

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 149

Introduced by Quick, 35; Albrecht, 17; Bolz, 29; Cavanaugh, 6; Hilkemann, 4; Howard, 9; Hunt, 8; McDonnell, 5; Pansing Brooks, 28; Vargas, 7; Walz, 15; Wishart, 27.

Read first time January 11, 2019

Committee:

1 A BILL FOR AN ACT relating to vapor products; to amend sections 28-1418,
2 28-1418.01, 28-1419, 28-1420, 28-1421, 28-1423, 28-1424, 28-1425,
3 28-1427, 28-1429.01, 28-1429.02, 71-5716, 71-5718, and 71-5727,
4 Reissue Revised Statutes of Nebraska; to change and provide
5 restrictions relating to the sale and use of vapor products and
6 flavored liquids as prescribed; to define and redefine terms; to
7 require sellers of vapor products to be licensed as prescribed; to
8 change legislative findings; to add restrictions relating to vapor
9 products under the Nebraska Clean Indoor Air Act; to harmonize
10 provisions; to provide an operative date; and to repeal the original
11 sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1418, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-1418 (1) Whoever, being a minor under the age of eighteen years,
4 shall smoke cigarettes or cigars, use ~~vapor products~~ or alternative
5 nicotine products, or use tobacco in any form whatever, in this state,
6 shall be guilty of a Class V misdemeanor.

7 (2) Whoever, being an individual under the age of twenty-one years,
8 shall use vapor products in this state shall be guilty of a Class V
9 misdemeanor.

10 (3) Any individual ~~minor~~ charged with a violation of this section
11 may be free from prosecution if he or she furnishes evidence for the
12 conviction of the person or persons selling or giving him or her the
13 cigarettes, cigars, vapor products, alternative nicotine products, or
14 tobacco.

15 Sec. 2. Section 28-1418.01, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

18 (1) Alternative nicotine product means any noncombustible product
19 containing nicotine that is intended for human consumption, whether
20 chewed, absorbed, dissolved, or ingested by any other means. Alternative
21 nicotine product does not include any vapor product, cigarette, cigar, or
22 other tobacco product, or any product regulated as a drug or device by
23 the United States Food and Drug Administration under Chapter V of the
24 federal Food, Drug, and Cosmetic Act;

25 (2) Flavored liquid means a liquid that (a) is composed of nicotine
26 and other chemicals, (b) is intended to be used in a vapor product, and
27 (c) contains a natural or artificial constituent or additive that causes
28 the liquid or its smoke to have a distinguishable flavor or aroma,
29 including, but not limited to, chocolate, vanilla, honey, cocoa, or any
30 fruit, candy, dessert, alcoholic beverage, herb, or spice;

31 (3) ~~(2)~~ Self-service display means a retail display that contains a

1 tobacco product, a tobacco-derived product, a vapor product, or an
2 alternative nicotine product and is located in an area openly accessible
3 to a retailer's customers and from which such customers can readily
4 access the product without the assistance of a salesperson. Self-service
5 display does not include a display case that holds tobacco products,
6 vapor products, or alternative nicotine products behind locked doors;

7 (4) ~~(3)~~ Tobacco specialty store means a retail store that (a)
8 derives at least seventy-five percent of its revenue from tobacco
9 products, tobacco-derived products, vapor products, or alternative
10 nicotine products and (b) does not permit minors under the age of
11 eighteen years to enter the premises unless accompanied by a parent or
12 legal guardian; and

13 (5) ~~(4)~~ Vapor product means any noncombustible product, whether
14 containing nicotine or not, that employs a heating element, power source,
15 electronic circuit, or other electronic, chemical, or mechanical means,
16 regardless of shape or size, that can be used to produce vapor from
17 nicotine in a solution or other form. Vapor product includes any
18 electronic cigarette, electronic cigar, electronic cigarillo, electronic
19 pipe, or similar product or device and any vapor cartridge or other
20 container of nicotine in a solution or other form that is intended to be
21 used with or in an electronic cigarette, electronic cigar, electronic
22 cigarillo, electronic pipe, or similar product or device. Vapor product
23 does not include an alternative nicotine product, cigarette, cigar, or
24 other tobacco product, or any product regulated as a drug or device by
25 the United States Food and Drug Administration under Chapter V of the
26 federal Food, Drug, and Cosmetic Act.

27 Sec. 3. Section 28-1419, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 28-1419 (1) Whoever shall sell, give, or furnish, in any way, any
30 tobacco in any form whatever, or any cigarettes, cigarette paper, ~~vapor~~
31 ~~products,~~ or alternative nicotine products, to any minor under eighteen

1 years of age, is guilty of a Class III misdemeanor for each offense.

2 (2) Whoever shall sell, give, or furnish, in any way, any vapor
3 products or flavored liquids, to any individual under twenty-one years of
4 age, is guilty of a Class III misdemeanor for each offense.

