

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0266

SENATE BILL NO. 43

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to provide for the licensing of tobacco retailers.

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

3 Section 1. That § 10-50-9 be amended to read as follows:

4 10-50-9. Each person, ~~except a retailer~~, engaging in the business of selling cigarettes or
5 tobacco products in this state, including any distributor ~~or~~ wholesaler, or dealer, shall secure
6 a license therefore from the secretary of revenue and regulation. A separate application and
7 license is required for each wholesale or retail outlet ~~when~~ if a person owns or controls more
8 than one place of business dealing in cigarettes or tobacco products.

9 Any person, ~~except a retailer~~, who sells, offers for sale, or possesses with intent to sell, any
10 cigarettes or tobacco products, without a license commits a petty offense.

11 Section 2. That § 10-50-11 be amended to read as follows:

12 10-50-11. Each application for a distributor or wholesaler license shall be accompanied by
13 a fee of one hundred fifty dollars. Each application for a dealer license shall be accompanied by
14 a fee of one hundred dollars. If the applicant for a license has not entered upon the business of
15 selling cigarettes or tobacco products until after the first day of January in any year, then the fee



1 for a license during the remainder of the fiscal year is one-half the amount set forth in this
2 section.

3 Section 3. That § 10-50-13 be amended to read as follows:

4 10-50-13. Any license granted under this chapter may be transferred to a new location or to
5 another person. ~~Where~~ If the transfer is to another person, the licensee ~~must~~ shall show in
6 writing, under oath, that ~~he~~ the licensee has made a bulk sale of the business operated under
7 ~~such~~ the license, and ~~the~~ The transferee ~~must~~ shall make an application exactly as if an original
8 applicant, setting forth therein that ~~he~~ the transferee is the bulk sale purchaser of the business
9 operated under ~~such~~ the license and requesting that ~~such~~ the license be transferred to him or her.
10 If the transfer is to a new location, the licensee ~~must~~ shall make application showing all the
11 relevant facts as to ~~such~~ the new location, ~~which~~ The application shall take the same course and
12 be acted upon as if an original application. ~~In case of any transfer of any license affected by this~~
13 ~~chapter, a fee of two dollars and fifty cents shall be required to continue the unexpired portion~~
14 ~~of such license.~~

15 Section 4. That § 10-50-15 be amended to read as follows:

16 10-50-15. The secretary of revenue and regulation may revoke the license of any distributor
17 ~~or~~ wholesaler, or dealer for failure to comply with any of the provisions of this chapter. Any
18 person aggrieved by ~~such~~ the revocation may apply to the secretary for a hearing as provided in
19 § 10-50-46 and may further appeal to the court as provided in § 10-50-49.

20 Section 5. That § 10-50-32 be amended to read as follows:

21 10-50-32. No person, other than a ~~person licensed pursuant to § 10-50-9~~ licensed distributor,
22 may sell, offer for sale, display for sale, or possess with intent to sell, advertise for sale, ship or
23 cause to be shipped, or possess with intent to deliver to another person, any cigarettes which do
24 not bear stamps or an imprint impressed by a suitable metering machine approved by the

1 secretary as provided by this chapter, evidencing the payment of the tax imposed by this chapter.

2 A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class
3 6 felony.

4 Section 6. That § 10-50-41 be amended to read as follows:

5 10-50-41. The secretary of revenue and regulation may examine the books, papers, and
6 records of any distributor, wholesaler, or dealer in this state, for the purpose of determining
7 whether the tax imposed by this chapter has been fully paid, and may investigate and examine
8 the stock of cigarettes or tobacco products in or upon any premises where ~~such~~ the cigarettes or
9 tobacco products are possessed, stored, or sold, for the purpose of determining whether the
10 provisions of this chapter are being obeyed. The secretary may make ~~such~~ the inspections and
11 examinations at any time during ordinary business hours, and may inspect at ~~such~~ the times the
12 premises and all desks, safes, vaults, and other fixtures and furniture contained in or upon ~~such~~
13 the premises for the purpose of ascertaining whether cigarettes or tobacco products are held or
14 possessed in violation of this chapter. Each dealer shall keep purchase invoices of all cigarettes
15 and tobacco products purchased within the last year on the licensed premises. Any cigarettes or
16 tobacco products found on the dealer's premises, without a corresponding purchase invoice, is
17 contraband and subject to forfeiture as provided in § 10-50-36.

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

19 10-50-62. Tobacco products may be sold by licensed distributors and licensed wholesalers
20 only to dealers. ~~Dealers who buy or receive tobacco products from persons other than licensed~~
21 ~~distributors or licensed wholesalers must pay the tax imposed in § 10-50-61. However, the~~
22 ~~dealer may elect to report and remit the tax on the cost price of the tobacco products to the~~
23 ~~dealer rather than on the wholesale purchase price. Tobacco dealers may purchase tobacco~~
24 products only from licensed wholesalers and distributors. A violation of this section is a Class

1 2 misdemeanor.

2 Section 8. That § 10-50-93 be amended to read as follows:

3 10-50-93. No person may make a delivery sale of cigarettes to any ~~individual~~ person who
4 is under the legal minimum purchase age in the state.

5 Any person accepting a purchase order for a delivery sale shall comply with:

6 (1) The age verification requirements provided in § 10-50-94;

7 (2) The disclosure requirements provided in § 10-50-95;

8 (3) The shipping requirements provided in § 10-50-96;

9 (4) The registration and reporting requirements provided in § 10-50-97; ~~and~~

10 (5) All other statutes of the state generally applicable to sales of cigarettes that occur
11 entirely within the state, and any law imposing an excise tax, sales tax, license,
12 revenue-stamping requirement, and escrow payment obligation as provided in chapter
13 10-50B; and

14 (6) The licensing requirements in § 10-50-9.