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SENATE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE  
AND THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE TOBACCO PRODUCTS, E-CIGARETTE AND NICOTINE LIQUID CONTAINER ACT TO BAN THE SALE OF TOBACCO PRODUCTS, E-CIGARETTES OR NICOTINE LIQUID CONTAINERS TO PERSONS UNDER TWENTY-ONE YEARS OF AGE, WITH CERTAIN EXCEPTIONS; DEFINING "TOBACCO PRODUCTS".

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

SECTION 1. Section 30-49-2 NMSA 1978 (being Laws 1993, Chapter 244, Section 2, as amended) 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

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

5 B. "e-cigarette":

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

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

15 (3) does not include any product regulated as  
16 a drug or device by the United States food and drug  
17 administration under the Federal Food, Drug, and Cosmetic Act  
18 [~~21 U.S.C. Section 301 et seq.~~];

19 C. "minor" means an individual who is less than  
20 [~~eighteen~~] twenty-one years of age [~~and~~]. "Minor" does not  
21 include an active duty military member who is eighteen years of  
22 age or older who presents an identification card issued by the  
23 United States armed forces as proof of age for this purpose or  
24 an individual who is eighteen to twenty-one years of age on  
25 July 1, 2019;

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1 D. "nicotine liquid container" means a bottle or  
2 other container of any substance containing nicotine where the  
3 substance is sold, marketed or intended for use in an e-  
4 cigarette; and

5 E. "tobacco product" means:

6 (1) a product made of or derived from tobacco  
7 or nicotine that is intended for human consumption, whether  
8 smoked, heated, chewed, absorbed, dissolved, inhaled, snorted,  
9 sniffed or ingested by any other means, including cigars,  
10 cigarettes, chewing tobacco, e-cigarettes, pipe tobacco or  
11 snuff; and

12 (2) a component, part or accessory used to  
13 consume tobacco, but does not include a product approved by the  
14 United States food and drug administration for sale as a  
15 tobacco cessation product or for another therapeutic purpose,  
16 where the product is marketed and sold solely for that use, as  
17 approved by the United States food and drug administration."

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

20 "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS, E-CIGARETTES  
21 OR NICOTINE LIQUID CONTAINERS TO A PERSON UNABLE TO PRODUCE  
22 IDENTITY CARD.--A person selling goods at retail or wholesale  
23 may refuse to sell tobacco products, e-cigarettes or nicotine  
24 liquid containers to a person who is unable to produce an  
25 identity card as evidence that the person is [~~eighteen years of~~

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1 ~~age or over]~~ not prohibited from purchasing tobacco products,  
2 e-cigarettes or nicotine liquid containers."

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

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

13 "A PERSON LESS THAN [~~18~~] 21 YEARS OF AGE WHO PURCHASES A  
14 TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER  
15 [~~IS~~] MAY BE SUBJECT TO A FINE OF UP TO \$100 OR UP TO 48 HOURS  
16 OF COMMUNITY SERVICE.

17 A PERSON WHO SELLS A TOBACCO PRODUCT, AN E-CIGARETTE OR A  
18 NICOTINE LIQUID CONTAINER TO A PERSON LESS THAN [~~18~~] 21 YEARS  
19 OF AGE [~~IS~~] MAY BE SUBJECT TO A FINE OF UP TO \$1,000 AND IS  
20 GUILTY OF A CRIMINAL MISDEMEANOR."