

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

555L0355

HOUSE BILL NO. 1113

Introduced by: Representatives Van Etten, Boomgarden, Cutler, Frost, Glenski, Hunhoff, McCoy, McLaughlin, Miles, Novstrup, Rave, Thompson, and Weems and Senators Adelstein, Dempster, Knudson, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to increase the tax on cigarettes and other tobacco products,
2 to dedicate the revenue for tobacco prevention and cessation programs and property tax
3 reduction, and to make an appropriation therefor.

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

5 Section 1. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 In addition to the tax imposed by § 10-50-3, whether or not a sale occurs, there is imposed
8 an additional tax at the following rates on all cigarettes held in this state for sale by any person:

9 Class A, on cigarettes weighing not more than three pounds per thousand, fifty mills on each
10 cigarette.

11 Class B, on cigarettes weighing more than three pounds per thousand, fifty and three-tenths
12 mills on each cigarette.

13 Section 2. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 In addition to the tax imposed by § 10-50-61, whether or not a sale occurs, there is imposed



1 an additional tax upon all tobacco products in this state and upon any person engaged in
2 business as a licensed distributor or licensed wholesaler thereof, at the rate of twenty-five
3 percent of the wholesale purchase price of such tobacco products. Such tax shall be imposed at
4 the time the distributor or wholesaler brings or causes to be brought into this state tobacco
5 products for sale; makes, manufactures, or fabricates tobacco products in this state for sale in
6 this state; or ships or transports tobacco products to dealers in this state to be sold by those
7 dealers. For the purposes of this chapter, wholesale purchase price is the price for which a
8 manufacturer sells tobacco products to a licensed distributor or licensed wholesaler exclusive
9 of any discount or other reduction.

10 Section 3. That § 10-50-4 be amended to read as follows:

11 10-50-4. The payment of the tax imposed by § 10-50-3 and section 1 of this Act shall be
12 evidenced by the affixing of stamps or by the impression of an imprint by suitable metering
13 machines approved by the secretary of revenue and regulation as provided by this chapter, to the
14 packages containing the cigarettes as hereinafter indicated. ~~Provided, that~~ However, for
15 cigarettes offered by manufacturers for gratis distribution as samples, ~~such~~ the stamps are not
16 required to be affixed to sample packages if the manufacturer of the cigarette reports and pays
17 the tax directly to the state tax authority.

18 Section 4. That § 10-50-5 be amended to read as follows:

19 10-50-5. No stamps evidencing payment of the tax prescribed in § 10-50-3 ~~shall~~ and section
20 1 of this Act may be in a denomination of less than one cent ~~and whenever~~. If the tax at the rate
21 ~~therein prescribed shall be~~ a specified is an amount plus a fractional part of one cent, the
22 package or carton shall be stamped for the next full cent, ~~provided, that whenever the tax at the~~
23 ~~rate therein prescribed shall amount to twelve cents the package or carton shall be stamped for~~
24 ~~the exact amount of twelve cents.~~

1 Section 5. That § 10-50-6 be amended to read as follows:

2 10-50-6. Any cigarette on which a tax has been paid, ~~such~~ the tax payment being evidenced
3 by the affixing of ~~such~~ the stamp or imprint, is not subject to a further tax under this chapter.
4 However, any person, who possesses two thousand or more cigarettes that do not bear a tax
5 stamp or imprint indicating that the South Dakota cigarette tax has been paid, shall pay the tax
6 imposed pursuant to § 10-50-3 and section 1 of this Act plus a penalty equal to ten percent of
7 the total tax due.

8 Section 6. That § 10-50-61 be amended to read as follows:

9 10-50-61. In addition to the tax imposed by § 10-50-3 and section 1 of this Act, there is
10 imposed, whether or not a sale occurs, a tax upon all tobacco products in this state and upon any
11 person engaged in business as a licensed distributor or licensed wholesaler thereof, at the rate
12 of ten percent of the wholesale purchase price of such tobacco products. ~~Such~~ The tax shall be
13 imposed at the time the distributor or wholesaler brings or causes to be brought into this state
14 tobacco products for sale; makes, manufactures, or fabricates tobacco products in this state for
15 sale in this state; or ships or transports tobacco products to dealers in this state to be sold by
16 those dealers. For the purposes of this chapter, wholesale purchase price is the price for which
17 a manufacturer sells tobacco products to a licensed distributor or licensed wholesaler exclusive
18 of any discount or other reduction.

19 Section 7. That § 10-50-62 be amended to read as follows:

20 10-50-62. Tobacco products may be sold by licensed distributors and licensed wholesalers
21 only to dealers. Dealers who buy or receive tobacco products from persons other than licensed
22 distributors or licensed wholesalers ~~must~~ shall pay the tax imposed in § 10-50-61 and section
23 2 of this Act. However, the dealer may elect to report and remit the tax on the cost price of the
24 tobacco products to the dealer rather than on the wholesale purchase price. A violation of this

1 section is a Class 2 misdemeanor.

