

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 285

Introduced by Lonowski, 33; Andersen, 49; McKeon, 41.

Read first time January 15, 2025

Committee:

1 A BILL FOR AN ACT relating to electronic nicotine delivery systems; to
2 amend sections 28-1418.01, 28-1425, 28-1429, 59-1523, and 77-4001,
3 Revised Statutes Cumulative Supplement, 2024; to prohibit the sale
4 or certification under the Tobacco Products Tax Act of flavored
5 vapor products; to define terms; to provide a penalty; to harmonize
6 provisions; and to repeal the original sections.

7 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 section 4 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 section 4
23 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 for a violation of
5 section 28-1429.04 or 28-1429.05, no new license shall be issued to such
6 licensee until the expiration of five years after the date of such
7 revocation and forfeiture.

8 (2) If a license issued under sections 28-1420 to 28-1429 is revoked
9 and forfeited as provided in section 28-1425 for any other violation of
10 sections 28-1418 to 28-1429.03, 28-1429.06, and 28-1429.07 and section 4
11 of this act, no new license shall be issued to such licensee until the
12 expiration of one year after the date of such revocation and forfeiture
13 except as otherwise provided in section 28-1423.

14 **Sec. 4.** (1) For purposes of this section, flavored vapor product
15 means an electronic nicotine delivery system:

16 (a) That has a taste or smell, other than the taste or smell of
17 tobacco or menthol, that is distinguishable by an ordinary consumer
18 either prior to or during consumption or use of the product or device,
19 including, but not limited to, any taste or smell relating to mint,
20 wintergreen, chocolate, cocoa, vanilla, or honey or any fruit, candy,
21 dessert, alcoholic beverage, herb, or spice;

22 (b) That is marketed as having any taste or smell other than tobacco
23 or menthol; or

24 (c) Regarding which the manufacturer, seller, or any person
25 authorized by, or acting with the consent of, the manufacturer or seller,
26 has made a public statement or claim, whether express or implied, that
27 such electronic nicotine delivery system has a taste or smell other than
28 tobacco or menthol.

29 (2) A person holding a license under sections 28-1420 to 28-1429
30 shall not market, advertise, sell, or cause to be sold any flavored vapor
31 product.

1 **Sec. 5.** Section 59-1523, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 59-1523 (1) The cigarette tax division of the Tax Commissioner may,
4 after notice and hearing, revoke or suspend for any violation of section
5 59-1520 the:

6 (a) License or licenses of any person licensed under sections
7 28-1418 to 28-1429.07 and section 4 of this act or sections 77-2601 to
8 77-2622; or

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

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

17 **Sec. 6.** Section 77-4001, Revised Statutes Cumulative Supplement,
18 2024, is amended to read:

19 77-4001 Sections 77-4001 to 77-4025 and section 7 of this act shall
20 be known and may be cited as the Tobacco Products Tax Act.

21 **Sec. 7.** (1) For purposes of this section, flavored vapor product
22 has the same meaning as in section 4 of this act.

23 (2) The Tax Commissioner shall not issue a certification under
24 section 77-4011.01 for any electronic nicotine delivery system which is a
25 flavored vapor product.

26 (3) A manufacturer shall not cause to be sold at retail in this
27 state any type or model of electronic nicotine delivery system which is a
28 flavored vapor product.

29 **Sec. 8.** Original sections 28-1418.01, 28-1425, 28-1429, 59-1523,
30 and 77-4001, Revised Statutes Cumulative Supplement, 2024, are repealed.