

# State of South Dakota

## EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

256Q0494

### HOUSE BILL NO. 1240

Introduced by: Representatives Faehn, Curd, Cutler, Feinstein, Hunhoff (Bernie), Lucas, McLaughlin, Pitts, Rave, Sly, Thompson, and Tidemann and Senators Knudson, Adelstein, Dempster, Hansen (Tom), Heidepriem, Hunhoff (Jean), Miles, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to prohibit smoking tobacco or carrying lighted tobacco  
2 products in certain places and to require certain persons to inform violators of the  
3 prohibition.

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

5 Section 1. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 No person may smoke tobacco or carry any lighted tobacco product in any public place or  
8 place of employment. A violation of this section is a Class 2 misdemeanor.

9 Section 2. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Any person that owns, manages, operates, or otherwise controls a public place or place of  
12 employment shall inform persons violating section 1 of this Act of the provisions thereof. A  
13 violation of this section is a Class 2 misdemeanor.

14 Section 3. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 Terms used in this Act mean:

- 3 (1) "Enclosed area," any space between a floor and a ceiling that is enclosed, exclusive  
4 of doorways, on all sides by permanent or temporary walls or windows;
- 5 (2) "Place of employment," any enclosed area under the control of a public or private  
6 employer;
- 7 (3) "Public place," any enclosed area to which the public is invited or in which the public  
8 is permitted.

9 Section 4. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 The provisions of this Act do not apply to any private residence unless the private residence  
12 is used for day care.

13 Section 5. That § 22-36-2 be repealed.

14 ~~— 22-36-2. No person may smoke tobacco or carry any lighted tobacco product in any public~~  
15 ~~place or place of employment. This section does not apply to any sleeping room in a lodging~~  
16 ~~establishment as defined in § 34-18-1, to any on-sale licensee pursuant to chapter 35-4, to any~~  
17 ~~video lottery licensed establishment pursuant to chapter 42-7A, to any licensee pursuant to~~  
18 ~~chapter 42-7B, or to any tobacco or packaged liquor store if the store is primarily used for the~~  
19 ~~sale of tobacco or alcoholic beverages, or both, and the sale of other products is merely~~  
20 ~~incidental.~~

21 ~~— A violation of this section is a petty offense.~~

22 Section 6. That § 22-36-3 be repealed.

23 ~~— 22-36-3. For the purposes of §§ 22-36-2 to 22-36-4, inclusive, a public place is any enclosed~~  
24 ~~indoor area to which the public is invited or to which the public is permitted, including any~~

1 ~~hospital or medical or dental clinic; any nursing facility; any public library, museum, theater,~~  
2 ~~or concert hall; any elementary or secondary school building; any public conveyance; any jury~~  
3 ~~room; any elevator; any reception area; any restaurant; any retail service establishment; any~~  
4 ~~retail store; and any registered or unregistered day care program, day care center, day care~~  
5 ~~cooperative, or family day care home governed by chapter 26-6 during the time in which~~  
6 ~~children who are not family members of the day care provider are receiving care. A private~~  
7 ~~residence is not a public place unless it is used for day care.~~

8 Section 7. That § 22-36-4 be repealed.

9 ~~— 22-36-4. For the purposes of §§ 22-36-2 to 22-36-4, inclusive, a place of employment is any~~  
10 ~~enclosed indoor area under the control of a public or private employer, including work areas,~~  
11 ~~employee lounges and restrooms, conference and class rooms, employee cafeterias, and~~  
12 ~~hallways. A private residence is not a place of employment unless it is used for day care.~~