

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

837B0781

SENATE HEALTH AND HUMAN SERVICES

ENGROSSED NO. **HB 1209** - 3/6/2019

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 e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen
6 containing or delivering nicotine or any other substance intended for human
7 consumption that may be used by a person in any manner for the purpose of inhaling
8 vapor or aerosol from the product;

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

12 ~~(2)~~(3) "Sample," tobacco products distributed to members of the general public at no cost
13 for purposes of promoting the product;

14 ~~(3)~~(4) "Sampling," the distribution of samples to members of the general public in a public



1 place;

2 ~~(4)~~(5) "Self-service display," a display that contains cigarettes or smokeless tobacco, or
3 both, and is located in an area openly accessible to the merchant's consumers, and
4 from which such consumers can readily access cigarettes or smokeless tobacco, or
5 both, without the assistance of the merchant or an employee or agent of the merchant.

6 A display case that holds tobacco products behind locked doors does not constitute
7 a self-service display;

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

13 ~~(5)~~(7) "Tobacco product," any item made of tobacco intended for human consumption,
14 including cigarettes, cigars, pipe tobacco, and smokeless tobacco, and vapor products
15 as defined in § 34-46-20;

16 ~~(6)~~(8) "Tobacco speciality store," a business that derives at least seventy-five percent of its
17 revenue from the sale of tobacco products.

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

19 34-46-14. No person may smoke tobacco product or carry any lighted tobacco product in any
20 public place or place of employment. A violation of this section is a petty offense.

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

22 34-46-20. For the purposes of §§ ~~34-46-2 to 34-46-6, inclusive, and 34-46-21~~ this chapter,
23 the term, tobacco product, includes vapor product. The term, vapor product, means any
24 noncombustible product containing nicotine that employs a heating element, power source,

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