

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 118**

FINAL READING

Introduced by Larson, 40; Coash, 27; Kintner, 2; Bloomfield, 17.

Read first time January 09, 2015

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco; to amend sections 53-103.08,  
2 53-1,120.01, 71-5716, and 71-5717, Reissue Revised Statutes of  
3 Nebraska, and sections 28-1429.03, 53-101, 53-131, and 71-5730,  
4 Revised Statutes Cumulative Supplement, 2014; to define cigar shop;  
5 to permit certain sales as prescribed; to provide for a  
6 nonrefundable application fee; to provide and change requirements  
7 for cigar shops; to state and restate intent; to preempt county  
8 resolutions and city ordinances relating to smoking in cigar shops;  
9 to exempt tobacco retail outlets and cigar shops from the Nebraska  
10 Clean Indoor Air Act; to provide requirements for tobacco retail  
11 outlets; to harmonize provisions; to provide severability; to repeal  
12 the original sections; and to declare an emergency.  
13 Be it enacted by the people of the State of Nebraska,

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

3 28-1429.03 (1) Except as provided in subsection (2) of this section  
4 and section 28-1429.02, it shall be unlawful to sell or distribute  
5 cigarettes, cigars, vapor products, alternative nicotine products, or  
6 tobacco in any form whatever through a self-service display. Any person  
7 violating this section is guilty of a Class III misdemeanor. In addition,  
8 upon conviction for a second or subsequent offense within a twelve-month  
9 period, the court shall order a six-month suspension of the license  
10 issued under section 28-1421.

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

15 Sec. 2. Section 53-101, Revised Statutes Cumulative Supplement,  
16 2014, is amended to read:

17 53-101 Sections 53-101 to 53-1,122 and sections 5 and 6 of this act  
18 shall be known and may be cited as the Nebraska Liquor Control Act.

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

21 53-103.08 Cigar shop bar means an establishment operated by a holder  
22 of a Class C liquor license which:

23 (1) Does not sell food;

24 (2) In addition to selling alcohol, annually receives ten percent or  
25 more of its gross revenue from the sale of cigars, ~~and~~ other tobacco  
26 products, ~~and~~ tobacco-related products, except from the sale of  
27 cigarettes as defined in section 69-2702. A cigar shop bar shall not  
28 discount alcohol if sold in combination with cigars or other tobacco  
29 products and tobacco-related products;

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

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

1           Sec. 4. Section 53-131, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

3           53-131 (1) Any person desiring to obtain a new license to sell  
4 alcoholic liquor at retail, a craft brewery license, or a microdistillery  
5 license shall file with the commission:

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

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

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

16           (2) The commission shall notify the clerk of the city or village in  
17 which such license is sought or, if the license sought is not sought  
18 within a city or village, the county clerk of the county in which such  
19 license is sought, of the receipt of the application and shall include  
20 one copy of the application with the notice. No such license shall be  
21 issued or denied by the commission until the expiration of the time  
22 allowed for the receipt of a recommendation of denial or an objection  
23 requiring a hearing under subdivision (1)(a) or (b) of section 53-133.  
24 During the period of forty-five days after the date of receipt by mail or  
25 electronic delivery of such application from the commission, the local  
26 governing body of such city, village, or county may make and submit to  
27 the commission recommendations relative to the granting or refusal to  
28 grant such license to the applicant.

29           (3) For an application to operate a cigar shop ~~bar~~, the application  
30 shall include proof of the cigar shop's ~~bar's~~ annual gross revenue as  
31 requested by the commission and such other information as requested by

1 the commission to establish the intent to operate as a cigar shop bar.  
2 The commission may adopt and promulgate rules and regulations to regulate  
3 cigar shops. The rules and regulations existing on August 1, 2014,  
4 applicable to cigar bars shall apply to cigar shops until amended or  
5 repealed by the commission bars.

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

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

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

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

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

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

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

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

31 (3) Beginning November 1, 2015, the licensee shall provide to the

1 commission a copy of a waiver signed prior to employment by each employee  
2 on a form prescribed by the commission. The waiver shall expressly notify  
3 the employee that he or she will be exposed to second-hand smoke, and the  
4 employee shall acknowledge that he or she understands the risks of  
5 exposure to second-hand smoke.

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

8 53-1,120.01 No county resolution or city ordinance that prohibits  
9 smoking in indoor areas shall apply to cigar shops ~~bars~~.

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

12 71-5716 Sections 71-5716 to 71-5734 and section 11 of this act shall  
13 be known and may be cited as the Nebraska Clean Indoor Air Act.

