

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 710

Introduced by Cavanaugh, 6.

Read first time January 23, 2019

Committee:

1 A BILL FOR AN ACT relating to tobacco; 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, 28-1429.03, 71-801, 71-7611,
4 77-2601, 77-2602, 77-4001, 77-4007, and 77-4008, Reissue Revised
5 Statutes of Nebraska; to change provisions relating to the sale of
6 tobacco under the Nebraska Criminal Code; to increase and change
7 tobacco taxes as prescribed; to provide for and change the
8 distribution of certain funds; to create a fund and provide for its
9 use; to harmonize provisions; to provide an operative date; to
10 repeal the original sections; and to declare an emergency.
11 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 Whoever, being a minor under the age of eighteen years,
4 shall use any tobacco product ~~smoke cigarettes or cigars, use vapor~~
5 ~~products or alternative nicotine products, or use tobacco in any form~~
6 ~~whatever~~, in this state, shall be guilty of a Class V misdemeanor. Any
7 minor charged with a violation of this section may be free from
8 prosecution if he or she furnishes evidence for the conviction of the
9 person or persons selling or giving him or her the tobacco product
10 ~~cigarettes, cigars, vapor products, alternative nicotine products, or~~
11 ~~tobacco.~~

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

14 28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

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

22 ~~(1)~~ (2) Self-service display means a retail display that contains a
23 tobacco product, ~~a tobacco-derived product, a vapor product, or an~~
24 ~~alternative nicotine product~~ and is located in an area openly accessible
25 to a retailer's customers and from which such customers can readily
26 access the product without the assistance of a salesperson. Self-service
27 display does not include a display case that holds tobacco products,
28 ~~vapor products, or alternative nicotine products behind locked doors;~~

29 ~~(2)~~ (3) Tobacco specialty store means a retail store that (a)
30 derives at least seventy-five percent of its revenue from tobacco
31 products, ~~tobacco-derived products, vapor products, or alternative~~

1 ~~nicotine products~~ and (b) does not permit minors under the age of
2 eighteen years to enter the premises unless accompanied by a parent or
3 legal guardian. ~~;~~ and

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

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

20 28-1419 Whoever shall sell, give, or furnish, in any way, any
21 tobacco in any form whatever, or any cigarettes, or cigarette paper,
22 ~~vapor products, or alternative nicotine products,~~ to any minor under
23 eighteen years of age, is guilty of a Class III misdemeanor for each
24 offense.

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

27 28-1420 It shall be unlawful for any person, partnership, limited
28 liability company, or corporation to sell, keep for sale, or give away in
29 course of trade, any tobacco product ~~cigars, tobacco, cigarettes, or~~
30 ~~cigarette material~~ to anyone without first obtaining a license as
31 provided in sections 28-1421 and 28-1422. It shall also be unlawful for

1 any wholesaler to sell or deliver any tobacco product ~~eigars, tobacco,~~
2 ~~cigarettes, or cigarette material~~ to any person, partnership, limited
3 liability company, or corporation who, at the time of such sale or
4 delivery, is not the recipient of a valid tobacco license for the current
5 year to retail the same as provided in such sections. It shall also be
6 unlawful for any person, partnership, limited liability company, or
7 corporation to purchase or receive, for purposes of resale, any tobacco
8 product ~~eigars, tobacco, cigarettes, or cigarette material~~ if such
9 person, partnership, limited liability company, or corporation is not the
10 recipient of a valid tobacco license to retail such tobacco products at
11 the time the same are purchased or received. Whoever shall be found
12 guilty of violating this section shall be guilty of a Class III
13 misdemeanor for each offense.

