

HOUSE BILL 205

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO PRODUCTS; PROHIBITING THE SALE ~~HHHC~~;
~~POSSESSION OR PURCHASE~~ ~~HHHC~~ OF FLAVORED TOBACCO PRODUCTS;
DEFINING TERMS; CONFORMING CERTAIN NOTICE REQUIREMENTS ~~HHHC~~;
~~PROVIDING PENALTIES~~ ~~HHHC~~ .

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

SECTION 1. Section 61-37-1 NMSA 1978 (being Laws 2020, Chapter 46, Section 1) is amended to read:

.218181.1AIC February 23, 2021 (9:48am)

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"61-37-1. SHORT TITLE.--~~[This act]~~ Chapter 61, Article 37 NMSA 1978 may be cited as the "Tobacco Products Act"."

SECTION 2. A new section of the Tobacco Products Act is enacted to read:

"~~[NEW MATERIAL]~~ PROHIBITED SALE ~~HHHC→~~, ~~PURCHASE OR POSSESSION~~←HHHC OF FLAVORED TOBACCO PRODUCTS.--

HHHC→~~A.~~←HHHC It is unlawful to knowingly sell, offer to sell, barter or give a flavored tobacco product to a person. HHHC→"~~←HHHC~~

HHHC→~~B. It is unlawful to purchase, possess or attempt to purchase or possess any flavored tobacco product."~~←HHHC

HHHC→~~SECTION 3. A new section of the Tobacco Products Act is enacted to read:~~

~~"[NEW MATERIAL] PENALTIES.--~~

~~A. Any person who violates the provisions of Subsection A or B of Section 2 of this 2021 act is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Each violation is a separate and distinct offense.~~

~~B. Any minor who violates the provisions of Subsection B of Section 2 of this 2021 act shall be punished by a fine not to exceed one hundred dollars (\$100) or forty-eight hours of community service."~~←HHHC

SECTION ~~HHHC→4.~~←HHHC ~~HHHC→3.~~←HHHC Section 61-37-2 NMSA

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1978 (being Laws 2020, Chapter 46, Section 2) is amended to read:

"61-37-2. DEFINITIONS.--As used in the Tobacco Products Act:

A. "characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information;

~~[A.]~~ B. "child-resistant packaging" means packaging or a 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 a normal adult to use properly, but does not mean packaging or a container that all such children cannot open or obtain a toxic or harmful amount within a reasonable time;

~~[B.]~~ C. "contraband tobacco products" means any tobacco products possessed, sold, bartered or given in violation of the Tobacco Products Act;

~~[C.]~~ D. "delivery sale" means a sale of tobacco products to a consumer in New Mexico in which:

- (1) the consumer submits an order for the sale

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by telephone, over the internet or through the mail or another delivery system; and

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

~~[D.]~~ E. "delivery service" means a person, including the United States postal service, that is engaged in the delivery of letters, packages or containers;

~~[E.]~~ F. "director" means the director of the alcoholic beverage control division of the regulation and licensing department;

~~[F.]~~ G. "distribute" means to purchase and store a product and to offer the product for resale to retailers or consumers;

~~[G.]~~ H. "distributor" means a person that distributes tobacco products in New Mexico, but does not include:

- (1) a retailer;
- (2) a manufacturer; or
- (3) a common or contract carrier;

~~[H.]~~ I. "division" means the alcoholic beverage control division of the regulation and licensing department;

~~[I.]~~ J. "e-cigarette":

(1) means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other

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substances the use or inhalation of which simulates smoking;
and

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

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

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

L. "flavored tobacco product" means any tobacco product that contains any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of a tobacco product, that imparts a characterizing flavor;

[K-] M. "knowingly attractive to minors" means packaging or labeling that contains:

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

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

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

[H-] N. "licensee" means a holder of a license issued by the division pursuant to the Tobacco Products Act;

[M-] O. "manufacturer" means a person that manufactures, fabricates, assembles, processes or labels tobacco products or imports from outside the United States, directly or indirectly, a tobacco product for sale or distribution in the United States;

[N-] P. "minor" means an individual who is younger than twenty-one years of age;

[O-] Q. "nicotine liquid" means a liquid or other substance containing nicotine where the liquid or substance is sold, marketed or intended for use in an electronic nicotine delivery system;

[P-] R. "person" means an individual, corporation, firm, partnership, copartnership, association or other legal entity;

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

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[R-] T. "self-service display" means a display to which the public has access without the assistance of a retailer or the retailer's employee; and

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

SECTION HHC→5.←HHC HHC→4.←HHC Section 61-37-15 NMSA 1978 (being Laws 2020, Chapter 46, Section 15) is amended to read:

"61-37-15. VENDING MACHINES--RESTRICTIONS ON SALES OF TOBACCO PRODUCTS.--

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

B. Tobacco products may be sold by vending machines only:

(1) in age-controlled locations where minors are not permitted; and

(2) if the tobacco products are not flavored tobacco products.

C. The sales and display of cigars may be allowed

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only:

(1) in age-controlled locations where minors are not permitted; and

(2) if the cigars are not flavored tobacco products."

SECTION HHC→6.←HHC HHC→5.←HHC Section 61-37-17 NMSA 1978 (being Laws 2020, Chapter 46, Section 17) is amended to read:

"61-37-17. SIGNS--POINT OF SALE.--A retailer shall prominently display in the place where tobacco products are sold and where a tobacco product vending machine is located a printed sign or decal that reads as follows:

"IT IS ILLEGAL HHC→~~FOR A PERSON UNDER 21 YEARS OF AGE~~ TO←HHC HHC→PURCHASE←HHC HHC→TO SELL FLAVORED←HHC TOBACCO PRODUCTS HHC→~~OR FOR ANY PERSON TO PURCHASE A FLAVORED TOBACCO PRODUCT~~←HHC ."."