

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 149**

Introduced by Quick, 35; Albrecht, 17; Bolz, 29; Cavanaugh, 6; Hilkemann, 4; Howard, 9; Hunt, 8; 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 vapor products; 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, 71-5716, 71-5718, and 71-5727,  
4 Reissue Revised Statutes of Nebraska; to change and provide  
5 restrictions relating to the sale and use of vapor products and  
6 flavored liquids as prescribed; to define and redefine terms; to  
7 require sellers of vapor products to be licensed as prescribed; to  
8 change legislative findings; to add restrictions relating to vapor  
9 products under the Nebraska Clean Indoor Air Act; to harmonize  
10 provisions; to provide an operative date; and to repeal the original  
11 sections.  
12 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 (1) Whoever, being a minor under the age of eighteen years,  
4 shall smoke cigarettes or cigars, use ~~vapor products~~ or alternative  
5 nicotine products, or use tobacco in any form whatever, in this state,  
6 shall be guilty of a Class V misdemeanor.

7 (2) Whoever, being an individual under the age of twenty-one years,  
8 shall use vapor products in this state shall be guilty of a Class V  
9 misdemeanor.

10 (3) Any individual ~~minor~~ charged with a violation of this section  
11 may be free from prosecution if he or she furnishes evidence for the  
12 conviction of the person or persons selling or giving him or her the  
13 cigarettes, cigars, vapor products, alternative nicotine products, or  
14 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 vapor product, cigarette, cigar, or  
22 other tobacco product, or any product regulated as a drug or device by  
23 the United States Food and Drug Administration under Chapter V of the  
24 federal Food, Drug, and Cosmetic Act;

25 (2) Flavored liquid means a liquid that (a) is composed of nicotine  
26 and other chemicals, (b) is intended to be used in a vapor product, and  
27 (c) contains a natural or artificial constituent or additive that causes  
28 the liquid or its smoke to have a distinguishable flavor or aroma,  
29 including, but not limited to, chocolate, vanilla, honey, cocoa, or any  
30 fruit, candy, dessert, alcoholic beverage, herb, or spice;

31 (3) ~~(2)~~ Self-service display means a retail display that contains a

1 tobacco product, a tobacco-derived product, a vapor product, or an  
2 alternative nicotine product and is located in an area openly accessible  
3 to a retailer's customers and from which such customers can readily  
4 access the product without the assistance of a salesperson. Self-service  
5 display does not include a display case that holds tobacco products,  
6 vapor products, or alternative nicotine products behind locked doors;

7 (4) ~~(3)~~ Tobacco specialty store means a retail store that (a)  
8 derives at least seventy-five percent of its revenue from tobacco  
9 products, tobacco-derived products, vapor products, or alternative  
10 nicotine products and (b) does not permit minors under the age of  
11 eighteen years to enter the premises unless accompanied by a parent or  
12 legal guardian; and

13 (5) ~~(4)~~ Vapor product means any noncombustible product, whether  
14 containing nicotine or not, that employs a heating element, power source,  
15 electronic circuit, or other electronic, chemical, or mechanical means,  
16 regardless of shape or size, that can be used to produce vapor from  
17 nicotine in a solution or other form. Vapor product includes any  
18 electronic cigarette, electronic cigar, electronic cigarillo, electronic  
19 pipe, or similar product or device and any vapor cartridge or other  
20 container of nicotine in a solution or other form that is intended to be  
21 used with or in an electronic cigarette, electronic cigar, electronic  
22 cigarillo, electronic pipe, or similar product or device. Vapor product  
23 does not include an alternative nicotine product, cigarette, cigar, or  
24 other tobacco product, or any product regulated as a drug or device by  
25 the United States Food and Drug Administration under Chapter V of the  
26 federal Food, Drug, and Cosmetic Act.

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

29 28-1419 (1) Whoever shall sell, give, or furnish, in any way, any  
30 tobacco in any form whatever, or any cigarettes, cigarette paper, ~~vapor~~  
31 ~~products,~~ or alternative nicotine products, to any minor under eighteen

1 years of age, is guilty of a Class III misdemeanor for each offense.

2 (2) Whoever shall sell, give, or furnish, in any way, any vapor  
3 products or flavored liquids, to any individual under twenty-one years of  
4 age, is guilty of a Class III misdemeanor for each offense.

