

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

283I0253

## HOUSE BILL NO. 1164

Introduced by: Representatives Olson (Ryan) and Craddock and Senators Moore, Greenfield,  
and Koetzle

1 FOR AN ACT ENTITLED, An Act to allow certain merchandising agreements between  
2 cigarette retailers and cigarette manufacturers and to place certain prohibitions on cigarette  
3 manufacturers.

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

5 Section 1. That chapter 37-10 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Except as provided in section 3 of this Act, a cigarette retailer may enter into and participate  
8 in a cigarette manufacturer's merchandising, advertising, display, or consumer discount or  
9 promotional agreement or program in which the retailer:

10 (1) Provides cigarette merchandising, shelf-space, advertising, stocking, or display to the  
11 manufacturer;

12 (2) Receives consumer promotions and consumer price discounts from the manufacturer,  
13 and, subject to the provisions of this chapter, conducts the manufacturer's consumer  
14 promotion and discount programs and provides such promotions and discounts to  
15 consumers; and



- 1       (3)    Receives compensation from the manufacturer for participating in any such agreement  
2            or program, and otherwise performing the activities described in subdivisions (1) and  
3            (2).

4       Section 2. That chapter 37-10 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6       Except as provided in section 3 of this Act, a cigarette manufacturer may:

- 7       (1)    Offer and enter into a retailer agreement or program as described in section 1 of this  
8            Act;
- 9       (2)    Pay or provide other compensation to retailers for participating in any such agreement  
10            or program; and
- 11       (3)    Provide consumer promotions and discounts to retailers for the retailers, subject to  
12            the provisions of this chapter, to furnish to consumers.

13       Section 3. That chapter 37-10 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15       No cigarette manufacturer may, directly or indirectly:

- 16       (1)    Condition a retailer's receipt of consumer promotions or consumer price discounts on  
17            the retailer's conduct or actions relating to the manufacturer's products or the  
18            products of any other manufacturer, except for requirements that the retailer:
- 19            (a)    Provide the promotion or discount to consumers; and
- 20            (b)    Advertise and display the promotion and the promoted or discounted product  
21                    to consumers;
- 22       (2)    Require or cause the retailer to allocate a specified percentage or fraction of the  
23            retailer's merchandising, stocking, display, shelf, or advertising space to the  
24            manufacturer;

- 1 (3) Prevent, restrict, or limit a retailer from stocking, advertising, displaying, or  
2 participating in a program for another manufacturer's product;
- 3 (4) Prevent, restrict, or limit the retailer from determining the size or location of the space  
4 that the retailer uses to stock, display, promote, or advertise cigarettes; or
- 5 (5) Require the retailer to raise its prices on, or prevent the retailer from setting,  
6 retaining, or reducing its prices on, another manufacturer's products.

7 Section 4. That chapter 37-10 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 The provisions of § 37-10-25 do not preclude any retailer from recovering from the  
10 manufacturer any promotions or discounts that the retailer provided to consumers on the  
11 manufacturer's behalf pursuant to the manufacturer's agreement, program, offer, or the like, nor  
12 do they serve as a defense in any action or claim by such retailer to recover any promotions or  
13 discounts described in this section from the manufacturer.

14 Section 5. That chapter 37-10 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 The provisions of this Act apply to any tobacco products manufacturer or importer,  
17 regardless of where located and whether or not included in chapter 10-50B, that, directly or  
18 indirectly through any person, offers, publishes, or enters into an agreement, program,  
19 promotion, discount, or the like, with retailers who sell tobacco products in this state.

20 Section 6. That chapter 37-10 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 Any defense specifically provided for in, or otherwise arising from, §§ 37-10-1, 37-10-2, 37-  
23 10-3, 37-10-14, and 37-10-16 to 37-10-21, inclusive, do not apply in any action brought under  
24 this Act.

1           Section 7. That chapter 37-10 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3           In addition to the rights provided in §§ 37-10-36 to 37-10-38, inclusive, any person injured  
4 by a violation or threatened violation of this Act may also recover reasonable attorneys' fees.