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

16 28-1421 Licenses for the sale of any tobacco product ~~eigars,~~
17 ~~tobacco, cigarettes, and cigarette material~~ to persons over the age of
18 eighteen years shall be issued to individuals, partnerships, limited
19 liability companies, and corporations by the clerk or finance director of
20 any city or village and by the county clerk of any county upon
21 application duly made as provided in section 28-1422. The sale of
22 cigarettes or cigarette materials that contain perfumes or drugs in any
23 form is prohibited and is not licensed by the provisions of this section.
24 ~~Only cigarettes and cigarette material containing pure white paper and~~
25 ~~pure tobacco shall be licensed.~~

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

28 28-1423 The term for which such license shall run shall be from the
29 date of filing such application and paying such license fee to and
30 including December 31 of the calendar year in which application for such
31 license is made, and the license fee for any person, partnership, limited

1 liability company, or corporation selling at retail shall be twenty-five
2 dollars in cities of the metropolitan class, fifteen dollars in cities of
3 the primary and first classes, and ten dollars in cities of all other
4 classes and in towns and villages and in locations outside of the limits
5 of cities, towns and villages. Any person, partnership, limited liability
6 company, or corporation selling annually in the aggregate more than one
7 hundred fifty thousand cigars, packages of cigarettes, and packages of
8 tobacco products in any form, at wholesale, shall pay a license fee of
9 one hundred dollars, and if such combined annual sales amount to less
10 than one hundred fifty thousand cigars, packages of cigarettes and
11 packages of tobacco, the annual license fee shall be fifteen dollars. No
12 wholesaler's license shall be issued in any year on a less basis than one
13 hundred dollars per annum unless the applicant for the same shall file
14 with such application a statement duly sworn to by himself or herself, or
15 if applicant is a partnership, by a member of the firm, or if a limited
16 liability company, by a member or manager of the company, or if a
17 corporation, by an officer or manager thereof, that in the past such
18 wholesaler's combined sales of cigars, packages of cigarettes, and
19 packages of tobacco in every form have not exceeded in the aggregate one
20 hundred fifty thousand annually, and that such sales will not exceed such
21 aggregate amount for the current year for which the license is to issue.
22 Any person swearing falsely in such affidavit shall be guilty of perjury
23 and upon conviction thereof shall be punished as provided by section
24 28-915 and such wholesaler's license shall be revoked until the full
25 license fee of one hundred dollars is paid. If application for license is
26 made after July 1 of any calendar year, the fee shall be one-half of the
27 fee provided in this section.

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

30 28-1424 The license, provided for in sections 28-1421 and 28-1422
31 when issued, shall authorize the sale of any tobacco product ~~cigars,~~

1 ~~tobacco, cigarettes, and cigarette material~~ by the licensee and
2 employees, to persons over the age of eighteen years, at the place of
3 business described in such license for the term therein authorized,
4 unless the same be forfeited as provided in section 28-1425.

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

7 28-1425 Any licensee who shall sell, give, or furnish in any way to
8 any person under the age of eighteen years, or who shall willingly allow
9 to be taken from his or her place of business by any person under the age
10 of eighteen years, any tobacco cigars, ~~tobacco, cigarettes, cigarette~~
11 ~~material, vapor products, or alternative nicotine~~ products is guilty of a
12 Class III misdemeanor. Any officer, director, or manager having charge or
13 control, either separately or jointly with others, of the business of any
14 corporation which violates sections 28-1418.01, 28-1420 to 28-1429, and
15 28-1429.03, if he or she has knowledge of such violation, shall be
16 subject to the penalties provided in this section. In addition to the
17 penalties provided in this section, such licensee shall be subject to the
18 additional penalty of a revocation and forfeiture of his, her, their, or
19 its license, at the discretion of the court before whom the complaint for
20 violation of such sections may be heard. If such license is revoked and
21 forfeited, all rights under such license shall at once cease and
22 terminate.

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

25 28-1427 Any person under the age of eighteen years who shall obtain
26 any tobacco cigars, ~~tobacco, cigarettes, cigarette material, vapor~~
27 ~~products, or alternative nicotine~~ products from a licensee by
28 representing that he or she is of the age of eighteen years or over is
29 guilty of a Class V misdemeanor.

