

1 AN ACT
2 RELATING TO PUBLIC HEALTH; ENACTING THE TOBACCO PRODUCTS ACT;
3 RAISING THE AGE LIMIT FOR SALES OF TOBACCO PRODUCTS;
4 PROVIDING LICENSURE REQUIREMENTS FOR TOBACCO PRODUCT
5 RETAILERS, MANUFACTURERS AND DISTRIBUTORS; PRESCRIBING POWERS
6 AND DUTIES TO THE ALCOHOLIC BEVERAGE CONTROL DIVISION OF THE
7 REGULATION AND LICENSING DEPARTMENT; PROHIBITING CERTAIN ACTS
8 PERTAINING TO THE MANUFACTURE, SALE OR DISTRIBUTION OF
9 TOBACCO PRODUCTS; ESTABLISHING FEES; CREATING A FUND;
10 PROVIDING ADMINISTRATIVE AND CRIMINAL PENALTIES; REPEALING
11 THE TOBACCO PRODUCTS, E-CIGARETTE AND NICOTINE LIQUID
12 CONTAINER ACT.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. SHORT TITLE.--This act may be cited as the
16 "Tobacco Products Act".

17 SECTION 2. DEFINITIONS.--As used in the Tobacco
18 Products Act:

19 A. "child-resistant packaging" means packaging or
20 a container that is designed or constructed to be
21 significantly difficult for children under five years of age
22 to open or obtain a toxic or harmful amount of the substance
23 contained therein within a reasonable time and not difficult
24 for a normal adult to use properly, but does not mean
25 packaging or a container that all such children cannot open

1 or obtain a toxic or harmful amount within a reasonable time;

2 B. "contraband tobacco products" means any tobacco
3 products possessed, sold, bartered or given in violation of
4 the Tobacco Products Act;

5 C. "delivery sale" means a sale of tobacco
6 products to a consumer in New Mexico in which:

7 (1) the consumer submits an order for the
8 sale by telephone, over the internet or through the mail or
9 another delivery system; and

10 (2) the tobacco product is shipped through a
11 delivery service;

12 D. "delivery service" means a person, including
13 the United States postal service, that is engaged in the
14 delivery of letters, packages or containers;

15 E. "director" means the director of the alcoholic
16 beverage control division of the regulation and licensing
17 department;

18 F. "distribute" means to purchase and store a
19 product and to offer the product for resale to retailers or
20 consumers;

21 G. "distributor" means a person that distributes
22 tobacco products in New Mexico, but does not include:

23 (1) a retailer;

24 (2) a manufacturer; or

25 (3) a common or contract carrier;

1 H. "division" means the alcoholic beverage control
2 division of the regulation and licensing department;

3 I. "e-cigarette":

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

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

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

17 J. "electronic nicotine delivery system" means an
18 electronic device, including e-cigarettes, whether composed
19 of a heating element and battery or an electronic circuit,
20 that provides a vapor or aerosol of nicotine, the use or
21 inhalation of which simulates smoking;

22 K. "knowingly attractive to minors" means
23 packaging or labeling that contains:

24 (1) a cartoon-like character that mimics
25 characters primarily aimed at entertaining minors;

1 (2) an imitation or mimicry of trademarks or
2 trade dress of products that are or have been primarily
3 marketed toward minors; or

4 (3) a symbol or celebrity image that is
5 primarily used to market products to minors;

6 L. "licensee" means a holder of a license issued
7 by the division pursuant to the Tobacco Products Act;

8 M. "manufacturer" means a person that
9 manufactures, fabricates, assembles, processes or labels
10 tobacco products or imports from outside the United States,
11 directly or indirectly, a tobacco product for sale or
12 distribution in the United States;

13 N. "minor" means an individual who is younger than
14 twenty-one years of age;

15 O. "nicotine liquid" means a liquid or other
16 substance containing nicotine where the liquid or substance
17 is sold, marketed or intended for use in an electronic
18 nicotine delivery system;

19 P. "person" means an individual, corporation,
20 firm, partnership, copartnership, association or other legal
21 entity;

22 Q. "retailer" means a person, whether located
23 within or outside of New Mexico, that sells tobacco products
24 at retail to a consumer in New Mexico; provided that the sale
25 is not for resale;

1 R. "self-service display" means a display to which
2 the public has access without the assistance of a retailer or
3 the retailer's employee; and

4 S. "tobacco product" means a product made or
5 derived from tobacco or nicotine that is intended for human
6 consumption, whether smoked, chewed, absorbed, dissolved,
7 inhaled, snorted, sniffed or ingested by any other means,
8 including cigars, cigarettes, chewing tobacco, pipe tobacco,
9 snuff, e-cigarettes or electronic nicotine delivery systems.

