

AMENDMENTS TO LB840

Introduced by Health and Human Services.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Section 71-5716, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           71-5716 Sections 71-5716 to 71-5735 and sections 4 and 5 of this act  
6 shall be known and may be cited as the Nebraska Clean Indoor Air Act.

7           Sec. 2. Section 71-5717, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9           71-5717 The purpose of the Nebraska Clean Indoor Air Act is to  
10 protect the public health and welfare by prohibiting smoking in public  
11 places and places of employment with limited exceptions for guestrooms  
12 and suites, research, tobacco retail outlets, electronic smoking device  
13 retail outlets, and cigar shops. The limited exceptions permit smoking in  
14 public places where the public would reasonably expect to find persons  
15 smoking, including guestrooms and suites which are subject to  
16 expectations of privacy like private residences, institutions engaged in  
17 research related to smoking, and tobacco retail outlets, electronic  
18 smoking device retail outlets, and cigar shops which provide the public  
19 legal retail outlets to sample, use, and purchase tobacco products and  
20 products related to smoking. The act shall not be construed to prohibit  
21 or otherwise restrict smoking in outdoor areas. The act shall not be  
22 construed to permit smoking where it is prohibited or otherwise  
23 restricted by other applicable law, ordinance, or resolution. The act  
24 shall be liberally construed to further its purpose.

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

27           71-5718 For purposes of the Nebraska Clean Indoor Air Act, the

1 definitions found in sections 71-5719 to 71-5728 and sections 4 and 5 of  
2 this act apply.

3 Sec. 4. Electronic smoking device means any product containing or  
4 delivering nicotine or any other substance intended for human consumption  
5 that can be used by a person in any manner for the purpose of inhaling  
6 vapor or aerosol from the product. The term includes any such device  
7 regardless of whether it is manufactured, distributed, marketed, or sold  
8 as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any  
9 other product name or descriptor.

10 Sec. 5. Electronic smoking device retail outlet means a store that  
11 is licensed as provided under sections 28-1421 and 28-1422, that sells  
12 only electronic smoking devices and products directly related to  
13 electronic smoking devices, and that does not allow a person under the  
14 age of twenty-one years to enter such store. Products directly related to  
15 electronic smoking devices do not include alcohol, coffee, soft drinks,  
16 candy, groceries, or gasoline.

17 Sec. 6. Section 71-5727, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 71-5727 Smoke or smoking means inhaling, exhaling, burning, or  
20 carrying any lighted or heated cigar, cigarette, pipe, hookah, or any  
21 other lighted or heated tobacco or plant product intended for inhalation,  
22 whether natural or synthetic, in any manner or in any form. The term  
23 includes the use of an electronic smoking device which creates an aerosol  
24 or vapor, in any manner or in any form ~~the lighting of any cigarette,~~  
25 ~~eigar, pipe, or other smoking material or the possession of any lighted~~  
26 ~~cigarette, cigar, pipe, or other smoking material, regardless of its~~  
27 ~~composition.~~

28 Sec. 7. Section 71-5730, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 71-5730 (1) The following indoor areas are exempt from section  
31 71-5729:

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

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

11 (c) Tobacco retail outlets; and

12 (d) Cigar shops as defined in section 53-103.08.

13 (2) Electronic smoking device retail outlets are exempt from section  
14 71-5729 as it relates to the use of electronic smoking devices only.

15 (3)(a) (2)(a) The Legislature finds that allowing smoking in tobacco  
16 retail outlets as a limited exception to the Nebraska Clean Indoor Air  
17 Act does not interfere with the original intent that the general public  
18 and employees not be unwillingly subjected to second-hand smoke since the  
19 general public does not frequent tobacco retail outlets and should  
20 reasonably expect that there would be second-hand smoke in tobacco retail  
21 outlets and could choose to avoid such exposure. The products that  
22 tobacco retail outlets sell are legal for customers who meet the age  
23 requirement. Customers should be able to try them within the tobacco  
24 retail outlet, especially given the way that tobacco customization may  
25 occur in how tobacco is blended and cigars are produced. The Legislature  
26 finds that exposure to second-hand smoke is inherent in the selling and  
27 sampling of cigars and pipe tobacco and that this exposure is  
28 inextricably connected to the nature of selling this legal product,  
29 similar to other inherent hazards in other professions and employment.