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

1 28-1429.01 The Legislature finds that the incumbent health risks
2 associated with smoking tobacco products have been scientifically proven.
3 The Legislature further finds that the growing number of minors who start
4 using tobacco products ~~smoking~~ is staggering and even more abhorrent are
5 the ages at which such children begin this deadly habit. The Legislature
6 has established an age restriction on the use of tobacco products by
7 minors. To ensure that the use of tobacco products among minors is
8 discouraged to the maximum extent possible, it is the intent of the
9 Legislature to ban the use of vending machines and similar devices to
10 dispense tobacco products in facilities, buildings, or areas which are
11 open to the general public within Nebraska.

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

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

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

31 (3) Nothing in this section shall be construed to restrict or

1 prohibit a governing body of a city or village from establishing and
2 enforcing ordinances at least as stringent as or more stringent than the
3 provisions of this section.

4 Sec. 12. Section 28-1429.03, Reissue Revised Statutes of Nebraska,
5 is amended to read:

6 28-1429.03 (1) Except as provided in subsection (2) of this section
7 and section 28-1429.02, it shall be unlawful to sell or distribute any
8 ~~cigarettes, cigars, vapor products, alternative nicotine products, or~~
9 tobacco products in any form whatever through a self-service display. Any
10 person violating this section is guilty of a Class III misdemeanor. In
11 addition, upon conviction for a second or subsequent offense within a
12 twelve-month period, the court shall order a six-month suspension of the
13 license issued under section 28-1421.

14 (2) ~~Tobacco products Cigarettes, cigars, vapor products, alternative~~
15 ~~nicotine products, or tobacco~~ in any form whatever may be sold or
16 distributed in a self-service display that is located in a tobacco
17 specialty store or cigar shop as defined in section 53-103.08.

18 Sec. 13. Section 71-801, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 71-801 Sections 71-801 to 71-831 and section 14 of this act shall be
21 known and may be cited as the Nebraska Behavioral Health Services Act.

22 Sec. 14. The Behavioral Health Provider Rate Stabilization Fund is
23 created. The fund shall consist of money credited to the fund pursuant to
24 section 77-2602, any gifts, grants, or donations from any source, and any
25 other funds appropriated by the Legislature. The fund shall be used to
26 support reimbursement of behavioral health services providers through
27 provider rates within, but not limited to, the Children's Health
28 Insurance Program, the Medical Assistance Act, the Nebraska Behavioral
29 Health Services Act, and the Nebraska Community Aging Services Act. The
30 money credited to the fund pursuant to section 77-2602 shall be used to
31 the greatest extent possible to leverage federal funds for behavioral

1 health services provider rate reimbursement under such program and acts.
2 The Legislature finds that, in order to provide Nebraska residents with
3 appropriate access to behavioral health services and providers, provider
4 rates need to be adequate and stable in order to attract and maintain the
5 number and variety of behavioral health services providers necessary to
6 maintain an adequate behavioral health services provider network. Any
7 money in the fund available for investment shall be invested by the state
8 investment officer pursuant to the Nebraska Capital Expansion Act and the
9 Nebraska State Funds Investment Act.

10 Sec. 15. Section 71-7611, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 71-7611 (1) The Nebraska Health Care Cash Fund is created. The State
13 Treasurer shall transfer (a) sixty million three hundred thousand dollars
14 on or before July 15, 2014, (b) sixty million three hundred fifty
15 thousand dollars on or before July 15, 2015, (c) sixty million three
16 hundred fifty thousand dollars on or before July 15, 2016, (d) sixty
17 million seven hundred thousand dollars on or before July 15, 2017, (e)
18 five hundred thousand dollars on or before May 15, 2018, (f) sixty-one
19 million six hundred thousand dollars on or before July 15, 2018, (g)
20 sixty-one million three hundred fifty thousand dollars on or before July
21 15, 2019, and (h) sixty million four hundred fifty thousand dollars on or
22 before every July 15 thereafter from the Nebraska Medicaid
23 Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust
24 Fund to the Nebraska Health Care Cash Fund, except that such amount shall
25 be reduced by the amount of the unobligated balance in the Nebraska
26 Health Care Cash Fund at the time the transfer is made. The state
27 investment officer shall advise the State Treasurer on the amounts to be
28 transferred first from the Nebraska Medicaid Intergovernmental Trust Fund
29 until the fund balance is depleted and from the Nebraska Tobacco
30 Settlement Trust Fund thereafter in order to sustain such transfers in
31 perpetuity. The state investment officer shall report electronically to

