

AMENDMENTS TO LB118

Introduced by Schumacher, 22.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Section 28-1429.03, Revised Statutes Cumulative
4 Supplement, 2014, is amended to read:

5 28-1429.03 (1) Except as provided in subsection (2) of this section
6 and section 28-1429.02, it shall be unlawful to sell or distribute
7 cigarettes, cigars, vapor products, alternative nicotine products, or
8 tobacco in any form whatever through a self-service display. Any person
9 violating this section is guilty of a Class III misdemeanor. In addition,
10 upon conviction for a second or subsequent offense within a twelve-month
11 period, the court shall order a six-month suspension of the license
12 issued under section 28-1421.

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

17 Sec. 2. Section 53-101, Revised Statutes Cumulative Supplement,
18 2014, is amended to read:

19 53-101 Sections 53-101 to 53-1,122 and sections 5 and 6 of this act
20 shall be known and may be cited as the Nebraska Liquor Control Act.

21 Sec. 3. Section 53-103.08, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 53-103.08 Cigar shop ~~bar~~ means an establishment operated by a holder
24 of a Class C liquor license which:

25 (1) Does not sell food;

26 (2) In addition to selling alcohol, annually receives ten percent or
27 more of its gross revenue from the sale of cigars, ~~and~~ other tobacco

1 products, and tobacco-related products, except from the sale of
2 cigarettes as defined in section 69-2702. A cigar shop ~~bar~~ shall not
3 discount alcohol if sold in combination with cigars or other tobacco
4 products and tobacco-related products;

5 (3) Has a walk-in humidor on the premises; and

6 (4) Does not permit the smoking of cigarettes.

7 Sec. 4. Section 53-131, Revised Statutes Cumulative Supplement,
8 2014, is amended to read:

9 53-131 (1) Any person desiring to obtain a new license to sell
10 alcoholic liquor at retail, a craft brewery license, or a microdistillery
11 license shall file with the commission:

12 (a) An application in triplicate original upon forms prescribed by
13 the commission—~~prescribes~~, including the information required by
14 subsection (3) of this section for an application to operate a cigar shop
15 ~~bar~~;

16 (b) The license fee if under sections 53-124 and 53-124.01 such fee
17 is payable to the commission, which fee shall be returned to the
18 applicant if the application is denied; and

19 (c) The nonrefundable application fee in the sum of four hundred
20 dollars, except that the nonrefundable application fee for an application
21 for a cigar shop ~~bar~~ shall be one thousand dollars.

22 (2) The commission shall notify the clerk of the city or village in
23 which such license is sought or, if the license sought is not sought
24 within a city or village, the county clerk of the county in which such
25 license is sought, of the receipt of the application and shall include
26 one copy of the application with the notice. No such license shall be
27 issued or denied by the commission until the expiration of the time
28 allowed for the receipt of a recommendation of denial or an objection
29 requiring a hearing under subdivision (1)(a) or (b) of section 53-133.
30 During the period of forty-five days after the date of receipt by mail or
31 electronic delivery of such application from the commission, the local

1 governing body of such city, village, or county may make and submit to
2 the commission recommendations relative to the granting or refusal to
3 grant such license to the applicant.

4 (3) For an application to operate a cigar shop bar, the application
5 shall include proof of the cigar shop's bar's annual gross revenue as
6 requested by the commission and such other information as requested by
7 the commission to establish the intent to operate as a cigar shop bar.
8 The commission may adopt and promulgate rules and regulations to regulate
9 cigar shops. The rules and regulations existing on August 1, 2014,
10 applicable to cigar bars shall apply to cigar shops until amended or
11 repealed by the commission bars.

12 (4) For renewal of a license under this section, a licensee shall
13 file with the commission an application, the license fee as provided in
14 subdivision (1)(b) of this section, and a renewal fee of forty-five
15 dollars.

16 Sec. 5. (1) The Legislature finds that allowing smoking in cigar
17 shops as a limited exception to the Nebraska Clean Indoor Air Act does
18 not interfere with the original intent that the general public and
19 employees not be unwillingly subjected to second-hand smoke. This
20 exception poses a de minimis restriction on the public and employees
21 given the limited number of cigar shops compared to other businesses that
22 sell alcohol, cigars, and pipe tobacco, and any member of the public
23 should reasonably expect that there would be second-hand smoke in a cigar
24 shop given the nature of the business and could choose to avoid such
25 exposure.

