

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 149**

FINAL READING

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.

Read first time January 11, 2019

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco; to amend sections 28-1418,  
2 28-1418.01, 28-1419, 28-1420, 28-1421, 28-1423, 28-1424, 28-1425,  
3 28-1427, 28-1429.01, 28-1429.02, and 28-1429.03, Reissue Revised  
4 Statutes of Nebraska; to change provisions relating to the legal age  
5 to buy or use, and the sale and use of, tobacco or electronic  
6 nicotine delivery systems or alternative nicotine products as  
7 prescribed; to define and redefine terms; to require sellers of  
8 electronic nicotine delivery systems to be licensed as prescribed;  
9 to change legislative findings; to harmonize provisions; to provide  
10 an operative date; and to repeal the original sections.  
11 Be it enacted by the people of the State of Nebraska,

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

3 28-1418 Whoever, being a person ~~minor~~ under the age of nineteen  
4 ~~eighteen~~ years, shall smoke cigarettes or cigars, use electronic nicotine  
5 delivery systems ~~vapor products~~ or alternative nicotine products, or use  
6 tobacco in any form whatever, in this state, shall be guilty of a Class V  
7 misdemeanor. Any person ~~minor~~ charged with a violation of this section  
8 may be free from prosecution if he or she furnishes evidence for the  
9 conviction of the person or persons selling or giving him or her the  
10 cigarettes, cigars, electronic nicotine delivery systems ~~vapor products~~,  
11 alternative nicotine products, or tobacco.

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

14 28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

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

23 (2) Cigarette means any product that contains nicotine, is intended  
24 to be burned or heated under ordinary conditions of use, and consists of  
25 or contains (a) any roll of tobacco wrapped in paper or in any substance  
26 not containing tobacco, (b) tobacco, in any form, that is functional in  
27 the product which, because of its appearance, the type of tobacco used in  
28 the filler, or its packaging and labeling, is likely to be offered to, or  
29 purchased by, consumers as a cigarette, or (c) any roll of tobacco  
30 wrapped in any substance containing tobacco which, because of its  
31 appearance, the type of tobacco used in the filler, or its packaging and

1 labeling, is likely to be offered to, or purchased by, consumers as a  
2 cigarette described in subdivision (2)(a) of this section;

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

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

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

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

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

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

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

31 (ii) Any component, part, or accessory of such a product or device

1 that is used during operation of the product or device when not sold in  
2 combination with any substance containing nicotine, tobacco, or tobacco  
3 derivatives;

4 (4) ~~(2)~~ Self-service display means a retail display that contains a  
5 tobacco product, a tobacco-derived product, an electronic nicotine  
6 delivery system ~~a vapor product~~, or an alternative nicotine product and  
7 is located in an area openly accessible to a retailer's customers and  
8 from which such customers can readily access the product without the  
9 assistance of a salesperson. Self-service display does not include a  
10 display case that holds tobacco products, electronic nicotine delivery  
11 systems ~~vapor products~~, or alternative nicotine products behind locked  
12 doors; and

13 (5) ~~(3)~~ Tobacco specialty store means a retail store that (a)  
14 derives at least seventy-five percent of its revenue from tobacco  
15 products, tobacco-derived products, electronic nicotine delivery systems  
16 ~~vapor products~~, or alternative nicotine products and (b) does not permit  
17 persons ~~minors~~ under the age of nineteen ~~eighteen~~ years to enter the  
18 premises unless accompanied by a parent or legal guardian. ~~;~~ and

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

1 ~~Cosmetic Act.~~

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

4       28-1419 Whoever shall sell, give, or furnish, in any way, any  
5 tobacco in any form whatever, or any cigarettes, cigarette paper,  
6 electronic nicotine delivery systems ~~vapor~~ products, or alternative  
7 nicotine products, to any ~~person~~ minor under nineteen ~~eighteen~~ years of  
8 age, is guilty of a Class III misdemeanor for each offense.

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

11       28-1420 It shall be unlawful for any person, partnership, limited  
12 liability company, or corporation to sell, keep for sale, or give away in  
13 course of trade, any cigars, tobacco, electronic nicotine delivery  
14 systems, cigarettes, or cigarette material to anyone without first  
15 obtaining a license as provided in sections 28-1421 and 28-1422. It shall  
16 also be unlawful for any wholesaler to sell or deliver any cigars,  
17 tobacco, electronic nicotine delivery systems, cigarettes, or cigarette  
18 material to any person, partnership, limited liability company, or  
19 corporation who, at the time of such sale or delivery, is not the  
20 recipient of a valid tobacco license for the current year to retail the  
21 same as provided in such sections. It shall also be unlawful for any  
22 person, partnership, limited liability company, or corporation to  
23 purchase or receive, for purposes of resale, any cigars, tobacco,  
24 electronic nicotine delivery systems, cigarettes, or cigarette material  
25 if such person, partnership, limited liability company, or corporation is  
26 not the recipient of a valid tobacco license to retail such tobacco  
27 products at the time the same are purchased or received. Whoever shall be  
28 found guilty of violating this section shall be guilty of a Class III  
29 misdemeanor for each offense.

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

1           28-1421 Licenses for the sale of cigars, tobacco, electronic  
2 nicotine delivery systems, cigarettes, and cigarette material to persons  
3 nineteen years of age or over the age of eighteen years shall be issued  
4 to individuals, partnerships, limited liability companies, and  
5 corporations by the clerk or finance director of any city or village and  
6 by the county clerk of any county upon application duly made as provided  
7 in section 28-1422. The sale of cigarettes or cigarette materials that  
8 contain perfumes or drugs in any form is prohibited and is not licensed  
9 by the provisions of this section. Only cigarettes and cigarette material  
10 containing pure white paper and pure tobacco shall be licensed.