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

7 28-1420 It shall be unlawful for any person, partnership, limited  
8 liability company, or corporation to sell, keep for sale, or give away in  
9 course of trade, any cigars, tobacco, cigarettes, ~~or~~ cigarette material,  
10 or vapor products to anyone without first obtaining a license as provided  
11 in sections 28-1421 and 28-1422. It shall also be unlawful for any  
12 wholesaler to sell or deliver any cigars, tobacco, cigarettes, ~~or~~  
13 cigarette material, or vapor products to any person, partnership, limited  
14 liability company, or corporation who, at the time of such sale or  
15 delivery, is not the recipient of a valid ~~tobacco~~ license for the current  
16 year to retail the same as provided in such sections. It shall also be  
17 unlawful for any person, partnership, limited liability company, or  
18 corporation to purchase or receive, for purposes of resale, any cigars,  
19 tobacco, cigarettes, ~~or~~ cigarette material, or vapor products if such  
20 person, partnership, limited liability company, or corporation is not the  
21 recipient of a valid ~~tobacco~~ license to retail such ~~tobacco~~ products at  
22 the time the same are purchased or received. Whoever shall be found  
23 guilty of violating this section shall be guilty of a Class III  
24 misdemeanor for each offense.

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

27 28-1421 Licenses for the sale of cigars, tobacco, cigarettes, ~~and~~  
28 cigarette material, and vapor products to persons of sufficient age to  
29 lawfully use such products over the age of eighteen years shall be issued  
30 to individuals, partnerships, limited liability companies, and  
31 corporations by the clerk or finance director of any city or village and

1 by the county clerk of any county upon application duly made as provided  
2 in section 28-1422. The sale of cigarettes or cigarette materials that  
3 contain perfumes or drugs in any form is prohibited and is not licensed  
4 by the provisions of this section. Only cigarettes and cigarette material  
5 containing pure white paper and pure tobacco shall be licensed.

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

8 28-1423 The term for which such license shall run shall be from the  
9 date of filing such application and paying such license fee to and  
10 including December 31 of the calendar year in which application for such  
11 license is made, and the license fee for any person, partnership, limited  
12 liability company, or corporation selling at retail shall be twenty-five  
13 dollars in cities of the metropolitan class, fifteen dollars in cities of  
14 the primary and first classes, and ten dollars in cities of all other  
15 classes, ~~and~~ in towns and villages, ~~and~~ in locations outside of the  
16 limits of cities, towns, ~~and~~ villages. Any person, partnership, limited  
17 liability company, or corporation selling annually in the aggregate more  
18 than one hundred fifty thousand cigars, packages of cigarettes, ~~and~~  
19 packages of tobacco, and packages of vapor products in any form, at  
20 wholesale, shall pay a license fee of one hundred dollars, and if such  
21 combined annual sales amount to less than one hundred fifty thousand  
22 cigars, packages of cigarettes, ~~and~~ packages of tobacco, and packages of  
23 vapor products, the annual license fee shall be fifteen dollars. No  
24 wholesaler's license shall be issued in any year on a less basis than one  
25 hundred dollars per annum unless the applicant for the same shall file  
26 with such application a statement duly sworn to by himself or herself, or  
27 if applicant is a partnership, by a member of the firm, or if a limited  
28 liability company, by a member or manager of the company, or if a  
29 corporation, by an officer or manager thereof, that in the past such  
30 wholesaler's combined sales of cigars, packages of cigarettes, ~~and~~  
31 packages of tobacco, and packages of vapor products in every form have

1 not exceeded in the aggregate one hundred fifty thousand annually, and  
2 that such sales will not exceed such aggregate amount for the current  
3 year for which the license is to issue. Any person swearing falsely in  
4 such affidavit shall be guilty of perjury and upon conviction thereof  
5 shall be punished as provided by section 28-915 and such wholesaler's  
6 license shall be revoked until the full license fee of one hundred  
7 dollars is paid. If application for license is made after July 1 of any  
8 calendar year, the fee shall be one-half of the fee provided in this  
9 section.

