

AMENDMENTS TO LB861

Introduced by General Affairs

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 28-101, Revised Statutes Supplement,
4 2013, is amended to read:

5 28-101 Sections 28-101 to 28-1356 and sections 3 and 8 of
6 this act shall be known and may be cited as the Nebraska Criminal
7 Code.

8 Sec. 2. Section 28-1418, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 28-1418 Whoever, being a minor under the age of eighteen
11 years, shall smoke cigarettes or cigars, use vapor products or
12 alternative nicotine products, or use tobacco in any form whatever,
13 in this state, shall be guilty of a Class V misdemeanor. Any
14 minor ~~se~~ charged with ~~the~~ a violation of this section may be free
15 from prosecution ~~when~~ if he shall have furnished or she furnishes
16 evidence for the conviction of the person or persons selling
17 or giving him or her the cigarettes, cigars, vapor products,
18 alternative nicotine products, or tobacco.

19 Sec. 3. For purposes of sections 28-1418 to 28-1429.02
20 and sections 3 and 8 of this act:

21 (1) Alternative nicotine product means any noncombustable
22 product containing nicotine that is intended for human consumption,
23 whether chewed, absorbed, dissolved, or ingested by any other

1 means. Alternative nicotine product does not include any vapor
2 product, cigarette, cigar, or other tobacco product, or any product
3 regulated as a drug or device by the United States Food and Drug
4 Administration under Chapter V of the federal Food, Drug, and
5 Cosmetic Act;

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

14 (3) Tobacco specialty store means a retail store that (a)
15 derives at least seventy-five percent of its revenue from tobacco
16 products, tobacco derived products, vapor products, or alternative
17 nicotine products and (b) does not permit minors under the age of
18 eighteen years to enter the premises unless accompanied by a parent
19 or legal guardian; and

20 (4) Vapor product means any noncombustible product
21 containing nicotine that employs a heating element, power source,
22 electronic circuit, or other electronic, chemical, or mechanical
23 means, regardless of shape or size, that can be used to produce
24 vapor from nicotine in a solution or other form. Vapor product
25 includes any electronic cigarette, electronic cigar, electronic
26 cigarillo, electronic pipe, or similar product or device and any
27 vapor cartridge or other container of nicotine in a solution or

1 other form that is intended to be used with or in an electronic
2 cigarette, electronic cigar, electronic cigarillo, electronic pipe,
3 or similar product or device. Vapor product does not include an
4 alternative nicotine product, cigarette, cigar, or other tobacco
5 product, or any product regulated as a drug or device by the United
6 States Food and Drug Administration under Chapter V of the federal
7 Food, Drug, and Cosmetic Act.

8 Sec. 4. Section 28-1419, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 28-1419 Whoever shall sell, give, or furnish, in any way,
11 any tobacco in any form whatever, or any cigarettes, ~~or~~ cigarette
12 paper, vapor products, or alternative nicotine products, to any
13 minor under eighteen years of age, ~~shall be~~ is guilty of a Class
14 III misdemeanor for each offense.

15 Sec. 5. Section 28-1425, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 28-1425 Any licensee who shall sell, give, or furnish
18 in any way to any person under the age of eighteen years, or
19 who shall willingly allow to be taken from his or her place
20 of business by any person under the age of eighteen years, any
21 cigars, tobacco, cigarettes, ~~or~~ cigarette material, vapor products,
22 or alternative nicotine products shall be guilty of a Class III
23 misdemeanor. Any officer, director, or manager having charge or
24 control, either separately or jointly with others, of the business
25 of any corporation which violates ~~the provisions of~~ sections
26 28-1420 to 28-1429, and sections 3 and 8 of this act, if he
27 ~~have~~ or she has knowledge of ~~the same,~~ such violation, shall be

1 subject to the penalties provided in this section. In addition
2 to the penalties provided in this section, such licensee shall be
3 subject to the additional penalty of a revocation and forfeiture
4 of his, her, their, or its license, at the discretion of the court
5 before whom the complaint for violation of ~~said~~ such sections may
6 be heard. If such license ~~be~~ is revoked and forfeited, all rights
7 under such license shall at once cease and terminate.

8 Sec. 6. Section 28-1427, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 28-1427 Any person under the age of eighteen years who
11 shall obtain cigars, tobacco, cigarettes, ~~or~~ cigarette material,
12 vapor products, or alternative nicotine products from a licensee
13 ~~hereunder~~ by representing that he or she is of the age of eighteen
14 years or over, ~~shall be~~ is guilty of a Class V misdemeanor.

15 Sec. 7. Section 28-1429.02, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 28-1429.02 (1) Except as provided in subsection (2) of
18 this section, it shall be unlawful to dispense cigarettes, ~~or~~ other
19 tobacco products, vapor products, or alternative nicotine products
20 from a vending machine or similar device. Any person violating this
21 section ~~shall be~~ is guilty of a Class III misdemeanor. In addition,
22 upon conviction for a second offense, the court shall order a
23 six-month suspension of the offender's license to sell tobacco,
24 if any, and, upon conviction for a third or subsequent offense,
25 the court shall order the permanent revocation of the offender's
26 license to sell tobacco, if any.

27 (2) Cigarettes, ~~or~~ other tobacco products, vapor

1 products, or alternative nicotine products may be dispensed from
2 a vending machine or similar device when such machine or device
3 is located in an area, office, business, plant, or factory which
4 is not open to the general public or on the licensed premises of
5 any establishment having a license issued under the Nebraska Liquor
6 Control Act for the sale of alcoholic liquor for consumption on the
7 premises when such machine or device is located in the same room in
8 which the alcoholic liquor is dispensed.

9 (3) Nothing in this section shall be construed to
10 restrict or prohibit a governing body of a city or village
11 from establishing and enforcing ordinances at least as stringent as
12 or more stringent than the provisions of this section.

13 Sec. 8. (1) Except as provided in subsection (2) of this
14 section and section 28-1429.02, it shall be unlawful to sell or
15 distribute cigarettes, cigars, vapor products, alternative nicotine
16 products, or tobacco in any form whatever through a self-service
17 display. Any person violating this section is guilty of a Class
18 III misdemeanor. In addition, upon conviction for a second or
19 subsequent offense within a twelve-month period, the court shall
20 order a six-month suspension of the license issued under section
21 28-1421.

22 (2) Cigarettes, cigars, vapor products, alternative
23 nicotine products, or tobacco in any form whatever may be sold or
24 distributed in a self-service display that is located in a tobacco
25 specialty store or cigar bar as defined in section 53-103.08.

26 Sec. 9. Section 59-1523, Revised Statutes Cumulative
27 Supplement, 2012, is amended to read:

1 59-1523 (1) The cigarette tax division of the Tax
2 Commissioner may, after notice and hearing, revoke or suspend
3 for any violation of section 59-1520 the license or licenses of any
4 person licensed under sections 28-1418 to ~~28-1429~~ 28-1429.02 and
5 sections 3 and 8 of this act or sections 77-2601 to 77-2622.

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

13 Sec. 10. Original sections 28-1418, 28-1419, 28-1425,
14 28-1427, and 28-1429.02, Reissue Revised Statutes of Nebraska,
15 section 59-1523, Revised Statutes Cumulative Supplement, 2012, and
16 section 28-101, Revised Statutes Supplement, 2013, are repealed.