

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 118

Introduced by Larson, 40; Krist, 10.

Read first time January 09, 2015

Committee: General Affairs

1 A BILL FOR AN ACT relating to cigar shops; to amend sections 53-103.08
2 and 53-1,120.01, Reissue Revised Statutes of Nebraska, and sections
3 28-1429.03, 53-131, and 71-5730, Revised Statutes Cumulative
4 Supplement, 2014; to define cigar shop; to permit certain sales as
5 prescribed; to provide for a nonrefundable application fee and
6 requirements for certain Class C liquor license applications; to
7 preempt county resolutions and city ordinances relating to smoking
8 in cigar shops; to state intent; to exempt cigar shops from the
9 Nebraska Clean Indoor Air Act; to harmonize provisions; to repeal
10 the original sections; and to declare an emergency.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1429.03, Revised Statutes Cumulative
2 Supplement, 2014, is amended to read:

3 28-1429.03 (1) Except as provided in subsection (2) of this section
4 and section 28-1429.02, it shall be unlawful to sell or distribute
5 cigarettes, cigars, vapor products, alternative nicotine products, or
6 tobacco in any form whatever through a self-service display. Any person
7 violating this section is guilty of a Class III misdemeanor. In addition,
8 upon conviction for a second or subsequent offense within a twelve-month
9 period, the court shall order a six-month suspension of the license
10 issued under section 28-1421.

11 (2) Cigarettes, cigars, vapor products, alternative nicotine
12 products, or tobacco in any form ~~whatever~~ may be sold or distributed in a
13 self-service display that is located in a tobacco specialty store or
14 cigar shop bar as defined in section 53-103.08.

15 Sec. 2. Section 53-103.08, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 53-103.08 Cigar shop bar means an establishment operated by a holder
18 of a Class C liquor license which:

19 (1) Does not sell food;

20 (2) In addition to selling alcohol, annually receives ten percent or
21 more of its gross revenue from the sale of cigars, ~~and~~ other tobacco
22 products, ~~and~~ tobacco-related products, except from the sale of
23 cigarettes as defined in section 69-2702. A cigar shop bar shall not
24 discount alcohol if sold in combination with cigars or other tobacco
25 products and tobacco-related products;

26 (3) Has a walk-in humidor on the premises; and

27 (4) Does not permit the smoking of cigarettes.

28 Sec. 3. Section 53-131, Revised Statutes Cumulative Supplement,
29 2014, is amended to read:

30 53-131 (1) Any person desiring to obtain a new license to sell
31 alcoholic liquor at retail, a craft brewery license, or a microdistillery

1 license shall file with the commission:

2 (a) An application in triplicate original upon forms prescribed by
3 the commission—~~prescribes~~, including the information required by
4 subsection (3) of this section for an application to operate a cigar shop
5 ~~bar~~;

6 (b) The license fee if under sections 53-124 and 53-124.01 such fee
7 is payable to the commission, which fee shall be returned to the
8 applicant if the application is denied; and

9 (c) The nonrefundable application fee in the sum of four hundred
10 dollars, except that the nonrefundable application fee for an application
11 for a cigar shop ~~bar~~ shall be one thousand dollars.

12 (2) The commission shall notify the clerk of the city or village in
13 which such license is sought or, if the license sought is not sought
14 within a city or village, the county clerk of the county in which such
15 license is sought, of the receipt of the application and shall include
16 one copy of the application with the notice. No such license shall be
17 issued or denied by the commission until the expiration of the time
18 allowed for the receipt of a recommendation of denial or an objection
19 requiring a hearing under subdivision (1)(a) or (b) of section 53-133.
20 During the period of forty-five days after the date of receipt by mail or
21 electronic delivery of such application from the commission, the local
22 governing body of such city, village, or county may make and submit to
23 the commission recommendations relative to the granting or refusal to
24 grant such license to the applicant.

25 (3) For an application to operate a cigar shop ~~bar~~, the application
26 shall include proof of the cigar shop's ~~bar's~~ annual gross revenue as
27 requested by the commission and such other information as requested by
28 the commission to establish the intent to operate as a cigar shop ~~bar~~.
29 The commission may adopt and promulgate rules and regulations to regulate
30 cigar shops ~~bars~~.

