

E AND R AMENDMENTS TO LB 840

Introduced by Slama, 1, Chairman Enrollment and Review

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

3 Section 1. Section 71-5716, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 71-5716 Sections 71-5716 to 71-5735 and sections 4 and 5 of this act
6 shall be known and may be cited as the Nebraska Clean Indoor Air Act.

7 Sec. 2. Section 71-5717, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 71-5717 The purpose of the Nebraska Clean Indoor Air Act is to
10 protect the public health and welfare by prohibiting smoking in public
11 places and places of employment with limited exceptions for guestrooms
12 and suites, research, tobacco retail outlets, electronic smoking device
13 retail outlets, and cigar shops. The limited exceptions permit smoking in
14 public places where the public would reasonably expect to find persons
15 smoking, including guestrooms and suites which are subject to
16 expectations of privacy like private residences, institutions engaged in
17 research related to smoking, and tobacco retail outlets, electronic
18 smoking device retail outlets, and cigar shops which provide the public
19 legal retail outlets to sample, use, and purchase tobacco products and
20 products related to smoking. The act shall not be construed to prohibit
21 or otherwise restrict smoking in outdoor areas. The act shall not be
22 construed to permit smoking where it is prohibited or otherwise
23 restricted by other applicable law, ordinance, or resolution. The act
24 shall be liberally construed to further its purpose.

25 Sec. 3. Section 71-5718, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 71-5718 For purposes of the Nebraska Clean Indoor Air Act, the

1 definitions found in sections 71-5719 to 71-5728 and sections 4 and 5 of
2 this act apply.

3 Sec. 4. Electronic smoking device means an electronic nicotine
4 delivery system as defined in section 28-1418.01. The term includes any
5 such device regardless of whether it is manufactured, distributed,
6 marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape
7 pen or under any other product name or descriptor.

8 Sec. 5. Electronic smoking device retail outlet means a store that
9 is licensed as provided under sections 28-1421 and 28-1422, that sells
10 only electronic smoking devices and products directly related to
11 electronic smoking devices, and that does not allow a person under the
12 age of twenty-one years to enter such store. Products directly related to
13 electronic smoking devices do not include alcohol, coffee, soft drinks,
14 candy, groceries, or gasoline.

15 Sec. 6. Section 71-5727, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 71-5727 Smoke or smoking means inhaling, exhaling, burning, or
18 carrying any lighted or heated cigar, cigarette, pipe, hookah, or any
19 other lighted or heated tobacco or plant product intended for inhalation,
20 whether natural or synthetic, in any manner or in any form. The term
21 includes the use of an electronic smoking device which creates an aerosol
22 or vapor, in any manner or in any form ~~the lighting of any cigarette,~~
23 ~~cigar, pipe, or other smoking material or the possession of any lighted~~
24 ~~cigarette, cigar, pipe, or other smoking material, regardless of its~~
25 composition.

26 Sec. 7. Section 71-5730, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 71-5730 (1) The following indoor areas are exempt from section
29 71-5729:

30 (a) Guestrooms and suites that are rented to guests and that are
31 designated as smoking rooms, except that not more than twenty percent of

1 rooms rented to guests in an establishment may be designated as smoking
2 rooms. All smoking rooms on the same floor shall be contiguous, and smoke
3 from such rooms shall not infiltrate into areas where smoking is
4 prohibited under the Nebraska Clean Indoor Air Act;

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

9 (c) Tobacco retail outlets; and

10 (d) Cigar shops as defined in section 53-103.08.

11 (2) Electronic smoking device retail outlets are exempt from section
12 71-5729 as it relates to the use of electronic smoking devices only.

13 (3)(a) (2)(a) The Legislature finds that allowing smoking in tobacco
14 retail outlets as a limited exception to the Nebraska Clean Indoor Air
15 Act does not interfere with the original intent that the general public
16 and employees not be unwillingly subjected to second-hand smoke since the
17 general public does not frequent tobacco retail outlets and should
18 reasonably expect that there would be second-hand smoke in tobacco retail
19 outlets and could choose to avoid such exposure. The products that
20 tobacco retail outlets sell are legal for customers who meet the age
21 requirement. Customers should be able to try them within the tobacco
22 retail outlet, especially given the way that tobacco customization may
23 occur in how tobacco is blended and cigars are produced. The Legislature
24 finds that exposure to second-hand smoke is inherent in the selling and
25 sampling of cigars and pipe tobacco and that this exposure is
26 inextricably connected to the nature of selling this legal product,
27 similar to other inherent hazards in other professions and employment.

28 (b) It is the intent of the Legislature to allow cigar and pipe
29 smoking in tobacco retail outlets that meet specific statutory criteria
30 not inconsistent with the fundamental nature of the business. This
31 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in

1 accordance with the intent of the act to protect public places and places
2 of employment.

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

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

1 were stored and displayed. These variables are similar to fine wines,
2 which can also be very expensive to purchase. It is all of these
3 variables that warrant a customer wanting to sample the product before
4 making such a substantial purchase.

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

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

16 Sec. 8. Section 71-5735, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 71-5735 (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 AND ELECTRONIC SMOKING DEVICES IS
23 NOT ALLOWED.

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

30 (3) The owner shall not allow cigarette smoking or the use of an
31 electronic smoking device in the tobacco retail outlet.

1 Sec. 9. Original sections 71-5716, 71-5717, 71-5718, 71-5727,
2 71-5730, and 71-5735, Reissue Revised Statutes of Nebraska, are repealed.
3 2. On page 1, strike lines 2 through 5 and insert "sections 71-5716,
4 71-5717, 71-5718, 71-5727, 71-5730, and 71-5735, Reissue Revised Statutes
5 of Nebraska; to exempt electronic smoking device retail outlets; to
6 define and redefine terms; to prohibit the use of electronic smoking
7 devices as prescribed; to harmonize provisions; and to repeal the
8 original sections."