



2020 South Dakota Legislature

House Bill 1063

HOUSE HEALTH AND HUMAN SERVICES ENGROSSED

Introduced by: **Representative Perry**

1 **An Act to revise certain provisions regarding the purchase, distribution, and sale of**
 2 **tobacco products to persons under the age of twenty-one.**

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

4 **Section 1.** That § 34-46-2 be AMENDED:

5 **34-46-2. Unlawful actions.**

6 The following actions are unlawful:

- 7 (1) To knowingly sell or distribute a tobacco product to a person under the age of
 8 ~~eighteen~~ twenty-one;
- 9 (2) To purchase or attempt to purchase, to receive or attempt to receive, to possess,
 10 or to consume a tobacco product if a person is under the age of ~~eighteen~~ twenty-
 11 one;
- 12 (3) To purchase a tobacco product on behalf of, or to give a tobacco product to, any
 13 person under the age of ~~eighteen~~ twenty-one;
- 14 (4) To sell cigarettes other than in an unopened package originating with the
 15 manufacturer and depicting the warning labels required by federal law;
- 16 (5) To sell tobacco products through a vending machine located in a place other than
 17 ~~the following:~~
 18 ~~(a) A factory, business, office, or other place not open to the general public;~~
 19 ~~(b) A a place that is open to the public but to which persons under the age of~~
 20 ~~eighteen~~ twenty-one ~~are denied access at all times;~~
 21 ~~(c) An establishment licensed under chapter 35-4 to sell alcoholic beverages for~~
 22 ~~consumption on the premises where sold;~~
 23 (6) To sell cigarettes or smokeless tobacco, or both, through a self-service display other
 24 than a display that is:
 25 (a) A vending machine permitted under subdivision (5) of this section ~~(4)~~; or
 26 (b) Located in a tobacco speciality store; or

- 1 (7) To distribute tobacco product samples in or on a public street, sidewalk, or park
2 that is within five hundred feet of a playground, school, or other facility when the
3 facility is being used primarily by persons under the age of ~~eighteen~~ twenty-one.

4 **Section 2.** That § 34-46-2.2 be AMENDED:

5 **34-46-2.2. Merchants--Notice requirement--Contents.**

6 ~~If a merchant chooses to implement the provisions of § 34-46-2.1, the A merchant~~
7 shall conspicuously post a notice, on the merchant's premises, stating that ~~any person~~
8 ~~who the merchant reasonably believes was under the age of eighteen, has attempted to~~
9 ~~purchase tobacco products, will be detained and surrendered to a law enforcement officer.~~
10 "No person under the age of 21 may be sold tobacco products."

11 Any owner, lessee, or person having control of any cigarette vending machine shall
12 post, in a conspicuous place on each machine in use within the state, a warning which
13 shall be printed in bold type letters each of which shall be at least one-half inch high and
14 which shall be kept in easily legible form and repair stating:

15 "Any person under 21 years of age is forbidden by law to purchase cigarettes from
16 this machine."

17 **Section 3.** That § 34-46-3 be AMENDED:

18 **34-46-3. Unannounced, random inspections--Persons enlisted--**
19 **Requirements.**

20 Each county state's attorney or a local law enforcement officer designated by the
21 state's attorney shall annually conduct unannounced, random inspections at various
22 locations where tobacco products are sold or distributed to ensure compliance with this
23 chapter. Persons under the age of ~~eighteen~~ twenty-one may be enlisted to test compliance
24 with this chapter. Such persons may be used to test compliance with this chapter only if
25 the testing is conducted under the supervision of the county state's attorney or a local law
26 enforcement officer designated by the state's attorney and written parental consent has
27 been provided. Any other use of persons under the age of ~~eighteen~~ twenty-one to test
28 compliance with this chapter is unlawful and the persons responsible for such use are
29 subject to the penalties prescribed in § 34-46-5.

30 **Section 4.** That § 34-46-5 be AMENDED:

1 **34-46-5. Violation as misdemeanor--Complete defense.**

2 A violation of § 34-46-2 is a Class 2 misdemeanor. A person is not liable for more
3 than one violation of subdivision 34-46-2(4) on a single day. Reasonable reliance upon
4 proof of age of the purchaser or the recipient of a tobacco product is a complete defense
5 to any action brought against a person for the sale or distribution of a tobacco product to
6 a person under the age of ~~eighteen~~ twenty-one.

7 **Section 5.** That § 26-10-20 be REPEALED.

8 **26-10-20. Use or purchase of smokeless tobacco by minor prohibited--Petty**
9 **offense.**

10 **Section 6.** That § 26-10-24 be REPEALED.

11 **26-10-24. Cigarette vending machine owner exempted--Warning required.**

12 **Section 7.** That § 34-46-2.1 be REPEALED.

13 **34-46-2.1. Merchant may detain minor who purchases, attempts to**
14 **purchase or consumes tobacco product--Conditions.**