10 SECTION 3. PROHIBITED SALES--MANUFACTURING--LABELING--
11 MARKETING--SAFETY REQUIREMENTS.--

12 A. A person shall not knowingly, intentionally or
13 negligently sell, offer to sell, barter or give a tobacco
14 product to a minor.

15 B. A licensee shall not sell, offer to sell or
16 deliver a tobacco product in a form other than an original
17 manufacturer-sealed package, except for individually sold
18 cigars or loose leaf pipe tobacco.

19 C. A licensee shall not sell, offer to sell or
20 deliver nicotine liquid in this state unless such liquid is
21 in child-resistant packaging, except that for the purpose of
22 this subsection, "nicotine liquid" does not include nicotine
23 liquid in a cartridge that is pre-filled and sealed by the
24 manufacturer and that is not intended to be opened by the
25 consumer.

1 D. A manufacturer shall not produce and a
2 distributor or retailer shall not sell tobacco products that
3 are knowingly attractive to minors.

4 SECTION 4. DIVISION--LICENSE ISSUANCE--MANUFACTURE,
5 DISTRIBUTION OR SALE OF TOBACCO PRODUCTS.--

6 A. Except as provided in Subsection C of this
7 section, the division shall issue licenses for the
8 manufacture, distribution or sale of tobacco products in
9 New Mexico to applicants who meet the requirements of the
10 Tobacco Products Act.

11 B. The division shall issue or renew a license for
12 the:

13 (1) manufacture of tobacco products for a
14 term of one year;

15 (2) distribution of tobacco products for a
16 term of one year; and

17 (3) retail sale of tobacco products for a
18 term of one year.

19 C. A license shall not be issued, retained,
20 transferred or renewed pursuant to the Tobacco Products Act
21 if any of the following conditions apply:

22 (1) the applicant has had a manufacturer,
23 distributor or retailer license revoked by the division or by
24 another state;

25 (2) the applicant is not in compliance with

1 Subsection G of Section 7-12-9.1 NMSA 1978;

2 (3) the location for the license or license
3 transfer is within three hundred feet of a school; provided
4 that this restriction does not apply to a location at which
5 tobacco products have been lawfully manufactured, distributed
6 or sold prior to July 1, 2020; or

7 (4) the location for the license would
8 result in a violation of a zoning or other ordinance of a
9 governing body in which the proposed location would exist.

10 SECTION 5. MANUFACTURER LICENSE REQUIREMENTS--
11 APPLICATION AND RENEWAL REQUIREMENTS--FEES.--

12 A. A person shall not manufacture tobacco products
13 at any location in the state without first obtaining a
14 manufacturer license issued by the division to that person
15 for that location.

16 B. An application for a manufacturer license or
17 manufacturer license renewal shall be submitted on a form
18 prescribed by the division and shall include:

19 (1) the name, telephone number, mailing
20 address and email address of the applicant and:

21 (a) if the applicant is a firm,
22 partnership or association, the name and address of each of
23 its members contributing ten percent or more of the total
24 value of contributions made to the firm, partnership or
25 association and each member entitled to ten percent or more

1 of the profits earned by the firm, partnership or
2 association; or

3 (b) if the applicant is a corporation,
4 the name and address of its registered agent, the names and
5 addresses of all officers and directors and those
6 stockholders owning ten percent or more of the voting stock
7 of the corporation;

8 (2) the address of the applicant's principal
9 place of business and every location where the applicant
10 manufactures tobacco products;

11 (3) documentation as required by the
12 division affirming that the applicant will comply with
13 applicable and proper tobacco products manufacturing
14 practices as required pursuant to 21 USCA Section 387d(a) and
15 will comply with any applicable health directives issued by
16 the department of health pursuant to the Public Health Act;

17 (4) documentation as required by the
18 division affirming that the applicant will submit the
19 applicable ingredient listing to the federal secretary of
20 health and human services as required pursuant to 21 USCA
21 Section 387d(a)(1); and

22 (5) a nonrefundable application fee not to
23 exceed seven hundred fifty dollars (\$750) per location or a
24 renewal fee not to exceed four hundred dollars (\$400) per
25 location.

