

1 SENATE BILL 433

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 John C. Ryan

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10 AN ACT

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

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

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

21 "30-49-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 49
22 NMSA 1978 may be cited as the "Tobacco Products and E-Cigarette
23 Act"."

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

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1 "30-49-2. [~~DEFINITION~~] DEFINITIONS.--As used in the
2 Tobacco Products and E-Cigarette Act:

3 A. "child-resistant" means a package or container
4 that satisfies the requirements for "special packaging"
5 pursuant to the federal Poison Prevention Packaging Act of
6 1970, 15 U.S.C. Section 1471 et seq.;

7 B. "e-cigarette":

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

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

17 (3) does not include any product regulated as
18 a drug or device by the United States food and drug
19 administration under the Federal Food, Drug, and Cosmetic Act,
20 21 U.S.C. Section 301 et seq.;

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

23 D. "nicotine liquid container":

24 (1) means a bottle or other container of a
25 liquid or other substance containing nicotine where the liquid

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1 or substance is sold, marketed or intended for use in an e-
2 cigarette; but

3 (2) does not include a liquid or other
4 substance containing nicotine in a cartridge that is sold,
5 marketed or intended for use in an e-cigarette; provided that
6 such cartridge is pre-filled and sealed by the manufacturer and
7 is not intended to be opened by the consumer."

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

10 "30-49-3. TOBACCO AND E-CIGARETTES--PROHIBITED SALES.--

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

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

17 C. No person shall sell, offer to sell or deliver a
18 tobacco product or an e-cigarette in a form other than an
19 original factory-sealed package.

20 D. No person shall sell or offer to sell any
21 nicotine liquid container at retail in this state unless such
22 container is child-resistant."

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

25 "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS OR

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1 E-CIGARETTES TO PERSON UNABLE TO PRODUCE IDENTITY CARD.--[~~Any~~]
2 A person selling goods at retail or wholesale may refuse to
3 sell tobacco products or e-cigarettes to [~~any~~] a person who is
4 unable to produce an identity card as evidence that [~~he~~] 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 IDENTITY.--
9 No minor shall present any written, printed or photostatic
10 evidence of age or identity that is false for the purpose of
11 procuring or attempting to procure any tobacco products or e-
12 cigarettes."

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 AND E-CIGARETTES.--

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

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

23 (2) a person selling goods at a retail
24 location in New Mexico shall not use a self-service display for
25 tobacco products or e-cigarettes. As used in this subsection,

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

4 B. Tobacco products or e-cigarettes may be sold by
5 vending machines [~~in the following locations~~] only

6 [~~(1) in locations not held open to the public,~~
7 ~~including controlled areas within factories, businesses and~~
8 ~~offices;~~

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

11 ~~(3)] in age-controlled locations where minors~~
12 ~~are not permitted [unless accompanied by a parent or guardian].~~

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

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

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

19 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS OR E-
20 CIGARETTES AS FREE SAMPLES PROHIBITED--EXCEPTION.--

21 A. A person who sells, distributes, promotes or
22 advertises tobacco products or e-cigarettes shall not provide
23 free samples of tobacco products or e-cigarettes to a minor.

24 B. The provisions of Subsection A of this section
25 shall not apply to an individual who provides free samples of

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1 tobacco products [~~to a family member or to an acquaintance on~~
2 ~~private property not held open to the public~~] in connection
3 with the practice of cultural or ceremonial activities by
4 Native Americans in accordance with the federal American Indian
5 Religious Freedom Act, 42 U.S.C. 1996 and 1996a."

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~~] \$100.

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 or D 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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SECTION 12. A new section of the Tobacco Products and E-Cigarette Act is enacted to read:

"[NEW MATERIAL] APPLICABILITY.--The provisions of the Tobacco Products and E-Cigarette Act do not apply to the lawful purchase or use by a minor of a tobacco-cessation product approved by the federal food and drug administration."

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