1 the Legislature on or before October 1 of every even-numbered year on the
2 sustainability of such transfers. The Nebraska Health Care Cash Fund
3 shall also include money received pursuant to section 77-2602. Except as
4 otherwise provided by law, no more than the amounts specified in this
5 subsection may be appropriated or transferred from the Nebraska Health
6 Care Cash Fund in any fiscal year.

7 The State Treasurer shall transfer ten million dollars from the
8 Nebraska Medicaid Intergovernmental Trust Fund to the General Fund on
9 June 28, 2018, and June 28, 2019.

10 It is the intent of the Legislature that no additional programs are
11 funded through the Nebraska Health Care Cash Fund until funding for all
12 programs with an appropriation from the fund during FY2012-13 are
13 restored to their FY2012-13 levels.

14 (2) Any money in the Nebraska Health Care Cash Fund available for
15 investment shall be invested by the state investment officer pursuant to
16 the Nebraska Capital Expansion Act and the Nebraska State Funds
17 Investment Act.

18 (3) The University of Nebraska and postsecondary educational
19 institutions having colleges of medicine in Nebraska and their affiliated
20 research hospitals in Nebraska, as a condition of receiving any funds
21 appropriated or transferred from the Nebraska Health Care Cash Fund,
22 shall not discriminate against any person on the basis of sexual
23 orientation.

24 (4) The State Treasurer shall transfer fifty thousand dollars on or
25 before July 15, 2016, from the Nebraska Health Care Cash Fund to the
26 Board of Regents of the University of Nebraska for the University of
27 Nebraska Medical Center. It is the intent of the Legislature that these
28 funds be used by the College of Public Health for workforce training.

29 (5) It is the intent of the Legislature that the cost of the staff
30 and operating costs necessary to carry out the changes made by Laws 2018,
31 LB439, and not covered by fees or federal funds shall be funded from the

1 Nebraska Health Care Cash Fund for fiscal years 2018-19 and 2019-20.

2 (6)(a) Beginning with fiscal year 2020-21, and every fiscal year
3 thereafter, one dollar and fifty cents of the two dollars and fourteen
4 cents special privilege tax under subsection (1) of section 77-2602 shall
5 be distributed as follows:

6 (i) In addition to the forty-nine cents of such tax under subsection
7 (2) of section 77-2602, seventeen percent to the General Fund;

8 (ii) One-half of one percent to the Nebraska Outdoor Recreation
9 Development Cash Fund;

10 (iii) One percent to the University of Nebraska Medical Center and
11 the Creighton University Medical Center for cancer research;

12 (iv) Two and one-half percent to the Building Renewal Allocation
13 Fund;

14 (v) Three percent equally distributed to the University of Nebraska
15 Medical Center, Creighton University Medical Center, and Boys Town Center
16 for Neurobehavioral Research in Children for children's behavioral
17 research;

18 (vi) Twenty-five percent for medicaid expansion;

19 (vii) Four percent to Nebraska public health departments;

20 (viii) Two percent to the University of Nebraska Medical Center
21 College of Public Health;

22 (ix) Two percent for federally qualified health centers;

23 (x) Five percent for smoking cessation and addiction services;

24 (xi) One percent for area health education centers;

25 (xii) Four percent for cancer and smoking-related disease research;

26 (xiii) One percent to the Behavioral Health Education Center of
27 Nebraska at the University of Nebraska Medical Center;

28 (xiv) One percent for emergency protective custody services and
29 resources;

30 (xv) Two percent to the Behavioral Health Provider Rate
31 Stabilization Fund for behavioral health rate basing;

1 (xvi) Six percent to the State Children's Health Insurance Program
2 to increase eligibility by thirty-seven percent;

3 (xvii) Two percent to improve health care delivery systems under the
4 Patient Safety Improvement Act;