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

16 71-5717 The purpose of the Nebraska Clean Indoor Air Act is to  
17 protect the public health and welfare by prohibiting smoking in public  
18 places and places of employment with limited exceptions for guestrooms  
19 and suites, research, tobacco retail outlets, and cigar shops. The  
20 limited exceptions permit smoking in public places where the public would  
21 reasonably expect to find persons smoking, including guestrooms and  
22 suites which are subject to expectations of privacy like private  
23 residences, institutions engaged in research related to smoking, and  
24 tobacco retail outlets and cigar shops which provide the public legal  
25 retail outlets to sample, use, and purchase tobacco products and products  
26 related to smoking. The act shall not be construed to prohibit or  
27 otherwise restrict smoking in outdoor areas. The act shall not be  
28 construed to permit smoking where it is prohibited or otherwise  
29 restricted by other applicable law, ordinance, or resolution. The act  
30 shall be liberally construed to further its purpose.

31 Sec. 10. Section 71-5730, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 71-5730 (1) The following indoor areas are exempt from section  
3 71-5729:

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

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

14 (c 3) Tobacco retail outlets; and

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

16 (2)(a) The Legislature finds that allowing smoking in tobacco retail  
17 outlets 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 since the  
20 general public does not frequent tobacco retail outlets and should  
21 reasonably expect that there would be second-hand smoke in tobacco retail  
22 outlets and could choose to avoid such exposure. The products that  
23 tobacco retail outlets sell are legal for customers who meet the age  
24 requirement. Customers should be able to try them within the tobacco  
25 retail outlet, especially given the way that tobacco customization may  
26 occur in how tobacco is blended and cigars are produced. The Legislature  
27 finds that exposure to second-hand smoke is inherent in the selling and  
28 sampling of cigars and pipe tobacco and that this exposure is  
29 inextricably connected to the nature of selling this legal product,  
30 similar to other inherent hazards in other professions and employment.

31 (b) It is the intent of the Legislature to allow cigar and pipe

1 smoking in tobacco retail outlets that meet specific statutory criteria  
2 not inconsistent with the fundamental nature of the business. This  
3 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in  
4 accordance with the intent of the act to protect public places and places  
5 of employment.

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

15 (b) The Legislature finds that (i) cigars and pipe tobacco have  
16 different characteristics than other forms of tobacco such as cigarettes,  
17 (ii) cigars are customarily paired with various spirits such as cognac,  
18 single malt whisky, bourbon, rum, rye, port, and others, and (iii) unlike  
19 cigarette smokers, cigar and pipe smokers may take an hour or longer to  
20 enjoy a cigar or pipe while cigarettes simply serve as a mechanism for  
21 delivering nicotine. Cigars paired with selected liquor creates a synergy  
22 unique to the particular pairing similar to wine paired with particular  
23 foods. Cigars are a pure, natural product wrapped in a tobacco leaf that  
24 is typically not inhaled in order to enjoy the taste of the smoke, unlike  
25 cigarettes that tend to be processed with additives and wrapped in paper  
26 and are inhaled. Cigars have a different taste and smell than cigarettes  
27 due to the fermentation process cigars go through during production.  
28 Cigars tend to cost considerably more than cigarettes, and their quality  
29 and characteristics vary depending on the type of tobacco plant, the  
30 geography and climate where the tobacco was grown, and the overall  
31 quality of the manufacturing process. Not only does the customized

1 blending of the tobacco influence the smoking experience, so does the  
2 freshness of the cigars, which is dependent on how the cigars were stored  
3 and displayed. These variables are similar to fine wines, which can also  
4 be very expensive to purchase. It is all of these variables that warrant  
5 a customer wanting to sample the product before making such a substantial  
6 purchase.

7 (c) The Legislature finds that exposure to second-hand smoke is  
8 inherent in the selling and sampling of cigars and pipe tobacco and that  
9 this exposure is inextricably connected to the nature of selling this  
10 legal product, similar to other inherent hazards in other professions and  
11 employment.

12 (d) It is the intent of the Legislature to allow cigar and pipe  
13 smoking in cigar shops that meet specific statutory criteria not  
14 inconsistent with the fundamental nature of the business. This exception  
15 to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance  
16 with the intent of the act to protect public places and places of  
17 employment.

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

23 (2) Beginning November 1, 2015, the owner shall provide to the  
24 Division of Public Health a copy of a waiver signed prior to employment  
25 by each employee on a form prescribed by the division. The waiver shall  
26 expressly notify the employee that he or she will be exposed to second-  
27 hand smoke, and the employee shall acknowledge that he or she understands  
28 the risks of exposure to second-hand smoke.

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

31 Sec. 12. If any section in this act or any part of any section is

1 declared invalid or unconstitutional, the declaration shall not affect  
2 the validity or constitutionality of the remaining portions.

3       Sec. 13. Original sections 53-103.08, 53-1,120.01, 71-5716, and  
4 71-5717, Reissue Revised Statutes of Nebraska, and sections 28-1429.03,  
5 53-101, 53-131, and 71-5730, Revised Statutes Cumulative Supplement,  
6 2014, are repealed.

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