

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

751V0151

## SENATE BILL NO. 181

Introduced by: Senators Lederman, Curd, Jones (Chuck), Jones (Tom), Krebs, Rave, Tieszen, and Vehle and Representatives Stevens, Haggar (Jenna), Novstrup (David), Peterson, Qualm, Rasmussen, Romkema, Rozum, Solum, Tulson, Verchio, and Westra

1 FOR AN ACT ENTITLED, An Act to prohibit the sale of tobacco products, alternative nicotine  
2 products, and vapor products to minors, and to provide a penalty therefor.

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

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

5 34-46-1. Terms used in this chapter mean:

6 (1) "Alternative nicotine product," any noncombustible product containing nicotine that  
7 is intended for human consumption, whether chewed, absorbed, dissolved, or  
8 ingested by any other means. The term, alternative nicotine product, does not include  
9 any vapor product, tobacco product, or any product regulated as a drug or device by  
10 the United States Food and Drug Administration under Chapter V of the Food, Drug  
11 and Cosmetic Act;

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



1       ~~(2)~~(3) "Sample," tobacco products, alternative nicotine products, or vapor products  
2           distributed to members of the general public at no cost for purposes of promoting the  
3           product;

4       ~~(3)~~(4) "Sampling," the distribution of samples to members of the general public in a public  
5           place;

6       ~~(4)~~(5) "Self-service display," a display that contains ~~cigarettes or smokeless tobacco, or~~  
7           ~~both,~~ tobacco products, alternative nicotine products, or vapor products and is located  
8           in an area openly accessible to the merchant's consumers, and from which such  
9           consumers can readily access ~~cigarettes or smokeless tobacco, or both,~~ such products  
10          without the assistance of the merchant or an employee or agent of the merchant. A  
11          display case that holds tobacco products, alternative nicotine products, or vapor  
12          products behind locked doors does not constitute a self-service display;

13       ~~(5)~~(6) "Tobacco product," any item made of tobacco intended for human consumption,  
14          ~~including cigarettes, cigars, pipe tobacco, and smokeless tobacco~~ but not including  
15          an alternative nicotine product or vapor product;

16       ~~(6)~~(7) "Tobacco speciality store," a business that derives at least seventy-five percent of its  
17          revenue from the sale of tobacco products, alternative nicotine products, or vapor  
18          products;

19       (8) "Vapor product," any noncombustible product containing nicotine that employs a  
20          heating element, power source, electronic circuit or other electronic, chemical, or  
21          mechanical means, regardless of shape or size, that can be used to produce vapor  
22          from nicotine in a solution or other form. The term, vapor product, includes any  
23          electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar  
24          product or device and any vapor cartridge or other container of nicotine in a solution

1           or other form that is intended to be used with or in an electronic cigarette, electronic  
2           cigar, electronic cigarillo, electronic pipe, or similar product or device. The term,  
3           vapor product, does not include any product that is regulated as a drug or device by  
4           the United States Food and Drug Administration under chapter V of the Food, Drug  
5           and Cosmetic Act.

6           Section 2. That § 34-46-2 be amended to read as follows:

7           34-46-2. The following actions are unlawful:

- 8           (1)    To knowingly sell or distribute a tobacco product, an alternative nicotine product, or  
9           a vapor product to a person under the age of eighteen;
- 10          (2)    To purchase or attempt to purchase, to receive or attempt to receive, to possess, or  
11          to consume a tobacco product, an alternative nicotine product, or a vapor product if  
12          a person is under the age of eighteen;
- 13          (3)    To purchase a tobacco product, an alternative nicotine product, or a vapor product on  
14          behalf of, or to give a tobacco product, an alternative nicotine product, or a vapor  
15          product to, any person under the age of eighteen;
- 16          (4)    To sell cigarettes other than in an unopened package originating with the  
17          manufacturer and depicting the warning labels required by federal law;
- 18          (5)    To sell tobacco products, alternative nicotine products, or vapor products through a  
19          vending machine located in a place other than the following:
  - 20           (a)    A factory, business, office, or other place not open to the general public;
  - 21           (b)    A place that is open to the public but to which persons under the age of  
22           eighteen are denied access;
  - 23           (c)    An establishment licensed under chapter 35-4 to sell alcoholic beverages for  
24           consumption on the premises where sold;

