

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

855Z0396

## SENATE BILL NO. 152

Introduced by: Senators Solano, Cronin, Curd, Haverly, Nesiba, Partridge, Rusch, Soholt, Stalzer, and Tidemann and Representatives Heinemann, Ahlers, Barthel, Bartling, Johns, Lust, McCleerey, McPherson, Mills, Reed, Ring, Rozum, Smith, Steinhauer, and York

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the sale and  
2 possession of tobacco products.

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

4 Section 1. That § 34-46-2 be amended to read:

5 34-46-2. The following actions are unlawful:

6 (1) To knowingly sell or distribute a tobacco product to a person under the age of  
7 ~~eighteen~~ twenty-one;

8 (2) ~~To purchase or attempt to purchase, to receive or attempt to receive, to possess, or~~  
9 ~~to consume a tobacco product if a person is under the age of eighteen;~~

10 ~~—(3)—~~To purchase a tobacco product on behalf of, or to give a tobacco product to, any  
11 person under the age of ~~eighteen~~ twenty-one;

12 ~~(4)~~(3) To sell cigarettes other than in an unopened package originating with the  
13 manufacturer and depicting the warning labels required by federal law;

14 ~~(5)~~(4) To sell tobacco products through a vending machine located in a place other than the



1 following:

2 (a) A factory, business, office, or other place not open to the general public;

3 (b) A place that is open to the public but to which persons under the age of  
4 ~~eighteen~~ twenty-one are denied access; or

5 (c) An establishment licensed under chapter 35-4 to sell alcoholic beverages for  
6 consumption on the premises where sold;

7 ~~(6)~~(5) To sell cigarettes or smokeless tobacco, or both, through a self-service display other  
8 than a display that is:

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

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

11 ~~(7)~~(6) To distribute tobacco product samples in or on a public street, sidewalk, or park that  
12 is within five hundred feet of a playground, school, or other facility when the facility  
13 is being used primarily by persons under the age of ~~eighteen~~ twenty-one.

14 Section 2. That § 34-46-2.1 be repealed.

15 ~~— 34-46-2.1. Any merchant who has reasonable grounds to believe that a minor has illegally~~  
16 ~~purchased, attempted to purchase, possess, or consume a tobacco product, in violation of § 34-~~  
17 ~~46-2, may detain the minor, on the premises of the merchant's establishment, in a reasonable~~  
18 ~~manner and for a reasonable length of time:~~

19 ~~— (1) — To request identification;~~

20 ~~— (2) — To verify the identification;~~

21 ~~— (3) — To make reasonable inquiry as to whether the minor has violated § 34-46-2 in any~~  
22 ~~manner;~~

23 ~~— (4) — To inform a law enforcement officer of the detention of the person and surrender that~~  
24 ~~person to the custody of a law enforcement officer; or~~

1 ~~(5) To inform a law enforcement officer or the parents, guardian, or other private person~~  
2 ~~interested in the welfare of that minor of this detention and to surrender custody of~~  
3 ~~the minor to that person.~~

4 Section 3. That § 34-46-2.2 be amended to read:

5 34-46-2.2. ~~If a merchant chooses to implement the provisions of § 34-46-2.1, the A~~  
6 ~~merchant shall~~ may conspicuously post a notice, on the merchant's premises, stating that any  
7 person who the merchant reasonably believes was under the age of ~~eighteen~~ twenty-one, has  
8 attempted to purchase tobacco products, will be detained and surrendered to a law enforcement  
9 officer.

10 Section 4. That § 34-46-3 be amended to read:

11 34-46-3. Each county state's attorney or a local law enforcement officer designated by the  
12 state's attorney shall annually conduct unannounced, random inspections at various locations  
13 where tobacco products are sold or distributed to ensure compliance with this chapter. Persons  
14 under the age of ~~eighteen~~ twenty-one may be enlisted to test compliance with this chapter. ~~Such~~  
15 The persons may be used to test compliance with this chapter only if the testing is conducted  
16 under the supervision of the county state's attorney or a local law enforcement officer designated  
17 by the state's attorney and written parental consent has been provided. Any other use of persons  
18 under the age of ~~eighteen~~ twenty-one to test compliance with this chapter is unlawful and the  
19 persons responsible for such use are subject to the penalties prescribed in § 34-46-5.

20 Section 5. That § 34-46-5 be amended to read:

21 34-46-5. A violation of § 34-46-2 is a Class 2 misdemeanor. A person is not liable for more  
22 than one violation of subdivision 34-46-2(4) on a single day. Reasonable reliance upon proof  
23 of age of the purchaser or the recipient of a tobacco product is a complete defense to any action  
24 brought against a person for the sale or distribution of a tobacco product to a person under the

1 age of ~~eighteen~~ twenty-one.