

AMENDMENTS TO LB149

Introduced by General Affairs.

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

3           Section 1. Section 28-1418, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           28-1418 Whoever, being a person ~~minor~~ under the age of nineteen  
6 ~~eighteen~~ years, shall smoke cigarettes or cigars, use electronic nicotine  
7 delivery systems ~~vapor products~~ or alternative nicotine products, or use  
8 tobacco in any form whatever, in this state, shall be guilty of a Class V  
9 misdemeanor. Any person ~~minor~~ charged with a violation of this section  
10 may be free from prosecution if he or she furnishes evidence for the  
11 conviction of the person or persons selling or giving him or her the  
12 cigarettes, cigars, electronic nicotine delivery systems ~~vapor products~~,  
13 alternative nicotine products, or tobacco.

14           Sec. 2. Section 28-1418.01, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16           28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

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

25           (2) Cigarette means any product that contains nicotine, is intended  
26 to be burned or heated under ordinary conditions of use, and consists of  
27 or contains (a) any roll of tobacco wrapped in paper or in any substance

1 not containing tobacco, (b) tobacco, in any form, that is functional in  
2 the product which, because of its appearance, the type of tobacco used in  
3 the filler, or its packaging and labeling, is likely to be offered to, or  
4 purchased by, consumers as a cigarette, or (c) any roll of tobacco  
5 wrapped in any substance containing tobacco which, because of its  
6 appearance, the type of tobacco used in the filler, or its packaging and  
7 labeling, is likely to be offered to, or purchased by, consumers as a  
8 cigarette described in subdivision (2)(a) of this section;

9 (3)(a) Electronic nicotine delivery system means any product or  
10 device containing nicotine, tobacco, or tobacco derivatives that employs  
11 a heating element, power source, electronic circuit, or other electronic,  
12 chemical, or mechanical means, regardless of shape or size, to simulate  
13 smoking by delivering the nicotine, tobacco, or tobacco derivatives in  
14 vapor, fog, mist, gas, or aerosol form to a person inhaling from the  
15 product or device.

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

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

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

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

31 (c) Electronic nicotine delivery system does not include the

1 following:

2 (i) An alternative nicotine product, cigarette, cigar, or other  
3 tobacco product, or any product regulated as a drug or device by the  
4 United States Food and Drug Administration under Chapter V of the Federal  
5 Food, Drug, and Cosmetic Act; or

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

10 (4) (2) Self-service display means a retail display that contains a  
11 tobacco product, a tobacco-derived product, an electronic nicotine  
12 delivery system a vapor product, or an alternative nicotine product and  
13 is located in an area openly accessible to a retailer's customers and  
14 from which such customers can readily access the product without the  
15 assistance of a salesperson. Self-service display does not include a  
16 display case that holds tobacco products, electronic nicotine delivery  
17 systems vapor products, or alternative nicotine products behind locked  
18 doors; and

19 (5) (3) Tobacco specialty store means a retail store that (a)  
20 derives at least seventy-five percent of its revenue from tobacco  
21 products, tobacco-derived products, electronic nicotine delivery systems  
22 vapor products, or alternative nicotine products and (b) does not permit  
23 persons minors under the age of nineteen eighteen years to enter the  
24 premises unless accompanied by a parent or legal guardian. ; and

25 (4) Vapor product means any noncombustible product containing  
26 nicotine that employs a heating element, power source, electronic  
27 circuit, or other electronic, chemical, or mechanical means, regardless  
28 of shape or size, that can be used to produce vapor from nicotine in a  
29 solution or other form. Vapor product includes any electronic cigarette,  
30 electronic cigar, electronic cigarillo, electronic pipe, or similar  
31 product or device and any vapor cartridge or other container of nicotine

1 ~~in a solution or other form that is intended to be used with or in an~~  
2 ~~electronic cigarette, electronic cigar, electronic cigarillo, electronic~~  
3 ~~pipe, or similar product or device. Vapor product does not include an~~  
4 ~~alternative nicotine product, cigarette, cigar, or other tobacco product,~~  
5 ~~or any product regulated as a drug or device by the United States Food~~  
6 ~~and Drug Administration under Chapter V of the federal Food, Drug, and~~  
7 ~~Cosmetic Act.~~

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

10       28-1419 Whoever shall sell, give, or furnish, in any way, any  
11 tobacco in any form whatever, or any cigarettes, cigarette paper,  
12 electronic nicotine delivery systems ~~vapor products~~, or alternative  
13 nicotine products, to any person ~~minor~~ under nineteen ~~eighteen~~ years of  
14 age, is guilty of a Class III misdemeanor for each offense.

