

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1064

FINAL READING

Introduced by Briese, 41.

Read first time January 21, 2020

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco; to amend sections 28-1418,
2 28-1418.01, 28-1419, 28-1421, 28-1424, 28-1425, and 28-1427, Revised
3 Statutes Supplement, 2019; to change provisions relating to the sale
4 and use of tobacco products, electronic nicotine delivery systems,
5 and alternative nicotine products; to provide for participation in
6 compliance enforcement activities as prescribed; to harmonize
7 provisions; to provide an operative date; to repeal the original
8 sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

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

3 28-1418 Whoever, being a person under the age of twenty-one ~~nineteen~~
4 years, shall smoke cigarettes or cigars, use electronic nicotine delivery
5 systems or alternative nicotine products, or use tobacco in any form
6 whatever, in this state, shall be guilty of a Class V misdemeanor. Any
7 person charged with a violation of this section may be free from
8 prosecution if he or she furnishes evidence for the conviction of the
9 person or persons selling or giving him or her the cigarettes, cigars,
10 electronic nicotine delivery systems, alternative nicotine products, or
11 tobacco.

12 Sec. 2. Section 28-1418.01, Revised Statutes Supplement, 2019, is
13 amended to read:

14 28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

15 (1) Alternative nicotine product means any noncombustible product
16 containing nicotine that is intended for human consumption, whether
17 chewed, absorbed, dissolved, or ingested by any other means. Alternative
18 nicotine product does not include any electronic nicotine delivery
19 system, cigarette, cigar, or other tobacco product, or any product
20 regulated as a drug or device by the United States Food and Drug
21 Administration under Chapter V of the Federal Food, Drug, and Cosmetic
22 Act;

23 (2) Cigarette means any product that contains nicotine, is intended
24 to be burned or heated under ordinary conditions of use, and consists of
25 or contains (a) any roll of tobacco wrapped in paper or in any substance
26 not containing tobacco, (b) tobacco, in any form, that is functional in
27 the product which, because of its appearance, the type of tobacco used in
28 the filler, or its packaging and labeling, is likely to be offered to, or
29 purchased by, consumers as a cigarette, or (c) any roll of tobacco
30 wrapped in any substance containing tobacco which, because of its
31 appearance, the type of tobacco used in the filler, or its packaging and

1 labeling, is likely to be offered to, or purchased by, consumers as a
2 cigarette described in subdivision (2)(a) of this section;

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

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

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

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

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

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

27 (i) An alternative nicotine product, cigarette, cigar, or other
28 tobacco product, or any product regulated as a drug or device by the
29 United States Food and Drug Administration under Chapter V of the Federal
30 Food, Drug, and Cosmetic Act; or

31 (ii) Any component, part, or accessory of such a product or device

1 that is used during operation of the product or device when not sold in
2 combination with any substance containing nicotine, tobacco, or tobacco
3 derivatives;

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

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

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

23 28-1419 (1) whoever shall sell, give, or furnish, in any way, any
24 tobacco in any form whatever, or any cigars, cigarettes, cigarette paper,
25 electronic nicotine delivery systems, or alternative nicotine products,
26 to any person under twenty-one ~~nineteen~~ years of age, is guilty of a
27 Class III misdemeanor for each offense.

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

1 if:

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

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

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

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

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

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

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

19 28-1421 Licenses for the sale of cigars, tobacco, electronic
20 nicotine delivery systems, cigarettes, and cigarette material to persons
21 twenty-one ~~nineteen~~ years of age or over shall be issued to individuals,
22 partnerships, limited liability companies, and corporations by the clerk
23 or finance director of any city or village and by the county clerk of any
24 county upon application duly made as provided in section 28-1422. The
25 sale of cigarettes or cigarette materials that contain perfumes or drugs
26 in any form is prohibited and is not licensed by the provisions of this
27 section. Only cigarettes and cigarette material containing pure white
28 paper and pure tobacco shall be licensed.

29 Sec. 5. Section 28-1424, Revised Statutes Supplement, 2019, is
30 amended to read:

31 28-1424 The license provided for in sections 28-1421 and 28-1422

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

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

9 28-1425 Any licensee who shall sell, give, or furnish in any way to
10 any person under the age of twenty-one ~~nineteen~~ years, or who shall
11 willingly allow to be taken from his or her place of business by any
12 person under the age of twenty-one ~~nineteen~~ years, any cigars, tobacco,
13 cigarettes, cigarette material, electronic nicotine delivery systems, or
14 alternative nicotine products is guilty of a Class III misdemeanor. Any
15 officer, director, or manager having charge or control, either separately
16 or jointly with others, of the business of any corporation which violates
17 sections 28-1419, 28-1420 to 28-1429, and 28-1429.03, if he or she has
18 knowledge of such violation, shall be subject to the penalties provided
19 in this section. In addition to the penalties provided in this section,
20 such licensee shall be subject to the additional penalty of a revocation
21 and forfeiture of his, her, their, or its license, at the discretion of
22 the court before whom the complaint for violation of such sections may be
23 heard. If such license is revoked and forfeited, all rights under such
24 license shall at once cease and terminate.

25 Sec. 7. Section 28-1427, Revised Statutes Supplement, 2019, is
26 amended to read:

27 28-1427 Except as provided in subsection (2) of section 28-1419,
28 any Any person under the age of twenty-one ~~nineteen~~ years who obtains
29 cigars, tobacco, cigarettes, cigarette material, electronic nicotine
30 delivery systems, or alternative nicotine products from a licensee by
31 representing that he or she is of the age of twenty-one ~~nineteen~~ years or

1 over is guilty of a Class V misdemeanor.

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

3 Sec. 9. Original sections 28-1418, 28-1418.01, 28-1419, 28-1421,
4 28-1424, 28-1425, and 28-1427, Revised Statutes Supplement, 2019, are
5 repealed.

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