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

12 28-1424 The license, provided for in sections 28-1421 and 28-1422  
13 when issued, shall authorize the sale of cigars, tobacco, cigarettes, and  
14 cigarette material, and vapor products by the licensee and employees, to  
15 persons of sufficient age to lawfully use such products ~~over the age of~~  
16 ~~eighteen years~~, at the place of business described in such license for  
17 the term therein authorized, unless the same be forfeited as provided in  
18 section 28-1425.

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

21 28-1425 Any licensee who shall sell, give, or furnish in any way ~~to~~  
22 ~~any person under the age of eighteen years, or who shall willingly allow~~  
23 ~~to be taken from his or her place of business by any person under the age~~  
24 ~~of eighteen years,~~ any cigars, tobacco, cigarettes, cigarette material,  
25 vapor products, flavored liquids, or alternative nicotine products to any  
26 person who is not of sufficient age to lawfully use such products, or who  
27 shall willingly allow any cigars, tobacco, cigarettes, cigarette  
28 material, vapor products, flavored liquids, or alternative nicotine  
29 products to be taken from his or her place of business by any person who  
30 is not of sufficient age to lawfully use such products, is guilty of a  
31 Class III misdemeanor. Any officer, director, or manager having charge or

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

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

13 28-1427 (1) Any person under the age of eighteen years who shall  
14 obtain cigars, tobacco, cigarettes, cigarette material, ~~vapor products,~~  
15 or alternative nicotine products from a licensee by representing that he  
16 or she is of the age of eighteen years or over is guilty of a Class V  
17 misdemeanor.

18 (2) Any person under the age of twenty-one years who shall obtain  
19 vapor products or flavored liquids from a licensee by representing that  
20 he or she is of the age of twenty-one years or over is guilty of a Class  
21 V misdemeanor.

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

24 28-1429.01 The Legislature finds that the incumbent health risks  
25 associated with using cigarettes, other ~~smoking~~ tobacco products, vapor  
26 products, and alternative nicotine products have been scientifically  
27 proven. The Legislature further finds that the growing number of young  
28 people ~~minors~~ who start using these products ~~smoking~~ is staggering and  
29 even more abhorrent are the ages at which such use begins ~~children begin~~  
30 this ~~deadly habit~~. The Legislature has established an age ~~restrictions~~  
31 restriction on the use of such ~~tobacco~~ products ~~by minors~~. To ensure that

1 the use of ~~such tobacco~~ products among young people ~~minors~~ is discouraged  
2 to the maximum extent possible, it is the intent of the Legislature to  
3 ban the use of vending machines and similar devices to dispense such  
4 ~~tobacco~~ products in facilities, buildings, or areas which are open to the  
5 general public within Nebraska.

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

8 28-1429.02 (1) Except as provided in subsection (2) of this section,  
9 it shall be unlawful to dispense cigarettes, other tobacco products,  
10 vapor products, or alternative nicotine products from a vending machine  
11 or similar device. Any person violating this section is guilty of a Class  
12 III misdemeanor. In addition, upon conviction for a second offense, the  
13 court shall order a six-month suspension of the ~~offender's~~ license issued  
14 under section 28-1421 to sell tobacco, if any, and, upon conviction for a  
15 third or subsequent offense, the court shall order the permanent  
16 revocation of the ~~offender's~~ license issued under section 28-1421 to sell  
17 ~~tobacco~~, if any.

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

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

30 Sec. 12. Section 71-5716, Reissue Revised Statutes of Nebraska, is  
31 amended to read:



1           71-5716 Sections 71-5716 to 71-5735 and section 14 of this act shall  
2 be known and may be cited as the Nebraska Clean Indoor Air Act.

3           Sec. 13. Section 71-5718, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           71-5718 For purposes of the Nebraska Clean Indoor Air Act, the  
6 definitions found in sections 71-5719 to 71-5728 and section 14 of this  
7 act apply.

8           Sec. 14. Vapor product has the same meaning as in section  
9 28-1418.01.

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

12          71-5727 Smoke or smoking means (1) the lighting of any cigarette,  
13 cigar, pipe, or other smoking material or the possession of any lighted  
14 cigarette, cigar, pipe, or other smoking material, regardless of its  
15 composition, or (2) the use of a vapor product.

16          Sec. 16. This act becomes operative on January 1, 2020.

17          Sec. 17. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420,  
18 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02,  
19 71-5716, 71-5718, and 71-5727, Reissue Revised Statutes of Nebraska, are  
20 repealed.