LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 149

Introduced by Quick, 35; Albrecht, 17; Bolz, 29; Cavanaugh, 6; Hilkemann, 4; Howard, 9; Hunt, 8; McDonnell, 5; Pansing Brooks, 28; Vargas, 7; Walz, 15; Wishart, 27.

Read first time January 11, 2019

Committee: General Affairs

1 A BILL FOR AN ACT relating to vapor products; to amend sections 28-1418, 28-1418.01, 28-1419, 28-1420, 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02, 71-5716, 71-5718, and 71-5727, Reissue Revised Statutes of Nebraska; to change and provide restrictions relating to the sale and use of vapor products and flavored liquids as prescribed; to define and redefine terms; to require sellers of vapor products to be licensed as prescribed; to change legislative findings; to add restrictions relating to vapor products under the Nebraska Clean Indoor Air Act; to harmonize provisions; to provide an operative date; and to repeal the original sections.

12 Be it enacted by the people of the State of Nebraska,
Section 1. Section 28-1418, Reissue Revised Statutes of Nebraska, is amended to read:

28-1418 (1) Whoever, being a minor under the age of eighteen years, shall smoke cigarettes or cigars, use vapor products or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor.

(2) Whoever, being an individual under the age of twenty-one years, shall use vapor products in this state shall be guilty of a Class V misdemeanor.

(3) Any individual charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, vapor products, alternative nicotine products, or tobacco.

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

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

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

(2) Flavored liquid means a liquid that (a) is composed of nicotine and other chemicals, (b) is intended to be used in a vapor product, and (c) contains a natural or artificial constituent or additive that causes the liquid or its smoke to have a distinguishable flavor or aroma, including, but not limited to, chocolate, vanilla, honey, cocoa, or any fruit, candy, dessert, alcoholic beverage, herb, or spice;

(3) Self-service display means a retail display that contains a
tobacco product, a tobacco-derived product, a vapor product, or an alternative nicotine product and is located in an area openly accessible to a retailer's customers and from which such customers can readily access the product without the assistance of a salesperson. Self-service display does not include a display case that holds tobacco products, vapor products, or alternative nicotine products behind locked doors;

(4) (3) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, vapor products, or alternative nicotine products and (b) does not permit minors under the age of eighteen years to enter the premises unless accompanied by a parent or legal guardian; and

(5) (4) Vapor product means any noncombustible product, whether containing nicotine or not, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. Vapor product includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include an alternative nicotine product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

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

28-1419 (1) Whoever shall sell, give, or furnish, in any way, any tobacco in any form whatever, or any cigarettes, cigarette paper, vapor products, or alternative nicotine products, to any minor under eighteen
years of age, is guilty of a Class III misdemeanor for each offense.

(2) Whoever shall sell, give, or furnish, in any way, any vapor products or flavored liquids, to any individual under twenty-one years of age, is guilty of a Class III misdemeanor for each offense.

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

28-1420 It shall be unlawful for any person, partnership, limited liability company, or corporation to sell, keep for sale, or give away in course of trade, any cigars, tobacco, cigarettes, or cigarette material, or vapor products to anyone without first obtaining a license as provided in sections 28-1421 and 28-1422. It shall also be unlawful for any wholesaler to sell or deliver any cigars, tobacco, cigarettes, or cigarette material, or vapor products to any person, partnership, limited liability company, or corporation who, at the time of such sale or delivery, is not the recipient of a valid tobacco license for the current year to retail the same as provided in such sections. It shall also be unlawful for any person, partnership, limited liability company, or corporation to purchase or receive, for purposes of resale, any cigars, tobacco, cigarettes, or cigarette material, or vapor products if such person, partnership, limited liability company, or corporation is not the recipient of a valid tobacco license to retail such tobacco products at the time the same are purchased or received. Whoever shall be found guilty of violating this section shall be guilty of a Class III misdemeanor for each offense.

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

28-1421 Licenses for the sale of cigars, tobacco, cigarettes, and cigarette material, and vapor products to persons of sufficient age to lawfully use such products over the age of eighteen years shall be issued to individuals, partnerships, limited liability companies, and corporations by the clerk or finance director of any city or village and
by the county clerk of any county upon application duly made as provided in section 28-1422. The sale of cigarettes or cigarette materials that contain perfumes or drugs in any form is prohibited and is not licensed by the provisions of this section. Only cigarettes and cigarette material containing pure white paper and pure tobacco shall be licensed.