30 (b) It is the intent of the Legislature to allow cigar and pipe  
31 smoking in tobacco retail outlets that meet specific statutory criteria

1 not inconsistent with the fundamental nature of the business. This  
2 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in  
3 accordance with the intent of the act to protect public places and places  
4 of employment.

5 (4)(a) ~~(3)(a)~~ The Legislature finds that allowing smoking in cigar  
6 shops as a limited exception to the Nebraska Clean Indoor Air Act does  
7 not interfere with the original intent that the general public and  
8 employees not be unwillingly subjected to second-hand smoke. This  
9 exception poses a de minimis restriction on the public and employees  
10 given the limited number of cigar shops compared to other businesses that  
11 sell alcohol, cigars, and pipe tobacco, and any member of the public  
12 should reasonably expect that there would be second-hand smoke in a cigar  
13 shop given the nature of the business and could choose to avoid such  
14 exposure.

15 (b) The Legislature finds that (i) cigars and pipe tobacco have  
16 different characteristics than other forms of tobacco such as cigarettes,  
17 (ii) cigars are customarily paired with various spirits such as cognac,  
18 single malt whiskey, bourbon, rum, rye, port, and others, and (iii)  
19 unlike cigarette smokers, cigar and pipe smokers may take an hour or  
20 longer to enjoy a cigar or pipe while cigarettes simply serve as a  
21 mechanism for delivering nicotine. Cigars paired with selected liquor  
22 creates a synergy unique to the particular pairing similar to wine paired  
23 with particular foods. Cigars are a pure, natural product wrapped in a  
24 tobacco leaf that is typically not inhaled in order to enjoy the taste of  
25 the smoke, unlike cigarettes that tend to be processed with additives and  
26 wrapped in paper and are inhaled. Cigars have a different taste and smell  
27 than cigarettes due to the fermentation process cigars go through during  
28 production. Cigars tend to cost considerably more than cigarettes, and  
29 their quality and characteristics vary depending on the type of tobacco  
30 plant, the geography and climate where the tobacco was grown, and the  
31 overall quality of the manufacturing process. Not only does the

1 customized blending of the tobacco influence the smoking experience, so  
2 does the freshness of the cigars, which is dependent on how the cigars  
3 were stored and displayed. These variables are similar to fine wines,  
4 which can also be very expensive to purchase. It is all of these  
5 variables that warrant a customer wanting to sample the product before  
6 making such a substantial purchase.

7 (c) The Legislature finds that exposure to second-hand smoke is  
8 inherent in the selling and sampling of cigars and pipe tobacco and that  
9 this exposure is inextricably connected to the nature of selling this  
10 legal product, similar to other inherent hazards in other professions and  
11 employment.

12 (d) It is the intent of the Legislature to allow cigar and pipe  
13 smoking in cigar shops that meet specific statutory criteria not  
14 inconsistent with the fundamental nature of the business. This exception  
15 to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance  
16 with the intent of the act to protect public places and places of  
17 employment.

18 Sec. 8. Section 71-5735, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 71-5735 (1) The owner of a tobacco retail outlet shall post a sign  
21 on all entrances to the tobacco retail outlet, on the outside of each  
22 door, in a conspicuous location slightly above or next to the door, with  
23 the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE  
24 THIS BUSINESS. SMOKING OF CIGARETTES AND ELECTRONIC SMOKING DEVICES IS  
25 NOT ALLOWED.

26 (2) Beginning November 1, 2015, the owner shall provide to the  
27 Division of Public Health a copy of a waiver signed prior to employment  
28 by each employee on a form prescribed by the division. The waiver shall  
29 expressly notify the employee that he or she will be exposed to second-  
30 hand smoke, and the employee shall acknowledge that he or she understands  
31 the risks of exposure to second-hand smoke.

1           (3) The owner shall not allow cigarette smoking or the use of an  
2 electronic smoking device in the tobacco retail outlet.

3           Sec. 9.    Original sections 71-5716, 71-5717, 71-5718, 71-5727,  
4 71-5730, and 71-5735, Reissue Revised Statutes of Nebraska, are repealed.