1 SECTION 6. DISTRIBUTOR LICENSE REQUIREMENTS--
2 APPLICATION AND RENEWAL REQUIREMENTS--FEES.--

3 A. A person shall not distribute tobacco products
4 from any location in the state without first obtaining a
5 distributor license issued by the division to that person for
6 that location.

7 B. An application for a distributor license or
8 distributor license renewal shall be submitted on a form
9 prescribed by the division and shall include:

10 (1) the name, telephone number, mailing
11 address and email address of the applicant and:

12 (a) if the applicant is a firm,
13 partnership or association, the name and address of each of
14 its members contributing ten percent or more of the total
15 value of contributions made to the firm, partnership or
16 association and each member entitled to ten percent or more
17 of the profits earned by the firm, partnership or
18 association; or

19 (b) if the applicant is a corporation,
20 the name and address of its registered agent, the names and
21 addresses of all officers and directors and those
22 stockholders owning ten percent or more of the voting stock
23 of the corporation;

24 (2) the address of the applicant's principal
25 place of business and every location from which the applicant

1 distributes tobacco products; and

2 (3) a nonrefundable application fee not to
3 exceed seven hundred fifty dollars (\$750) per location or a
4 renewal fee not to exceed four hundred dollars (\$400) per
5 location.

6 SECTION 7. RETAILER LICENSE REQUIREMENTS--APPLICATION
7 AND RENEWAL REQUIREMENTS--FEES.--

8 A. A person shall not sell tobacco products at any
9 location in the state without first obtaining a retailer
10 license issued by the division to that person or that
11 person's employer for that location.

12 B. An application for a retailer license or for a
13 retailer license renewal shall be submitted on a form
14 prescribed by the division and shall include:

15 (1) the name, telephone number, mailing
16 address and email address of the applicant and:

17 (a) if the applicant is a firm,
18 partnership or association, the name and address of each of
19 its members contributing ten percent or more of the total
20 value of contributions made to the firm, partnership or
21 association and each member entitled to ten percent or more
22 of the profits earned by the firm, partnership or
23 association; or

24 (b) if the applicant is a corporation,
25 the name and address of its registered agent, the names and

1 addresses of all officers and directors and those
2 stockholders owning ten percent or more of the voting stock
3 of the corporation;

4 (2) the address of the applicant's principal
5 place of business and every location where the applicant
6 sells tobacco products; and

7 (3) a nonrefundable application fee not to
8 exceed seven hundred fifty dollars (\$750) per location or a
9 renewal fee not to exceed four hundred dollars (\$400) per
10 location.

11 SECTION 8. LICENSE APPLICATION INFORMATION CHANGES.--If
12 the information submitted in an application pursuant to the
13 Tobacco Products Act for a license or for a license renewal
14 changes, the licensee shall notify the division within ten
15 business days of the change. If a change in the information
16 required for an application results in a violation of the
17 Tobacco Products Act, the director may impose an
18 administrative penalty as provided in that act.

19 SECTION 9. ISSUANCE OF LICENSES--REASONS FOR DENIAL.--

20 A. Beginning January 1, 2021, the division shall
21 begin issuing licenses.

22 B. The division shall grant or deny an application
23 for a license or for a license renewal made pursuant to the
24 Tobacco Products Act after the complete application is
25 submitted to the division. The division shall approve the

1 application for issuance of a license or for a license
2 renewal if the division determines that the applicant meets
3 the requirements of the Tobacco Products Act and the rules
4 promulgated pursuant to that act.

5 C. If a complete application for a license or for
6 a license renewal is denied, the division shall state the
7 reasons for the denial. The applicant may reapply within
8 thirty days after the date of the denial. The division shall
9 not charge a fee for a reapplication made within that period.

10 SECTION 10. LICENSE TRANSFER--NOTICE OF CHANGES.--

11 A. A license issued pursuant to the Tobacco
12 Products Act shall not be transferred from the licensee to
13 another person.

14 B. The transfer of a license from one location to
15 another may be approved by the division, provided that the
16 licensee shall submit an application for license location
17 transfer to the division for review. The division shall
18 allow the transfer unless any of the conditions provided in
19 Sections 4 and 9 of the Tobacco Products Act apply.

