

## Changes to Tobacco and Vapor Product Sales and Use Statutes in Nebraska

On **April 9, 2014**, the Governor approved LB863 which brings several important changes impacting the sale and display of cigarettes, cigars, “vapor products” (e-cigarettes and similar products), “alternative nicotine products” or tobacco in any form that all retailers, tobacco retail license holders, and law enforcement need to be aware of.

As of **April 9, 2014**, it is illegal to sell, give, or furnish in any way, any “vapor products” (e-cigarettes and similar type products) or “alternative nicotine products” to persons under the age of eighteen years.

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

As of **April 9, 2014**, it is illegal to sell cigarettes, cigars, “vapor products”, “alternative nicotine products”, or tobacco in any form through a self-service display. Two or more violation convictions within a twelve-month period could result in a suspension of the tobacco retail license.

*“Sec. 22. (1) Except as provided in subsection (2) of this section and section 28-1429.02, it shall be unlawful to sell or distribute cigarettes, cigars, vapor products, alternative nicotine products, or tobacco in any form whatever through a self-service display. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second or subsequent offense within a twelve-month period, the court shall order a six-month suspension of the license issued under section 28-1421.”*

Self-service display exemptions: *Section 22, “Cigarettes, cigars, vapor products, alternative nicotine products, or tobacco in any form whatever may be sold or distributed in a self-service display that is located in a tobacco specialty store or cigar bar as defined in section 53-103.08.”*

As of **April 9, 2014**, it is illegal to sell “vapor products” from a vending machine.

*28-1429.02 (1) - “It shall be unlawful to dispense cigarettes, or other tobacco products, vapor products, or alternative nicotine products from a vending machine or similar device.”*

Vending machine exemptions: *“28-1429.02 (2) Cigarettes, or other tobacco products, vapor products, or alternative nicotine products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.”*

As of **April 9, 2014**, it is illegal for persons under the age of eighteen years to smoke cigarettes or cigars, use “vapor products” or “alternative nicotine products,” or use tobacco in any form.

*“28-1418 Whoever, being a minor under the age of eighteen years, shall smoke cigarettes or cigars, use vapor products or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor.”*

As of **April 9, 2014**, business officers, directors, or managers with knowledge of sales of “vapor products” (e-cigarette and similar type products) to any minor under the age of eighteen could have their tobacco license revoked.

*28-1425 “Any officer, director, or manager having charge or control, either separately or jointly with others, of the business of any corporation which violates sections 28-1420 to 28-1429 and sections 17 and 22 of this act, 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.”*

Local governing bodies can enact ordinances that are more stringent than Nebraska’s state statutes for tobacco and “vapor products”.

*“28-1429.02 (3) Nothing in this section shall be construed to restrict or prohibit a governing body of a city or village from establishing and enforcing ordinances at least as stringent as or more stringent than the provisions of this section.”*

“For purposes of sections 28-1418 to 28-1429.02 and sections 17 and 22 of this act:”

**“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 vapor 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.”

**“Self-Service Display** means a retail display that contains a tobacco product, a tobacco-derived product, a vapor product, 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, vapor products, or alternative nicotine products behind locked doors.”

**“Tobacco Specialty Store** means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, vapor products, or alternative nicotine products and (b) does not permit minors under the age of eighteen years to enter the premises unless accompanied by a parent or legal guardian.”

**“Vapor Product** means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. Vapor product includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include 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.”