

SENATE BILL 342

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

INTRODUCED BY

Linda M. Lopez

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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,

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

B. "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 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 SPAC→for medical purposes←SPAC by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act [~~21 U.S.C. Section 301 et seq.~~];

C. "minor" means an individual who is less than [~~eighteen~~] twenty-one years of age [~~and~~]. "Minor" does not

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include an active duty military member who is eighteen years of age or older who presents an identification card issued by the United States armed forces as proof of age for this purpose or an individual who is eighteen to twenty-one years of age on July 1, 2019;

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

E. "tobacco product" means:

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

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

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

"30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS, E-CIGARETTES

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OR NICOTINE LIQUID CONTAINERS TO A PERSON UNABLE TO PRODUCE IDENTITY CARD.--A person selling goods at retail or wholesale may refuse to sell tobacco products, e-cigarettes or nicotine liquid containers to a person who is unable to produce an identity card as evidence that the person is [~~eighteen years of age or over~~] not prohibited from purchasing tobacco products, e-cigarettes or nicotine liquid containers."

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

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

"A PERSON LESS THAN [~~18~~] 21 YEARS OF AGE WHO PURCHASES A TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER [~~18~~] MAY BE SUBJECT TO A FINE OF UP TO HCEDC→~~\$100~~←HCEDC HCEDC→~~\$25~~←HCEDC OR UP TO HCEDC→~~48~~←HCEDC HCEDC→~~4~~←HCEDC HOURS OF COMMUNITY SERVICE.

A PERSON WHO SELLS A TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER TO A PERSON LESS THAN [~~18~~] 21 YEARS OF AGE [~~18~~] MAY BE SUBJECT TO A FINE OF UP TO HCEDC→~~\$1,000~~←AND

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~~IS GUILTY OF A CRIMINAL MISDEMEANOR~~ \$100 ← HCEDC."."

HCEDC → SECTION 4. Section 30-49-12 NMSA 1978 (being Laws 1993, Chapter 244, Section 12, as amended) is amended to read:

"30-49-12. PENALTY.--

A. Any person who violates any provision of Subsection A, D or E of Section 30-49-3 NMSA 1978 or Section 30-49-7, 30-49-8 or 30-49-9 NMSA 1978 [~~is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978~~] shall be punished by a fine not to exceed one hundred dollars (\$100) or four hours of community service. Each violation is a separate and distinct offense.

B. Any minor who violates any provision of Subsection B of Section 30-49-3 NMSA 1978 or Section 30-49-6 NMSA 1978 shall be punished by a fine not to exceed one hundred dollars (\$100) or forty-eight hours of community service." ← HCEDC