20 SECTION 11. TOBACCO PRODUCTS ADMINISTRATION

21 FUND--CREATED--PURPOSE.--The "tobacco products administration
22 fund" is created as a nonreverting fund in the state
23 treasury. The fund consists of fees and administrative
24 penalties collected by the division pursuant to the Tobacco
25 Products Act, appropriations by the legislature, gifts,

1 grants and donations. Money in the fund at the end of a
2 fiscal year shall not revert to any other fund. The division
3 shall administer the fund, and money in the fund is subject
4 to appropriation by the legislature to the division for the
5 administration of the Tobacco Products Act. Disbursements
6 from the fund shall be made by warrant of the secretary of
7 finance and administration pursuant to vouchers signed by the
8 superintendent of regulation and licensing or the
9 superintendent's authorized representative.

10 SECTION 12. FEES AND ADMINISTRATIVE PENALTIES RETAINED
11 BY THE DIVISION.--All fees and administrative penalties
12 collected by the division pursuant to the Tobacco Products
13 Act shall be deposited into the tobacco products
14 administration fund.

15 SECTION 13. HEARING PROCEDURE.--If the division
16 suspends or revokes a license or imposes an administrative
17 penalty against a licensee, the licensee shall be entitled to
18 a hearing pursuant to the rules promulgated by the division.
19 The hearing shall be conducted by the director or a hearing
20 officer appointed by the director and shall be held in the
21 county in which the licensee is located. Hearings shall be
22 open to the public. Subpoenas shall be issued and enforced
23 in accordance with the provisions of Section 23 of the
24 Tobacco Products Act.

25 SECTION 14. DOCUMENTARY EVIDENCE OF AGE AND IDENTITY.--

1 A. A retailer or an employee of a retailer shall
2 not knowingly, intentionally or negligently fail to verify
3 the age of a consumer purchasing tobacco products.

4 B. Except as provided in Subsection C of this
5 section, evidence of the age and identity of a person
6 attempting to procure tobacco products in person shall be
7 shown by a valid document that contains a picture of that
8 person and is issued by a federal, state, county, municipal,
9 tribal or foreign government, including a motor vehicle
10 driver's license or an identification card.

11 C. For each sale made through a delivery sales
12 method, age verification shall be completed through an
13 independent, third-party age verification service that
14 establishes that a consumer is of legal age by comparing
15 information available from public records to personal
16 information entered by the consumer during the ordering
17 process.

18 D. A retailer may ship tobacco products only to a
19 consumer whose age has been verified pursuant to Subsection C
20 of this section.

21 SECTION 15. VENDING MACHINES--RESTRICTIONS ON SALES OF
22 TOBACCO PRODUCTS.--

23 A. Except as provided in Subsections B and C of
24 this section, a retailer selling goods at a retail location
25 in New Mexico shall not use a self-service display for

1 tobacco products.

2 B. Tobacco products may be sold by vending
3 machines only in age-controlled locations where minors are
4 not permitted.

5 C. The sales and display of cigars may be allowed
6 only in age-controlled locations where minors are not
7 permitted.

8 SECTION 16. DISTRIBUTION OF TOBACCO PRODUCTS AS FREE
9 SAMPLES PROHIBITED.--

10 A. A person shall not provide free samples of
11 tobacco products without the express written approval of the
12 director.

13 B. The provisions of Subsection A of this section
14 shall not apply to an individual who provides free samples of
15 tobacco products, e-cigarettes or nicotine liquid containers
16 in connection with the practice of cultural or ceremonial
17 activities in accordance with the federal American Indian
18 Religious Freedom Act or its successor act.

19 SECTION 17. SIGNS--POINT OF SALE.--A retailer shall
20 prominently display in the place where tobacco products are
21 sold and where a tobacco product vending machine is located a
22 printed sign or decal that reads as follows:

23 "IT IS ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO
24 PURCHASE TOBACCO PRODUCTS."

25 SECTION 18. CRIMINAL PENALTIES--UNLICENSED

1 ACTIVITIES.--A person who manufactures, distributes or sells
2 tobacco products without a license required pursuant to the
3 Tobacco Products Act is guilty of a misdemeanor and shall be
4 sentenced in accordance with the provisions of
5 Section 31-19-1 NMSA 1978. Contraband tobacco products
6 seized by the division or by a law enforcement agency as
7 evidence of unlicensed activities shall be retained and
8 disposed of pursuant to the Forfeiture Act. The provisions
9 of this section shall not apply to the sale of tobacco
10 products between a minor and another minor.

