

HOUSE BILL 552

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

INTRODUCED BY

Patricio Ruiloba

AN ACT

RELATING TO NICOTINE LIQUID; ENACTING THE E-CIGARETTE AND
NICOTINE LIQUID ACT; RAISING THE AGE OF SALES; PROVIDING
LICENSURE REQUIREMENTS FOR E-CIGARETTE AND NICOTINE LIQUID
RETAILERS, MANUFACTURERS AND DISTRIBUTORS; PRESCRIBING DUTIES
TO THE REGULATION AND LICENSING DEPARTMENT WITH RESPECT TO
THOSE LICENSES; PROHIBITING CERTAIN ACTS PERTAINING TO THE
MANUFACTURE, SALE OR DISTRIBUTION OF E-CIGARETTE AND NICOTINE
LIQUID; PROVIDING FOR INSPECTIONS; ESTABLISHING FEES; CHANGING
THE NAME OF THE TOBACCO PRODUCTS, E-CIGARETTE AND NICOTINE
LIQUID CONTAINER ACT TO THE TOBACCO PRODUCTS ACT; REMOVING
REFERENCES TO E-CIGARETTES AND NICOTINE LIQUID CONTAINERS FROM
THE TOBACCO PRODUCTS ACT; PROVIDING ADMINISTRATIVE AND CRIMINAL
PENALTIES; MAKING AN APPROPRIATION.

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

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1 SECTION 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 1
2 through 25 of this act may be cited as the "E-Cigarette and
3 Nicotine Liquid Act".

4 SECTION 2. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the E-
5 Cigarette and Nicotine Liquid Act:

6 A. "child-resistant" means a package or container
7 that is designed or constructed to be significantly difficult
8 for children under five years of age to open or obtain a toxic
9 or harmful amount of the substance contained therein within a
10 reasonable time and not difficult for normal adults to use
11 properly, but does not mean a package or container that all
12 such children cannot open or obtain a toxic or harmful amount
13 within a reasonable time;

14 B. "delivery sale" means a sale of e-cigarettes or
15 nicotine liquid to a consumer in New Mexico in which:

16 (1) the consumer submits an order for the sale
17 by telephone, over the internet or through the mail or another
18 delivery system; and

19 (2) the e-cigarette or nicotine liquid is
20 shipped through a delivery system;

21 C. "delivery service" means a person, including the
22 United States postal service, that is engaged in the delivery
23 of letters, packages or containers;

24 D. "department" means the regulation and licensing
25 department;

1 E. "distributor" means a person licensed pursuant
2 to the E-Cigarette and Nicotine Liquid Act to sell or
3 distribute e-cigarettes or nicotine liquid in New Mexico, but
4 does not include:

5 (1) a retailer;

6 (2) a manufacturer; or

7 (3) a common or contract carrier transporting
8 e-cigarettes or nicotine liquid pursuant to a bill of lading or
9 freight bill, or a person who ships e-cigarettes or nicotine
10 liquid through the state by a common or contract carrier
11 pursuant to a bill of lading or freight bill;

12 F. "e-cigarette":

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

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

22 (3) does not include any product regulated as
23 a drug or device by the United States food and drug
24 administration under the Federal Food, Drug, and Cosmetic Act,
25 21 U.S.C. Section 301 et seq.;

1 G. "electronic nicotine delivery system" means an
2 electronic device, whether composed of a heating element and
3 battery or an electronic circuit, that provides a vapor of
4 nicotine, the use or inhalation of which simulates smoking;

5 H. "flavoring" means a food grade additive or
6 synthetic flavoring substance that is used to add flavor and
7 that is not prohibited by the United States food and drug
8 administration as an additive in nicotine liquid;

9 I. "knowingly attractive to minors" means packaging
10 or labeling that contains:

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

13 (2) imitates or mimics trademarks or trade
14 dress of products that are or have been primarily marketed
15 toward minors; or

