

LEGISLATIVE BILL 149

Approved by the Governor May 30, 2019

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

A BILL FOR AN ACT relating to tobacco; to amend sections 28-1418, 28-1418.01, 28-1419, 28-1420, 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02, and 28-1429.03, Reissue Revised Statutes of Nebraska; to change provisions relating to the legal age to buy or use, and the sale and use of, tobacco or electronic nicotine delivery systems or alternative nicotine products as prescribed; to define and redefine terms; to require sellers of electronic nicotine delivery systems to be licensed as prescribed; to change legislative findings; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

28-1418 Whoever, being a person ~~minor~~ under the age of nineteen ~~eighteen~~ years, shall smoke cigarettes or cigars, use electronic nicotine delivery systems ~~vapor products~~ or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor. Any person ~~minor~~ charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, electronic nicotine delivery systems ~~vapor products~~, alternative nicotine products, or tobacco.

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

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

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

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

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

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

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

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

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

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

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

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

(4) ~~(2)~~ Self-service display means a retail display that contains a tobacco product, a tobacco-derived product, an electronic nicotine delivery

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

~~(5) (3) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, electronic nicotine delivery systems vapor products, or alternative nicotine products and (b) does not permit persons ~~minors~~ under the age of nineteen ~~eighteen~~ years to enter the premises unless accompanied by a parent or legal guardian. ; and~~

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

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

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

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

28-1420 It shall be unlawful for any person, partnership, limited liability company, or corporation to sell, keep for sale, or give away in course of trade, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to anyone without first obtaining a license as provided in sections 28-1421 and 28-1422. It shall also be unlawful for any wholesaler to sell or deliver any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to any person, partnership, limited liability company, or corporation who, at the time of such sale or delivery, is not the recipient of a valid tobacco license for the current year to retail the same as provided in such sections. It shall also be unlawful for any person, partnership, limited liability company, or corporation to purchase or receive, for purposes of resale, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material if such person, partnership, limited liability company, or corporation is not the recipient of a valid tobacco license to retail such tobacco products at the time the same are purchased or received. Whoever shall be found guilty of violating this section shall be guilty of a Class III misdemeanor for each offense.

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

28-1421 Licenses for the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material to persons nineteen years of age or over the age of eighteen years shall be issued to individuals, partnerships, limited liability companies, and corporations by the clerk or finance director of any city or village and by the county clerk of any county upon application duly made as provided in section 28-1422. The sale of cigarettes or cigarette materials that contain perfumes or drugs in any form is prohibited and is not licensed by the provisions of this section. Only cigarettes and cigarette material containing pure white paper and pure tobacco shall be licensed.

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

28-1423 The term for which such license shall run shall be from the date of filing such application and paying such license fee to and including December 31 of the calendar year in which application for such license is made, and the license fee for any person, partnership, limited liability company, or corporation selling at retail shall be twenty-five dollars in cities of the metropolitan class, fifteen dollars in cities of the primary and first classes, and ten dollars in cities of all other classes and in towns and villages and in locations outside of the limits of cities, towns, and villages. Any person, partnership, limited liability company, or corporation selling annually in the aggregate more than one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in any form, at wholesale, shall pay a license fee of one hundred dollars, and if such combined annual sales amount to less than one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco, the annual license fee shall be fifteen dollars. No wholesaler's license shall be issued in any year on a less basis than one hundred dollars per annum unless the applicant for the same shall file with such application a statement duly sworn to by himself or herself, or if applicant is a partnership, by a member

of the firm, or if a limited liability company, by a member or manager of the company, or if a corporation, by an officer or manager thereof, that in the past such wholesaler's combined sales of cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in every form have not exceeded in the aggregate one hundred fifty thousand annually, and that such sales will not exceed such aggregate amount for the current year for which the license is to issue. Any person swearing falsely in such affidavit shall be guilty of perjury and upon conviction thereof shall be punished as provided by section 28-915 and such wholesaler's license shall be revoked until the full license fee of one hundred dollars is paid. If application for license is made after July 1 of any calendar year, the fee shall be one-half of the fee provided in this section.

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

28-1424 The license, provided for in sections 28-1421 and 28-1422 shall, when issued, shall authorize the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material by the licensee and employees, to persons nineteen years of age or over ~~the age of eighteen years~~, at the place of business described in such license for the term therein authorized, unless the license is same ~~be~~ forfeited as provided in section 28-1425.

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

28-1425 Any licensee who shall sell, give, or furnish in any way to any person under the age of nineteen ~~eighteen~~ years, or who shall willingly allow to be taken from his or her place of business by any person under the age of nineteen ~~eighteen~~ years, any cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems ~~vapor products~~, or alternative nicotine products is guilty of a Class III misdemeanor. Any officer, director, or manager having charge or control, either separately or jointly with others, of the business of any corporation which violates sections ~~28-1419 28-1418.01~~, 28-1420 to 28-1429, and 28-1429.03, if he or she has knowledge of such violation, shall be subject to the penalties provided in this section. In addition to the penalties provided in this section, such licensee shall be subject to the additional penalty of a revocation and forfeiture of his, her, their, or its license, at the discretion of the court before whom the complaint for violation of such sections may be heard. If such license is revoked and forfeited, all rights under such license shall at once cease and terminate.

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

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

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

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

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

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

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

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

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

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

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

Sec. 13. This act becomes operative on January 1, 2020.

Sec. 14. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420, 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02, and 28-1429.03, Reissue Revised Statutes of Nebraska, are repealed.