5 (xviii) One percent on emergency medical services workforce training
6 and recruitment;

7 (xix) One percent on other emergency medical services sustainability
8 initiatives;

9 (xx) Two and one-half percent for paid family and medical leave
10 start-up costs;

11 (xxi) Two percent to the Nebraska Early Childhood Professional
12 Record System;

13 (xxii) Five percent for grades kindergarten through twelve
14 education;

15 (xxiii) Two percent for health services in county corrections;

16 (xxiv) One-half percent to the Human Trafficking Victim Assistance
17 Fund;

18 (xxv) Two and one-half percent for all telehealth services;

19 (xxvi) Four percent for beds in county hospitals and county-owned
20 health centers for mental health treatment in counties containing a city
21 of the metropolitan class and a county-owned health center; and

22 (xxvii) One-half percent to the Health and Human Services Cash Fund
23 for traumatic brain injury research.

24 Sec. 16. Section 77-2601, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 77-2601 For purposes of sections 77-2601 to 77-2615:

27 (1) Person means and includes every individual, firm, association,
28 joint-stock company, partnership, limited liability company, syndicate,
29 corporation, trustee, or other legal entity, including any Indian tribe
30 or instrumentality thereof;

31 (2) Wholesale dealer means a person who sells cigarettes to licensed

1 retail dealers other than branch stores operated by or connected with
2 such wholesale dealer for purposes of resale and is licensed under
3 section 28-1423;

4 (3) Retail dealer includes every person other than a wholesale
5 dealer engaged in the business of selling cigarettes in this state
6 irrespective of quantity, amount, or number of sales thereof;

7 (4) Tax Commissioner means the Tax Commissioner of the State of
8 Nebraska;

9 (5) Cigarette means any roll for smoking made wholly or in part of
10 tobacco that weights four and one-half pounds or less per thousand and
11 whether or not such tobacco is flavored, adulterated, or mixed with any
12 other ingredient and (a) the wrapper or cover of which is made of paper
13 or any other material excepting tobacco or (b) wrapped in any substance
14 containing tobacco, however labeled or named, which, because of its
15 appearance, size, the type of tobacco used in the filler, or its
16 packaging, pricing, marketing, or labeling, is likely to be offered to or
17 purchased by consumers as a cigarette described in subdivision (5)(a) of
18 this section irrespective of size or shape and whether or not such
19 tobacco is flavored, adulterated, or mixed with any other ingredient, the
20 wrapper or cover of which is made of paper or any other material
21 excepting tobacco;

22 (6) Consumer means any person, firm, association, partnership,
23 limited liability company, joint-stock company, syndicate, or corporation
24 not having a license to sell cigarettes;

25 (7) Sales entity affiliate means an entity that (a) sells cigarettes
26 that it acquires directly from a manufacturer or importer and (b) is
27 affiliated with that manufacturer or importer. Entities are affiliated
28 with each other if one directly, or indirectly through one or more
29 intermediaries, controls or is controlled by or is under common control
30 with the other. Unless provided otherwise, manufacturer or importer
31 includes any sales entity affiliate of that manufacturer or importer;

1 (8) Stamping agent has the same meaning as in section 69-2705; and

2 (9) Indian country means (a) all land in this state within the
3 limits of any Indian reservation under the jurisdiction of the United
4 States, notwithstanding the issuance of any patent, including rights-of-
5 way running through the reservation, (b) all dependent Indian communities
6 within the borders of this state, and (c) all Indian allotments in this
7 state, the Indian titles to which have not been extinguished, including
8 rights-of-way running through such allotments.

9 Sec. 17. Section 77-2602, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 77-2602 (1) Every stamping agent engaged in distributing or selling
12 cigarettes at wholesale in this state shall pay to the Tax Commissioner
13 of this state a special privilege tax. This shall be in addition to all
14 other taxes. It shall be paid prior to or at the time of the sale, gift,
15 or delivery to the retail dealer in the several amounts as follows: On
16 each package of cigarettes containing not more than twenty cigarettes,
17 two dollars and fourteen ~~sixty-four~~ cents per package; and on packages
18 containing more than twenty cigarettes, the same tax as provided on
19 packages containing not more than twenty cigarettes for the first twenty
20 cigarettes in each package and a tax of one-twentieth of the tax on the
21 first twenty cigarettes on each cigarette in excess of twenty cigarettes
22 in each package.

