

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB149

Hearing Date: Monday March 04, 2019
Committee On: General Affairs
Introducer: Quick
One Liner: Change provisions relating to vapor products

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	5	Senators Arch, Brandt, Blood, Hunt, Lowe
Nay:	1	Senator Wayne
Absent:	1	Senator Moser
Present Not Voting:	1	Senator Briese

Oral Testimony:

Proponents:

Dan Quick
Lisa Albens

Kathy Siefken
Gaye Lannan
Rich Otto
Robert Aranda
Jordon Engle
Nick Faustman
Brian Krannantter

Representing:

Introducer
Grand Island Public Schools, Nebraska Association of School Boards
Nebraska Grocery Industry Association
Omaha Public Schools
Nebraska Retail Federation
Omaha Public Schools
Grand Island Central Catholic
American Cancer Society Cancer Action Network
American Heart Association

Opponents:

Tim Keigher

Tim Bowen
Sarah Linden

Tanner Whitaker

Representing:

Nebraska Petroleum Marketers and Convenience Store Association
Nebraska Vape Vendor Alliance and Alohma Vapor
Nebraska Vape Vendors Association and Generation V Inc.
Self

Neutral:

Daniel Muelleman
Brooklyn Larimore

Representing:

Nebraska Attorney's General Office
Students Against Nicotine

Summary of purpose and/or changes:

LB149 raises the legal age for use of vapor products to twenty one years of age. Amends necessary statutory provisions regarding the use and sale of such products to harmonize provisions with the raised legal age limit. Includes the use of a vapor product in the definition of smoke or smoking. Defines flavored liquid. Provides an operative date of January 1, 2020.

LB149 makes the following changes by section:

Section One of the Bill: Amends section 28-1418 to raise the legal age for using vapor products to twenty one years of age. An individual under the age of twenty one who uses vapor products in this state shall be guilty of a Class V misdemeanor.

Section Two of the Bill: Amends section 28-1418.01 to define flavored liquid as a liquid that:

- (a) Is composed of nicotine and other chemicals
- (b) Is intended to be used in a vapor product, and
- (c) Contains a natural or artificial constituent or additive that causes the liquid or its smoke to have a distinguishable flavor or aroma, including, but not limited to, chocolate, vanilla, honey, cocoa, or any fruit, candy, dessert, alcoholic beverage, herb, or spice.

Section Three of the Bill: Amends section 28-1419 to specify that whoever shall sell, give, or furnish in any way, any vapor products or flavored liquids, to any individual under twenty-one years of age, is guilty of a Class III misdemeanor. Removes vapor products language from the Class III misdemeanor of selling, giving or furnishing in any way, such products to anyone under eighteen years old.

Section Four of the Bill: Amends section 28-1420 to add vapor products language to products that require a license to sell, keep for sale, or give away in course of trade.

Add vapor products language to products that it is unlawful for any wholesaler to sell or delivery to a person, partnership, limited liability company, or cooperation who at the time of such sale is not the recipient of a valid license. Add vapor products language to products that is unlawful for any person, partnership, limited liability company or corporation to purchase or receive, for purposes of resale without a valid license.

Removes the word tobacco where the term tobacco license is used so that that statute will just read a valid license.

Section Five of the Bill: Amends section 28-1421 to include vapor products language in the license for sale of such products. Removes language saying that such licenses must be issued to individuals over the age of eighteen years and instead reads to persons of sufficient age to lawfully use such products.

Section Six of the Bill: Amends section 28-1423 to add packages of vapor products to the fee requirements that if selling annually in aggregate at wholesale more than one hundred fifty thousand packages of such products the annual license fee shall be one hundred dollars and if less than one hundred fifty thousand packages in aggregate annually the annual license fee shall be fifteen dollars. Includes packages of vapor products in the requirement that if an applicant is paying a fifteen dollar annual license fee they must file with such application a statement duly sworn that assures that the number of products sold at wholesale in aggregate is less than one hundred fifty thousand packages as required.

Section Seven of the Bill: Amends section 28-1424 to include vapor product in the list of products authorized by a license provided for in section 28-1421 and 28-1422. Replaces over the age of eighteen years language with language specifying such products can be sold to persons of sufficient age to lawfully use such products.

Section Eight of the Bill: Amends section 28-1425 to remove under the age of eighteen language and specify that any licensee who shall sell, give, or furnish any cigars, tobacco, cigarettes, cigarette material, vapor products, flavored liquids, or alternative nicotine products or who shall willingly allow any such products to be taken from his or her business to any person who is not of sufficient age to lawfully use such products, is guilty of a Class III misdemeanor.

Section Nine of the bill: Amends section 28-1427 to remove vapor products from the Class V misdemeanor of obtaining such products under the age of eighteen by representing that he or she is over such age.

Specifies that any person under the age of twenty one years who shall obtain vapor products or flavored liquids from a licensee by representing that he or she is of the age of twenty one years or over is guilty of a Class V misdemeanor.

Section Ten of the Bill: Amends section 28-1429.01 to harmonize language by specifying that the legislature finds that the incumbent health risks associated with using cigarettes, other tobacco products, vapor products, and alternative nicotine products have been scientifically proven. The Legislature further finds that the growing number of young people who start using these products is staggering and even more abhorrent are the ages at which such use begins. The Legislature has established age restriction on the use of such products. To ensure that the use of such products among young people 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 such products in facilities, building or areas which are open to the general public within Nebraska.

Section Eleven of the Bill: Amends Section 28-1429.02 to specify that upon conviction for a second offense the court shall order a six-month suspension of the license issued under section 28-1421 and that if any and upon conviction or a third or subsequent offense, the court shall order the permanent revocation of the license issued under such section.

Section Twelve of the Bill: Amends section 71-5716 to include section 14 of this act to a list of section to be known and cited as the Nebraska Clean Indoor Air Act.

Section Thirteen of the Bill: Amends section 71-5716 to include section 14 of this act in a list of sections of which the definitions found in such sections apply to the Nebraska Clean Indoor Air Act.

Section Fourteen of the Bill: Defines vapor product to have the same meaning as in section 28-1418.01

Section Fifteen of the Bill: include the use of a vapor product in the definition of smoke or smoking.

Section Sixteen of the Bill: Specifies an operative date for the bill as January 1, 2020.

Section Seventeen of the Bill: Repeals original sections.

Explanation of amendments:

AM901 makes the following changes:

Replaces vapor products language with electronic nicotine delivery systems language.

Changes the legal age to buy or use electronic nicotine delivery systems, alternative nicotine products, or tobacco to 19 years of age in all necessary statutory provisions.

Requires a license to sell, keep for sale or give away in course of trade electronic nicotine delivery systems in the same manner as similar products such as cigarettes, tobacco and alternative nicotine products.

Authorizes the sale of electronic nicotine delivery systems by licensees to persons over 19 years of age and provides penalties for violation of this section.

Defines electronic nicotine delivery system as: 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.

Electronic nicotine delivery system includes but is not limited to:

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:

-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
-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 contained nicotine, tobacco, or tobacco derivatives.

Electronic delivery system does not include the following:

-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
-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.

Defines cigarette as any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains;

-Any roll of tobacco wrapped in paper or in any substance not containing tobacco,

-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

-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.

Adds electronic nicotine delivery system as defined to the Nebraska Clean Indoor Air Act.

Provides an operative date of January 1, 2020.

Tom Brieese, Chairperson