

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 838

Introduced by Brashear, 4

Read first time January 20, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to tobacco; to amend sections 28-1420, 28-1421,
2 28-1423 to 28-1425, and 28-1428, Reissue Revised Statutes
3 of Nebraska, and section 28-1422, Revised Statutes
4 Supplement, 1998; to change provisions relating to
5 tobacco licensees and the distribution of tobacco to
6 minors; to define terms; to require notice; to provide
7 duties; to provide for penalties; to provide for
8 enforcement and compliance checks; to create a fund; to
9 distribute fees; to harmonize provisions; to provide
10 severability; to repeal the original sections; and to
11 outright repeal sections 28-1418, 28-1419, 28-1426,
12 28-1427, and 28-1429, Reissue Revised Statutes of
13 Nebraska.

14 Be it enacted by the people of the State of Nebraska,

1 Section 1. For purposes of sections 28-1420 to
2 28-1429.02 and sections 1 to 5, 7, and 14 to 16 of this act:

3 (1) Distribute means to sell, furnish, give, or provide
4 tobacco products or, in the case of a retail tobacco licensee, to
5 knowingly allow tobacco products to be taken from the retail
6 tobacco licensee's place of business;

7 (2) Identification means a valid driver's license or
8 operator's license, state identification card, military
9 identification card, alien registration card, or passport that
10 purports to establish that the person is eighteen years of age or
11 older;

12 (3) Minor means a person under eighteen years of age; and

13 (4) Tobacco products include, but are not limited to,
14 cigars, cigarettes, loose tobacco leaves, and other products made
15 from tobacco leaves which can be used for smoking, sniffing, or
16 chewing.

17 Sec. 2. (1) Every retail tobacco licensee of a place
18 where tobacco products are sold shall display at all times in a
19 prominent place his or her valid tobacco license and shall post
20 conspicuously so as to ensure that such license is likely to be
21 read at each point of sale and keep so posted a printed card, no
22 smaller than ninety-three and one-half square inches with each
23 letter to be a minimum of one-fourth inch in height, which reads as
24 follows: "IT IS A VIOLATION OF THE LAW FOR TOBACCO PRODUCTS TO BE
25 SOLD TO A PERSON UNDER THE AGE OF 18".

26 (2) No notice regarding tobacco products, other than the
27 notice required by this section, shall be required to be posted or
28 maintained in any place of business that sells tobacco products at

1 retail.

2 (3) Compliance with any federal statute or regulation
3 requiring posting of substantially similar information at retail
4 points of sale as required by this section shall constitute
5 compliance with this section.

6 Sec. 3. (1) Except as provided in subsection (4) of this
7 section, it is unlawful for any minor to use or possess tobacco
8 products in this state or obtain, accept receipt of, or attempt to
9 purchase tobacco products from a tobacco licensee.

10 (2) It is unlawful for any minor to present or offer to
11 any person any purported identification of age which is false,
12 fraudulent, or not actually his or her own for the purpose of
13 purchasing or receiving tobacco products.

14 (3) Any minor in violation of subsection (1) or (2) of
15 this section is guilty of a Class V misdemeanor.

16 (4) A minor may possess tobacco products:

17 (a) If he or she is an employee of a tobacco licensee and
18 is in possession of tobacco products in the course of his or her
19 employment; or

20 (b) If he or she is under the direct supervision of a
21 peace officer with statutory powers of arrest to enforce or test
22 compliance with sections 28-1420 to 28-1429.02 and sections 1 to 5,
23 7, and 14 to 16 of this act and has provided written parental
24 consent to participate in the enforcement or compliance testing.
25 Enforcement or compliance testing shall be conducted in accordance
26 with section 14 of this act.

27 Sec. 4. (1) It is unlawful for any person to distribute
28 tobacco products in any way to any minor, except that it is not

1 unlawful for a person to provide tobacco products to a minor
 2 employee when required in the performance of the employee's duties.

3 (2) It is unlawful for any person who sells tobacco
 4 products over the counter to maintain packages of such products in
 5 any location accessible to customers that is not within the line of
 6 sight, or under the control, of a cashier or other employee during
 7 regular business hours.

8 Sec. 5. Any retail tobacco licensee may maintain, in a
 9 separate book, a record of each person who has furnished
 10 identification for the purpose of purchasing or receiving tobacco
 11 products. The record may show the name and address of the
 12 purchaser, the date of the purchase, and a description of the
 13 identification used and may be signed by the purchaser. In any
 14 prosecution of or any proceeding against any retail tobacco
 15 licensee charged with distribution of tobacco products to a minor,
 16 proof of the following shall be an absolute defense to the charge:

17 (1) The minor falsely represented and supported with
 18 identification that purported to establish that he or she was of
 19 legal age to purchase or receive tobacco products; and

20 (2) The seller was acting in good faith, relying upon the
 21 identification and the appearance of the purchaser, and on the
 22 belief the purchaser was of legal age to make the purchase.

