

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 184

Introduced by DeKay, 40.

Read first time January 13, 2025

Committee: Judiciary

1 A BILL FOR AN ACT relating to nitrous oxide; to amend sections
2 28-1418.01, 28-1425, 28-1429, and 59-1523, Revised Statutes
3 Cumulative Supplement, 2024; to prohibit the sale of nitrous oxide
4 at a tobacco specialty store and in other circumstances as
5 prescribed; to prohibit the sale of equipment to use nitrous oxide
6 for recreational purposes; to provide penalties; to harmonize
7 provisions; and to repeal the original sections.
8 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 and
4 sections 4 to 6 of this act:

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

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

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

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

1 vapor, fog, mist, gas, or aerosol form to a person inhaling from the
2 product or device.

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

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

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

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

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

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

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

28 (5) Self-service display means a retail display that contains a
29 tobacco product, a tobacco-derived product, an electronic nicotine
30 delivery system, or an alternative nicotine product and is located in an
31 area openly accessible to a retailer's customers and from which such

1 customers can readily access the product without the assistance of a
2 salesperson. Self-service display does not include a display case that
3 holds tobacco products, tobacco-derived products, electronic nicotine
4 delivery systems, or alternative nicotine products behind locked doors;
5 and

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

12 **Sec. 2.** Section 28-1425, Revised Statutes Cumulative Supplement,
13 2024, is amended to read:

14 28-1425 Any licensee who shall sell, give, or furnish in any way to
15 any person under the age of twenty-one years, or who shall willingly
16 allow to be taken from his or her place of business by any person under
17 the age of twenty-one years, any cigars, tobacco, cigarettes, cigarette
18 material, electronic nicotine delivery systems, or alternative nicotine
19 products is guilty of a Class III misdemeanor. Any officer, director, or
20 manager having charge or control, either separately or jointly with
21 others, of the business of any corporation which violates sections
22 28-1419, 28-1420 to 28-1429, and 28-1429.03 to 28-1429.07 and sections 4
23 to 6 of this act, if he or she has knowledge of such violation, shall be
24 subject to the penalties provided in this section. In addition to the
25 penalties provided in this section, such licensee shall be subject to the
26 additional penalty of a revocation and forfeiture of his, her, their, or
27 its license, at the discretion of the court before whom the complaint for
28 violation of such sections may be heard. If such license is revoked and
29 forfeited, all rights under such license shall at once cease and
30 terminate and a new license shall not be issued until the expiration of
31 the period provided for in section 28-1429.

1 **Sec. 3.** Section 28-1429, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 28-1429 (1) If a license issued under sections 28-1420 to 28-1429 is
4 revoked and forfeited as provided in section 28-1425 or section 4 of this
5 act for a violation of section 28-1429.04, ~~or~~ 28-1429.05, or section 4 of
6 this act, no new license shall be issued to such licensee until the
7 expiration of five years after the date of such revocation and
8 forfeiture.

9 (2) If a license issued under sections 28-1420 to 28-1429 is revoked
10 and forfeited as provided in section 28-1425 for any other violation of
11 sections 28-1418 to 28-1429.03, 28-1429.06, and 28-1429.07 and sections 5
12 and 6 of this act, no new license shall be issued to such licensee until
13 the expiration of one year after the date of such revocation and
14 forfeiture except as otherwise provided in section 28-1423.

15 **Sec. 4.** (1) No tobacco specialty store shall sell, offer for sale,
16 or distribute any object containing nitrous oxide in any form or
17 willingly allow such an object to be taken from such store by any person.
18 A person holding a license for a tobacco specialty store under sections
19 28-1420 to 28-1429 who violates this subsection shall:

20 (a) Be guilty of a Class II misdemeanor for the first offense;

21 (b) Be guilty of a Class I misdemeanor for any second or subsequent
22 offense; and

23 (c) Be subject to the additional penalty of revocation and
24 forfeiture of such license, at the discretion of the court before whom
25 the complaint for a violation of this subsection may be heard. If such
26 license is revoked and forfeited, all rights under such license shall at
27 once cease and terminate and a new license shall not be issued until the
28 expiration of the period provided for in section 28-1429.

29 (2) All objects containing nitrous oxide that are sold, offered for
30 sale, given, or furnished in violation of this section are subject to
31 seizure, forfeiture, and destruction. The cost of such seizure,

1 forfeiture, and destruction shall be borne by the person from whom the
2 products are seized.

3 **Sec. 5.** (1) A person holding a license under sections 28-1420 to
4 28-1429 shall not, by delivery sale, sell, give, or furnish to any
5 consumer in this state any object containing nitrous oxide in any form. A
6 violation of this subsection is a Class I misdemeanor.

7 (2) Any common carrier that knowingly transports any object
8 containing nitrous oxide in any form for a person who is in violation of
9 subsection (1) of this section is guilty of a Class I misdemeanor.

10 (3) In addition to any other penalty, a violation of this section
11 shall constitute a deceptive trade practice under the Uniform Deceptive
12 Trade Practices Act and shall be subject to any remedies or penalties
13 available for a violation of such act.

14 (4) All objects containing nitrous oxide that are sold, offered for
15 sale, given, or furnished in violation of this section are subject to
16 seizure, forfeiture, and destruction and shall not be purchased or sold
17 in the state. The cost of such seizure, forfeiture, and destruction shall
18 be borne by the person from whom the products are seized.

19 (5) This section does not apply to the following:

20 (a) The shipment of an object containing nitrous oxide to a foreign
21 trade zone that is established under 19 U.S.C. 81a et seq. and that is
22 located in this state if the products are from outside of this country,
23 were ordered by a distributor in another state, and are not distributed
24 in this state; or

25 (b) A government employee who is acting in the course of the
26 employee's official duties.

27 **Sec. 6.** (1) A person shall not sell, offer for sale, or distribute
28 an object that is specifically designed for inhaling nitrous oxide for
29 recreational purposes or that the person knows will be used to inhale
30 nitrous oxide for recreational purposes.

31 (2) Any person who violates subsection (1) of this section shall:

1 (a) For the first offense, be guilty of a Class III misdemeanor; and
2 (b) For the second and all subsequent offenses, be guilty of a Class
3 II misdemeanor.

4 (3) All objects containing nitrous oxide that are sold, offered for
5 sale, given, or furnished in violation of this section are subject to
6 seizure, forfeiture, and destruction. The cost of such seizure,
7 forfeiture, and destruction shall be borne by the person from whom the
8 products are seized.

9 **Sec. 7.** Section 59-1523, Revised Statutes Cumulative Supplement,
10 2024, is amended to read:

11 59-1523 (1) The cigarette tax division of the Tax Commissioner may,
12 after notice and hearing, revoke or suspend for any violation of section
13 59-1520 the:

14 (a) License or licenses of any person licensed under sections
15 28-1418 to 28-1429.07 and sections 4 to 6 of this act or sections 77-2601
16 to 77-2622; or

17 (b) License or certification of any person licensed or certified
18 under the Tobacco Products Tax Act.

19 (2) Cigarettes that are acquired, held, owned, possessed,
20 transported, sold, or distributed in or imported into this state in
21 violation of section 59-1520 are declared to be contraband goods and are
22 subject to seizure and forfeiture. Any cigarettes so seized and forfeited
23 shall be destroyed. Such cigarettes shall be declared to be contraband
24 goods whether the violation of section 59-1520 is knowing or otherwise.

25 **Sec. 8.** Original sections 28-1418.01, 28-1425, 28-1429, and
26 59-1523, Revised Statutes Cumulative Supplement, 2024, are repealed.