5 Sec. 4. Section 28-1420, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 28-1420 It shall be unlawful for any person, partnership, limited
8 liability company, or corporation to sell, keep for sale, or give away in
9 course of trade, any cigars, tobacco, cigarettes, ~~or~~ cigarette material,
10 or vapor products to anyone without first obtaining a license as provided
11 in sections 28-1421 and 28-1422. It shall also be unlawful for any
12 wholesaler to sell or deliver any cigars, tobacco, cigarettes, ~~or~~
13 cigarette material, or vapor products to any person, partnership, limited
14 liability company, or corporation who, at the time of such sale or
15 delivery, is not the recipient of a valid ~~tobacco~~ license for the current
16 year to retail the same as provided in such sections. It shall also be
17 unlawful for any person, partnership, limited liability company, or
18 corporation to purchase or receive, for purposes of resale, any cigars,
19 tobacco, cigarettes, ~~or~~ cigarette material, or vapor products if such
20 person, partnership, limited liability company, or corporation is not the
21 recipient of a valid ~~tobacco~~ license to retail such ~~tobacco~~ products at
22 the time the same are purchased or received. Whoever shall be found
23 guilty of violating this section shall be guilty of a Class III
24 misdemeanor for each offense.

25 Sec. 5. Section 28-1421, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 28-1421 Licenses for the sale of cigars, tobacco, cigarettes, ~~and~~
28 cigarette material, and vapor products to persons of sufficient age to
29 lawfully use such products over the age of eighteen years shall be issued
30 to individuals, partnerships, limited liability companies, and
31 corporations by the clerk or finance director of any city or village and

1 by the county clerk of any county upon application duly made as provided
2 in section 28-1422. The sale of cigarettes or cigarette materials that
3 contain perfumes or drugs in any form is prohibited and is not licensed
4 by the provisions of this section. Only cigarettes and cigarette material
5 containing pure white paper and pure tobacco shall be licensed.

6 Sec. 6. Section 28-1423, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 28-1423 The term for which such license shall run shall be from the
9 date of filing such application and paying such license fee to and
10 including December 31 of the calendar year in which application for such
11 license is made, and the license fee for any person, partnership, limited
12 liability company, or corporation selling at retail shall be twenty-five
13 dollars in cities of the metropolitan class, fifteen dollars in cities of
14 the primary and first classes, and ten dollars in cities of all other
15 classes, ~~and~~ in towns and villages, ~~and~~ in locations outside of the
16 limits of cities, towns, ~~and~~ villages. Any person, partnership, limited
17 liability company, or corporation selling annually in the aggregate more
18 than one hundred fifty thousand cigars, packages of cigarettes, ~~and~~
19 packages of tobacco, and packages of vapor products in any form, at
20 wholesale, shall pay a license fee of one hundred dollars, and if such
21 combined annual sales amount to less than one hundred fifty thousand
22 cigars, packages of cigarettes, ~~and~~ packages of tobacco, and packages of
23 vapor products, the annual license fee shall be fifteen dollars. No
24 wholesaler's license shall be issued in any year on a less basis than one
25 hundred dollars per annum unless the applicant for the same shall file
26 with such application a statement duly sworn to by himself or herself, or
27 if applicant is a partnership, by a member of the firm, or if a limited
28 liability company, by a member or manager of the company, or if a
29 corporation, by an officer or manager thereof, that in the past such
30 wholesaler's combined sales of cigars, packages of cigarettes, ~~and~~
31 packages of tobacco, and packages of vapor products in every form have

1 not exceeded in the aggregate one hundred fifty thousand annually, and
2 that such sales will not exceed such aggregate amount for the current
3 year for which the license is to issue. Any person swearing falsely in
4 such affidavit shall be guilty of perjury and upon conviction thereof
5 shall be punished as provided by section 28-915 and such wholesaler's
6 license shall be revoked until the full license fee of one hundred
7 dollars is paid. If application for license is made after July 1 of any
8 calendar year, the fee shall be one-half of the fee provided in this
9 section.

10 Sec. 7. Section 28-1424, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 28-1424 The license, provided for in sections 28-1421 and 28-1422
13 when issued, shall authorize the sale of cigars, tobacco, cigarettes, and
14 cigarette material, and vapor products by the licensee and employees, to
15 persons of sufficient age to lawfully use such products ~~over the age of~~
16 ~~eighteen years~~, at the place of business described in such license for
17 the term therein authorized, unless the same be forfeited as provided in
18 section 28-1425.