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

25 28-1420. It ~~shall be~~ is unlawful for any person,
 26 partnership, limited liability company, or corporation to sell,
 27 keep for sale, or give away in course of trade, ~~any cigars,~~ tobacco
 28 products, ~~cigarettes, or cigarette material~~ to anyone without first

1 obtaining a tobacco license as provided in sections 28-1421 and
 2 28-1422. It ~~shall also be~~ is unlawful for any wholesaler to sell
 3 or deliver ~~any cigars, tobacco products, cigarettes, or cigarette~~
 4 ~~material~~ to any person, partnership, limited liability company, or
 5 corporation who, at the time of such sale or delivery, ~~is not the~~
 6 ~~recipient of~~ does not have a valid tobacco license for the current
 7 year to retail ~~the same as provided in such sections~~ tobacco
 8 products. It ~~shall also be~~ is unlawful for any person,
 9 partnership, limited liability company, or corporation to purchase
 10 or receive, ~~for purposes of resale, any cigars, tobacco products~~
 11 ~~for purposes of resale, cigarettes, or cigarette material~~ if such
 12 person, partnership, limited liability company, or corporation ~~is~~
 13 ~~not the recipient of~~ does not have a valid tobacco license to
 14 retail ~~such~~ tobacco products at the time the ~~same~~ tobacco products
 15 are purchased or received. ~~Whoever shall be found guilty of~~
 16 ~~violating this section shall be guilty of a Class III misdemeanor~~
 17 ~~for each offense.~~

18 Sec. 7. (1) Every retail tobacco licensee shall notify
 19 each individual employed as a retail sales clerk that state law
 20 prohibits selling, distributing, giving, or furnishing of tobacco
 21 products to a minor.

22 (2) The notice required by subsection (1) of this section
 23 shall be provided within ten days after the effective date of this
 24 act for individuals employed on such date. Any individual employed
 25 as a retail sales clerk selling tobacco products after the
 26 effective date of this act shall receive the notice prior to
 27 commencing the sale of tobacco products. The retail sales clerk
 28 shall verify in writing that he or she has received the notice and

1 the date and time the notice was received. The written
 2 verification shall be retained by the employer until one hundred
 3 twenty days after the retail sales clerk has left the employer's
 4 employ.

5 Sec. 8. Section 28-1421, Reissue Revised Statutes of
 6 Nebraska, is amended to read:

7 28-1421. Licenses for the sale of ~~cigars,~~ tobacco
 8 ~~products,~~ ~~cigarettes,~~ and ~~cigarette material~~ to persons ~~over the~~
 9 ~~age of~~ eighteen years of age or older shall be issued to
 10 individuals, partnerships, limited liability companies, and
 11 corporations by the ~~clerk or finance director of any city or~~
 12 ~~village and by the county clerk of any county~~ Department of Revenue
 13 upon application duly made as provided in section 28-1422. ~~The~~
 14 ~~sale of cigarettes or cigarette materials that contain perfumes or~~
 15 ~~drugs in any form is prohibited and is not licensed by the~~
 16 ~~provisions of this section. Only cigarettes and cigarette material~~
 17 ~~containing pure white paper and pure tobacco shall be licensed.~~

18 Sec. 9. Section 28-1422, Revised Statutes Supplement,
 19 1998, is amended to read:

20 28-1422. Every person, partnership, limited liability
 21 company, or corporation desiring a license under sections 28-1420
 22 to ~~28-1429~~ 28-1429.02 and sections 1 to 5, 7, and 14 to 16 of this
 23 act shall file with the ~~clerk or finance department of the city,~~
 24 ~~town,~~ or village where his, her, their, or its place of business is
 25 located, if within the limits of a city, town, or village or with
 26 the clerk of the county where such place of business is located if
 27 outside the limits of any city, town, or village Department of
 28 Revenue a written application stating the name of the person,

1 partnership, limited liability company, or corporation for whom
 2 such license is desired and the exact location of the place of
 3 business and shall deposit with such application the amount of the
 4 license fee provided in section 28-1423. If the applicant is an
 5 individual, the application shall include the applicant's social
 6 security number.

