

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1064

Introduced by Briese, 41.

Read first time January 21, 2020

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco; to amend sections 28-1418,
2 28-1418.01, 28-1419, 28-1421, 28-1424, 28-1425, and 28-1427, Revised
3 Statutes Supplement, 2019; to change provisions relating to the sale
4 and use of tobacco products, electronic nicotine delivery systems,
5 and alternative nicotine products; to provide an operative date; to
6 repeal the original sections; and to declare an emergency.

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

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

14 28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

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

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

1 labeling, is likely to be offered to, or purchased by, consumers as a
2 cigarette described in subdivision (2)(a) of this section;

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

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

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

17 (ii) Any product or device marketed, manufactured, distributed, or
18 sold as an electronic cigarette, electronic cigar, electronic cigarillo,
19 electronic pipe, electronic hookah, or similar products, names,
20 descriptors, or devices; and

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

25 (c) Electronic nicotine delivery system does not include the
26 following:

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

31 (ii) Any component, part, or accessory of such a product or device

1 that is used during operation of the product or device when not sold in
2 combination with any substance containing nicotine, tobacco, or tobacco
3 derivatives;

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

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

19 Sec. 3. Section 28-1419, Revised Statutes Supplement, 2019, is
20 amended to read:

21 28-1419 Whoever shall sell, give, or furnish, in any way, any
22 tobacco in any form whatever, or any cigarettes, cigarette paper,
23 electronic nicotine delivery systems, or alternative nicotine products,
24 to any person under twenty-one ~~nineteen~~ years of age, is guilty of a
25 Class III misdemeanor for each offense.

26 Sec. 4. Section 28-1421, Revised Statutes Supplement, 2019, is
27 amended to read:

28 28-1421 Licenses for the sale of cigars, tobacco, electronic
29 nicotine delivery systems, cigarettes, and cigarette material to persons
30 twenty-one ~~nineteen~~ years of age or over shall be issued to individuals,
31 partnerships, limited liability companies, and corporations by the clerk

1 or finance director of any city or village and by the county clerk of any
2 county upon application duly made as provided in section 28-1422. The
3 sale of cigarettes or cigarette materials that contain perfumes or drugs
4 in any form is prohibited and is not licensed by the provisions of this
5 section. Only cigarettes and cigarette material containing pure white
6 paper and pure tobacco shall be licensed.

7 Sec. 5. Section 28-1424, Revised Statutes Supplement, 2019, is
8 amended to read:

9 28-1424 The license provided for in sections 28-1421 and 28-1422
10 shall, when issued, authorize the sale of cigars, tobacco, electronic
11 nicotine delivery systems, cigarettes, and cigarette material by the
12 licensee and employees, to persons twenty-one ~~nineteen~~ years of age or
13 over, at the place of business described in such license for the term
14 therein authorized, unless the license is forfeited as provided in
15 section 28-1425.

16 Sec. 6. Section 28-1425, Revised Statutes Supplement, 2019, is
17 amended to read:

18 28-1425 Any licensee who shall sell, give, or furnish in any way to
19 any person under the age of twenty-one ~~nineteen~~ years, or who shall
20 willingly allow to be taken from his or her place of business by any
21 person under the age of twenty-one ~~nineteen~~ years, any cigars, tobacco,
22 cigarettes, cigarette material, electronic nicotine delivery systems, or
23 alternative nicotine products is guilty of a Class III misdemeanor. Any
24 officer, director, or manager having charge or control, either separately
25 or jointly with others, of the business of any corporation which violates
26 sections 28-1419, 28-1420 to 28-1429, and 28-1429.03, if he or she has
27 knowledge of such violation, shall be subject to the penalties provided
28 in this section. In addition to the penalties provided in this section,
29 such licensee shall be subject to the additional penalty of a revocation
30 and forfeiture of his, her, their, or its license, at the discretion of
31 the court before whom the complaint for violation of such sections may be

1 heard. If such license is revoked and forfeited, all rights under such
2 license shall at once cease and terminate.

3 Sec. 7. Section 28-1427, Revised Statutes Supplement, 2019, is
4 amended to read:

5 28-1427 Any person under the age of twenty-one ~~nineteen~~ years who
6 obtains cigars, tobacco, cigarettes, cigarette material, electronic
7 nicotine delivery systems, or alternative nicotine products from a
8 licensee by representing that he or she is of the age of twenty-one
9 ~~nineteen~~ years or over is guilty of a Class V misdemeanor.

10 Sec. 8. This act becomes operative on June 1, 2020.

11 Sec. 9. Original sections 28-1418, 28-1418.01, 28-1419, 28-1421,
12 28-1424, 28-1425, and 28-1427, Revised Statutes Supplement, 2019, are
13 repealed.

14 Sec. 10. Since an emergency exists, this act takes effect when
15 passed and approved according to law.