.**

5 Terms used in this chapter mean:

6 (1) "Characterizing flavor," a taste or aroma, other than the taste or aroma of tobacco,  
 7 mint, or menthol, imparted either prior to or during the use of an electronic smoking  
 8 device or vapor product;

9 ~~(2)~~ "Electronic smoking device," any e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen  
 10 containing or delivering nicotine or noncombustible product that employs a heating  
 11 element, power source, electronic circuit, or other electronic, chemical, or  
 12 mechanical means, regardless of shape or size, containing any other substance  
 13 intended for human consumption that may be used by a person in any manner for  
 14 the purpose of inhaling vapor or aerosol from the product for nonmedicinal  
 15 purposes;

16 (3) "Enclosed area," any space between a floor and a ceiling that is enclosed, exclusive  
 17 of doorways, on all sides by permanent or temporary walls or windows;

18 (4) "Flavored vapor product," any cartridge, liquid, solution, or other product that  
 19 imparts a characterizing flavor;

20 (5) "Place of employment," any enclosed area under the control of a public or private  
 21 employer;

22 ~~(2)~~(6) "Proof of age," a driver's license, nondriver identification card, tribal identification  
 23 card, or other generally accepted means of identification that contains a picture of  
 24 the individual and appears on its face to be valid;

25 (7) "Public place," any enclosed area to which the public is invited or in which the public  
 26 is permitted;

- 1       ~~(3)~~(8) "Sample," tobacco products distributed to members of the general public at no cost  
2           for purposes of promoting the product;
- 3       ~~(4)~~(9) "Sampling," the distribution of samples to members of the general public in a public  
4           place;
- 5       ~~(5)~~(10) "Self-service display," a display that contains cigarettes or smokeless  
6           tobacco, or both, and is located in an area openly accessible to the merchant's  
7           consumers, and from which such consumers can readily access cigarettes or  
8           smokeless tobacco, or both, without the assistance of the merchant or an employee  
9           or agent of the merchant. A display case that holds tobacco products behind locked  
10          doors does not constitute a self-service display;
- 11       ~~(6)~~(11) "Smoke" or "Smoking," the act of inhaling, exhaling, burning, or carrying any  
12          lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated  
13          tobacco or plant product intended for inhalation, whether natural or synthetic, in  
14          any manner or in any form, including the use of an electronic smoking device which  
15          creates an aerosol or vapor, in any manner or in any form;
- 16       ~~(7)~~(12) "Tobacco product," any item made of tobacco intended for human  
17          consumption, including cigarettes, cigars, pipe tobacco, and smokeless tobacco, as  
18          well as electronic smoking devices, and vapor products ~~as defined in § 34-46-20~~;
- 19       ~~(8)~~(13) "Tobacco speciality store," a business that derives at least seventy-five  
20          percent of its revenue from the sale of tobacco products;
- 21       (14) "Vapor product," any cartridge, liquid, solution, or other product used in conjunction  
22          with an electronic smoking device to produce a vapor or aerosol intended for human  
23          consumption for nonmedicinal purposes.

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

25                **34-46-2. Unlawful actions.**

26                The following actions are unlawful:

- 27           (1) To knowingly sell or distribute a tobacco product to a person under the age of  
28           eighteen;
- 29           (2) To purchase or attempt to purchase, to receive or attempt to receive, to possess,  
30           or to consume a tobacco product if a person is under the age of eighteen;
- 31           (3) To purchase a tobacco product on behalf of, or to give a tobacco product to, any  
32           person under the age of eighteen;
- 33           (4) To sell cigarettes other than in an unopened package originating with the  
34           manufacturer and depicting the warning labels required by federal law;

