

# State of South Dakota

## EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

256Q0494

### HOUSE ENGROSSED NO. **HB 1240** - 2/23/2009

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 petty offense.

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 sections 1 to 3, inclusive, of this Act do not apply to any private residence  
12 unless the private residence is used for day care.

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

15 The provisions of sections 1 to 3, inclusive, of this Act do not apply to any sleeping rooms  
16 in any hotel or lodging establishment licensed pursuant to subdivision 34-18-1(6) or (7),  
17 respectively, if the rooms are rented to guests. Any sleeping room in which smoking is allowed  
18 shall be posted as a smoking room.

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

21 The provisions of sections 1 to 3, inclusive, of this Act do not apply to any establishment  
22 licensed pursuant to subdivision 35-4-2(4), (6), (12), or (16) that was in compliance on  
23 January 1, 2009, with, and maintains compliance with, the following requirements:

- 24 (1) Generates ten percent or more of its annual gross income from the sale of cigars. For

1 the purposes of this section, a cigar is any individual roll of tobacco that has a  
2 wrapper or cover consisting only of tobacco, that measures a number forty ring size  
3 or larger, and that is sold without a filter;

4 (2) Has a humidor on the premises; and

5 (3) Is enclosed by solid walls or windows, a ceiling, and a solid door and is equipped  
6 with a ventilation system by which exhausted air is not recirculated to nonsmoking  
7 areas and smoke is not backstreamed into nonsmoking areas.

8 Any establishment meeting the requirements of this section may permit the smoking of  
9 cigars and any premium tobacco product purchased on the premises. However, no establishment  
10 may permit the smoking of any other tobacco product on the premises. The establishment shall  
11 post a notice of the prohibition.

12 Any establishment meeting the requirements of this section shall annually report to the  
13 Department of Revenue and Regulation, on a form prescribed by the department, the revenue  
14 generated from the sale of cigars as a percentage of annual gross income.

15 Section 7. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 The provisions of sections 1 to 3, inclusive, of this Act do not apply to any retail tobacco  
18 store that meets the following requirements:

19 (1) Generates sixty-five percent of its annual gross income from the sale of tobacco,  
20 tobacco products, and accessories for such products;

21 (2) Is enclosed by solid walls or windows, a ceiling, and a solid door that provides egress  
22 to the outdoors; and

23 (3) Does not allow the consumption of alcoholic beverages on the premises.

24 Any retail tobacco store meeting the requirements of this section shall annually report to the

1 Department of Revenue and Regulation, on a form prescribed by the department, the revenue  
2 generated from the sale of tobacco, tobacco products, and accessories for such products as a  
3 percentage of annual gross income.

4 Section 8. That § 22-36-2 be repealed.

5 ~~— 22-36-2. No person may smoke tobacco or carry any lighted tobacco product in any public~~  
6 ~~place or place of employment. This section does not apply to any sleeping room in a lodging~~  
7 ~~establishment as defined in § 34-18-1, to any on-sale licensee pursuant to chapter 35-4, to any~~  
8 ~~video lottery licensed establishment pursuant to chapter 42-7A, to any licensee pursuant to~~  
9 ~~chapter 42-7B, or to any tobacco or packaged liquor store if the store is primarily used for the~~  
10 ~~sale of tobacco or alcoholic beverages, or both, and the sale of other products is merely~~  
11 ~~incidental.~~

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

13 Section 9. That § 22-36-3 be repealed.

14 ~~— 22-36-3. For the purposes of §§ 22-36-2 to 22-36-4, inclusive, a public place is any enclosed~~  
15 ~~indoor area to which the public is invited or to which the public is permitted, including any~~  
16 ~~hospital or medical or dental clinic; any nursing facility; any public library, museum, theater,~~  
17 ~~or concert hall; any elementary or secondary school building; any public conveyance; any jury~~  
18 ~~room; any elevator; any reception area; any restaurant; any retail service establishment; any~~  
19 ~~retail store; and any registered or unregistered day care program, day care center, day care~~  
20 ~~cooperative, or family day care home governed by chapter 26-6 during the time in which~~  
21 ~~children who are not family members of the day care provider are receiving care. A private~~  
22 ~~residence is not a public place unless it is used for day care.~~

23 Section 10. That § 22-36-4 be repealed.

24 ~~— 22-36-4. For the purposes of §§ 22-36-2 to 22-36-4, inclusive, a place of employment is any~~

- 1 ~~enclosed indoor area under the control of a public or private employer, including work areas,~~
- 2 ~~employee lounges and restrooms, conference and class rooms, employee cafeterias, and~~
- 3 ~~hallways. A private residence is not a place of employment unless it is used for day care.~~