2 Section 8. That § 10-50-63 be amended to read as follows:

3 10-50-63. On or before the fifteenth day of each calendar month, each person required to pay
4 the tax imposed by § 10-50-61 and section 2 of this Act shall report, on forms prescribed by the
5 secretary, the amount and type of tobacco products manufactured or brought into this state
6 during the month preceding the month in which the report is made, the source of those tobacco
7 products, and the wholesale purchase price of those tobacco products. The person shall remit
8 the tax due on those tobacco products with the filing of the form. Any person who fails to timely
9 file the form and pay the tax in this section may be subject to penalty and interest as prescribed
10 in § 10-59-6. Any person seeking to recover overpayment of the tax imposed in § 10-50-61 and
11 section 2 of this Act, may do so in the manner prescribed in §§ 10-59-19, 10-59-20, 10-59-21,
12 10-59-22, 10-59-23, and 10-59-24. The secretary may secure the payment of any unpaid tax in
13 the same manner as prescribed in chapter 10-59. If any taxpayer destroys tobacco products upon
14 which the tax imposed by § 10-50-61 or 10-50-62 or section 2 of this Act has been paid because
15 of unfitness for sale, a credit or refund in the amount of the tax paid on those products shall be
16 granted as prescribed in this section for the overpayment of tax.

17 Section 9. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Any revenues collected pursuant to sections 1 and 2 of this Act shall be deposited in the
20 tobacco prevention and reduction trust fund created pursuant to § 34-46-12. Five million dollars
21 of the revenues deposited in the tobacco prevention and reduction fund pursuant to this Act shall
22 be used to implement elements of the tobacco prevention and reduction plan each fiscal year.
23 Any remaining revenues deposited in the tobacco prevention and reduction fund pursuant to this
24 Act shall be transferred to the property tax reduction fund and be used for the purpose of

1 funding lowering the general fund levies of a school district.

2 Section 10. There is hereby appropriated from the tobacco prevention and reduction fund
3 the sum of one million seven hundred thousand dollars (\$1,700,000), or so much thereof as may
4 be necessary, to the Department of Health for the purpose of creating a block grant program for
5 community and school based initiatives.

6 There is hereby appropriated from the tobacco prevention and reduction fund the sum of two
7 million one hundred seventy thousand dollars (\$2,170,000), or so much thereof as may be
8 necessary, to the Department of Health for the purpose of funding cessation and statewide
9 programs.

10 There is hereby appropriated from the tobacco prevention and reduction fund the sum of five
11 hundred seventy-five thousand dollars (\$575,000), or so much thereof as may be necessary, to
12 the Department of Health for the purpose of funding public education and statewide marketing
13 programs.

14 There is hereby appropriated from the tobacco prevention and reduction fund the sum of two
15 hundred eighty thousand dollars (\$280,000), or so much thereof as may be necessary, to the
16 Department of Health for the purpose of surveillance, data collection, and evaluation programs.

17 There is hereby appropriated from the tobacco prevention and reduction fund the sum of two
18 hundred seventy-five thousand dollars (\$275,000), or so much thereof as may be necessary, to
19 the Department of Health for the purpose of management and accountability programs.

20 Section 11. The secretary of the Department of Health shall approve vouchers and the state
21 auditor shall draw warrants to pay expenditures authorized by this Act.

22 Section 12. Any amounts appropriated in this Act not lawfully expended or obligated by
23 June 30, 2006, shall revert in accordance with § 4-8-21.

24 Section 13. For taxes payable in 2006, the levy for the general fund of a school district, as

1 provided in § 10-12-42, shall be lowered by:

- 2 (1) One dollar and ninety-six cents per thousand dollars of taxable valuation subject to
3 the limitations on agricultural property as provided in subdivision (2) of this section,
4 owner-occupied property as provided for in subdivision (3) of this section, and
5 nonagricultural acreage property as provided for in subdivision (4) of this section;
- 6 (2) Fifty-seven cents per thousand dollars of taxable valuation for agricultural property;
- 7 (3) Ninety-two cents per thousand dollars of taxable valuation for an owner-occupied
8 single-family dwelling as defined in § 10-13-40; and
- 9 (4) Fifty-seven cents per thousand dollars of taxable valuation for nonagricultural
10 acreage property.

11 This rate reduction is in addition to any other adjustment made by the Eightieth Legislature
12 of the State of South Dakota to the levy for the general fund of a school district as provided in
13 § 10-12-42.