

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 433

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

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

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underscored material = new
[bracketed material] = delete

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

3 "30-49-2. [~~DEFINITION~~] DEFINITIONS.--As used in the
4 Tobacco Products, E-Cigarette and Nicotine Liquid Container
5 Act:

6 A. "child-resistant" means a package or container
7 that satisfies the requirements for "special packaging"
8 pursuant to the federal Poison Prevention Packaging Act of
9 1970, 15 U.S.C. Section 1471 et seq.;

10 B. "e-cigarette":

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

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

20 (3) does not include any product regulated as
21 a drug or device by the United States food and drug
22 administration under the Federal Food, Drug, and Cosmetic Act,
23 21 U.S.C. Section 301 et seq.;

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

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."

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

7 "30-49-3. TOBACCO PRODUCTS, E-CIGARETTES AND NICOTINE
 8 LIQUID CONTAINERS--PROHIBITED SALES.--

9 A. No person shall knowingly sell, offer to sell,
 10 barter or give [~~any~~] a tobacco product, an e-cigarette or a
 11 nicotine liquid container to [~~any~~] a minor.

12 B. No minor shall procure or attempt to procure any
 13 tobacco [~~products~~] product, e-cigarette or nicotine liquid
 14 container for [~~his~~] the minor's own use or for use by [~~any~~
 15 ~~other~~] another minor.

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

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

22 E. The online internet sale of e-cigarettes or
 23 nicotine liquid containers to a minor in New Mexico is
 24 prohibited."

25 SECTION 4. Section 30-49-5 NMSA 1978 (being Laws 1993,

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1 Chapter 244, Section 5) is amended to read:

2 "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS, E-CIGARETTES
3 OR NICOTINE LIQUID CONTAINERS TO PERSON UNABLE TO PRODUCE
4 IDENTITY CARD.--~~[Any]~~ A person selling goods at retail or
5 wholesale may refuse to sell tobacco products, e-cigarettes or
6 nicotine liquid containers to ~~[any]~~ a person who is unable to
7 produce an identity card as evidence that ~~[he]~~ the person is
8 eighteen years of age or over."

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

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

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

18 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF
19 TOBACCO PRODUCTS, E-CIGARETTES AND NICOTINE LIQUID
20 CONTAINERS.--

21 A. Except as provided in Subsections B and C of
22 this section:

23 (1) a person shall not sell tobacco products,
24 e-cigarettes or nicotine liquid containers at a retail location
25 in New Mexico by any means other than a direct, face-to-face

1 exchange between the customer and the seller or the seller's
2 employee; and

3 (2) a person selling goods at a retail
4 location in New Mexico shall not use a self-service display for
5 tobacco products, e-cigarettes or nicotine liquid containers.

6 As used in this subsection, "self-service display" means a
7 display to which the public has access without the assistance
8 of the seller or the seller's employee.

9 B. Tobacco products, e-cigarettes and nicotine
10 liquid containers may be sold by vending machines [~~in the~~
11 ~~following locations~~] only

12 [~~(1) in locations not held open to the public,~~
13 ~~including controlled areas within factories, businesses and~~
14 ~~offices;~~

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

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

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

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

23 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS, E-CIGARETTES
24 OR NICOTINE LIQUID CONTAINERS AS FREE SAMPLES PROHIBITED--
25 EXCEPTION.--

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1 A. A person [~~who sells, distributes, promotes or~~
2 ~~advertises tobacco products~~] shall not provide free samples of
3 tobacco products, e-cigarettes or nicotine liquid containers to
4 a minor.

5 B. The provisions of Subsection A of this section
6 shall not apply to an individual who provides free samples of
7 tobacco products [~~to a family member or to an acquaintance on~~
8 ~~private property not held open to the public~~], e-cigarettes or
9 nicotine liquid containers in connection with the practice of
10 cultural or ceremonial activities in accordance with the
11 federal American Indian Religious Freedom Act, 42 U.S.C. 1996
12 and 1996a or its successor act."

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

15 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,
16 corporation, partnership or other entity engaged in the sale at
17 retail of tobacco products, e-cigarettes or nicotine liquid
18 containers shall prominently display in the place where tobacco
19 products, e-cigarettes or nicotine liquid containers are sold
20 and where a tobacco product, e-cigarette or nicotine liquid
21 container vending machine is located a printed sign or decal
22 that reads as follows:

23 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A
24 TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER
25 IS SUBJECT TO A FINE OF UP TO [~~\$1,000~~] \$100.

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

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

6 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The
7 alcohol and gaming division of the regulation and licensing
8 department and the appropriate law enforcement authorities in
9 each county and municipality shall conduct random, unannounced
10 inspections of facilities where tobacco products, e-cigarettes
11 or nicotine liquid containers are sold to ensure compliance
12 with the provisions of the Tobacco Products, E-Cigarette and
13 Nicotine Liquid Container Act."

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

16 "30-49-11. PREEMPTION.--When a municipality or county,
17 including a home rule municipality or urban county, adopts an
18 ordinance or a regulation pertaining to sales of tobacco
19 products, e-cigarettes or nicotine liquid containers, the
20 ordinance or regulation shall be consistent with the provisions
21 of the Tobacco Products, E-Cigarette and Nicotine Liquid
22 Container Act."

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

25 "30-49-12. PENALTY.--

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