- 1 (5) To sell tobacco products through a vending machine located in a place other than  
 2 the following:
- 3 (a) A factory, business, office, or other place not open to the general public;
  - 4 (b) A place that is open to the public but to which persons under the age of  
 5 eighteen are denied access;
  - 6 (c) An establishment licensed under chapter 35-4 to sell alcoholic beverages for  
 7 consumption on the premises where sold;
- 8 (6) To sell cigarettes or smokeless tobacco, or both, through a self-service display other  
 9 than a display that is:
- 10 (a) A vending machine permitted under subdivision (5) ~~of this section~~; or
  - 11 (b) Located in a tobacco speciality store; ~~or~~
- 12 (7) To distribute tobacco product samples in or on a public street, sidewalk, or park  
 13 that is within five hundred feet of a playground, school, or other facility when the  
 14 facility is being used primarily by persons under the age of eighteen; ~~or~~
- 15 (8) To sell, offer for sale, give, transport, otherwise distribute, or possess a flavored  
 16 vapor product.

17 A violation of this section is a Class 2 misdemeanor. A person is not liable for more  
 18 than one violation of subdivision (4) on a single day. Reasonable reliance upon proof of  
 19 age of the purchaser or the recipient of a tobacco product is a complete defense to any  
 20 action brought against a person for the sale or distribution of a tobacco product to a person  
 21 under the age of eighteen.

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

23 **34-46-3. Unannounced random inspections--Persons enlisted--**  
 24 **Requirements.**

25 Each county state's attorney or a local law enforcement officer designated by the  
 26 state's attorney shall annually conduct unannounced, random inspections at various  
 27 locations where tobacco products are sold or distributed to ensure compliance with this  
 28 chapter. Persons under the age of eighteen may be enlisted to test compliance with this  
 29 chapter. Such persons may be used to test compliance with this chapter only if the testing  
 30 is conducted under the supervision of the county state's attorney or a local law  
 31 enforcement officer designated by the state's attorney and written parental consent has  
 32 been provided. Any other use of persons under the age of eighteen to test compliance  
 33 with this chapter is unlawful and the persons responsible for such use are subject to the  
 34 penalties prescribed in ~~§ 34-46-5~~ § 34-46-2.

1 **Section 4.** That a NEW SECTION be added:

2 **34-46-22. Seizure and destruction of flavored vapor products.**

3 Any flavored vapor product found at any place in this state in violation of  
4 subdivision 34-46-2(8) is declared to be a contraband good and may be seized by the  
5 secretary of revenue, the secretary's agents or employees, or by any law enforcement of  
6 this state if directed by the secretary to do so, without a warrant. Any flavored vapor  
7 products seized pursuant to this section shall be forfeited to the state and destroyed. Any  
8 person aggrieved by an action of the secretary under this section may apply to the  
9 secretary for an appeal under § 10-50-46.

10 **Section 5.** That § 34-46-14 be AMENDED:

11 **34-46-14. Smoking in public or place of employment prohibited--Petty**  
12 **offense.**

13 No person may smoke tobacco product or carry any lighted or activated tobacco  
14 product in any public place or place of employment. A violation of this section is a petty  
15 offense.

16 **Section 6.** That § 34-46-16 be AMENDED:

17 **34-46-16. Inapplicability to private residences unless used for day care.**

18 The provisions of ~~§§ 34-46-13 to 34-46-15, inclusive,~~ this chapter do not apply to  
19 any private residence unless the private residence is used for day care.

20 **Section 7.** That § 34-46-17 be AMENDED:

21 **34-46-17. Posted smoking rooms permitted in hotels and lodging**  
22 **establishments.**

23 The provisions of ~~§§ 34-46-13 to 34-46-15, inclusive,~~ this chapter do not apply to  
24 any sleeping rooms in any hotel or lodging establishment licensed pursuant to subdivision  
25 34-18-1(7) or (9), respectively, if the rooms are rented to guests. Any sleeping room in  
26 which smoking is allowed shall be posted as a smoking room.

