

E AND R AMENDMENTS TO LB 118

Introduced by Hansen, 26, Chairman Enrollment and Review

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

3 Section 1. Section 28-1429.03, Revised Statutes Cumulative
4 Supplement, 2014, is amended to read:

5 28-1429.03 (1) Except as provided in subsection (2) of this section
6 and section 28-1429.02, it shall be unlawful to sell or distribute
7 cigarettes, cigars, vapor products, alternative nicotine products, or
8 tobacco in any form whatever through a self-service display. Any person
9 violating this section is guilty of a Class III misdemeanor. In addition,
10 upon conviction for a second or subsequent offense within a twelve-month
11 period, the court shall order a six-month suspension of the license
12 issued under section 28-1421.

13 (2) Cigarettes, cigars, vapor products, alternative nicotine
14 products, or tobacco in any form ~~whatever~~ may be sold or distributed in a
15 self-service display that is located in a tobacco specialty store or
16 cigar shop bar as defined in section 53-103.08.

17 Sec. 2. Section 53-103.08, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 53-103.08 Cigar shop bar means an establishment operated by a holder
20 of a Class C liquor license which:

21 (1) Does not sell food;

22 (2) In addition to selling alcohol, annually receives ten percent or
23 more of its gross revenue from the sale of cigars, ~~and~~ other tobacco
24 products, ~~and~~ tobacco-related products, except from the sale of
25 cigarettes as defined in section 69-2702. A cigar shop bar shall not
26 discount alcohol if sold in combination with cigars or other tobacco
27 products and tobacco-related products;

- 1 (3) Has a walk-in humidor on the premises; and
- 2 (4) Does not permit the smoking of cigarettes.

3 Sec. 3. Section 53-131, Revised Statutes Cumulative Supplement,
4 2014, is amended to read:

5 53-131 (1) Any person desiring to obtain a new license to sell
6 alcoholic liquor at retail, a craft brewery license, or a microdistillery
7 license shall file with the commission:

8 (a) An application ~~in triplicate original~~ upon forms prescribed by
9 the commission ~~prescribes~~, including the information required by
10 subsection (3) of this section for an application to operate a cigar shop
11 ~~bar~~;

12 (b) The license fee if under sections 53-124 and 53-124.01 such fee
13 is payable to the commission, which fee shall be returned to the
14 applicant if the application is denied; and

15 (c) The nonrefundable application fee in the sum of four hundred
16 dollars, except that the nonrefundable application fee for an application
17 for a cigar shop bar shall be one thousand dollars.

18 (2) The commission shall notify the clerk of the city or village in
19 which such license is sought or, if the license sought is not sought
20 within a city or village, the county clerk of the county in which such
21 license is sought, of the receipt of the application and shall include
22 one copy of the application with the notice. No such license shall be
23 issued or denied by the commission until the expiration of the time
24 allowed for the receipt of a recommendation of denial or an objection
25 requiring a hearing under subdivision (1)(a) or (b) of section 53-133.
26 During the period of forty-five days after the date of receipt by mail or
27 electronic delivery of such application from the commission, the local
28 governing body of such city, village, or county may make and submit to
29 the commission recommendations relative to the granting or refusal to
30 grant such license to the applicant.

31 (3) For an application to operate a cigar shop bar, the application

1 shall include proof of the cigar shop's ~~bar's~~ annual gross revenue as
2 requested by the commission and such other information as requested by
3 the commission to establish the intent to operate as a cigar shop ~~bar~~.
4 The commission may adopt and promulgate rules and regulations to regulate
5 cigar shops. The rules and regulations existing on August 1, 2014,
6 applicable to cigar bars shall apply to cigar shops until amended or
7 repealed by the commission ~~bars~~.

8 (4) For renewal of a license under this section, a licensee shall
9 file with the commission an application, the license fee as provided in
10 subdivision (1)(b) of this section, and a renewal fee of forty-five
11 dollars.

12 Sec. 4. Section 53-1,120.01, Reissue Revised Statutes of Nebraska,
13 is amended to read:

14 53-1,120.01 (1) No county resolution or city ordinance that
15 prohibits smoking in indoor areas shall apply to cigar shops ~~bars~~.