19 Sec. 8. Section 28-1425, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-1425 Any licensee who shall sell, give, or furnish in any way ~~to~~
22 ~~any person under the age of eighteen years, or who shall willingly allow~~
23 ~~to be taken from his or her place of business by any person under the age~~
24 ~~of eighteen years,~~ any cigars, tobacco, cigarettes, cigarette material,
25 vapor products, flavored liquids, or alternative nicotine products to any
26 person who is not of sufficient age to lawfully use such products, or who
27 shall willingly allow any cigars, tobacco, cigarettes, cigarette
28 material, vapor products, flavored liquids, or alternative nicotine
29 products to be taken from his or her place of business by any person who
30 is not of sufficient age to lawfully use such products, is guilty of a
31 Class III misdemeanor. Any officer, director, or manager having charge or

1 control, either separately or jointly with others, of the business of any
2 corporation which violates sections 28-1418.01, 28-1420 to 28-1429, and
3 28-1429.03, if he or she has knowledge of such violation, shall be
4 subject to the penalties provided in this section. In addition to the
5 penalties provided in this section, such licensee shall be subject to the
6 additional penalty of a revocation and forfeiture of his, her, their, or
7 its license, at the discretion of the court before whom the complaint for
8 violation of such sections may be heard. If such license is revoked and
9 forfeited, all rights under such license shall at once cease and
10 terminate.

11 Sec. 9. Section 28-1427, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 28-1427 (1) Any person under the age of eighteen years who shall
14 obtain cigars, tobacco, cigarettes, cigarette material, ~~vapor products,~~
15 or alternative nicotine products from a licensee by representing that he
16 or she is of the age of eighteen years or over is guilty of a Class V
17 misdemeanor.

18 (2) Any person under the age of twenty-one years who shall obtain
19 vapor products or flavored liquids from a licensee by representing that
20 he or she is of the age of twenty-one years or over is guilty of a Class
21 V misdemeanor.

22 Sec. 10. Section 28-1429.01, Reissue Revised Statutes of Nebraska,
23 is amended to read:

24 28-1429.01 The Legislature finds that the incumbent health risks
25 associated with using cigarettes, other ~~smoking~~ tobacco products, vapor
26 products, and alternative nicotine products have been scientifically
27 proven. The Legislature further finds that the growing number of young
28 people ~~minors~~ who start using these products ~~smoking~~ is staggering and
29 even more abhorrent are the ages at which such use begins ~~children begin~~
30 this ~~deadly habit~~. The Legislature has established an age ~~restrictions~~
31 restriction on the use of such ~~tobacco~~ products ~~by minors~~. To ensure that

1 the use of ~~such tobacco~~ products among young people ~~minors~~ is discouraged
2 to the maximum extent possible, it is the intent of the Legislature to
3 ban the use of vending machines and similar devices to dispense such
4 ~~tobacco~~ products in facilities, buildings, or areas which are open to the
5 general public within Nebraska.

6 Sec. 11. Section 28-1429.02, Reissue Revised Statutes of Nebraska,
7 is amended to read:

8 28-1429.02 (1) Except as provided in subsection (2) of this section,
9 it shall be unlawful to dispense cigarettes, other tobacco products,
10 vapor products, or alternative nicotine products from a vending machine
11 or similar device. Any person violating this section is guilty of a Class
12 III misdemeanor. In addition, upon conviction for a second offense, the
13 court shall order a six-month suspension of the ~~offender's~~ license issued
14 under section 28-1421 ~~to sell tobacco~~, if any, and, upon conviction for a
15 third or subsequent offense, the court shall order the permanent
16 revocation of the ~~offender's~~ license issued under section 28-1421 ~~to sell~~
17 ~~tobacco~~, if any.

18 (2) Cigarettes, other tobacco products, vapor products, or
19 alternative nicotine products may be dispensed from a vending machine or
20 similar device when such machine or device is located in an area, office,
21 business, plant, or factory which is not open to the general public or on
22 the licensed premises of any establishment having a license issued under
23 the Nebraska Liquor Control Act for the sale of alcoholic liquor for
24 consumption on the premises when such machine or device is located in the
25 same room in which the alcoholic liquor is dispensed.

26 (3) Nothing in this section shall be construed to restrict or
27 prohibit a governing body of a city or village from establishing and
28 enforcing ordinances at least as stringent as or more stringent than the
29 provisions of this section.

30 Sec. 12. Section 71-5716, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 71-5716 Sections 71-5716 to 71-5735 and section 14 of this act shall
2 be known and may be cited as the Nebraska Clean Indoor Air Act.

3 Sec. 13. Section 71-5718, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 71-5718 For purposes of the Nebraska Clean Indoor Air Act, the
6 definitions found in sections 71-5719 to 71-5728 and section 14 of this
7 act apply.

8 Sec. 14. Vapor product has the same meaning as in section
9 28-1418.01.

10 Sec. 15. Section 71-5727, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 71-5727 Smoke or smoking means (1) the lighting of any cigarette,
13 cigar, pipe, or other smoking material or the possession of any lighted
14 cigarette, cigar, pipe, or other smoking material, regardless of its
15 composition, or (2) the use of a vapor product.

16 Sec. 16. This act becomes operative on January 1, 2020.

17 Sec. 17. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420,
18 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02,
19 71-5716, 71-5718, and 71-5727, Reissue Revised Statutes of Nebraska, are
20 repealed.