7 Sec. 10. Section 28-1423, Reissue Revised Statutes of
 8 Nebraska, is amended to read:

9 28-1423. ~~The term for which such license shall run shall~~
 10 be from the date of filing such application A license for the sale
 11 of tobacco products is valid from the date of filing the
 12 application as provided in section 28-1422 and paying such license
 13 fee to and including December 31 of the calendar year in which
 14 application for such license is made. ~~The~~ ~~7~~ ~~and~~ ~~the~~ license fee
 15 for any person, partnership, limited liability company, or
 16 corporation selling tobacco products at retail shall be ~~twenty-five~~
 17 thirty-five dollars in cities of the metropolitan class, ~~fifteen~~
 18 twenty-five dollars in cities of the primary and first classes, and
 19 ~~ten~~ twenty dollars in cities of all other classes and in towns and
 20 villages and in locations outside of the limits of cities, towns
 21 and villages. Any person, partnership, limited liability company,
 22 or corporation selling annually in the aggregate more than one
 23 hundred fifty thousand packages of tobacco products ~~cigars,~~
 24 ~~packages of cigarettes,~~ ~~and packages of tobacco in any form,~~ at
 25 wholesale, shall pay a license fee of one hundred dollars, and if
 26 such combined annual sales amount to less than one hundred fifty
 27 thousand packages of tobacco products, ~~cigars,~~ ~~packages of~~
 28 ~~cigarettes and packages of tobacco,~~ the annual license fee shall be

1 fifteen dollars. No wholesaler's license shall be issued in any
2 year on a less basis than one hundred dollars per annum unless the
3 applicant for the ~~same shall file~~ license files with such
4 application a statement duly sworn to by himself or herself, or if
5 applicant is a partnership, by a ~~member of the firm~~ partner, or if
6 a limited liability company, by a member or manager of the limited
7 liability company, or if a corporation, by an officer or manager
8 thereof, that in the past such wholesaler's combined sales of
9 packages of tobacco products cigars, packages of cigarettes, and
10 ~~packages of tobacco in every form~~ have not exceeded in the
11 aggregate one hundred fifty thousand annually, and that such sales
12 will not exceed such aggregate amount for the current year for
13 which the license is to issue. Any person swearing falsely in such
14 affidavit ~~shall be~~ is guilty of perjury and upon conviction thereof
15 shall be punished as provided by section ~~28-915~~ 28-915.01 and such
16 wholesaler's license shall be revoked until the full license fee of
17 one hundred dollars is paid. If application for license is made
18 after July 1 of any calendar year, the fee shall be one-half of the
19 fee provided in this section.

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

22 28-1424. The tobacco license, provided for in sections
23 28-1421 and 28-1422 when issued, ~~shall authorize~~ authorizes the
24 sale of tobacco products cigars, tobacco, cigarettes, and cigarette
25 ~~material~~ by the licensee and employees, to persons ~~over the age of~~
26 eighteen years of age or older, at the place of business described
27 in such license for the term therein authorized, unless the ~~same be~~
28 license is revoked or forfeited as provided in section 28-1425.

1 Sec. 12. Section 28-1425, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1425. ~~Any licensee who shall sell, give or furnish in~~
4 ~~any way to any person under the age of eighteen years, or who shall~~
5 ~~willingly allow to be taken from his place of business by any~~
6 ~~person under the age of eighteen years, any cigars, tobacco,~~
7 ~~cigarettes or cigarette material, shall be guilty of a Class III~~
8 ~~misdemeanor. Any officer, director, or manager having charge or~~
9 ~~control either separately or jointly with others, of the business~~
10 ~~of any corporation which violates the provisions of sections~~
11 ~~28-1420 to 28-1429, if he have knowledge of the same, shall be~~
12 ~~subject to the penalties provided in this section. (1) Any person~~
13 ~~who violates any provision of sections 28-1420 to 28-1429.02 and~~
14 ~~sections 1 to 5, 7, and 14 to 16 of this act for which a penalty is~~
15 ~~not otherwise provided, or any officer, director, or manager having~~
16 ~~direct charge or control either separately or jointly with others~~
17 ~~of the business of any partnership, limited liability company, or~~
18 ~~corporation which violates any such provision, if he or she has~~
19 ~~knowledge of such violation, is guilty of a Class III misdemeanor~~
20 ~~for the first offense and Class II misdemeanor for the second and~~
21 ~~each subsequent offense. Each day a violation is continuing shall~~
22 ~~constitute a separate offense.~~

23 (2)(a) In addition to the penalties provided in this
24 section, ~~such a~~ licensee shall be subject to the additional penalty
25 of a revocation ~~or and~~ forfeiture of his, ~~her,~~ their, or its
26 license, at the discretion of the court. ~~before whom the complaint~~
27 ~~for violation of said sections may be heard. If such license be~~
28 ~~revoked and is revoked or forfeited, all rights under such license~~

1 shall at once cease and terminate and no new license shall be
2 issued to the licensee until the expiration of one year from the
3 date of revocation or forfeiture.

4 (b) Upon conviction for a third offense, the court shall
5 order the permanent revocation of the license to sell tobacco
6 products.

