

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1176**

Introduced by Briese, 41.

Read first time January 23, 2020

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco; to amend sections 28-1418.01,  
2 28-1419, and 28-1425, Revised Statutes Supplement, 2019; to change  
3 provisions relating to the sale of tobacco products, electronic  
4 nicotine delivery systems, and alternative nicotine products; to  
5 define and redefine terms; and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1418.01, Revised Statutes Supplement, 2019, is  
2 amended to read:

3 28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

4 (1) Alternative nicotine product means any noncombustible product  
5 containing nicotine that is intended for human consumption, whether  
6 chewed, absorbed, dissolved, or ingested by any other means. Alternative  
7 nicotine product does not include any electronic nicotine delivery  
8 system, cigarette, cigar, or other tobacco product, flavored liquid, or  
9 any product regulated as a drug or device by the United States Food and  
10 Drug Administration under Chapter V of the Federal Food, Drug, and  
11 Cosmetic Act;

12 (2) Cigarette means any product that contains nicotine, is intended  
13 to be burned or heated under ordinary conditions of use, and consists of  
14 or contains (a) any roll of tobacco wrapped in paper or in any substance  
15 not containing tobacco, (b) tobacco, in any form, that is functional in  
16 the product which, because of its appearance, the type of tobacco used in  
17 the filler, or its packaging and labeling, is likely to be offered to, or  
18 purchased by, consumers as a cigarette, or (c) any roll of tobacco  
19 wrapped in any substance containing tobacco which, because of its  
20 appearance, the type of tobacco used in the filler, or its packaging and  
21 labeling, is likely to be offered to, or purchased by, consumers as a  
22 cigarette described in subdivision (2)(a) of this section;

23 (3)(a) Electronic nicotine delivery system means any product or  
24 device containing nicotine, tobacco, or tobacco derivatives that employs  
25 a heating element, power source, electronic circuit, or other electronic,  
26 chemical, or mechanical means, regardless of shape or size, to simulate  
27 smoking by delivering the nicotine, tobacco, or tobacco derivatives in  
28 vapor, fog, mist, gas, or aerosol form to a person inhaling from the  
29 product or device.

30 (b) Electronic nicotine delivery system includes, but is not limited  
31 to, the following:

1 (i) Any substance containing nicotine, tobacco, or tobacco  
2 derivatives, whether sold separately or sold in combination with a  
3 product or device that is intended to deliver to a person nicotine,  
4 tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol  
5 form;

6 (ii) Any product or device marketed, manufactured, distributed, or  
7 sold as an electronic cigarette, electronic cigar, electronic cigarillo,  
8 electronic pipe, electronic hookah, or similar products, names,  
9 descriptors, or devices; and

10 (iii) Any component, part, or accessory of such a product or device  
11 that is used during operation of the product or device when sold in  
12 combination with any substance containing nicotine, tobacco, or tobacco  
13 derivatives.

14 (c) Electronic nicotine delivery system does not include the  
15 following:

16 (i) An alternative nicotine product, flavored liquid, cigarette,  
17 cigar, or other tobacco product, or any product regulated as a drug or  
18 device by the United States Food and Drug Administration under Chapter V  
19 of the Federal Food, Drug, and Cosmetic Act; or

20 (ii) Any component, part, or accessory of such a product or device  
21 that is used during operation of the product or device when not sold in  
22 combination with any substance containing nicotine, tobacco, or tobacco  
23 derivatives;

24 (4)(a) Flavored liquid means a liquid that (i) contains nicotine,  
25 tobacco, or tobacco derivatives, (ii) is intended to be delivered in a  
26 vapor, fog, mist, gas, or aerosol form through an electronic nicotine  
27 delivery system that involves an enclosed cartridge, pod, or unit sealed  
28 by the manufacturer designed to fit within or operate as part of an  
29 electronic nicotine delivery system, and (iii) contains a natural or  
30 artificial constitution or additive that causes the liquid or its smoke  
31 to have a distinguishable flavor or aroma, including, but not limited to,

1 chocolate, vanilla, honey, cocoa, or any fruit, candy, dessert, alcoholic  
2 beverage, herb, or spice.

3 (b) Flavored liquid does not include such liquids that are (i)  
4 menthol or tobacco flavored, or (ii) intended to be used in and that are  
5 used in open-tank based electronic nicotine delivery systems.

6 (5) (4) Self-service display means a retail display that contains a  
7 tobacco product, a tobacco-derived product, an electronic nicotine  
8 delivery system, or an alternative nicotine product and is located in an  
9 area openly accessible to a retailer's customers and from which such  
10 customers can readily access the product without the assistance of a  
11 salesperson. Self-service display does not include a display case that  
12 holds tobacco products, tobacco-derived products, electronic nicotine  
13 delivery systems, or alternative nicotine products behind locked doors;  
14 and

15 (6) (5) Tobacco specialty store means a retail store that (a)  
16 derives at least seventy-five percent of its revenue from tobacco  
17 products, tobacco-derived products, electronic nicotine delivery systems,  
18 or alternative nicotine products and (b) does not permit persons under  
19 the age of nineteen years to enter the premises unless accompanied by a  
20 parent or legal guardian.

21 Sec. 2. Section 28-1419, Revised Statutes Supplement, 2019, is  
22 amended to read:

23 28-1419 (1) Whoever shall sell, give, or furnish, in any way, any  
24 tobacco in any form whatever, or any cigarettes, cigarette paper,  
25 electronic nicotine delivery systems, or alternative nicotine products,  
26 to any person under nineteen years of age, is guilty of a Class III  
27 misdemeanor for each offense.

28 (2) Whoever shall sell, give, or furnish, in any way, any flavored  
29 liquid is guilty of a Class III misdemeanor for each offense.

30 Sec. 3. Section 28-1425, Revised Statutes Supplement, 2019, is  
31 amended to read:

1           28-1425 (1) Any licensee who shall sell, give, or furnish in any  
2 way to any person under the age of nineteen years, or who shall willingly  
3 allow to be taken from his or her place of business by any person under  
4 the age of nineteen years, any cigars, tobacco, cigarettes, cigarette  
5 material, electronic nicotine delivery systems, or alternative nicotine  
6 products is guilty of a Class III misdemeanor. Any officer, director, or  
7 manager having charge or control, either separately or jointly with  
8 others, of the business of any corporation which violates sections  
9 28-1419, 28-1420 to 28-1429, and 28-1429.03, if he or she has knowledge  
10 of such violation, shall be subject to the penalties provided in this  
11 section. In addition to the penalties provided in this section, such  
12 licensee shall be subject to the additional penalty of a revocation and  
13 forfeiture of his, her, their, or its license, at the discretion of the  
14 court before whom the complaint for violation of such sections may be  
15 heard. If such license is revoked and forfeited, all rights under such  
16 license shall at once cease and terminate.

17           (2) Any licensee who shall sell, give, or furnish in any way to any  
18 person any flavored liquid is guilty of a Class III misdemeanor.

19           Sec. 4. Original sections 28-1418.01, 28-1419, and 28-1425, Revised  
20 Statutes Supplement, 2019, are repealed.