23 (2) Beginning October 1, 2004, the State Treasurer shall place the
24 equivalent of forty-nine cents of such tax in the General Fund. The State
25 Treasurer shall reduce the amount placed in the General Fund under this
26 subsection by the amount prescribed in subdivision (3)(d) of this
27 section. For purposes of this section, the equivalent of a specified
28 number of cents of the tax shall mean that portion of the proceeds of the
29 tax equal to the specified number divided by the tax rate per package of
30 cigarettes containing not more than twenty cigarettes.

31 (3) The State Treasurer shall distribute the remaining proceeds of

1 such tax in the following order:

2 (a) First, beginning July 1, 1980, the State Treasurer shall place
3 the equivalent of one cent of such tax in the Nebraska Outdoor Recreation
4 Development Cash Fund. For fiscal year distributions occurring after
5 FY1998-99, the distribution under this subdivision shall not be less than
6 the amount distributed under this subdivision for FY1997-98. Any money
7 needed to increase the amount distributed under this subdivision to the
8 FY1997-98 amount shall reduce the distribution to the General Fund;

9 (b) Second, beginning July 1, 1993, the State Treasurer shall place
10 the equivalent of three cents of such tax in the Health and Human
11 Services Cash Fund to carry out sections 81-637 to 81-640. For fiscal
12 year distributions occurring after FY1998-99, the distribution under this
13 subdivision shall not be less than the amount distributed under this
14 subdivision for FY1997-98. Any money needed to increase the amount
15 distributed under this subdivision to the FY1997-98 amount shall reduce
16 the distribution to the General Fund;

17 (c) Third, beginning October 1, 2002, and continuing until all the
18 purposes of the Deferred Building Renewal Act have been fulfilled, the
19 State Treasurer shall place the equivalent of seven cents of such tax in
20 the Building Renewal Allocation Fund. The distribution under this
21 subdivision shall not be less than the amount distributed under this
22 subdivision for FY1997-98. Any money needed to increase the amount
23 distributed under this subdivision to the FY1997-98 amount shall reduce
24 the distribution to the General Fund;

25 (d) Fourth, until July 1, 2009, the State Treasurer shall place in
26 the Municipal Infrastructure Redevelopment Fund the sum of five hundred
27 twenty thousand dollars each fiscal year to carry out the Municipal
28 Infrastructure Redevelopment Fund Act. The Legislature shall appropriate
29 the sum of five hundred twenty thousand dollars each year for fiscal year
30 2003-04 through fiscal year 2008-09;

31 (e) Fifth, beginning July 1, 2001, and continuing until June 30,

1 2008, the State Treasurer shall place the equivalent of two cents of such
2 tax in the Information Technology Infrastructure Fund. The distribution
3 under this subdivision shall not be less than two million fifty thousand
4 dollars. Any money needed to increase the amount distributed under this
5 subdivision to two million fifty thousand dollars shall reduce the
6 distribution to the General Fund;

7 (f) Sixth, beginning July 1, 2001, and continuing until June 30,
8 2016, the State Treasurer shall place one million dollars each fiscal
9 year in the City of the Primary Class Development Fund. If necessary, the
10 State Treasurer shall reduce the distribution of tax proceeds to the
11 General Fund pursuant to subsection (2) of this section by such amount
12 required to fulfill the one million dollars to be distributed pursuant to
13 this subdivision;

14 (g) Seventh, beginning July 1, 2001, and continuing until June 30,
15 2016, the State Treasurer shall place one million five hundred thousand
16 dollars each fiscal year in the City of the Metropolitan Class
17 Development Fund. If necessary, the State Treasurer shall reduce the
18 distribution of tax proceeds to the General Fund pursuant to subsection
19 (2) of this section by such amount required to fulfill the one million
20 five hundred thousand dollars to be distributed pursuant to this
21 subdivision;