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

18 J. "licensee" means a holder of a license granted
19 pursuant to the E-Cigarette and Nicotine Liquid Act;

20 K. "manufacturer" means a person that manufactures,
21 fabricates, assembles, processes or labels e-cigarettes or
22 nicotine liquid or imports from outside the United States,
23 directly or indirectly, a product for sale or distribution in
24 the United States;

25 L. "minor" means an individual who is younger than

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1 twenty-one years of age;

2 M. "nicotine liquid" means a bottle or container of
3 a liquid or other substance containing nicotine where the
4 liquid or substance is sold, marketed or intended for use in an
5 electronic nicotine delivery system;

6 N. "retailer" means a person, whether located
7 within or outside of New Mexico, that sells e-cigarettes or
8 nicotine liquid at retail to a consumer in New Mexico; provided
9 that the sale is not for resale; and

10 O. "self-service display" means a display to which
11 the public has access without the assistance of a retailer or
12 the retailer's employee.

13 SECTION 3. [NEW MATERIAL] DEPARTMENT--LICENSE ISSUANCE--
14 MANUFACTURE, DISTRIBUTION OR SALE OF E-CIGARETTES OR NICOTINE
15 LIQUID.--

16 A. The department shall issue licenses for the
17 manufacture, distribution or sale of e-cigarettes or nicotine
18 liquid in New Mexico.

19 B. The department shall issue or renew a:

20 (1) license for the manufacture of e-
21 cigarettes or nicotine liquid for a term not to exceed five
22 years; and

23 (2) license for the distribution or retail
24 sale of e-cigarettes or nicotine liquid for a term not to
25 exceed one year.

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1 SECTION 4. ~~[NEW MATERIAL]~~ MANUFACTURER LICENSE

2 REQUIREMENTS--APPLICATION AND RENEWAL REQUIREMENTS--FEES.--

3 A. A person shall not manufacture e-cigarettes or
4 nicotine liquid in the state without a manufacturer license
5 issued by the department to that person or that person's
6 employer.

7 B. An application for a manufacturer license or
8 manufacturer license renewal shall be submitted on a form
9 prescribed by the department and include:

10 (1) the name, telephone number and address of
11 the applicant and:

12 (a) if the applicant is a firm,
13 partnership or association, the name and address of each of its
14 members; or

15 (b) if the applicant is a corporation,
16 the name and address of each of its officers;

17 (2) the address of the applicant's principal
18 place of business and every location where the applicant's
19 business is conducted;

20 (3) documentation that the applicant will
21 comply with applicable tobacco products good manufacturing
22 practice requirements pursuant to 21 USCA Section 387f(e);

23 (4) documentation that the applicant will
24 submit the applicable ingredient listing to the federal
25 secretary of health and human services as required pursuant to

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1 21 USCA Section 387d(a)(1);

2 (5) a nonrefundable fee of one thousand
3 dollars (\$1,000); and

4 (6) any other information the department may
5 require.

6 SECTION 5. [NEW MATERIAL] DISTRIBUTOR LICENSE

7 REQUIREMENTS--APPLICATION AND RENEWAL REQUIREMENTS--FEES.--

8 A. A person shall not distribute e-cigarettes or
9 nicotine liquid in the state without a distributor license
10 issued by the department to that person or that person's
11 employer.

12 B. An application for a distributor license shall
13 be submitted on a form prescribed by the department and
14 include:

15 (1) the name, telephone number and address of
16 the applicant and:

17 (a) if the applicant is a firm,
18 partnership or association, the name and address of each of its
19 members; or

20 (b) if the applicant is a corporation,
21 the name and address of each of its officers;

22 (2) the address of the applicant's principal
23 place of business and every location where the applicant's
24 business is conducted;

25 (3) written consent allowing the New Mexico

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1 state police division of the department of public safety to
2 conduct a criminal history background check on any person
3 listed on the application;

4 (4) a nonrefundable fee of five hundred
5 dollars (\$500); and

6 (5) any other information the department may
7 require.

