

AMENDMENTS TO LB149

(Amendments to Standing Committee amendments, AM901)

Introduced by Wayne, 13.

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and insert the following new
3 sections:

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

6 28-1418 Whoever, being a minor ~~under the age of eighteen years,~~
7 shall smoke cigarettes or cigars, use electronic nicotine delivery
8 systems ~~vapor products~~ or alternative nicotine products, or use tobacco
9 in any form whatever, in this state, shall be guilty of a Class V
10 misdemeanor. Any minor charged with a violation of this section may be
11 free from prosecution if he or she furnishes evidence for the conviction
12 of the person or persons selling or giving him or her the cigarettes,
13 cigars, electronic nicotine delivery systems ~~vapor products~~, alternative
14 nicotine products, or tobacco.

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

17 28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

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

26 (2) Cigarette means any product that contains nicotine, is intended

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

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

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

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

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

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

1 derivatives.

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

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

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

12 (4) Minor means any person under nineteen years of age, except that
13 any person who is at least eighteen years of age on January 1, 2020,
14 shall not be considered a minor;

15 (5) ~~(2)~~ Self-service display means a retail display that contains a
16 tobacco product, a tobacco-derived product, an electronic nicotine
17 delivery system ~~a vapor product~~, or an alternative nicotine product and
18 is located in an area openly accessible to a retailer's customers and
19 from which such customers can readily access the product without the
20 assistance of a salesperson. Self-service display does not include a
21 display case that holds tobacco products, electronic nicotine delivery
22 systems ~~vapor products~~, or alternative nicotine products behind locked
23 doors; and

24 (6) ~~(3)~~ Tobacco specialty store means a retail store that (a)
25 derives at least seventy-five percent of its revenue from tobacco
26 products, tobacco-derived products, electronic nicotine delivery systems
27 ~~vapor products~~, or alternative nicotine products and (b) does not permit
28 minors ~~under the age of eighteen years~~ to enter the premises unless
29 accompanied by a parent or legal guardian. ~~;~~ and

30 ~~(4) Vapor product means any noncombustible product containing~~
31 ~~nicotine that employs a heating element, power source, electronic~~

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

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

15 28-1419 Whoever shall sell, give, or furnish, in any way, any
16 tobacco in any form whatever, or any cigarettes, cigarette paper,
17 electronic nicotine delivery systems ~~vapor products~~, or alternative
18 nicotine products, to any minor ~~under eighteen years of age~~, is guilty of
19 a Class III misdemeanor for each offense.

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

22 28-1420 It shall be unlawful for any person, partnership, limited
23 liability company, or corporation to sell, keep for sale, or give away in
24 course of trade, any cigars, tobacco, electronic nicotine delivery
25 systems, cigarettes, or cigarette material to anyone without first
26 obtaining a license as provided in sections 28-1421 and 28-1422. It shall
27 also be unlawful for any wholesaler to sell or deliver any cigars,
28 tobacco, electronic nicotine delivery systems, cigarettes, or cigarette
29 material to any person, partnership, limited liability company, or
30 corporation who, at the time of such sale or delivery, is not the
31 recipient of a valid tobacco license for the current year to retail the

1 same as provided in such sections. It shall also be unlawful for any
2 person, partnership, limited liability company, or corporation to
3 purchase or receive, for purposes of resale, any cigars, tobacco,
4 electronic nicotine delivery systems, cigarettes, or cigarette material
5 if such person, partnership, limited liability company, or corporation is
6 not the recipient of a valid tobacco license to retail such tobacco
7 products at the time the same are purchased or received. Whoever shall be
8 found guilty of violating this section shall be guilty of a Class III
9 misdemeanor for each offense.

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

12 28-1421 Licenses for the sale of cigars, tobacco, electronic
13 nicotine delivery systems, cigarettes, and cigarette material to persons
14 of legal age to purchase such products ~~over the age of eighteen years~~
15 shall be issued to individuals, partnerships, limited liability
16 companies, and corporations by the clerk or finance director of any city
17 or village and by the county clerk of any county upon application duly
18 made as provided in section 28-1422. The sale of cigarettes or cigarette
19 materials that contain perfumes or drugs in any form is prohibited and is
20 not licensed by the provisions of this section. Only cigarettes and
21 cigarette material containing pure white paper and pure tobacco shall be
22 licensed.

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

25 28-1423 The term for which such license shall run shall be from the
26 date of filing such application and paying such license fee to and
27 including December 31 of the calendar year in which application for such
28 license is made, and the license fee for any person, partnership, limited
29 liability company, or corporation selling at retail shall be twenty-five
30 dollars in cities of the metropolitan class, fifteen dollars in cities of
31 the primary and first classes, and ten dollars in cities of all other

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

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

29 28-1424 The license~~r~~ provided for in sections 28-1421 and 28-1422
30 shall, when issued, shall authorize the sale of cigars, tobacco,
31 electronic nicotine delivery systems, cigarettes, and cigarette material

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

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

26 28-1427 Any minor person under the age of eighteen years who shall
27 obtain cigars, tobacco, cigarettes, cigarette material, electronic
28 nicotine delivery systems vapor products, or alternative nicotine
29 products from a licensee by representing that he or she is not a minor of
30 the age of eighteen years or over is guilty of a Class V misdemeanor.

31 Sec. 10. Section 28-1429.01, Reissue Revised Statutes of Nebraska,

1 is amended to read:

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

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

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

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

1 liquor is dispensed.

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

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

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

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

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

21 Sec. 14. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420,
22 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02, and
23 28-1429.03, Reissue Revised Statutes of Nebraska, are repealed.