

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

837B0781

HOUSE HEALTH AND HUMAN SERVICES

ENGROSSED NO. **HB 1209** - 2/19/2019

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Perry, Cwach, and Lake and Senators Blare, Foster, Rusch, and Wismer

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding tobacco products.

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

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

4 10-50-1. Terms used in this chapter mean:

5 (1) "Consumer," any individual who is not a retailer or a licensed distributor or  
6 wholesaler pursuant to § 10-50-9;

7 (2) "Dealer," or "retailer," any person other than a distributor or wholesaler, as defined  
8 herein, who is engaged in this state in the business of selling cigarettes or tobacco  
9 products at retail;

10 (3) "Distributor," any person engaged in this state in the business of producing or  
11 manufacturing cigarettes, or importing into the state cigarettes, at least seventy-five  
12 percent of which are purchased directly from the manufacturers thereof;

13 (4) "Licensed distributor," or "licensed wholesaler," a distributor or wholesaler licensed  
14 under the provisions of this chapter;



- 1 (5) "Person," any individual, firm, fiduciary, partnership, limited liability company,  
2 corporation, trust, or association, however formed;
- 3 (6) "Sale" or "sell," shall include or apply to gifts, exchanges, and barter;
- 4 (7) "Secretary," the secretary of revenue;
- 5 (8) "Tobacco products," cigars, snuff, chewing tobacco, vapor products, and any other  
6 products made up or composed of tobacco in whole or in part, except cigarettes;
- 7 (9) "Vapor products," any noncombustible product containing nicotine that employs a  
8 heating element, power source, electronic circuit, or other electronic, chemical, or  
9 mechanical means, regardless of shape or size, that can be used to produce vapor  
10 from nicotine in a solution or other form.

11 Section 2. That § 10-50-61 be amended to read:

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

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

1 the tax paid ~~pursuant to~~ under this section on ~~such~~ tobacco products.

2 For the purposes of this section, the term, vapor product, includes any electronic cigarette,  
3 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor  
4 cartridge or other container of nicotine in a solution or other form that is intended to be used  
5 with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar  
6 product or device, but does not include any product approved by the United States Food and  
7 Drug Administration for sale as a tobacco cessation product and marketed and sold solely for  
8 that purpose.