8 SECTION 6. [NEW MATERIAL] RETAILER LICENSE REQUIREMENTS--
9 APPLICATION AND RENEWAL REQUIREMENTS--FEES.--

10 A. A person shall not sell e-cigarettes or nicotine
11 liquid in the state without a retail license issued by the
12 department to that person or that person's employer.

13 B. An application for a retail license or for a
14 retail license renewal shall be submitted on a form prescribed
15 by the department and include:

16 (1) the name, telephone number and address of
17 the applicant and:

18 (a) if the applicant is a firm,
19 partnership or association, the name and address of each of its
20 members; or

21 (b) if the applicant is a corporation,
22 the name and address of each of its officers; and

23 (2) the address of the applicant's principal
24 place of business.

25 SECTION 7. [NEW MATERIAL] ISSUANCE OF LICENSES--REASONS

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1 FOR DENIAL.--

2 A. The department shall grant or deny an
3 application for a license or for a license renewal made
4 pursuant to the E-Cigarette and Nicotine Liquid Act not later
5 than sixty days after the complete application is filed. The
6 department shall approve the application for issuance of a
7 license or for a license renewal if the department determines
8 that all of the requirements pursuant to the E-Cigarette and
9 Nicotine Liquid Act have been met.

10 B. If a complete application for a license or for a
11 license renewal is denied, the department shall state the
12 reasons for the denial. The applicant may reapply within
13 thirty days after the date of the denial. The department shall
14 not charge a fee for a reapplication made within that period.

15 SECTION 8. [NEW MATERIAL] LICENSE TRANSFER--NOTICE OF
16 CHANGES.--

17 A. A license issued pursuant to the E-Cigarette and
18 Nicotine Liquid Act shall not be transferred:

19 (1) from the licensee to another person; or
20 (2) from the location where the license was
21 approved or renewed to another location, unless approved by the
22 department.

23 B. The department shall allow a license to be
24 transferred from one location to another pursuant to Subsection
25 A of this section if the license has not been suspended or

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1 revoked.

2 C. If the information submitted in an application
3 pursuant to the E-Cigarette and Nicotine Liquid Act for a
4 license or for a license renewal changes, the licensee shall
5 notify the department within ten business days of the change.
6 If a change in the information required for an application
7 results in a violation of the E-Cigarette and Nicotine Liquid
8 Act, the department may impose an administrative penalty as
9 provided in that act.

10 SECTION 9. [NEW MATERIAL] RECORD REQUIREMENTS.--A
11 licensee shall retain all invoices for at least two years. The
12 invoices shall be subject to inspection by the department.

13 SECTION 10. [NEW MATERIAL] FEES AND ADMINISTRATIVE
14 PENALTIES RETAINED BY THE DEPARTMENT.--Application fees and
15 administrative penalties collected by the department pursuant
16 to the E-Cigarette and Nicotine Liquid Act shall be retained by
17 the department for the administration of that act.

18 SECTION 11. [NEW MATERIAL] MANUFACTURERS, DISTRIBUTORS
19 AND RETAILERS--VIOLATIONS--LICENSE SUSPENSION OR REVOCATION.--
20 The department may suspend or revoke a license of a licensee
21 when the department finds that the licensee has violated any
22 provision of the E-Cigarette and Nicotine Liquid Act.

23 SECTION 12. [NEW MATERIAL] HEARING PROCEDURE.--Before the
24 revocation, suspension or fine is effective against a licensee,
25 the licensee shall be entitled to a hearing pursuant to the

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1 procedures provided in the Uniform Licensing Act and within
2 fifteen days from the date the licensee requests a hearing.

3 SECTION 13. [NEW MATERIAL] USE OF FLAVORING IN NICOTINE
4 LIQUID.--

5 A. A licensed manufacturer may use flavoring as an
6 ingredient in nicotine liquid.

7 B. A licensed distributor or licensed retailer may
8 sell nicotine liquid containing flavors.

9 SECTION 14. [NEW MATERIAL] PROHIBITED SALES--
10 MANUFACTURING--LABELING--MARKETING--SAFETY REQUIREMENTS.--

11 A. A person shall not knowingly sell, offer to
12 sell, barter or give an e-cigarette or nicotine liquid to a
13 minor.

