

LEGISLATIVE BILL 840

Approved by the Governor August 06, 2020

Introduced by Quick, 35; Crawford, 45; Hansen, M., 26; Pansing Brooks, 28; Walz, 15; Kolowski, 31.

A BILL FOR AN ACT relating to the Nebraska Clean Indoor Air Act; to amend sections 71-5716, 71-5717, 71-5718, 71-5727, 71-5730, and 71-5735, Reissue Revised Statutes of Nebraska; to exempt electronic smoking device retail outlets; to define and redefine terms; to prohibit the use of electronic smoking devices as prescribed; to harmonize provisions; and to repeal the original sections.

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

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

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

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

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

Sec. 3. 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 sections 4 and 5 of this act apply.

Sec. 4. Electronic smoking device means an electronic nicotine delivery system as defined in section 28-1418.01. The term includes any such device regardless of whether it is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor. The term also includes any substance that is used in an electronic smoking device. The term does not include a diffuser, humidifier, prescription inhaler, or similar device.

Sec. 5. (1) Electronic smoking device retail outlet means a store that:

(a) Is licensed as provided under sections 28-1421 and 28-1422;

(b) Sells electronic smoking devices and products directly related to electronic smoking devices;

(c) Does not sell alcohol or gasoline;

(d) Derives no more than twenty percent of its revenue from the sale of food and food ingredients as defined in section 77-2704.24; and

(e) Prohibits persons under twenty-one years of age from entering the store in accordance with subsection (2) of this section.

(2)(a) Prior to January 1, 2022, an electronic smoking device retail outlet shall not allow a person under twenty-one years of age to enter the store but may allow an employee who is under twenty-one years of age to work in the store.

(b) On and after January 1, 2022, an electronic smoking device retail outlet shall not allow a person under twenty-one years of age to enter the store and shall not allow an employee who is under twenty-one years of age to work in the store.

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

71-5727 Smoke or smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. The term includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form 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.

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

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

(a) Guestrooms and suites that are rented to guests and that are designated as smoking rooms, except that not more than twenty percent of rooms

rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;

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

(c) Tobacco retail outlets; and

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

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

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

(b) It is the intent of the Legislature to allow cigar and pipe smoking in tobacco retail outlets that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

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

(b) The Legislature finds that (i) cigars and pipe tobacco have different characteristics than other forms of tobacco such as cigarettes, (ii) cigars are customarily paired with various spirits such as cognac, single malt whiskey, bourbon, rum, rye, port, and others, and (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour or longer to enjoy a cigar or pipe while cigarettes simply serve as a mechanism for delivering nicotine. Cigars paired with selected liquor creates a synergy unique to the particular pairing similar to wine paired with particular foods. Cigars are a pure, natural product wrapped in a tobacco leaf that is typically not inhaled in order to enjoy the taste of the smoke, unlike cigarettes that tend to be processed with additives and wrapped in paper and are inhaled. Cigars have a different taste and smell than cigarettes due to the fermentation process cigars go through during production. Cigars tend to cost considerably more than cigarettes, and their quality and characteristics vary depending on the type of tobacco plant, the geography and climate where the tobacco was grown, and the overall quality of the manufacturing process. Not only does the customized blending of the tobacco influence the smoking experience, so does the freshness of the cigars, which is dependent on how the cigars were stored and displayed. These variables are similar to fine wines, which can also be very expensive to purchase. It is all of these variables that warrant a customer wanting to sample the product before making such a substantial purchase.

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

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

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

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

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

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

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