

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

837B0781

## HOUSE ENGROSSED NO. **HB 1209** - 2/25/2019

**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 vapor products.

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

3 Section 1. That § 34-46-1 be amended to read:

4 34-46-1. Terms used in this chapter mean:

5 (1) "Electronic smoking device," any product containing or delivering nicotine or any  
6 other substance intended for human consumption that may be used by a person in any  
7 manner for the purpose of inhaling vapor or aerosol from the product. The term  
8 includes any nicotine device, whether manufactured, distributed, marketed, or sold  
9 as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product  
10 name or descriptor;

11 (2) "Proof of age," a driver's license, nondriver identification card, tribal identification  
12 card, or other generally accepted means of identification that contains a picture of the  
13 individual and appears on its face to be valid;

14 ~~(2)~~(3) "Sample," tobacco products distributed to members of the general public at no cost



1 for purposes of promoting the product;

2 ~~(3)~~(4) "Sampling," the distribution of samples to members of the general public in a public  
3 place;

4 ~~(4)~~(5) "Self-service display," a display that contains cigarettes or smokeless tobacco, or  
5 both, and is located in an area openly accessible to the merchant's consumers, and  
6 from which such consumers can readily access cigarettes or smokeless tobacco, or  
7 both, without the assistance of the merchant or an employee or agent of the merchant.  
8 A display case that holds tobacco products behind locked doors does not constitute  
9 a self-service display;

10 (6) "Smoke" or "Smoking," the act of inhaling, exhaling, burning, or carrying any lighted  
11 or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or  
12 plant product intended for inhalation, whether natural or synthetic, in any manner or  
13 in any form, including the use of an electronic smoking device which creates an  
14 aerosol or vapor, in any manner or in any form;

15 ~~(5)~~(7) "Tobacco product," any item made of tobacco intended for human consumption,  
16 including cigarettes, cigars, pipe tobacco, and smokeless tobacco, and vapor products  
17 as defined in § 34-46-20;

18 ~~(6)~~(8) "Tobacco speciality store," a business that derives at least seventy-five percent of its  
19 revenue from the sale of tobacco products.

20 Section 2. That § 34-46-14 be amended to read:

21 34-46-14. No person may smoke tobacco product or carry any lighted tobacco product in any  
22 public place or place of employment. A violation of this section is a petty offense.

23 Section 3. That § 34-46-20 be amended to read:

24 34-46-20. For the purposes of ~~§§ 34-46-2 to 34-46-6, inclusive, and 34-46-21~~ this chapter,

1 the term, tobacco product, includes vapor product. The term, vapor product, means any  
2 noncombustible product containing nicotine that employs a heating element, power source,  
3 electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or  
4 size, that can be used to produce vapor from nicotine in a solution or other form. The term,  
5 vapor product, includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic  
6 pipe, or similar product or device and any vapor cartridge or other container of nicotine in a  
7 solution or other form that is intended to be used with or in an electronic cigarette, electronic  
8 cigar, electronic cigarillo, electronic pipe, electronic smoking device, or similar product or  
9 device. The term, vapor product, does not include any product approved by the United States  
10 Food and Drug Administration for sale as tobacco cessation products and marketed and sold  
11 solely for that purpose.