7 Sec. 13. Section 28-1428, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 28-1428. In case of the sale of a business ~~where for~~
10 which the owner has a tobacco license hereunder, the licensing
11 authority may authorize such license to shall be transferred to the
12 purchaser. In case of a change of location by any tobacco
13 licensee, hereunder, the licensing authority may transfer such
14 license to the new location.

15 Sec. 14. (1) Peace officers with statutory powers of
16 arrest shall enforce sections 28-1420 to 28-1429.02 and sections 1
17 to 5, 7, and 14 to 16 of this act in a manner that can reasonably
18 be expected to reduce the extent to which tobacco products are sold
19 or distributed to persons under eighteen years of age.

20 (2) Persons under eighteen years of age may be enlisted
21 by peace officers with statutory powers of arrest to enforce or
22 test compliance with sections 28-1420 to 28-1429.02 and sections 1
23 to 5, 7, and 14 to 16 of this act, except that such persons may be
24 used only if written parental consent has been provided and such
25 enforcement or testing is conducted under the direct supervision of
26 peace officers with statutory powers of arrest. Any public agency
27 may utilize persons under eighteen years of age to test compliance
28 with sections 28-1420 to 28-1429.02 and sections 1 to 5, 7, and 14

1 to 16 of this act only if parental consent has been provided and
2 the standards for such testing comply with the rules and
3 regulations adopted and promulgated by the Nebraska State Patrol.

4 (3) The Nebraska State Patrol shall, annually or when
5 requested by the Department of Health and Human Services, conduct a
6 random sample of tobacco licenses issued pursuant to sections
7 28-1421 and 28-1422 for statewide compliance checks as required by
8 42 U.S.C. 300x-26. Such random sample shall be developed in
9 consultation with the Department of Health and Human Services.

10 Sec. 15. (1) The Tobacco License Cash Fund is created.
11 The Tax Commissioner shall remit all tobacco license fees received
12 pursuant to section 28-1423 for credit to the fund. Such fund
13 shall be distributed on a quarterly basis within one month after
14 the end of the quarter as follows:

15 (a) From each license fee of thirty-five dollars,
16 twenty-five dollars shall be distributed to the school district in
17 which the place of business of the licensee is located; from each
18 license fee of twenty-five dollars, fifteen dollars shall be
19 distributed to the school district in which the place of business
20 of the licensee is located; from each license fee of twenty
21 dollars, ten dollars shall be distributed to the school district in
22 which the place of business of the licensee is located; and from
23 each license fee of one hundred dollars or fifteen dollars, the
24 entire amount shall be distributed to the school district in which
25 the place of business of the licensee is located.

26 (b) Any amount remaining in the fund after the
27 distribution in subdivision (a) of this subsection shall be
28 allocated as follows:

1 (i) An amount not to exceed four dollars per license
2 shall be retained by the Tax Commissioner for the costs of
3 administering sections 28-1420 to 28-1429.02 and sections 1 to 5,
4 7, and 14 to 16 of this act;

5 (ii) An amount equal to three dollars per license shall
6 be transferred to the Nebraska State Patrol for the purpose of
7 testing compliance with and enforcing sections 28-1420 to
8 28-1429.02 and sections 1 to 5, 7, and 14 to 16 of this act; and

9 (iii) Any balance in the fund shall be transferred to the
10 Department of Health and Human Services to be used for grants to
11 organizations providing educational programs designed to reduce
12 drug, alcohol, and tobacco use among youth.

13 (2) Any money in the fund available for investment shall
14 be invested by the state investment officer pursuant to the
15 Nebraska Capital Expansion Act and the Nebraska State Funds
16 Investment Act.

17 Sec. 16. The Department of Revenue shall provide on a
18 monthly basis data or a listing to the Department of Health and
19 Human Services regarding each tobacco license issued pursuant to
20 sections 28-1421 and 28-1422. Such data or listing will be in a
21 format to permit the licenses to be arranged in aggregate by
22 license number and sorted by county, city, school district, zip
23 code, and standard industrial classification code as established by
24 the United States Department of Commerce. The Department of Health
25 and Human Services shall make information relating to tobacco
26 licenses available to the Nebraska State Patrol and any county,
27 city, or other public agency upon request.

28 Sec. 17. If any section in this act or any part of any

1 section is declared invalid or unconstitutional, the declaration
2 shall not affect the validity or constitutionality of the remaining
3 portions.

4 Sec. 18. Original sections 28-1420, 28-1421, 28-1423 to
5 28-1425, and 28-1428, Reissue Revised Statutes of Nebraska, and
6 section 28-1422, Revised Statutes Supplement, 1998, are repealed.

7 Sec. 19. The following sections are outright repealed:
8 Sections 28-1418, 28-1419, 28-1426, 28-1427, and 28-1429, Reissue
9 Revised Statutes of Nebraska.