

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 125

Introduced by Hughes, 24.

Read first time January 10, 2025

Committee:

1 A BILL FOR AN ACT relating to tobacco and related products; to amend
2 sections 28-1418.01, 77-4001, 77-4002, 77-4003.01, 77-4007, and
3 77-4008, Revised Statutes Cumulative Supplement, 2024; to define and
4 redefine terms relating to nicotine and nicotine analogues; to
5 provide for regulation, licensure, and taxation of alternative
6 nicotine products and electronic nicotine delivery systems
7 containing nicotine analogues; to change provisions of the Tobacco
8 Products Tax Act; to harmonize provisions; to provide an operative
9 date; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 28-1418.01, Revised Statutes Cumulative
2 Supplement, 2024, is amended to read:

3 28-1418.01 For purposes of sections 28-1418 to 28-1429.07:

4 (1) Alternative nicotine product means any noncombustible product
5 containing nicotine or a nicotine analogue that is intended for human
6 consumption, whether chewed, absorbed, dissolved, or ingested by any
7 other means. Alternative nicotine product does not include any electronic
8 nicotine delivery system, cigarette, cigar, or other tobacco product, or
9 any product regulated as a drug or device by the United States Food and
10 Drug Administration under Chapter V of the Federal Food, Drug, and
11 Cosmetic Act;

12 (2) Cigarette means any product that contains nicotine, is intended
13 to be burned or heated under ordinary conditions of use, and consists of
14 or contains (a) any roll of tobacco wrapped in paper or in any substance
15 not containing tobacco, (b) tobacco, in any form, that is functional in
16 the product which, because of its appearance, the type of tobacco used in
17 the filler, or its packaging and labeling, is likely to be offered to, or
18 purchased by, consumers as a cigarette, or (c) any roll of tobacco
19 wrapped in any substance containing tobacco which, because of its
20 appearance, the type of tobacco used in the filler, or its packaging and
21 labeling, is likely to be offered to, or purchased by, consumers as a
22 cigarette described in subdivision (2)(a) of this section;

23 (3) Delivery sale means to sell, give, or furnish products (a) by
24 mail or delivery service, (b) through the Internet or a computer network,
25 (c) by telephone, or (d) through any other electronic method;

26 (4)(a) Electronic nicotine delivery system means any product or
27 device containing nicotine, a nicotine analogue, tobacco, or tobacco
28 derivatives that employs a heating element, power source, electronic
29 circuit, or other electronic, chemical, or mechanical means, regardless
30 of shape or size, to simulate smoking by delivering the nicotine,
31 nicotine analogue, tobacco, or tobacco derivatives in vapor, fog, mist,

1 gas, or aerosol form to a person inhaling from the product or device.

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

4 (i) Any substance containing nicotine, a nicotine analogue, tobacco,
5 or tobacco derivatives, whether sold separately or sold in combination
6 with a product or device that is intended to deliver to a person
7 nicotine, nicotine analogue, tobacco, or tobacco derivatives in vapor,
8 fog, mist, gas, or aerosol form;

9 (ii) Any product or device marketed, manufactured, distributed, or
10 sold as an electronic cigarette, electronic cigar, electronic cigarillo,
11 electronic pipe, electronic hookah, or similar products, names,
12 descriptors, or devices; and

13 (iii) Any component, part, or accessory of such a product or device
14 that is used during operation of the product or device when sold in
15 combination with any substance containing nicotine, a nicotine analogue,
16 tobacco, or tobacco derivatives.

17 (c) Electronic nicotine delivery system does not include the
18 following:

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

23 (ii) Any component, part, or accessory of such a product or device
24 that is used during operation of the product or device when not sold in
25 combination with any substance containing nicotine, a nicotine analogue,
26 tobacco, or tobacco derivatives;

27 (5) Nicotine analogue means a substance that has:

28 (a) A chemical structure substantially similar to nicotine; or

29 (b) An effect on the central nervous system that is substantially
30 similar to, or greater than, the effect on the central nervous system of
31 nicotine;

1 (6) ~~(5)~~ Self-service display means a retail display that contains a
2 tobacco product, a tobacco-derived product, an electronic nicotine
3 delivery system, or an alternative nicotine product and is located in an
4 area openly accessible to a retailer's customers and from which such
5 customers can readily access the product without the assistance of a
6 salesperson. Self-service display does not include a display case that
7 holds tobacco products, tobacco-derived products, electronic nicotine
8 delivery systems, or alternative nicotine products behind locked doors;
9 and

10 (7) ~~(6)~~ Tobacco specialty store means a retail store that (a)
11 derives at least seventy-five percent of its revenue from tobacco
12 products, tobacco-derived products, electronic nicotine delivery systems,
13 or alternative nicotine products and (b) does not permit persons under
14 the age of twenty-one years to enter the premises unless accompanied by a
15 parent or legal guardian.

