

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 862

Introduced by Hughes, 44.

Read first time January 09, 2020

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco; to amend sections 28-1418 and
2 28-1418.01, Revised Statutes Supplement, 2019; to prohibit
3 possession by minors of tobacco, electronic nicotine delivery
4 systems, or alternative nicotine products as prescribed; to redefine
5 a term; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1418, Revised Statutes Supplement, 2019, is
2 amended to read:

3 28-1418 (1) ~~A whoever, being a person under the age of nineteen~~
4 ~~years,~~ shall not smoke or possess cigarettes or cigars, use or possess
5 electronic nicotine delivery systems or alternative nicotine products, or
6 use or possess tobacco in any form whatever. A violation of this section
7 is ~~, in this state, shall be guilty of a Class V misdemeanor.~~

8 (2) Any person charged with a violation of this section may be free
9 from prosecution if he or she furnishes evidence for the conviction of
10 the person or persons selling or giving him or her the cigarettes,
11 cigars, electronic nicotine delivery systems, alternative nicotine
12 products, or tobacco.

13 Sec. 2. Section 28-1418.01, Revised Statutes Supplement, 2019, is
14 amended to read:

15 28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

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

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

1 appearance, the type of tobacco used in the filler, or its packaging and
2 labeling, is likely to be offered to, or purchased by, consumers as a
3 cigarette described in subdivision (2)(a) of this section;

4 (3)(a) Electronic nicotine delivery system means any product or
5 device designed or manufactured to contain ~~containing~~ nicotine, tobacco,
6 or tobacco derivatives that employs a heating element, power source,
7 electronic circuit, or other electronic, chemical, or mechanical means,
8 regardless of shape or size, to simulate smoking by delivering the
9 nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or
10 aerosol form to a person inhaling from the product or device. A product
11 or device may constitute an electronic nicotine delivery system
12 regardless of whether the product or device actually contains nicotine,
13 tobacco, or tobacco derivatives.

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

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

21 (ii) Any product or device marketed, manufactured, distributed, or
22 sold as an electronic cigarette, electronic cigar, electronic cigarillo,
23 electronic pipe, electronic hookah, or similar products, names,
24 descriptors, or devices; and

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

29 (c) Electronic nicotine delivery system does not include the
30 following:

31 (i) An alternative nicotine product, cigarette, cigar, or other

1 tobacco product, or any product regulated as a drug or device by the
2 United States Food and Drug Administration under Chapter V of the Federal
3 Food, Drug, and Cosmetic Act; or

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

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

17 (5) Tobacco specialty store means a retail store that (a) derives at
18 least seventy-five percent of its revenue from tobacco products, tobacco-
19 derived products, electronic nicotine delivery systems, or alternative
20 nicotine products and (b) does not permit persons under the age of
21 nineteen years to enter the premises unless accompanied by a parent or
22 legal guardian.

23 Sec. 3. Original sections 28-1418 and 28-1418.01, Revised Statutes
24 Supplement, 2019, are repealed.