

## LEGISLATIVE BILL 1064

Approved by the Governor August 15, 2020

Introduced by Briese, 41.

A BILL FOR AN ACT relating to tobacco; to amend sections 28-1418, 28-1418.01, 28-1419, 28-1421, 28-1424, 28-1425, and 28-1427, Revised Statutes Supplement, 2019; to change provisions relating to the sale and use of tobacco products, electronic nicotine delivery systems, and alternative nicotine products; to provide for participation in compliance enforcement activities as prescribed; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.  
Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-1418, Revised Statutes Supplement, 2019, is amended to read:

28-1418 Whoever, being a person under the age of twenty-one ~~nineteen~~ years, shall smoke cigarettes or cigars, use electronic nicotine delivery systems or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor. Any person 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, electronic nicotine delivery systems, alternative nicotine products, or tobacco.

Sec. 2. Section 28-1418.01, Revised Statutes Supplement, 2019, 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 electronic nicotine delivery system, 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) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (b) tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (2)(a) of this section;

(3)(a) Electronic nicotine delivery system means any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

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

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

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

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

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

(i) 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; or

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

(4) Self-service display means a retail display that contains a tobacco product, a tobacco-derived product, an electronic nicotine delivery system, 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, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products behind

locked doors; and

(5) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products and (b) does not permit persons under the age of twenty-one ~~nineteen~~ years to enter the premises unless accompanied by a parent or legal guardian, except that until January 1, 2022, a tobacco specialty store may allow an employee who is nineteen or twenty years of age to work in the store.

Sec. 3. Section 28-1419, Revised Statutes Supplement, 2019, is amended to read:

28-1419 (1) Whoever shall sell, give, or furnish, in any way, any tobacco in any form whatever, or any cigars, cigarettes, cigarette paper, electronic nicotine delivery systems, or alternative nicotine products, to any person under twenty-one ~~nineteen~~ years of age, is guilty of a Class III misdemeanor for each offense.

(2)(a) In order to further the public policy of deterring licensees or other persons from violating subsection (1) of this section, a person who is at least fifteen years of age but under twenty-one years of age may assist a peace officer in determining compliance with such subsection if:

(i) The parent or legal guardian of the person has given written consent for the person to participate in such compliance check if such person is under nineteen years of age;

(ii) The person is an employee, a volunteer, or an intern with a state or local law enforcement agency;

(iii) The person is acting within the scope of his or her assigned duties as part of a law enforcement investigation;

(iv) The person does not use or consume a tobacco product as part of such duties; and

(v) The person is not actively assigned to a diversion program, is not a party to a pending criminal proceeding or a proceeding pending under the Nebraska Juvenile Code, and is not on probation.

(b) Any person under the age of twenty-one years acting in accordance with and under the authority of this subsection shall not be in violation of section 28-1427.

Sec. 4. Section 28-1421, Revised Statutes Supplement, 2019, is amended to read:

28-1421 Licenses for the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material to persons twenty-one ~~nineteen~~ years of age or over 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. 5. Section 28-1424, Revised Statutes Supplement, 2019, is amended to read:

28-1424 The license provided for in sections 28-1421 and 28-1422 shall, when issued, authorize the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material by the licensee and employees, to persons twenty-one ~~nineteen~~ years of age or over, at the place of business described in such license for the term therein authorized, unless the license is forfeited as provided in section 28-1425.

Sec. 6. Section 28-1425, Revised Statutes Supplement, 2019, is amended to read:

28-1425 Any licensee who shall sell, give, or furnish in any way to any person under the age of twenty-one ~~nineteen~~ years, or who shall willingly allow to be taken from his or her place of business by any person under the age of twenty-one ~~nineteen~~ years, any cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine 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 28-1419, 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. 7. Section 28-1427, Revised Statutes Supplement, 2019, is amended to read:

28-1427 Except as provided in subsection (2) of section 28-1419, any Any person under the age of twenty-one ~~nineteen~~ years who obtains cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products from a licensee by representing that he or she is of the age of twenty-one ~~nineteen~~ years or over is guilty of a Class V misdemeanor.

Sec. 8. This act becomes operative on October 1, 2020.

Sec. 9. Original sections 28-1418, 28-1418.01, 28-1419, 28-1421, 28-1424, 28-1425, and 28-1427, Revised Statutes Supplement, 2019, are repealed.

Sec. 10. Since an emergency exists, this act takes effect when passed and approved according to law.