11 SECTION 19. MANUFACTURERS, DISTRIBUTORS AND
12 RETAILERS--VIOLATIONS--LICENSE SUSPENSION OR REVOCATION--
13 ADMINISTRATIVE PENALTIES.--The division may suspend or revoke
14 a license of a licensee, require the use of identification
15 verification software for a designated period of time or
16 impose an administrative penalty against a licensee in an
17 amount not to exceed ten thousand dollars (\$10,000), or any
18 combination thereof, if the division finds that the licensee,
19 an employee of the licensee or a contractor acting on behalf
20 of the licensee has violated a provision of the Tobacco
21 Products Act; provided, however, that upon a fourth violation
22 for the sale of a tobacco product to a minor occurring at the
23 same location within three years of the first such violation,
24 the retailer's license issued for that location shall be
25 permanently revoked.

1 SECTION 20. MONITORED COMPLIANCE--INSPECTIONS.--The
2 alcoholic beverage control division of the regulation and
3 licensing department, the department of public safety and the
4 appropriate law enforcement authorities in each county and
5 municipality may conduct random, unannounced inspections of
6 facilities where tobacco products are sold, manufactured or
7 distributed to ensure compliance with the provisions of the
8 Tobacco Products Act.

9 SECTION 21. AUTHORITY OF DEPARTMENT OF PUBLIC SAFETY.--

10 A. The department of public safety has authority
11 over all investigations and enforcement activities required
12 under the Tobacco Products Act, except for those provisions
13 relating to the issuance, denial, suspension or revocation
14 and administrative sanctions of licenses unless its
15 assistance is requested by the director.

16 B. Following the issuance of a citation pursuant
17 to the provisions of the Tobacco Products Act, the department
18 of public safety or the law enforcement agency of a
19 municipality or county shall report alleged violations of
20 that act to the division.

21 C. The director may request the investigators from
22 the department of public safety to investigate licensees or
23 activities that the director has reasonable cause to believe
24 are in violation of the Tobacco Products Act.

25 SECTION 22. AUTHORITY OF THE DIVISION.--

1 A. The division has the authority over all matters
2 relating to the issuance, denial, suspension, revocation and
3 other administrative penalties or transfer of licenses under
4 the Tobacco Products Act. The director may request the
5 department of public safety to provide investigatory and
6 enforcement support as deemed necessary.

7 B. The director has rulemaking authority pursuant
8 to the State Rules Act.

9 SECTION 23. ADMINISTRATIVE AUTHORITY AND POWERS.--

10 A. For the purpose of administering the licensing
11 provisions of the Tobacco Products Act, the director is
12 authorized to examine and to require the production of any
13 pertinent records, books, information or evidence, to require
14 the presence of any person and to require that person to
15 testify under oath concerning the subject matter of the
16 inquiry and to make a permanent record of the proceedings.

17 B. The director, through the legal counsel for the
18 division, is vested with the power to issue subpoenas. In no
19 case shall a subpoena be made returnable less than five days
20 from the date of service.

21 C. A subpoena issued by the division shall state
22 with reasonable certainty the nature of the evidence required
23 to be produced, the time and place of the hearing, the nature
24 of the inquiry or investigation and the consequences of
25 failure to obey the subpoena and shall bear the seal of the

1 division and be attested to by the director.

2 D. After service of a subpoena upon a person, if a
3 person neglects or refuses to appear or produce records or
4 other evidence in response to the subpoena or neglects or
5 refuses to give testimony, as required, the director may
6 invoke the aid of the district courts in the enforcement of
7 the subpoena. In appropriate cases, the court shall issue
8 its order requiring the person to appear and testify or
9 produce the books or records and may, upon failure of the
10 person to comply with the order, punish the person for
11 contempt.

12 SECTION 24. PREEMPTION.--When a municipality or county,
13 including a home rule municipality or an urban county, adopts
14 an ordinance, charter amendment or regulation pertaining to
15 the sales of tobacco products, the ordinance, charter
16 amendment or regulation shall be consistent with the
17 provisions of the Tobacco Products Act.

18 SECTION 25. APPLICABILITY.--The provisions of the
19 Tobacco Products Act do not apply to the lawful purchase or
20 use by a minor of a tobacco-cessation product approved by the
21 federal food and drug administration.

22 SECTION 26. REPEAL.--Sections 30-49-1 through 30-49-13
23 NMSA 1978 (being Laws 1993, Chapter 244, Sections 1 through
24 12 and Laws 2015, Chapter 98, Section 12, as amended) are
25 repealed.

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SECTION 27. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2021.=====