27 **Section 8.** That § 34-46-18 be AMENDED:

1           **34-46-18. Smoking permitted in certain licensed establishments where**  
 2           **alcohol sold.**

3           The provisions of ~~§§ 34-46-13 to §§ 34-46-14 and 34-46-15, inclusive,~~ do not  
 4           apply to any establishment licensed pursuant to subdivision 35-4-2(4), (6), (12), or (16)  
 5           that was in compliance on January 1, 2009, with, and maintains compliance with, the  
 6           following requirements:

- 7           (1) Generates ten percent or more of its annual gross income from the sale of cigars.  
 8           For the purposes of this section, a cigar is any individual roll of tobacco that has a  
 9           wrapper or cover consisting only of tobacco, that measures a number forty ring size  
 10          or larger, and that is sold without a filter;
- 11          (2) Has a humidor on the premises; and
- 12          (3) Is enclosed by solid walls or windows, a ceiling, and a solid door and is equipped  
 13          with a ventilation system by which exhausted air is not recirculated to nonsmoking  
 14          areas and smoke is not backstreamed into nonsmoking areas.

15          Any establishment meeting the requirements of this section may permit the  
 16          smoking of cigars and any premium tobacco product purchased on the premises. However,  
 17          no establishment may permit the smoking of any other tobacco product on the premises.  
 18          The establishment shall post a notice of the prohibition.

19          Any establishment meeting the requirements of this section shall annually report  
 20          to the Department of Revenue, on a form prescribed by the department, the revenue  
 21          generated from the sale of cigars as a percentage of annual gross income.

22        **Section 9.** That § 34-46-19 be AMENDED:

23           **34-46-19. Retail tobacco stores--Smoking permitted--Limitations.**

24           The provisions of ~~§§ 34-46-13 to §§ 34-46-14 and 34-46-15, inclusive,~~ do not  
 25           apply to any retail tobacco store that meets the following requirements:

- 26           (1) Generates sixty-five percent of its annual gross income from the sale of tobacco,  
 27           tobacco products, and accessories for such products;
- 28           (2) Is enclosed by solid walls or windows, a ceiling, and a solid door that provides  
 29           egress to the outdoors; and
- 30           (3) Does not allow the consumption of alcoholic beverages on the premises.

31          Any retail tobacco store meeting the requirements of this section shall annually report  
 32          to the Department of Revenue, on a form prescribed by the department, the revenue  
 33          generated from the sale of tobacco, tobacco products, and accessories for such products  
 34          as a percentage of annual gross income.

1 **Section 10.** That § 10-50-46 be AMENDED:

2 **10-50-46. Persons aggrieved--Application for hearing--Notice of grant or**  
3 **denial.**

4 Any person aggrieved by any action under this chapter or § 34-36-22 of the  
5 secretary of revenue or his authorized agent for which hearing is not elsewhere provided  
6 may apply to the secretary, in writing, within ten days after the notice of such action is  
7 delivered or mailed to him, for a hearing, setting forth the reasons why such hearing  
8 should be granted and the manner of relief sought. The secretary shall promptly consider  
9 each such application and may grant or deny the hearing requested. If the hearing be  
10 denied, the applicant shall be notified thereof forthwith; if it be granted, the secretary  
11 shall notify the applicant of the time and place fixed for such hearing.

12 **Section 11.** That § 10-50-49 be AMENDED:

13 **10-50-49. Appeal to circuit court--Notice of appeal.**

14 Any person aggrieved because of any action or decision of the secretary of revenue  
15 under the provisions of this chapter or § 34-46-22 may appeal therefrom to the circuit  
16 court for the county of the taxpayer's residence or place of business, which appeal shall  
17 be taken by a notice of appeal in writing, setting forth the grounds upon which the appeal  
18 is taken or the action or decision of the secretary of which the appellant is aggrieved.

19 **Section 12.** That § 34-46-5 be REPEALED.

20 **34-46-5. Violation as misdemeanor.**

21 **Section 13.** That § 34-46-13 be REPEALED.

22 **34-46-13. Definition of terms used in §§ 34-46-13 to 34-46-19.**

23 **Section 14.** That § 34-46-20 be REPEALED.

24 **34-46-20. Tobacco product includes vapor product.**