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AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE TOBACCO PRODUCTS ACT TO CHANGE THE TITLE OF THE ACT TO THE "TOBACCO PRODUCTS, E-CIGARETTE AND NICOTINE LIQUID CONTAINER ACT", TO PROHIBIT SALES OF E-CIGARETTES AND NICOTINE LIQUID CONTAINERS TO MINORS, TO REQUIRE NICOTINE LIQUID CONTAINERS TO BE SOLD IN CHILD-RESISTANT PACKAGING AND TO PROHIBIT THE ONLINE INTERNET SALE OF E-CIGARETTES AND NICOTINE LIQUID CONTAINERS TO A MINOR IN NEW MEXICO; PROVIDING PENALTIES.

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.-- Chapter 30, Article 49 NMSA 1978 may be cited as the "Tobacco Products, E-Cigarette and Nicotine Liquid Container Act"."

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

"30-49-2. DEFINITIONS.--As used in the Tobacco Products, E-Cigarette and Nicotine Liquid Container Act:

A. "child-resistant" means a package or container that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults

1 to use properly, but does not mean a package or container  
2 that all such children cannot open or obtain a toxic or  
3 harmful amount within a reasonable time;

4 B. "e-cigarette":

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

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

14 (3) does not include any product regulated  
15 as a drug or device by the United States food and drug  
16 administration under the Federal Food, Drug, and Cosmetic  
17 Act, 21 U.S.C. Section 301 et seq.;

18 C. "minor" means an individual who is less than  
19 eighteen years of age; and

20 D. "nicotine liquid container" means a bottle or  
21 other container of any substance containing nicotine where  
22 the substance is sold, marketed or intended for use in an  
23 e-cigarette."

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

1           "30-49-3. TOBACCO PRODUCTS, E-CIGARETTES AND NICOTINE  
2 LIQUID CONTAINERS--PROHIBITED SALES.--

3           A. No person shall knowingly sell, offer to sell,  
4 barter or give a tobacco product, an e-cigarette or a  
5 nicotine liquid container to a minor.

6           B. No minor shall procure or attempt to procure  
7 any tobacco product, e-cigarette or nicotine liquid container  
8 for the minor's own use or for use by another minor.

9           C. No person shall sell, offer to sell or deliver  
10 a tobacco product, an e-cigarette or a nicotine liquid  
11 container in a form other than an original factory-sealed  
12 package.

13           D. No person shall sell or offer to sell any  
14 nicotine liquid container at retail in this state unless such  
15 container is child-resistant; except that for the purpose of  
16 this subsection, "nicotine liquid container" does not include  
17 a cartridge that is pre-filled and sealed by the manufacturer  
18 and that is not intended to be opened by the consumer.

19           E. The online internet sale of e-cigarettes or  
20 nicotine liquid containers to a minor in New Mexico is  
21 prohibited."

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

24           "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS,  
25 E-CIGARETTES OR NICOTINE LIQUID CONTAINERS TO PERSON UNABLE

1 TO PRODUCE IDENTITY CARD.--A person selling goods at retail  
2 or wholesale may refuse to sell tobacco products,  
3 e-cigarettes or nicotine liquid containers to a person who is  
4 unable to produce an identity card as evidence that the  
5 person is eighteen years of age or over."

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

8 "30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR  
9 IDENTITY.--No minor shall present any written, printed or  
10 photostatic evidence of age or identity that is false for the  
11 purpose of procuring or attempting to procure any tobacco  
12 products, e-cigarettes or nicotine liquid containers."

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

15 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF  
16 TOBACCO PRODUCTS, E-CIGARETTES AND NICOTINE LIQUID  
17 CONTAINERS.--

18 A. Except as provided in Subsections B and C of  
19 this section:

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

25 (2) a person selling goods at a retail

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

7 B. Tobacco products, e-cigarettes and nicotine  
8 liquid containers may be sold by vending machines only in  
9 age-controlled locations where minors are not permitted.

10 C. The provisions of this section do not apply to  
11 written, telephonic or electronic sales of tobacco products."

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

14 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS,  
15 E-CIGARETTES OR NICOTINE LIQUID CONTAINERS AS FREE SAMPLES  
16 PROHIBITED--EXCEPTION.--

17 A. A person shall not provide free samples of  
18 tobacco products, e-cigarettes or nicotine liquid containers  
19 to a minor.

20 B. The provisions of Subsection A of this section  
21 shall not apply to an individual who provides free samples of  
22 tobacco products, e-cigarettes or nicotine liquid containers  
23 in connection with the practice of cultural or ceremonial  
24 activities in accordance with the federal American Indian  
25 Religious Freedom Act, 42 U.S.C. 1996 and 1996a or its

1 successor act."

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

4 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,  
5 corporation, partnership or other entity engaged in the sale  
6 at retail of tobacco products, e-cigarettes or nicotine  
7 liquid containers shall prominently display in the place  
8 where tobacco products, e-cigarettes or nicotine liquid  
9 containers are sold and where a tobacco product, e-cigarette  
10 or nicotine liquid container vending machine is located a  
11 printed sign or decal that reads as follows:

12 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A  
13 TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID  
14 CONTAINER IS SUBJECT TO A FINE OF UP TO \$100.

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

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

20 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The  
21 alcohol and gaming division of the regulation and licensing  
22 department and the appropriate law enforcement authorities in  
23 each county and municipality shall conduct random,  
24 unannounced inspections of facilities where tobacco products,  
25 e-cigarettes or nicotine liquid containers are sold to ensure

1 compliance with the provisions of the Tobacco Products,  
2 E-Cigarette and Nicotine Liquid Container Act."

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

5 "30-49-11. PREEMPTION.--When a municipality or county,  
6 including a home rule municipality or urban county, adopts an  
7 ordinance or a regulation pertaining to sales of tobacco  
8 products, e-cigarettes or nicotine liquid containers, the  
9 ordinance or regulation shall be consistent with the  
10 provisions of the Tobacco Products, E-Cigarette and Nicotine  
11 Liquid Container Act."

12 SECTION 11. Section 30-49-12 NMSA 1978 (being Laws  
13 1993, Chapter 244, Section 12) is amended to read:

14 "30-49-12. PENALTY.--

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

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

1 SECTION 12. A new section of the Tobacco Products,  
2 E-Cigarette and Nicotine Liquid Container Act is enacted to  
3 read:

4 "APPLICABILITY.--The provisions of the Tobacco Products,  
5 E-Cigarette and Nicotine Liquid Container Act do not apply to  
6 the lawful purchase or use by a minor of a tobacco-cessation  
7 product approved by the federal food and drug  
8 administration."

9 SECTION 13. TEMPORARY PROVISION.--Not later than  
10 August 1, 2015, the public education department shall revise  
11 its tobacco, alcohol and drug free school districts policy to  
12 include e-cigarettes and nicotine liquid containers, as  
13 defined in Section 30-49-2 NMSA 1978. \_\_\_\_\_

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