1 (6) To sell ~~cigarettes or smokeless tobacco, or both,~~ tobacco products, alternative  
2 nicotine products, or vapor products through a self-service display other than a  
3 display that is:

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

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

6 (7) To distribute tobacco product, alternative nicotine product, or vapor product samples  
7 in or on a public street, sidewalk, or park that is within five hundred feet of a  
8 playground, school, or other facility when the facility is being used primarily by  
9 persons under the age of eighteen.

10 Section 3. That § 34-46-2.1 be amended to read as follows:

11 34-46-2.1. Any merchant who has reasonable grounds to believe that a minor has illegally  
12 purchased, attempted to purchase, possess, or consume a tobacco product, an alternative nicotine  
13 product, or a vapor product in violation of § 34-46-2, may detain the minor, on the premises of  
14 the merchant's establishment, in a reasonable manner and for a reasonable length of time:

15 (1) To request identification;

16 (2) To verify the identification;

17 (3) To make reasonable inquiry as to whether the minor has violated § 34-46-2 in any  
18 manner;

19 (4) To inform a law enforcement officer of the detention of the person and surrender that  
20 person to the custody of a law enforcement officer; or

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

24 Section 4. That § 34-46-2.2 be amended to read as follows:

1       34-46-2.2. If a merchant chooses to implement the provisions of § 34-46-2.1, the merchant  
2 shall conspicuously post a notice, on the merchant's premises, stating that any person who the  
3 merchant reasonably believes was under the age of eighteen, has attempted to purchase tobacco  
4 products, alternative nicotine products, or vapor products will be detained and surrendered to  
5 a law enforcement officer.

6       Section 5. That § 34-46-3 be amended to read as follows:

7       34-46-3. Each county state's attorney or a local law enforcement officer designated by the  
8 state's attorney shall annually conduct unannounced, random inspections at various locations  
9 where tobacco products, alternative nicotine products, or vapor products are sold or distributed  
10 to ensure compliance with this chapter. Persons under the age of eighteen may be enlisted to test  
11 compliance with this chapter. Such persons may be used to test compliance with this chapter  
12 only if the testing is conducted under the supervision of the county state's attorney or a local law  
13 enforcement officer designated by the state's attorney and written parental consent has been  
14 provided. Any other use of persons under the age of eighteen to test compliance with this  
15 chapter is unlawful and the persons responsible for such use are subject to the penalties  
16 prescribed in § 34-46-5.

17       Section 6. That § 34-46-5 be amended to read as follows:

18       34-46-5. A violation of § 34-46-2 is a Class 2 misdemeanor. A person is not liable for more  
19 than one violation of subdivision 34-46-2(4) on a single day. Reasonable reliance upon proof  
20 of age of the purchaser or the recipient of a tobacco product, alternative nicotine product, or a  
21 vapor product is a complete defense to any action brought against a person for the sale or  
22 distribution of a tobacco product, an alternative nicotine product, or a vapor product to a person  
23 under the age of eighteen.

24       Section 7. That § 34-46-6 be amended to read as follows:

1        34-46-6. Enforcement of this chapter shall be implemented in an equitable and uniform  
2        manner throughout the state so as to ensure the eligibility for and receipt of any federal funds  
3        or grants that the state now receives or may receive relating to the provisions of this chapter. For  
4        the purposes of equitable and uniform regulation and implementation, the Legislature through  
5        this chapter is the exclusive regulator of all matters relating to the distribution, marketing,  
6        promotion, and sale of tobacco products, alternative nicotine products, or vapor products.