

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

400V0279

## SENATE STATE AFFAIRS ENGROSSED NO. **SB 51** - 02/07/2014

Introduced by: The Committee on State Affairs at the request of the Department of Revenue

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of  
2 tobacco.

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

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

5 10-50-30. Each distributor shall affix or cause to be affixed, in the manner as the secretary  
6 of revenue may specify in rules promulgated pursuant to chapter 1-26, to each individual  
7 package of cigarettes, ~~to cartons containing more than one individual package of three, four, or~~  
8 ~~five cigarettes sold or distributed by such distributor,~~ stamps of the proper denomination, as  
9 required by this chapter. The stamps shall be affixed by a distributor before the cigarettes are  
10 transferred out of the distributor's premises, ~~or in lieu thereof the amount of the tax due shall be~~  
11 ~~entered on the invoice and stamps sufficient in denominations and amount shall accompany the~~  
12 ~~invoice on every delivery of cigarettes.~~

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

14 10-50-31. Each dealer upon opening any shipping package containing any unstamped  
15 taxable articles for purposes of sale or delivery to consumers, shall immediately ~~affix the tax~~



1 ~~stamps required by this chapter~~ return the cigarettes to the distributor.

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

3 10-50-32. No person, other than a licensed distributor, may sell, offer for sale, display for  
4 sale, or possess with intent to sell, advertise for sale, ship or cause to be shipped, or possess with  
5 intent to deliver to another person, any cigarettes, including cigarettes made by a roll-your-own  
6 machine as described in § 10-50-105, which do not bear stamps evidencing the payment of the  
7 tax imposed by this chapter.

8 A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class  
9 6 felony.

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

11 10-50-61. In addition to the tax imposed by § 10-50-3, there is imposed, whether or not a  
12 sale occurs, a tax upon all tobacco products in this state and upon any person engaged in  
13 business as a licensed distributor or licensed wholesaler thereof, at the rate of thirty-five percent  
14 of the wholesale purchase price of such tobacco products. Such tax shall be imposed at the time  
15 the distributor or wholesaler brings or causes to be brought into this state tobacco products for  
16 sale; makes, manufactures, or fabricates tobacco products in this state for sale in this state; or  
17 ships or transports tobacco products to dealers in this state to be sold by those dealers. For the  
18 purposes of this chapter, wholesale purchase price is the price for which a manufacturer sells  
19 tobacco products to a licensed distributor or licensed wholesaler exclusive of any discount or  
20 other reduction.

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

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

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

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

8 10-50-105. Any person that maintains or provides a machine ~~at any retail establishment~~ that  
9 enables any consumer to process ~~at that establishment~~ tobacco or any product that is made or  
10 derived from tobacco into a roll or tube is deemed to be a manufacturer of cigarettes. This  
11 includes a person who owns or possesses an automated roll-your-own machine that is used to  
12 make cigarettes, but does not include a person who owns or possesses a roll-your-own machine  
13 and uses the machine in the person's residence solely to make cigarettes for his or her own  
14 personal use or for the personal use of other individuals who reside at the residence.

15 The product produced by ~~the~~ a roll-your-own machine as described in this section is deemed  
16 to be a cigarette that was sold to a consumer for purposes of this chapter and chapter 10-50B.  
17 The product produced by the machine shall comply with the provisions of chapter 34-49 by July  
18 1, 2014.

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

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

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

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

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

8 34-49-1. Terms used in this chapter mean:

- 9 (1) "Brand family," all styles of cigarettes sold under the same trademark and  
10 differentiated from one another by means of additional modifiers or descriptors,  
11 including, but not limited to, menthol, lights, kings, and 100s. "Brand family"  
12 includes cigarettes sold under a brand name, whether that name is used alone, or in  
13 conjunction with any other word, trademark, logo, symbol, motto, selling message,  
14 recognizable pattern or colors, or other indicia of product identification identical or  
15 similar to, or identifiable with, a previous brand of cigarette;
- 16 (2) "Cigarette," any roll of tobacco wrapped in paper or in any substance not containing  
17 tobacco, or any roll of tobacco wrapped in any substance containing tobacco which,  
18 because of its appearance, the type of tobacco used in the filler, or its packaging and  
19 labeling, is likely to be offered to, or purchased by, consumers as a cigarette,  
20 including cigarettes made by a roll-your-own machine as described in § 10-50-105;
- 21 (3) "Dealer," or "retailer," any person other than a distributor or wholesaler who is  
22 engaged in this state in the business of selling cigarettes or tobacco products at retail;
- 23 (4) "Distributor," any person engaged in this state in the business of producing or  
24 manufacturing cigarettes, or importing into the state cigarettes, at least seventy-five

- 1 percent of which are purchased directly from the manufacturers thereof;
- 2 (5) "Manufacturer," any entity which manufactures or otherwise produces cigarettes or  
3 causes cigarettes to be manufactured or produced anywhere that the manufacturer  
4 intends to be sold in this state, including cigarettes intended to be sold in the United  
5 States through an importer or any entity that becomes a successor of a manufacturer;  
6 The term includes any person deemed to be a manufacturer pursuant to § 10-50-105;
- 7 (6) "Person," any individual, firm, fiduciary, partnership, limited liability company,  
8 corporation, trust, or association;
- 9 (7) "Quality control and quality assurance program," the laboratory procedures  
10 implemented to ensure that operator bias, systematic and nonsystematic  
11 methodological errors, and equipment-related problems do not affect the results of  
12 the testing. Such a program ensures that the testing repeatability remains within the  
13 required repeatability values stated in § 34-49-2 for all test trials used to certify  
14 cigarettes in accordance with this chapter;
- 15 (8) "Repeatability," the range of values within which the repeat results of cigarette test  
16 trials from a single laboratory will fall ninety-five percent of the time;
- 17 (9) "Sale," any transfer of title or possession or both, exchange or barter, conditional or  
18 otherwise, in any manner or by any means whatever or any agreement therefor. In  
19 addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts,  
20 and the exchanging of cigarettes for any consideration other than money, are  
21 considered sales;
- 22 (10) "Secretary," the secretary of revenue;
- 23 (11) "Sell," to sell, or to offer or agree to do the same;
- 24 (12) "State fire marshal," the state fire marshal designated pursuant to chapter 34-29B.