

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 861

Introduced by Karpisek, 32.

Read first time January 13, 2014

Committee: General Affairs

A BILL

1 FOR AN ACT relating to tobacco; to amend sections 28-1418 and
2 28-1419, Reissue Revised Statutes of Nebraska, and
3 section 59-1523, Revised Statutes Cumulative Supplement,
4 2012; to prohibit the use and distribution of vapor
5 products and other products derived from tobacco as
6 prescribed and to provide an exception; to provide
7 penalties; to harmonize provisions; and to repeal the
8 original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1418, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1418 Whoever, being a minor under the age of eighteen
4 years, shall smoke cigarettes or cigars, use vapor products, or use
5 tobacco in any form whatever, including products made or derived from
6 tobacco, in this state, shall be guilty of a Class V misdemeanor. Any
7 minor so charged with the violation of this section may be free from
8 prosecution ~~when if he shall have furnished evidence or she furnishes~~
9 for the conviction of the person or persons selling or giving him or
10 her the cigarettes, vapor products, cigars, or tobacco.

11 Sec. 2. For purposes of sections 28-1418 to 28-1429 and
12 sections 2 and 4 of this act:

13 (1) Self-service display means a retail display that
14 contains a tobacco product and is located in an area openly
15 accessible to a retailer's customers and from which such customers
16 can readily access tobacco products without the assistance of a
17 salesperson. Self-service display does not include a display case
18 that holds tobacco products behind locked doors;

19 (2) Tobacco specialty store means a retail store that (a)
20 derives at least seventy-five percent of its revenue from tobacco
21 products and (b) does not permit minors to enter the premises unless
22 accompanied by a parent or legal guardian; and

23 (3) Vapor products means any noncombustible tobacco-
24 derived product containing nicotine that employs a mechanical heating
25 element, battery, or circuit, regardless of shape or size, that can

1 be used to heat a nicotine solution contained in cartridges. Vapor
2 products includes any vapor cartridge containing such nicotine
3 solution, an electronic cigarette, an electronic cigar, an electronic
4 cigarillo, and an electronic pipe. Vapor products does not include
5 any product that is regulated by the United States Food and Drug
6 Administration under subchapter V - Drugs and Devices, of the Federal
7 Food, Drug, and Cosmetic Act, 21 U.S.C. 351 to 360ddd-2, as such
8 sections existed on January 1, 2014.

9 Sec. 3. Section 28-1419, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 28-1419 Whoever shall sell, give, or furnish, in any way,
12 any tobacco in any form whatever, including products made or derived
13 from tobacco, or any cigarettes, or—cigarette paper, or vapor
14 products, to any minor under eighteen years of age, shall be guilty
15 of a Class III misdemeanor for each offense.

16 Sec. 4. (1) Except as provided in subsection (2) of this
17 section and section 28-1429.02, it shall be unlawful to sell or
18 distribute cigarettes, cigars, vapor products, or tobacco in any form
19 whatever, including products made or derived from tobacco, through a
20 self-service display. Any person violating this section shall be
21 guilty of a Class III misdemeanor. In addition, upon conviction for a
22 second or subsequent offense within a twelve-month period, the court
23 shall order a six-month suspension of the license issued under
24 section 28-1421.

25 (2) Cigarettes, cigars, vapor products, or tobacco in any

1 form whatever, including products made or derived from tobacco, may
2 be sold or distributed in a self-service display that is located in a
3 tobacco specialty store or cigar bar as defined in section 53-103.08.

4 Sec. 5. Section 59-1523, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

6 59-1523 (1) The cigarette tax division of the Tax
7 Commissioner may, after notice and hearing, revoke or suspend for any
8 violation of section 59-1520 the license or licenses of any person
9 licensed under sections ~~28-1418~~28-1420 to 28-1429 or sections
10 77-2601 to 77-2622.

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
14 are subject to seizure and forfeiture. Any cigarettes so seized and
15 forfeited shall be destroyed. Such cigarettes shall be declared to be
16 contraband goods whether the violation of section 59-1520 is knowing
17 or otherwise.

18 Sec. 6. Original sections 28-1418 and 28-1419, Reissue
19 Revised Statutes of Nebraska, and section 59-1523, Revised Statutes
20 Cumulative Supplement, 2012, are repealed.