14 B. A minor shall not procure, attempt to procure or
15 possess an e-cigarette or nicotine liquid for the minor's own
16 use or for use by another minor.

17 C. A manufacturer, retailer or distributor shall
18 not sell or offer to sell nicotine liquid unless it is in a
19 container that is child-resistant.

20 D. A manufacturer shall not produce and a
21 distributor or retailer shall not sell an e-cigarette or
22 nicotine liquid that is knowingly attractive to minors.

23 E. It is not a defense to any of the acts
24 prohibited in this section that the person to whom the e-
25 cigarette or nicotine liquid is sold or distributed did not use

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1 the e-cigarette or inhale or otherwise consume the nicotine
2 liquid.

3 SECTION 15. [NEW MATERIAL] DOCUMENTARY EVIDENCE OF AGE
4 AND IDENTITY--DEFENSE.--

5 A. A retailer or an employee of a retailer shall
6 not knowingly, intentionally or negligently fail to verify the
7 age of a consumer purchasing an e-cigarette or nicotine liquid.

8 B. Except as provided in Subsection C of this
9 section, evidence of the age and identity of a person
10 attempting to procure an e-cigarette or nicotine liquid may be
11 shown by a document that contains a picture of the person and
12 is issued by a federal, state, county or municipal government,
13 including a motor vehicle driver's license or an identification
14 card.

15 C. For each sale made through a delivery sales
16 method, age verification shall be completed through an
17 independent, third-party age verification service that
18 establishes that a consumer is of legal age by comparing
19 information available from public records to personal
20 information entered by the consumer during the ordering
21 process.

22 D. The following are defenses for a retailer or
23 distributor accused of selling or distributing an e-cigarette
24 or nicotine liquid to a person who is a minor:

- 25 (1) the consumer produced a driver's license

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1 or an identification card in accordance with Subsection B of
2 this section indicating that the consumer was of legal age to
3 make the purchase; and

4 (2) for a sale made through a delivery sales
5 method, the retailer or distributor had an age verification
6 completed in accordance with Subsection C of this section
7 indicating that the consumer was of legal age to make the
8 purchase.

9 SECTION 16. [NEW MATERIAL] PRESENTING FALSE EVIDENCE OF
10 AGE OR IDENTITY.--A minor shall not present any written,
11 printed or photostatic evidence of age or identity that is
12 false for the purpose of procuring or attempting to procure an
13 e-cigarette or nicotine liquid.

14 SECTION 17. [NEW MATERIAL] VENDING MACHINES--RESTRICTIONS
15 ON SALES OF E-CIGARETTES AND NICOTINE LIQUID.--

16 A. Except as provided in Subsections B and C of
17 this section, a retailer selling goods at a retail location in
18 New Mexico shall not use a self-service display for e-
19 cigarettes or nicotine liquid.

20 B. E-cigarettes and nicotine liquid may be sold by
21 vending machines only in age-controlled locations where minors
22 are not permitted.

23 C. The provisions of this section do not apply to
24 delivery sales of e-cigarettes or nicotine liquid that are in
25 accordance with the E-Cigarette and Nicotine Liquid Act.

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1 SECTION 18. [NEW MATERIAL] DISTRIBUTION OF E-CIGARETTES
2 OR NICOTINE LIQUID AS FREE SAMPLES PROHIBITED.--A person shall
3 not provide free samples of e-cigarettes or nicotine liquid to
4 a minor.

5 SECTION 19. [NEW MATERIAL] SIGNS--POINT OF SALE.--A
6 retailer shall prominently display in the place where e-
7 cigarettes or nicotine liquid is sold and where an e-cigarette
8 or nicotine liquid vending machine is located a printed sign or
9 decal that reads as follows:

10 "A PERSON LESS THAN 21 YEARS OF AGE WHO PURCHASES AN E-
11 CIGARETTE OR NICOTINE LIQUID IS SUBJECT TO A FINE OF UP TO
12 \$100.