22 (h) Eighth, beginning July 1, 2008, and continuing until June 30,
23 2009, the State Treasurer shall place the equivalent of two million fifty
24 thousand dollars of such tax in the Nebraska Public Safety Communication
25 System Cash Fund. Beginning July 1, 2009, and continuing until June 30,
26 2016, the State Treasurer shall place the equivalent of two million five
27 hundred seventy thousand dollars of such tax in the Nebraska Public
28 Safety Communication System Cash Fund. Beginning July 1, 2016, and every
29 fiscal year thereafter, the State Treasurer shall place the equivalent of
30 three million eight hundred twenty thousand dollars of such tax in the
31 Nebraska Public Safety Communication System Cash Fund. If necessary, the

1 State Treasurer shall reduce the distribution of tax proceeds to the
2 General Fund pursuant to subsection (2) of this section by such amount
3 required to fulfill the distribution pursuant to this subdivision; and

4 (i) Ninth, beginning July 1, ~~2020~~ 2016, and every fiscal year
5 thereafter, the State Treasurer shall place the equivalent of forty-seven
6 million four hundred one million two hundred fifty thousand dollars of
7 such tax in the Nebraska Health Care Cash Fund. In addition, the State
8 Treasurer shall place the equivalent of thirteen million dollars of such
9 tax in the Nebraska Health Care Cash Fund to ensure future sustainability
10 of the fund. If necessary, the State Treasurer shall reduce the
11 distribution of tax proceeds to the General Fund pursuant to subsection
12 (2) of this section by such amount required to fulfill the distribution
13 pursuant to this subdivision.

14 (4) If, after distributing the proceeds of such tax pursuant to
15 subsections (2) and (3) of this section, any proceeds of such tax remain,
16 the State Treasurer shall place such remainder in the Nebraska Capital
17 Construction Fund.

18 (5) The Legislature hereby finds and determines that the projects
19 funded from the Municipal Infrastructure Redevelopment Fund and the
20 Building Renewal Allocation Fund are of critical importance to the State
21 of Nebraska. It is the intent of the Legislature that the allocations and
22 appropriations made by the Legislature to such funds or, in the case of
23 allocations for the Municipal Infrastructure Redevelopment Fund, to the
24 particular municipality's account not be reduced until all contracts and
25 securities relating to the construction and financing of the projects or
26 portions of the projects funded from such funds or accounts of such funds
27 are completed or paid or, in the case of the Municipal Infrastructure
28 Redevelopment Fund, the earlier of such date or July 1, 2009, and that
29 until such time any reductions in the cigarette tax rate made by the
30 Legislature shall be simultaneously accompanied by equivalent reductions
31 in the amount dedicated to the General Fund from cigarette tax revenue.

1 Any provision made by the Legislature for distribution of the proceeds of
2 the cigarette tax for projects or programs other than those to (a) the
3 General Fund, (b) the Nebraska Outdoor Recreation Development Cash Fund,
4 (c) the Health and Human Services Cash Fund, (d) the Municipal
5 Infrastructure Redevelopment Fund, (e) the Building Renewal Allocation
6 Fund, (f) the Information Technology Infrastructure Fund, (g) the City of
7 the Primary Class Development Fund, (h) the City of the Metropolitan
8 Class Development Fund, (i) the Nebraska Public Safety Communication
9 System Cash Fund, and (j) the Nebraska Health Care Cash Fund shall not be
10 made a higher priority than or an equal priority to any of the programs
11 or projects specified in subdivisions (a) through (j) of this subsection.

12 Sec. 18. Section 77-4001, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 77-4001 Sections 77-4001 to 77-4025 and section 20 of this act shall
15 be known and may be cited as the Tobacco Products Tax Act.

16 Sec. 19. Section 77-4007, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-4007 (1) Tobacco product means:

19 (a) Any product that is made from or derived from tobacco, or that
20 contains nicotine, that is intended for human consumption or is likely to
21 be consumed, whether smoked, heated, chewed, absorbed, dissolved,
22 inhaled, or ingested by any other means, including, but not limited to, a
23 cigar, pipe tobacco, chewing tobacco, snuff, or snus.