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

28-1423 The term for which such license shall run shall be from the date of filing such application and paying such license fee to and including December 31 of the calendar year in which application for such license is made, and the license fee for any person, partnership, limited liability company, or corporation selling at retail shall be twenty-five dollars in cities of the metropolitan class, fifteen dollars in cities of the primary and first classes, and ten dollars in cities of all other classes \( \text{and in towns and villages} \) and in locations outside of the limits of cities, towns \( \text{and villages} \). Any person, partnership, limited liability company, or corporation selling annually in the aggregate more than one hundred fifty thousand cigars, packages of cigarettes, and packages of tobacco, \( \text{and packages of vapor products} \) in any form, at wholesale, shall pay a license fee of one hundred dollars, and if such combined annual sales amount to less than one hundred fifty thousand cigars, packages of cigarettes, \( \text{and packages of tobacco} \) \( \text{and packages of vapor products} \), the annual license fee shall be fifteen dollars. No wholesaler's license shall be issued in any year on a less basis than one hundred dollars per annum unless the applicant for the same shall file with such application a statement duly sworn to by himself or herself, or if applicant is a partnership, by a member of the firm, or if a limited liability company, by a member or manager of the company, or if a corporation, by an officer or manager thereof, that in the past such wholesaler's combined sales of cigars, packages of cigarettes, \( \text{and packages of tobacco} \) \( \text{and packages of vapor products} \) in every form have
not exceeded in the aggregate one hundred fifty thousand annually, and
that such sales will not exceed such aggregate amount for the current
year for which the license is to issue. Any person swearing falsely in
such affidavit shall be guilty of perjury and upon conviction thereof
shall be punished as provided by section 28-915 and such wholesaler's
license shall be revoked until the full license fee of one hundred
dollars is paid. If application for license is made after July 1 of any
calendar year, the fee shall be one-half of the fee provided in this
section.

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

28-1424 The license, provided for in sections 28-1421 and 28-1422
when issued, shall authorize the sale of cigars, tobacco, cigarettes, and
cigarette material, and vapor products by the licensee and employees, to
persons of sufficient age to lawfully use such products over the age of
eighteen years, at the place of business described in such license for
the term therein authorized, unless the same be forfeited as provided in
section 28-1425.

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

28-1425 Any licensee who shall sell, give, or furnish in any way to
any person under the age of eighteen years, or who shall willingly allow
to be taken from his or her place of business by any person under the age
of eighteen years, any cigars, tobacco, cigarettes, cigarette material,
vapor products, flavored liquids, or alternative nicotine products to any
person who is not of sufficient age to lawfully use such products, or who
shall willingly allow any cigars, tobacco, cigarettes, cigarette
material, vapor products, flavored liquids, or alternative nicotine
products to be taken from his or her place of business by any person who
is not of sufficient age to lawfully use such products, is guilty of a
Class III misdemeanor. Any officer, director, or manager having charge or
control, either separately or jointly with others, of the business of any
corporation which violates sections 28-1418.01, 28-1420 to 28-1429, and
28-1429.03, if he or she has knowledge of such violation, shall be
subject to the penalties provided in this section. In addition to the
penalties provided in this section, such licensee shall be subject to the
additional penalty of a revocation and forfeiture of his, her, their, or
its license, at the discretion of the court before whom the complaint for
violation of such sections may be heard. If such license is revoked and
forfeited, all rights under such license shall at once cease and
terminate.

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

28-1427  (1) Any person under the age of eighteen years who shall
obtain cigars, tobacco, cigarettes, cigarette material, vapor products,
or alternative nicotine products from a licensee by representing that he
or she is of the age of eighteen years or over is guilty of a Class V
misdemeanor.

(2) Any person under the age of twenty-one years who shall obtain
vapor products or flavored liquids from a licensee by representing that
he or she is of the age of twenty-one years or over is guilty of a Class
V misdemeanor.

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

28-1429.01 The Legislature finds that the incumbent health risks
associated with using cigarettes, other smoking tobacco products, vapor
products, and alternative nicotine products have been scientifically
proven. The Legislature further finds that the growing number of young
people minors who start using these products smoking is staggering and
even more abhorrent are the ages at which such use begins children begin
this deadly habit. The Legislature has established an age restrictions
restriction on the use of such tobacco products by minors. To ensure that
the use of such tobacco products among young people minors is discouraged to the maximum extent possible, it is the intent of the Legislature to ban the use of vending machines and similar devices to dispense such tobacco products in facilities, buildings, or areas which are open to the general public within Nebraska.

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

28-1429.02 (1) Except as provided in subsection (2) of this section, it shall be unlawful to dispense cigarettes, other tobacco products, vapor products, or alternative nicotine products from a vending machine or similar device. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second offense, the court shall order a six-month suspension of the offender's license issued under section 28-1421 to sell tobacco, if any, and, upon conviction for a third or subsequent offense, the court shall order the permanent revocation of the offender's license issued under section 28-1421 to sell tobacco, if any.

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

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

Sec. 12. Section 71-5716, Reissue Revised Statutes of Nebraska, is amended to read:
71-5716 Sections 71-5716 to 71-5735 and section 14 of this act shall be known and may be cited as the Nebraska Clean Indoor Air Act.

Sec. 13. Section 71-5718, Reissue Revised Statutes of Nebraska, is amended to read:

71-5718 For purposes of the Nebraska Clean Indoor Air Act, the definitions found in sections 71-5719 to 71-5728 and section 14 of this act apply.

Sec. 14. Vapor product has the same meaning as in section 28-1418.01.

Sec. 15. Section 71-5727, Reissue Revised Statutes of Nebraska, is amended to read:

71-5727 Smoke or smoking means (1) the lighting of any cigarette, cigar, pipe, or other smoking material or the possession of any lighted cigarette, cigar, pipe, or other smoking material, regardless of its composition, or (2) the use of a vapor product.

Sec. 16. This act becomes operative on January 1, 2020.

Sec. 17. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420, 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02, 71-5716, 71-5718, and 71-5727, Reissue Revised Statutes of Nebraska, are repealed.