16 **Sec. 2.** Section 77-4001, Revised Statutes Cumulative Supplement,
17 2024, is amended to read:

18 77-4001 Sections 77-4001 to 77-4025 and sections 4 and 6 of this act
19 shall be known and may be cited as the Tobacco Products Tax Act.

20 **Sec. 3.** Section 77-4002, Revised Statutes Cumulative Supplement,
21 2024, is amended to read:

22 77-4002 For purposes of the Tobacco Products Tax Act, unless the
23 context otherwise requires, the definitions found in sections 77-4003 to
24 77-4007 and sections 4 and 6 of this act shall be used.

25 **Sec. 4.** Alternative nicotine product has the same meaning as in
26 section 28-1418.01.

27 **Sec. 5.** Section 77-4003.01, Revised Statutes Cumulative Supplement,
28 2024, is amended to read:

29 77-4003.01 Consumable material means any liquid solution or other
30 material containing nicotine or a nicotine analogue that is depleted as
31 an electronic nicotine delivery system is used.

1 **Sec. 6.** Nicotine analogue has the same meaning as in section
2 28-1418.01.

3 **Sec. 7.** Section 77-4007, Revised Statutes Cumulative Supplement,
4 2024, is amended to read:

5 77-4007 (1) Tobacco products means (a) shall mean (1) cigars, (b)
6 (2) cheroots, (c) (3) stogies, (d) (4) periques, (e) (5) granulated, plug
7 cut, crimp cut, ready rubbed, and other smoking tobacco, (f) (6) snuff,
8 (g) (7) snuff flour, (h) (8) cavendish, (i) (9) plug and twist tobacco,
9 (j) (10) fine cut and other chewing tobacco, (k) (11) shorts, refuse
10 scraps, clippings, cuttings, and sweepings of tobacco, (l) (12) other
11 kinds and forms of tobacco, prepared in such manner as to be suitable for
12 chewing or smoking in a pipe or otherwise or both for chewing and
13 smoking, (m) any alternative nicotine product and (n) (13) electronic
14 nicotine delivery systems.

15 (2) Tobacco , except that tobacco products does not include shall
16 not mean cigarettes as defined in section 77-2601.

17 **Sec. 8.** Section 77-4008, Revised Statutes Cumulative Supplement,
18 2024, is amended to read:

19 77-4008 (1)(a) A tax is hereby imposed upon the first owner of
20 tobacco products to be sold in this state.

21 (b) The tax on snuff shall be forty-four cents per ounce and a
22 proportionate tax at the like rate on all fractional parts of an ounce.
23 Such tax shall be computed based on the net weight as listed by the
24 manufacturer.

25 (c) The tax on an electronic nicotine delivery system containing
26 three milliliters or less of consumable material shall be five cents per
27 milliliter of consumable material and a proportionate tax at the like
28 rate on all fractional parts of a milliliter.

29 (d) The tax on an electronic nicotine delivery system containing
30 more than three milliliters of consumable material shall be ten percent
31 of (i) the purchase price of such electronic nicotine delivery system

1 paid by the first owner or (ii) the price at which the first owner who
2 made, manufactured, or fabricated the electronic nicotine delivery system
3 sells the item to others.

4 (e) For electronic nicotine delivery systems in the possession of
5 retail dealers for which tax has not been paid, the tax under this
6 subsection shall be imposed at the earliest time the retail dealer: (i)
7 Brings or causes to be brought into the state any electronic nicotine
8 delivery system for sale; (ii) makes, manufactures, or fabricates any
9 electronic nicotine delivery system in this state for sale in this state;
10 or (iii) sells any electronic nicotine delivery system to consumers
11 within this state.

12 (f) The tax on alternative nicotine products shall be twenty percent
13 of (i) the purchase price of such products paid by the first owner or
14 (ii) the price at which a first owner who made, manufactured, or
15 fabricated the product sells the items to others.

16 (g) (f) The tax on tobacco products not otherwise provided for in
17 this section other than snuff and electronic nicotine delivery systems
18 shall be twenty percent of (i) the purchase price of such tobacco
19 products paid by the first owner or (ii) the price at which a first owner
20 who made, manufactured, or fabricated the tobacco product sells the items
21 to others.

22 (h) (g) The tax on tobacco products shall be in addition to all
23 other taxes.

24 (2) Whenever any person who is licensed under section 77-4009
25 purchases tobacco products from another person licensed under section
26 77-4009, the seller shall be liable for the payment of the tax.

27 (3) Amounts collected pursuant to this section shall be used and
28 distributed pursuant to section 77-4025.

29 **Sec. 9.** This act becomes operative on January 1, 2026.

30 **Sec. 10.** Original sections 28-1418.01, 77-4001, 77-4002,
31 77-4003.01, 77-4007, and 77-4008, Revised Statutes Cumulative Supplement,

1 2024, are repealed.