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HOUSE BILL 15

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Paul C. Bandy and Timothy M. Keller

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE TOBACCO PRODUCTS ACT TO CHANGE THE TITLE OF THE ACT TO THE "TOBACCO PRODUCTS AND E-CIGARETTE ACT", TO PROHIBIT SALES OF E-CIGARETTES TO MINORS AND TO PROHIBIT THE ONLINE INTERNET SALE OF E-CIGARETTES TO A MINOR IN NEW MEXICO.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-49-1 NMSA 1978 (being Laws 1993, Chapter 244, Section 1) is amended to read:

"30-49-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 49 NMSA 1978 may be cited as the "Tobacco Products and E-Cigarette Act"."

SECTION 2. Section 30-49-2 NMSA 1978 (being Laws 1993, Chapter 244, Section 2) is amended to read:

"30-49-2. ~~[DEFINITION]~~ DEFINITIONS.--As used in the .195129.1

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1 Tobacco Products and E-Cigarette Act:

2 A. "e-cigarette":

3 (1) means any electronic oral device, whether  
4 composed of a heating element and battery or an electronic  
5 circuit, that provides a vapor of nicotine or any other  
6 substances the use or inhalation of which simulates smoking;  
7 and

8 (2) includes any such device, or any part  
9 thereof, whether manufactured, distributed, marketed or sold as  
10 an e-cigarette, e-cigar, e-pipe or any other product, name or  
11 descriptor; and

12 B. "minor" means an individual who is less than  
13 eighteen years of age."

14 SECTION 3. Section 30-49-3 NMSA 1978 (being Laws 1993,  
15 Chapter 244, Section 3) is amended to read:

16 "30-49-3. TOBACCO AND E-CIGARETTE--PROHIBITED SALES.--

17 A. No person shall knowingly sell, offer to sell,  
18 barter or give [~~any~~] a tobacco product or an e-cigarette to  
19 [~~any~~] a minor.

20 B. No minor shall procure or attempt to procure any  
21 tobacco products or e-cigarette for [~~his~~] the minor's own use  
22 or for use by [~~any other~~] another minor.

23 C. No person shall sell, offer to sell or deliver a  
24 tobacco product or an e-cigarette in a form other than an  
25 original factory-sealed package."

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1           SECTION 4. Section 30-49-5 NMSA 1978 (being Laws 1993,  
2 Chapter 244, Section 5) is amended to read:

3           "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS OR  
4 E-CIGARETTES TO PERSON UNABLE TO PRODUCE IDENTITY CARD.--[~~Any~~]  
5 A person selling goods at retail or wholesale may refuse to  
6 sell tobacco products or e-cigarettes to [~~any~~] a person who is  
7 unable to produce an identity card as evidence that [~~he~~] the  
8 person is eighteen years of age or over."

9           SECTION 5. Section 30-49-6 NMSA 1978 (being Laws 1993,  
10 Chapter 244, Section 6) is amended to read:

11           "30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--  
12 No minor shall present any written, printed or photostatic  
13 evidence of age or identity that is false for the purpose of  
14 procuring or attempting to procure any tobacco products or e-  
15 cigarettes."

16           SECTION 6. Section 30-49-7 NMSA 1978 (being Laws 1993,  
17 Chapter 244, Section 7, as amended) is amended to read:

18           "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF  
19 TOBACCO PRODUCTS AND E-CIGARETTES.--

20           A. Except as provided in Subsections B and C of  
21 this section:

22                   (1) a person shall not sell tobacco products  
23 or e-cigarettes at a retail location in New Mexico by any means  
24 other than a direct, face-to-face exchange between the customer  
25 and the seller or the seller's employee; and

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1 (2) a person selling goods at a retail  
2 location in New Mexico shall not use a self-service display for  
3 tobacco products or e-cigarettes. As used in this subsection,  
4 "self-service display" means a display to which the public has  
5 access without the assistance of the seller or the seller's  
6 employee.