24 (b) Electronic smoking devices and any component or accessory used
25 in the consumption of a tobacco product, such as filters, rolling papers,
26 pipes, and substances used in electronic smoking devices, whether or not
27 they contain nicotine.

28 (2) Tobacco product does not include:

29 (a) Cigarettes as defined in section 77-2601.

30 (b) Drugs, devices, or combination products authorized for sale by
31 the federal Food and Drug Administration, as those terms are defined in

1 the Federal Food, Drug and Cosmetic Act.

2 ~~Tobacco products shall mean (1) cigars, (2) cheroots, (3) stogies,~~
3 ~~(4) periques, (5) granulated, plug cut, crimp cut, ready rubbed, and~~
4 ~~other smoking tobacco, (6) snuff, (7) snuff flour, (8) cavendish, (9)~~
5 ~~plug and twist tobacco, (10) fine cut and other chewing tobacco, (11)~~
6 ~~shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, and~~
7 ~~(12) other kinds and forms of tobacco, prepared in such manner as to be~~
8 ~~suitable for chewing or smoking in a pipe or otherwise or both for~~
9 ~~chewing and smoking, except that tobacco products shall not mean~~
10 ~~cigarettes as defined in section 77-2601.~~

11 Sec. 20. (1) Electronic smoking device means any device that can be
12 used to deliver aerosolized or vaporized nicotine to the person inhaling
13 from the device, including, but not limited to, an e-cigarette, e-cigar,
14 e-pipe, vape pen, or e-hookah. Electronic smoking device includes any
15 component, part, or accessory of such a device, whether or not sold
16 separately, and includes any substance intended to be aerosolized or
17 vaporized during the use of the device.

18 (2) Electronic smoking device does not include:

19 (a) Any battery or battery charger when sold separately; or

20 (b) Drugs, devices, or combination products authorized for sale by
21 the federal Food and Drug Administration, as those terms are defined in
22 the Federal Food, Drug and Cosmetic Act.

23 Sec. 21. Section 77-4008, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 77-4008 (1)(a) A tax is hereby imposed upon the first owner of
26 tobacco products to be sold in this state.

27 (b) The tax on snuff shall be sixty-five percent of (i) the purchase
28 price of such tobacco products paid by the first owner or (ii) the price
29 at which a first owner who made, manufactured, or fabricated the tobacco
30 products sells the items to others, except for any snuff whose applicable
31 tax per one and two-tenths ounces net weight of product is less than the

1 cigarette tax as provided in section 77-2602, the tax on snuff shall be
2 the same as the cigarette tax provided in section 77-2602 ~~forty-four~~
3 ~~cents per ounce and a proportionate tax at the like rate on all~~
4 ~~fractional parts of an ounce.~~ Such tax shall be computed based on the net
5 weight as listed by the manufacturer.

6 (c) The tax on tobacco products other than snuff shall be sixty-five
7 ~~twenty~~ percent of (i) the purchase price of such tobacco products paid by
8 the first owner or (ii) the price at which a first owner who made,
9 manufactured, or fabricated the tobacco product sells the items to
10 others.

11 (d) The tax on tobacco products shall be in addition to all other
12 taxes.

13 (2) Whenever any person who is licensed under section 77-4009
14 purchases tobacco products from another person licensed under section
15 77-4009, the seller shall be liable for the payment of the tax.

16 (3) Amounts collected pursuant to this section shall be used and
17 distributed pursuant to section 77-4025.

18 Sec. 22. This act becomes operative on July 1, 2019.

19 Sec. 23. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420,
20 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02,
21 28-1429.03, 71-801, 71-7611, 77-2601, 77-2602, 77-4001, 77-4007, and
22 77-4008, Reissue Revised Statutes of Nebraska, are repealed.

23 Sec. 24. Since an emergency exists, this act takes effect when
24 passed and approved according to law.