

AN ACT

ENTITLED, An Act to revise certain provisions regarding the regulation of tobacco.

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

Section 1. That § 10-50-30 be amended to read as follows:

10-50-30. Each distributor shall affix or cause to be affixed, in the manner as the secretary of revenue may specify in rules promulgated pursuant to chapter 1-26, to each individual package of cigarettes, stamps of the proper denomination, as required by this chapter. The stamps shall be affixed by a distributor before the cigarettes are transferred out of the distributor's premises.

Section 2. That § 10-50-31 be amended to read as follows:

10-50-31. Each dealer upon opening any shipping package containing any unstamped taxable articles for purposes of sale or delivery to consumers, shall immediately return the cigarettes to the distributor.

Section 3. That § 10-50-32 be amended to read as follows:

10-50-32. No person, other than a licensed distributor, may sell, offer for sale, display for sale, or possess with intent to sell, advertise for sale, ship or cause to be shipped, or possess with intent to deliver to another person, any cigarettes, including cigarettes made by a roll-your-own machine as described in § 10-50-105, which do not bear stamps evidencing the payment of the tax imposed by this chapter.

A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class 6 felony.

Section 4. That § 10-50-61 be amended to read as follows:

10-50-61. In addition to the tax imposed by § 10-50-3, there is imposed, whether or not a sale occurs, a tax upon all tobacco products in this state and upon any person engaged in business as a licensed distributor or licensed wholesaler thereof, at the rate of thirty-five percent of the wholesale

purchase price of such tobacco products. Such tax shall be imposed at the time the distributor or wholesaler brings or causes to be brought into this state tobacco products for sale; makes, manufactures, or fabricates tobacco products in this state for sale in this state; or ships or transports tobacco products to dealers in this state to be sold by those dealers. For the purposes of this chapter, wholesale purchase price is the price for which a manufacturer sells tobacco products to a licensed distributor or licensed wholesaler exclusive of any discount or other reduction.

Any licensed distributor or licensed wholesaler who has paid tax pursuant to this section and subsequently sells the tobacco products to another licensed distributor or licensed wholesaler for resale, or sells the tobacco products outside of this state, shall receive a credit for the tax paid pursuant to this section on such tobacco products.

Section 5. That § 10-50-62 be amended to read as follows:

10-50-62. Tobacco dealers may purchase tobacco products and cigarettes only from wholesalers and distributors licensed by the State of South Dakota who have paid all taxes as required by this chapter on the tobacco products or cigarettes sold to the dealer. A violation of this section is a Class 2 misdemeanor.

Section 6. That § 10-50-105 be amended to read as follows:

10-50-105. Any person that maintains or provides a machine that enables any consumer to process tobacco or any product that is made or derived from tobacco into a roll or tube is deemed to be a manufacturer of cigarettes. This includes a person who owns or possesses an automated roll-your-own machine that is used to make cigarettes, but does not include a person who owns or possesses a roll-your-own machine and uses the machine in the person's residence solely to make cigarettes for his or her own personal use or for the personal use of other individuals who reside at the residence.

The product produced by a roll-your-own machine as described in this section is deemed to be

a cigarette that was sold to a consumer for purposes of this chapter and chapter 10-50B. The product produced by the machine shall comply with the provisions of chapter 34-49 by July 1, 2014.

Section 7. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

Only tobacco products that are included in the directory published pursuant to § 10-50-77 may be inserted into a roll-your-own machine as described in § 10-50-105.

Section 8. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

Any tobacco products found at any place in this state that were purchased from any person other than a licensed distributor or licenced wholesaler, and that have not had the proper tax paid pursuant to § 10-50-61, are declared to be contraband goods and may be seized by the secretary, the secretary's agents or employees, or by any law enforcement of this state if directed by the secretary to do so, without a warrant. Any tobacco products seized pursuant to this section shall be forfeited to the state and destroyed.

Section 9. That § 34-49-1 be amended to read as follows:

34-49-1. Terms used in this chapter mean:

- (1) "Brand family," all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, menthol, lights, kings, and 100s. "Brand family" includes cigarettes sold under a brand name, whether that name is used alone, or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern or colors, or other indicia of product identification identical or similar to, or identifiable with, a previous brand of cigarette;
- (2) "Cigarette," any roll of tobacco wrapped in paper or in any substance not containing

tobacco, or any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, including cigarettes made by a roll-your-own machine as described in § 10-50-105;

- (3) "Dealer," or "retailer," any person other than a distributor or wholesaler who is engaged in this state in the business of selling cigarettes or tobacco products at retail;
- (4) "Distributor," any person engaged in this state in the business of producing or manufacturing cigarettes, or importing into the state cigarettes, at least seventy-five percent of which are purchased directly from the manufacturers thereof;
- (5) "Manufacturer," any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer or any entity that becomes a successor of a manufacturer. The term includes any person deemed to be a manufacturer pursuant to § 10-50-105;
- (6) "Person," any individual, firm, fiduciary, partnership, limited liability company, corporation, trust, or association;
- (7) "Quality control and quality assurance program," the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in § 34-49-2 for all test trials used to certify cigarettes in accordance with this chapter;
- (8) "Repeatability," the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time;

- (9) "Sale," any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor. In addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money, are considered sales;
- (10) "Secretary," the secretary of revenue;
- (11) "Sell," to sell, or to offer or agree to do the same;
- (12) "State fire marshal," the state fire marshal designated pursuant to chapter 34-29B.

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I certify that the attached Act
originated in the

SENATE as Bill No. 51

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 51

File No. _____

Chapter No. _____

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Received at this Executive Office
this ____ day of _____,

20__ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State