26 (2) The Legislature finds that (a) cigars and pipe tobacco have
27 different characteristics than other forms of tobacco such as cigarettes,
28 (b) cigars are customarily paired with various spirits such as cognac,
29 single malt whisky, bourbon, rum, rye, port, and others, and (c) unlike
30 cigarette smokers, cigar and pipe smokers may take an hour or longer to
31 enjoy a cigar or pipe while cigarettes simply serve as a mechanism for

1 delivering nicotine. Cigars paired with selected liquor creates a synergy
2 unique to the particular pairing similar to wine paired with particular
3 foods. Cigars are a pure, natural product wrapped in a tobacco leaf that
4 is typically not inhaled in order to enjoy the taste of the smoke, unlike
5 cigarettes that tend to be processed with additives and wrapped in paper
6 and are inhaled. Cigars have a different taste and smell than cigarettes
7 due to the fermentation process cigars go through during production.
8 Cigars tend to cost considerably more than cigarettes, and their quality
9 and characteristics vary depending on the type of tobacco plant, the
10 geography and climate where the tobacco was grown, and the overall
11 quality of the manufacturing process. Not only does the customized
12 blending of the tobacco influence the smoking experience, so does the
13 freshness of the cigars, which is dependent on how the cigars were stored
14 and displayed. These variables are similar to fine wines, which can also
15 be very expensive to purchase. It is all of these variables that warrant
16 a customer wanting to sample the product before making such a substantial
17 purchase.

18 (3) The Legislature finds that exposure to second-hand smoke is
19 inherent in the selling and sampling of cigars and pipe tobacco and that
20 this exposure is inextricably connected to the nature of selling this
21 legal product, similar to other inherent hazards in other professions and
22 employment.

23 (4) It is the intent of the Legislature to allow cigar and pipe
24 smoking in cigar shops that meet specific statutory criteria not
25 inconsistent with the fundamental nature of the business. This exception
26 to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance
27 with the intent of the act to protect public places and places of
28 employment.

29 Sec. 6. (1) The holder of a cigar shop license shall not allow a
30 person under twenty-one years of age to smoke or purchase any product in
31 the cigar shop.

1 (2) The licensee shall post a sign on all entrances to the cigar
2 shop, on the outside of each door, in a conspicuous location slightly
3 above or next to the door, with the following statement: SMOKING OF
4 CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES
5 IS NOT ALLOWED.

6 (3) Beginning November 1, 2015, the licensee shall provide to the
7 commission a copy of a waiver signed prior to employment by each employee
8 on a form prescribed by the commission. The waiver shall expressly notify
9 the employee that he or she will be exposed to second-hand smoke, and the
10 employee shall acknowledge that he or she understands the risks of
11 exposure to second-hand smoke.

12 Sec. 7. Section 53-1,120.01, Reissue Revised Statutes of Nebraska,
13 is amended to read:

14 53-1,120.01 No county resolution or city ordinance that prohibits
15 smoking in indoor areas shall apply to cigar shops ~~bars~~.

16 Sec. 8. Section 71-5716, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 71-5716 Sections 71-5716 to 71-5734 and section 11 of this act shall
19 be known and may be cited as the Nebraska Clean Indoor Air Act.

20 Sec. 9. Section 71-5717, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 71-5717 The purpose of the Nebraska Clean Indoor Air Act is to
23 protect the public health and welfare by prohibiting smoking in public
24 places and places of employment with limited exceptions for guestrooms
25 and suites, research, tobacco retail outlets, and cigar shops. The
26 limited exceptions permit smoking in public places where the public would
27 reasonably expect to find persons smoking, including guestrooms and
28 suites which are subject to expectations of privacy like private
29 residences, institutions engaged in research related to smoking, and
30 tobacco retail outlets and cigar shops which provide the public legal
31 retail outlets to sample, use, and purchase tobacco products and products

1 related to smoking. The act shall not be construed to prohibit or
2 otherwise restrict smoking in outdoor areas. The act shall not be
3 construed to permit smoking where it is prohibited or otherwise
4 restricted by other applicable law, ordinance, or resolution. The act
5 shall be liberally construed to further its purpose.

6 Sec. 10. Section 71-5730, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 71-5730 (1) The following indoor areas are exempt from section
9 71-5729:

10 (a 1) Guestrooms and suites that are rented to guests and that are
11 designated as smoking rooms, except that not more than twenty percent of
12 rooms rented to guests in an establishment may be designated as smoking
13 rooms. All smoking rooms on the same floor shall be contiguous, and smoke
14 from such rooms shall not infiltrate into areas where smoking is
15 prohibited under the Nebraska Clean Indoor Air Act;

16 (b 2) Indoor areas used in connection with a research study on the
17 health effects of smoking conducted in a scientific or analytical
18 laboratory under state or federal law or at a college or university
19 approved by the Coordinating Commission for Postsecondary Education;

20 (c 3) Tobacco retail outlets; and

21 (d 4) Cigar shops ~~bars~~ as defined in section 53-103.08.