16 (2)(a) The Legislature finds that allowing smoking in cigar shops as
17 a limited exception to the Nebraska Clean Indoor Air Act does not
18 interfere with the original intent that the general public and employees
19 not be unwillingly subjected to second-hand smoke since employees have
20 ample other opportunities for similar employment at other establishments.
21 This exception poses a de minimis restriction on the public and employees
22 given the limited number of cigar shops compared to other businesses that
23 sell alcohol, cigars, and pipe tobacco, and any member of the public
24 should reasonably expect that there would be second-hand smoke in a cigar
25 shop given the nature of the business and could choose to avoid such
26 exposure.

27 (b) The Legislature finds that (i) cigars and pipe tobacco have
28 different characteristics than other forms of tobacco such as cigarettes,
29 (ii) cigar aficionados often pair cigars with various spirits such as
30 cognac, single malt whisky, bourbon, rum, rye, port, and others, and
31 (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour

1 or longer to enjoy a cigar or pipe rather than simply satisfying an
2 addiction. Cigar shops are a variation of a tobacco retail outlet, which
3 has a liquor license. The issue of whether a liquor license shall be
4 granted to a cigar shop is an entirely separate issue that deals with an
5 entirely separate chapter of state law. Whether a liquor license is
6 granted is at the recommendation of the local governing body and the
7 discretion of the Nebraska Liquor Control Commission.

8 (c) It is the intent of the Legislature to allow cigar and pipe
9 smoking in cigar shops that meet specific statutory criteria. This
10 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in
11 accordance with the intent of the act to protect public places and places
12 of employment.

13 (3)(a) The Legislature finds that allowing smoking in tobacco retail
14 outlets as a limited exception to the Nebraska Clean Indoor Air Act does
15 not interfere with the original intent that the general public and
16 employees not be unwillingly subjected to second-hand smoke since
17 employees have ample other opportunities for similar employment at other
18 establishments and the general public would not frequent those
19 establishments and should reasonably expect that there would be second-
20 hand smoke in a tobacco retail outlet and could choose to avoid such
21 exposure. The products that tobacco retail outlets sell are legal for
22 customers who meet the age requirement. Customers should be able to try
23 them within the tobacco retail outlet, especially given the way that
24 tobacco customization may occur in how tobacco is blended and cigars are
25 produced.

26 (b) It is the intent of the Legislature to allow smoking in tobacco
27 retail outlets that meet specific statutory criteria. This exception to
28 the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with
29 the intent of the act to protect public places and places of employment.

30 Sec. 5. Section 71-5717, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 71-5717 The purpose of the Nebraska Clean Indoor Air Act is to
2 protect the public health and welfare by prohibiting smoking in public
3 places and places of employment with limited exceptions for guestrooms
4 and suites, research, tobacco retail outlets, and cigar shops. The
5 limited exceptions permit smoking in public places where the public would
6 reasonably expect to find persons smoking, including guestrooms and
7 suites which are subject to expectations of privacy like private
8 residences, institutions engaged in research related to smoking, and
9 tobacco retail outlets and cigar shops which provide the public legal
10 retail outlets to sample, use, and purchase tobacco products and products
11 related to smoking. The act shall not be construed to prohibit or
12 otherwise restrict smoking in outdoor areas. The act shall not be
13 construed to permit smoking where it is prohibited or otherwise
14 restricted by other applicable law, ordinance, or resolution. The act
15 shall be liberally construed to further its purpose.

16 Sec. 6. Section 71-5730, Revised Statutes Cumulative Supplement,
17 2014, is amended to read:

18 71-5730 (1) The following indoor areas are exempt from section
19 71-5729:

20 (a 1) Guestrooms and suites that are rented to guests and that are
21 designated as smoking rooms, except that not more than twenty percent of
22 rooms rented to guests in an establishment may be designated as smoking
23 rooms. All smoking rooms on the same floor shall be contiguous, and smoke
24 from such rooms shall not infiltrate into areas where smoking is
25 prohibited under the Nebraska Clean Indoor Air Act;

26 (b 2) Indoor areas used in connection with a research study on the
27 health effects of smoking conducted in a scientific or analytical
28 laboratory under state or federal law or at a college or university
29 approved by the Coordinating Commission for Postsecondary Education;

30 (c 3) Tobacco retail outlets; and

31 (d 4) Cigar shops ~~bars~~ as defined in section 53-103.08.