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

17       28-1420 It shall be unlawful for any person, partnership, limited  
18 liability company, or corporation to sell, keep for sale, or give away in  
19 course of trade, any cigars, tobacco, electronic nicotine delivery  
20 systems, cigarettes, or cigarette material to anyone without first  
21 obtaining a license as provided in sections 28-1421 and 28-1422. It shall  
22 also be unlawful for any wholesaler to sell or deliver any cigars,  
23 tobacco, electronic nicotine delivery systems, cigarettes, or cigarette  
24 material to any person, partnership, limited liability company, or  
25 corporation who, at the time of such sale or delivery, is not the  
26 recipient of a valid tobacco license for the current year to retail the  
27 same as provided in such sections. It shall also be unlawful for any  
28 person, partnership, limited liability company, or corporation to  
29 purchase or receive, for purposes of resale, any cigars, tobacco,  
30 electronic nicotine delivery systems, cigarettes, or cigarette material  
31 if such person, partnership, limited liability company, or corporation is

1 not the recipient of a valid tobacco license to retail such tobacco  
2 products at the time the same are purchased or received. Whoever shall be  
3 found guilty of violating this section shall be guilty of a Class III  
4 misdemeanor for each offense.

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

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

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

19 28-1423 The term for which such license shall run shall be from the  
20 date of filing such application and paying such license fee to and  
21 including December 31 of the calendar year in which application for such  
22 license is made, and the license fee for any person, partnership, limited  
23 liability company, or corporation selling at retail shall be twenty-five  
24 dollars in cities of the metropolitan class, fifteen dollars in cities of  
25 the primary and first classes, and ten dollars in cities of all other  
26 classes and in towns and villages and in locations outside of the limits  
27 of cities, towns, and villages. Any person, partnership, limited  
28 liability company, or corporation selling annually in the aggregate more  
29 than one hundred fifty thousand cigars, packages of cigarettes,  
30 electronic nicotine delivery systems, and packages of tobacco in any  
31 form, at wholesale, shall pay a license fee of one hundred dollars, and

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

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

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

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

1           28-1425 Any licensee who shall sell, give, or furnish in any way to  
2 any person under the age of nineteen ~~eighteen~~ years, or who shall  
3 willingly allow to be taken from his or her place of business by any  
4 person under the age of nineteen ~~eighteen~~ years, any cigars, tobacco,  
5 cigarettes, cigarette material, electronic nicotine delivery systems  
6 ~~vapor products~~, or alternative nicotine products is guilty of a Class III  
7 misdemeanor. Any officer, director, or manager having charge or control,  
8 either separately or jointly with others, of the business of any  
9 corporation which violates sections ~~28-1418.01~~, 28-1420 to 28-1429 or  
10 section ~~,~~ and 28-1429.03, if he or she has knowledge of such violation,  
11 shall be subject to the penalties provided in this section. In addition  
12 to the penalties provided in this section, such licensee shall be subject  
13 to the additional penalty of a revocation and forfeiture of his, her,  
14 their, or its license, at the discretion of the court before whom the  
15 complaint for violation of such sections may be heard. If such license is  
16 revoked and forfeited, all rights under such license shall at once cease  
17 and terminate.

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

20           28-1427 Any person under the age of nineteen ~~eighteen~~ years who  
21 shall obtain cigars, tobacco, cigarettes, cigarette material, electronic  
22 nicotine delivery systems ~~vapor products~~, or alternative nicotine  
23 products from a licensee by representing that he or she is of the age of  
24 nineteen ~~eighteen~~ years or over is guilty of a Class V misdemeanor.

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

27           28-1429.01 The Legislature finds that the incumbent health risks  
28 associated with using ~~smoking~~ tobacco products have been scientifically  
29 proven. The Legislature further finds that the growing number of young  
30 people ~~minors~~ who start using tobacco products ~~smoking~~ is staggering, and  
31 even more abhorrent are the ages at which such use begins ~~children begin~~

1 ~~this deadly habit~~. The Legislature has established an age restriction on  
2 the use of tobacco products ~~by minors~~. To ensure that the use of tobacco  
3 products among young people ~~minors~~ is discouraged to the maximum extent  
4 possible, it is the intent of the Legislature to ban the use of vending  
5 machines and similar devices to dispense tobacco products in facilities,  
6 buildings, or areas which are open to the general public within Nebraska.

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

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

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

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

31 Sec. 12. Section 28-1429.03, Reissue Revised Statutes of Nebraska,

1 is amended to read:

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

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

14 Sec. 13. Section 71-5716, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 71-5716 Sections 71-5716 to 71-5735 and section 15 of this act shall  
17 be known and may be cited as the Nebraska Clean Indoor Air Act.

18 Sec. 14. Section 71-5718, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 71-5718 For purposes of the Nebraska Clean Indoor Air Act, the  
21 definitions found in sections 71-5719 to 71-5728 and section 15 of this  
22 act apply.

23 Sec. 15. Electronic nicotine delivery system has the same meaning  
24 as in section 28-1418.01.

25 Sec. 16. Section 71-5727, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 71-5727 Smoke or smoking means (1) the lighting of any cigarette,  
28 cigar, pipe, or other smoking material or the possession of any lighted  
29 cigarette, cigar, pipe, or other smoking material, regardless of its  
30 composition, or (2) the use of an electronic nicotine delivery system.

31 Sec. 17. This act becomes operative on January 1, 2020.

1           Sec. 18.   Original sections 28-1418, 28-1418.01, 28-1419, 28-1420,  
2   28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02,  
3   28-1429.03, 71-5716, 71-5718, and 71-5727, Reissue Revised Statutes of  
4   Nebraska, are repealed.