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

13           28-1423 The term for which such license shall run shall be from the  
14 date of filing such application and paying such license fee to and  
15 including December 31 of the calendar year in which application for such  
16 license is made, and the license fee for any person, partnership, limited  
17 liability company, or corporation selling at retail shall be twenty-five  
18 dollars in cities of the metropolitan class, fifteen dollars in cities of  
19 the primary and first classes, and ten dollars in cities of all other  
20 classes and in towns and villages and in locations outside of the limits  
21 of cities, towns, and villages. Any person, partnership, limited  
22 liability company, or corporation selling annually in the aggregate more  
23 than one hundred fifty thousand cigars, packages of cigarettes,  
24 electronic nicotine delivery systems, and packages of tobacco in any  
25 form, at wholesale, shall pay a license fee of one hundred dollars, and  
26 if such combined annual sales amount to less than one hundred fifty  
27 thousand cigars, packages of cigarettes, electronic nicotine delivery  
28 systems, and packages of tobacco, the annual license fee shall be fifteen  
29 dollars. No wholesaler's license shall be issued in any year on a less  
30 basis than one hundred dollars per annum unless the applicant for the  
31 same shall file with such application a statement duly sworn to by

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

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

17 28-1424 The license~~er~~, provided for in sections 28-1421 and 28-1422  
18 shall, when issued, shall authorize the sale of cigars, tobacco,  
19 electronic nicotine delivery systems, cigarettes, and cigarette material  
20 by the licensee and employees, to persons nineteen years of age or over  
21 ~~the age of eighteen years~~, at the place of business described in such  
22 license for the term therein authorized, unless the license is same be  
23 forfeited as provided in section 28-1425.

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

26 28-1425 Any licensee who shall sell, give, or furnish in any way to  
27 any person under the age of nineteen ~~eighteen~~ years, or who shall  
28 willingly allow to be taken from his or her place of business by any  
29 person under the age of nineteen ~~eighteen~~ years, any cigars, tobacco,  
30 cigarettes, cigarette material, electronic nicotine delivery systems  
31 ~~vapor products~~, or alternative nicotine products is guilty of a Class III

1 misdemeanor. Any officer, director, or manager having charge or control,  
2 either separately or jointly with others, of the business of any  
3 corporation which violates sections 28-1419 ~~28-1418.01~~, 28-1420 to  
4 28-1429, and 28-1429.03, if he or she has knowledge of such violation,  
5 shall be subject to the penalties provided in this section. In addition  
6 to the penalties provided in this section, such licensee shall be subject  
7 to the additional penalty of a revocation and forfeiture of his, her,  
8 their, or its license, at the discretion of the court before whom the  
9 complaint for violation of such sections may be heard. If such license is  
10 revoked and forfeited, all rights under such license shall at once cease  
11 and terminate.

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

14       28-1427 Any person under the age of nineteen ~~eighteen~~ years who  
15 shall obtain cigars, tobacco, cigarettes, cigarette material, electronic  
16 nicotine delivery systems ~~vapor~~ products, or alternative nicotine  
17 products from a licensee by representing that he or she is of the age of  
18 nineteen ~~eighteen~~ years or over is guilty of a Class V misdemeanor.

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

21       28-1429.01 The Legislature finds that the incumbent health risks  
22 associated with using ~~smoking~~ tobacco products have been scientifically  
23 proven. The Legislature further finds that the growing number of young  
24 people ~~minors~~ who start using tobacco products ~~smoking~~ is staggering, and  
25 even more abhorrent are the ages at which such use begins ~~children begin~~  
26 ~~this deadly habit~~. The Legislature has established an age restriction on  
27 the use of tobacco products ~~by minors~~. To ensure that the use of tobacco  
28 products among young people ~~minors~~ is discouraged to the maximum extent  
29 possible, it is the intent of the Legislature to ban the use of vending  
30 machines and similar devices to dispense tobacco products in facilities,  
31 buildings, or areas which are open to the general public within Nebraska.



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

3           28-1429.02 (1) Except as provided in subsection (2) of this section,  
4 it shall be unlawful to dispense cigarettes, other tobacco products,  
5 electronic nicotine delivery systems ~~vapor products~~, or alternative  
6 nicotine products from a vending machine or similar device. Any person  
7 violating this section is guilty of a Class III misdemeanor. In addition,  
8 upon conviction for a second offense, the court shall order a six-month  
9 suspension of the offender's license to sell tobacco and electronic  
10 nicotine delivery systems, if any, and, upon conviction for a third or  
11 subsequent offense, the court shall order the permanent revocation of the  
12 offender's license to sell tobacco and electronic nicotine delivery  
13 systems, if any.

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

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

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

29           28-1429.03 (1) Except as provided in subsection (2) of this section  
30 and section 28-1429.02, it shall be unlawful to sell or distribute  
31 cigarettes, cigars, electronic nicotine delivery systems ~~vapor products~~,

1 alternative nicotine products, or tobacco in any form whatever through a  
2 self-service display. Any person violating this section is guilty of a  
3 Class III misdemeanor. In addition, upon conviction for a second or  
4 subsequent offense within a twelve-month period, the court shall order a  
5 six-month suspension of the license issued under section 28-1421.

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

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

11 Sec. 14. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420,  
12 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02, and  
13 28-1429.03, Reissue Revised Statutes of Nebraska, are repealed.