1 (2)(a) The Legislature finds that allowing smoking in cigar shops as
2 a limited exception to the Nebraska Clean Indoor Air Act does not
3 interfere with the original intent that the general public and employees
4 not be unwillingly subjected to second-hand smoke since employees have
5 ample other opportunities for similar employment at other establishments.
6 This exception poses a de minimis restriction on the public and employees
7 given the limited number of cigar shops compared to other businesses that
8 sell alcohol, cigars, and pipe tobacco, and any member of the public
9 should reasonably expect that there would be second-hand smoke in a cigar
10 shop given the nature of the business and could choose to avoid such
11 exposure.

12 (b) The Legislature finds that (i) cigars and pipe tobacco have
13 different characteristics than other forms of tobacco such as cigarettes,
14 (ii) cigar aficionados often pair cigars with various spirits such as
15 cognac, single malt whisky, bourbon, rum, rye, port, and others, and
16 (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour
17 or longer to enjoy a cigar or pipe rather than simply satisfying an
18 addiction. Cigar shops are a variation of a tobacco retail outlet, which
19 has a liquor license. The issue of whether a liquor license shall be
20 granted to a cigar shop is an entirely separate issue that deals with an
21 entirely separate chapter of state law. Whether a liquor license is
22 granted is at the recommendation of the local governing body and the
23 discretion of the Nebraska Liquor Control Commission.

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25 smoking in cigar shops that meet specific statutory criteria. This
26 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in
27 accordance with the intent of the act to protect public places and places
28 of employment.

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30 outlets as a limited exception to the Nebraska Clean Indoor Air Act does
31 not interfere with the original intent that the general public and

1 employees not be unwillingly subjected to second-hand smoke since
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5 hand smoke in a tobacco retail outlet and could choose to avoid such
6 exposure. The products that tobacco retail outlets sell are legal for
7 customers who meet the age requirement. Customers should be able to try
8 them within the tobacco retail outlet, especially given the way that
9 tobacco customization may occur in how tobacco is blended and cigars are
10 produced.

11 (b) It is the intent of the Legislature to allow smoking in tobacco
12 retail outlets that meet specific statutory criteria. This exception to
13 the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with
14 the intent of the act to protect public places and places of employment.

15 Sec. 7. If any section in this act or any part of any section is
16 declared invalid or unconstitutional, the declaration shall not affect
17 the validity or constitutionality of the remaining portions.

18 Sec. 8. Original sections 53-103.08, 53-1,120.01, and 71-5717,
19 Reissue Revised Statutes of Nebraska, and sections 28-1429.03, 53-131,
20 and 71-5730, Revised Statutes Cumulative Supplement, 2014, are repealed.

21 Sec. 9. Since an emergency exists, this act takes effect when
22 passed and approved according to law.

23 2. On page 1, strike beginning with "cigar" in line 1 through line
24 10 and insert "regulated establishments; to amend sections 53-103.08,
25 53-1,120.01, and 71-5717, Reissue Revised Statutes of Nebraska, and
26 sections 28-1429.03, 53-131, and 71-5730, Revised Statutes Cumulative
27 Supplement, 2014; to define cigar shop; to permit certain sales as
28 prescribed; to provide for a nonrefundable application fee; to provide
29 and change requirements for certain liquor license applications; to
30 preempt county resolutions and city ordinances relating to smoking in
31 cigar shops; to state and restate intent; to exempt retail tobacco

1 outlets and cigar shops from the Nebraska Clean Indoor Air Act; to
2 harmonize provisions; to provide severability; to repeal the original
3 sections; and to declare an emergency."