31 (4) For renewal of a license under this section, a licensee shall

1 file with the commission an application, the license fee as provided in
2 subdivision (1)(b) of this section, and a renewal fee of forty-five
3 dollars.

4 Sec. 4. Section 53-1,120.01, Reissue Revised Statutes of Nebraska,
5 is amended to read:

6 53-1,120.01 (1) No county resolution or city ordinance that
7 prohibits smoking in indoor areas shall apply to cigar shops bars.

8 (2)(a) The Legislature finds that allowing smoking in cigar shops as
9 a limited exception to the Nebraska Clean Indoor Air Act does not
10 interfere with the original intent that the general public and employees
11 not be unwillingly subjected to second-hand smoke since employees have
12 ample other opportunities for similar employment at other establishments.
13 This exception poses a de minimis restriction on the public and employees
14 given the limited number of cigar shops compared to other businesses that
15 sell alcohol, cigars, and pipe tobacco, and any member of the public
16 should reasonably expect that there would be second-hand smoke in a cigar
17 shop given the nature of the business and could choose to avoid such
18 exposure.

19 (b) The Legislature finds that (i) cigars and pipe tobacco have
20 different characteristics than other forms of tobacco such as cigarettes,
21 (ii) cigar aficionados often pair cigars with various spirits such as
22 cognac, single malt whisky, bourbon, rum, rye, port, and others, and
23 (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour
24 or longer to enjoy a cigar or pipe rather than simply satisfying an
25 addiction.

26 (c) It is the intent of the Legislature to allow cigar and pipe
27 smoking in cigar shops that meet specific statutory criteria. This
28 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in
29 accordance with the intent of the act to protect public places and places
30 of employment.

31 Sec. 5. Section 71-5730, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 71-5730 (1) The following indoor areas are exempt from section
3 71-5729:

4 (a ~~1~~) Guestrooms and suites that are rented to guests and that are
5 designated as smoking rooms, except that not more than twenty percent of
6 rooms rented to guests in an establishment may be designated as smoking
7 rooms. All smoking rooms on the same floor shall be contiguous, and smoke
8 from such rooms shall not infiltrate into areas where smoking is
9 prohibited under the Nebraska Clean Indoor Air Act;

10 (b ~~2~~) Indoor areas used in connection with a research study on the
11 health effects of smoking conducted in a scientific or analytical
12 laboratory under state or federal law or at a college or university
13 approved by the Coordinating Commission for Postsecondary Education;

14 (c ~~3~~) Tobacco retail outlets; and

15 (d ~~4~~) Cigar shops ~~bars~~ as defined in section 53-103.08.

16 (2)(a) The Legislature finds that allowing smoking in cigar shops as
17 a limited exception to the Nebraska Clean Indoor Air Act does not
18 interfere with the original intent that the general public and employees
19 not be unwillingly subjected to second-hand smoke since employees have
20 ample other opportunities for similar employment at other establishments.
21 This exception poses a de minimis restriction on the public and employees
22 given the limited number of cigar shops compared to other businesses that
23 sell alcohol, cigars, and pipe tobacco, and any member of the public
24 should reasonably expect that there would be second-hand smoke in a cigar
25 shop given the nature of the business and could choose to avoid such
26 exposure.

27 (b) The Legislature finds that (i) cigars and pipe tobacco have
28 different characteristics than other forms of tobacco such as cigarettes,
29 (ii) cigar aficionados often pair cigars with various spirits such as
30 cognac, single malt whisky, bourbon, rum, rye, port, and others, and
31 (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour

1 or longer to enjoy a cigar or pipe rather than simply satisfying an
2 addiction.

3 (c) It is the intent of the Legislature to allow cigar and pipe
4 smoking in cigar shops that meet specific statutory criteria. This
5 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in
6 accordance with the intent of the act to protect public places and places
7 of employment.

8 Sec. 6. Original sections 53-103.08 and 53-1,120.01, Reissue
9 Revised Statutes of Nebraska, and sections 28-1429.03, 53-131, and
10 71-5730, Revised Statutes Cumulative Supplement, 2014, are repealed.

11 Sec. 7. Since an emergency exists, this act takes effect when
12 passed and approved according to law.