7 B. Tobacco products or e-cigarettes may be sold by  
8 vending machines in the following locations only:

9 (1) in locations not held open to the public,  
10 including controlled areas within factories, businesses and  
11 offices;

12 (2) in locations in which the vending machine  
13 is equipped with a remote-controlled lock-out device; or

14 (3) in age-controlled locations where minors  
15 are not permitted unless accompanied by a parent or guardian.

16 C. The provisions of this section do not apply to  
17 written, telephonic or electronic sales of tobacco products.

18 D. The online internet sale of e-cigarettes to a  
19 minor in New Mexico is prohibited."

20 SECTION 7. Section 30-49-8 NMSA 1978 (being Laws 1993,  
21 Chapter 244, Section 8) is amended to read:

22 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS OR E-  
23 CIGARETTES AS FREE SAMPLES PROHIBITED--EXCEPTION.--

24 A. A person who sells, distributes, promotes or  
25 advertises tobacco products or e-cigarettes shall not provide

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1 free samples of tobacco products or e-cigarettes to a minor.

2 B. The provisions of Subsection A of this section  
3 shall not apply to an individual who provides free samples of  
4 tobacco products to a family member or to an acquaintance on  
5 private property not held open to the public."

6 SECTION 8. Section 30-49-9 NMSA 1978 (being Laws 1993,  
7 Chapter 244, Section 9) is amended to read:

8 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,  
9 corporation, partnership or other entity engaged in the sale at  
10 retail of tobacco products or e-cigarettes shall prominently  
11 display in the place where tobacco products or e-cigarettes are  
12 sold and where a tobacco product or e-cigarette vending machine  
13 is located a printed sign or decal that reads as follows:

14 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A  
15 TOBACCO PRODUCT OR E-CIGARETTE IS SUBJECT TO A FINE OF UP TO  
16 \$1,000.

17 A PERSON WHO SELLS A TOBACCO PRODUCT OR E-CIGARETTE TO A  
18 PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO  
19 \$1,000."."

20 SECTION 9. Section 30-49-10 NMSA 1978 (being Laws 1993,  
21 Chapter 244, Section 10) is amended to read:

22 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The  
23 alcohol and gaming division of the regulation and licensing  
24 department and the appropriate law enforcement authorities in  
25 each county and municipality shall conduct random, unannounced

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1 inspections of facilities where tobacco products or e-  
2 cigarettes are sold to ensure compliance with the provisions of  
3 the Tobacco Products and E-Cigarette Act."

4 SECTION 10. Section 30-49-11 NMSA 1978 (being Laws 1993,  
5 Chapter 244, Section 11) is amended to read:

6 "30-49-11. PREEMPTION.--When a municipality or county  
7 adopts an ordinance or a regulation pertaining to sales of  
8 tobacco products or e-cigarettes, the ordinance or regulation  
9 shall be consistent with the provisions of the Tobacco Products  
10 and E-Cigarette Act."

11 SECTION 11. Section 30-49-12 NMSA 1978 (being Laws 1993,  
12 Chapter 244, Section 12) is amended to read:

13 "30-49-12. PENALTY.--

14 A. Any person who violates any provision of  
15 Subsection A of Section [~~3 or Sections 5, 7, 8 or 9 of the~~  
16 ~~Tobacco Products Act~~] 30-49-3 NMSA 1978 or Section 30-49-7,  
17 30-49-8 or 30-49-9 NMSA 1978 is guilty of a misdemeanor and  
18 shall be sentenced pursuant to the provisions of Section  
19 31-19-1 NMSA 1978. Each violation is a separate and distinct  
20 offense.

21 B. Any minor who violates any provision of  
22 Subsection B of Section [~~3 or Section 6 of the Tobacco Products~~  
23 ~~Act~~] 30-49-3 NMSA 1978 or Section 30-49-6 NMSA 1978 shall be  
24 punished by a fine not to exceed one hundred dollars (\$100) or  
25 forty-eight hours of community service."

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