22 (2)(a) The Legislature finds that allowing smoking in tobacco retail
23 outlets as a limited exception to the Nebraska Clean Indoor Air Act does
24 not interfere with the original intent that the general public and
25 employees not be unwillingly subjected to second-hand smoke since the
26 general public does not frequent tobacco retail outlets and should
27 reasonably expect that there would be second-hand smoke in tobacco retail
28 outlets and could choose to avoid such exposure. The products that
29 tobacco retail outlets sell are legal for customers who meet the age
30 requirement. Customers should be able to try them within the tobacco
31 retail outlet, especially given the way that tobacco customization may

1 occur in how tobacco is blended and cigars are produced. The Legislature
2 finds that exposure to second-hand smoke is inherent in the selling and
3 sampling of cigars and pipe tobacco and that this exposure is
4 inextricably connected to the nature of selling this legal product,
5 similar to other inherent hazards in other professions and employment.

6 (b) It is the intent of the Legislature to allow cigar and pipe
7 smoking in tobacco retail outlets that meet specific statutory criteria
8 not inconsistent with the fundamental nature of the business. This
9 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in
10 accordance with the intent of the act to protect public places and places
11 of employment.

12 (3)(a) The Legislature finds that allowing smoking in cigar shops as
13 a limited exception to the Nebraska Clean Indoor Air Act does not
14 interfere with the original intent that the general public and employees
15 not be unwillingly subjected to second-hand smoke. This exception poses a
16 de minimis restriction on the public and employees given the limited
17 number of cigar shops compared to other businesses that sell alcohol,
18 cigars, and pipe tobacco, and any member of the public should reasonably
19 expect that there would be second-hand smoke in a cigar shop given the
20 nature of the business and could choose to avoid such exposure.

21 (b) The Legislature finds that (i) cigars and pipe tobacco have
22 different characteristics than other forms of tobacco such as cigarettes,
23 (ii) cigars are customarily paired with various spirits such as cognac,
24 single malt whisky, bourbon, rum, rye, port, and others, and (iii) unlike
25 cigarette smokers, cigar and pipe smokers may take an hour or longer to
26 enjoy a cigar or pipe while cigarettes simply serve as a mechanism for
27 delivering nicotine. Cigars paired with selected liquor creates a synergy
28 unique to the particular pairing similar to wine paired with particular
29 foods. Cigars are a pure, natural product wrapped in a tobacco leaf that
30 is typically not inhaled in order to enjoy the taste of the smoke, unlike
31 cigarettes that tend to be processed with additives and wrapped in paper

1 and are inhaled. Cigars have a different taste and smell than cigarettes
2 due to the fermentation process cigars go through during production.
3 Cigars tend to cost considerably more than cigarettes, and their quality
4 and characteristics vary depending on the type of tobacco plant, the
5 geography and climate where the tobacco was grown, and the overall
6 quality of the manufacturing process. Not only does the customized
7 blending of the tobacco influence the smoking experience, so does the
8 freshness of the cigars, which is dependent on how the cigars were stored
9 and displayed. These variables are similar to fine wines, which can also
10 be very expensive to purchase. It is all of these variables that warrant
11 a customer wanting to sample the product before making such a substantial
12 purchase.

13 (c) The Legislature finds that exposure to second-hand smoke is
14 inherent in the selling and sampling of cigars and pipe tobacco and that
15 this exposure is inextricably connected to the nature of selling this
16 legal product, similar to other inherent hazards in other professions and
17 employment.

18 (d) It is the intent of the Legislature to allow cigar and pipe
19 smoking in cigar shops that meet specific statutory criteria not
20 inconsistent with the fundamental nature of the business. This exception
21 to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance
22 with the intent of the act to protect public places and places of
23 employment.

24 Sec. 11. (1) The owner of a tobacco retail outlet shall post a sign
25 on all entrances to the tobacco retail outlet, on the outside of each
26 door, in a conspicuous location slightly above or next to the door, with
27 the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE
28 THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.

29 (2) Beginning November 1, 2015, the owner shall provide to the
30 Division of Public Health a copy of a waiver signed prior to employment
31 by each employee on a form prescribed by the division. The waiver shall

1 expressly notify the employee that he or she will be exposed to second-
2 hand smoke, and the employee shall acknowledge that he or she understands
3 the risks of exposure to second-hand smoke.

4 (3) The owner shall not allow cigarette smoking in the tobacco
5 retail outlet.

6 Sec. 12. If any section in this act or any part of any section is
7 declared invalid or unconstitutional, the declaration shall not affect
8 the validity or constitutionality of the remaining portions.

9 Sec. 13. Original sections 53-103.08, 53-1,120.01, 71-5716, and
10 71-5717, Reissue Revised Statutes of Nebraska, and sections 28-1429.03,
11 53-101, 53-131, and 71-5730, Revised Statutes Cumulative Supplement,
12 2014, are repealed.

13 Sec. 14. Since an emergency exists, this act takes effect when
14 passed and approved according to law.