13 A PERSON WHO SELLS AN E-CIGARETTE OR NICOTINE LIQUID TO A
14 PERSON LESS THAN 21 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO
15 \$250.".

16 SECTION 20. [NEW MATERIAL] DELIVERY SALES.--

17 A. Before a retailer ships e-cigarettes or nicotine
18 liquid for a delivery sale, the retailer must receive full
19 payment for the purchase and shall accept payment from the
20 consumer by a:

- 21 (1) check drawn on an account in the
22 consumer's name;
- 23 (2) credit card issued in the consumer's name;
- 24 or
- 25 (3) debit card issued in the consumer's name.

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1 B. A retailer may ship e-cigarettes or nicotine
2 liquid only to a consumer whose age has been verified pursuant
3 to Section 15 of the E-Cigarette and Nicotine Liquid Act.

4 C. A retailer taking a delivery sale order may
5 request the electronic mail address of the consumer.

6 **SECTION 21. [NEW MATERIAL] PENALTY--POSSESSION OR**
7 **PROCUREMENT OF AN E-CIGARETTE OR NICOTINE LIQUID BY MINOR.--A**
8 minor who procures, attempts to procure or possesses an e-
9 cigarette or nicotine liquid in violation of Section 14 of the
10 E-Cigarette and Nicotine Liquid Act or who violates Section 16
11 of the E-Cigarette and Nicotine Liquid Act shall be punished by
12 a fine not to exceed one hundred dollars (\$100) or forty-eight
13 hours of community service.

14 **SECTION 22. [NEW MATERIAL] ADMINISTRATIVE PENALTIES.--**

15 A. The department may impose the following
16 administrative penalties, in addition to other administrative
17 penalties imposed pursuant to the E-Cigarette and Nicotine
18 Liquid Act, for a retailer that sells, offers to sell, barter
19 or gives an e-cigarette or nicotine liquid to a minor or fails
20 to verify the age of a consumer in violation of the provisions
21 of Section 14 or 15 of the E-Cigarette and Nicotine Liquid Act:

22 (1) for a first violation in a twenty-four-
23 month period, a fine no greater than two hundred fifty dollars
24 (\$250);

25 (2) for a second violation in a twenty-four-

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1 month period, a fine no greater than five hundred dollars
2 (\$500);

3 (3) for a third violation in a twenty-four-
4 month period, a fine no greater than one thousand dollars
5 (\$1,000); and

6 (4) for a fourth violation in a twenty-four-
7 month period, the retailer's license will be permanently
8 revoked.

9 B. The department may impose the following
10 administrative penalties for an employee of a retailer who
11 sells, offers to sell, barter or gives an e-cigarette or
12 nicotine liquid to a minor or fails to verify the age of a
13 consumer in violation of the provisions of Section 15 of the E-
14 Cigarette and Nicotine Liquid Act:

15 (1) for a first violation in a twenty-four-
16 month period, a fine no greater than one hundred fifty dollars
17 (\$150);

18 (2) for a second violation in a twenty-four-
19 month period, a fine no greater than three hundred dollars
20 (\$300); and

21 (3) for a third violation in a twenty-four-
22 month period, a fine no greater than one thousand dollars
23 (\$1,000).

24 SECTION 23. [NEW MATERIAL] MONITORED COMPLIANCE--
25 INSPECTIONS.--The alcohol and gaming division of the department
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1 and the appropriate law enforcement authorities in each county
2 and municipality shall conduct random, unannounced inspections
3 of facilities where e-cigarettes or nicotine liquid is sold to
4 ensure compliance with the provisions of the E-Cigarette and
5 Nicotine Liquid Act.

6 SECTION 24. [NEW MATERIAL] PREEMPTION.--When a
7 municipality or county, including a home rule municipality or
8 urban county, adopts an ordinance or a regulation pertaining to
9 sales of e-cigarettes or nicotine liquid, the ordinance or
10 regulation shall be consistent with the provisions of the E-
11 Cigarette and Nicotine Liquid Act.

12 SECTION 25. [NEW MATERIAL] APPLICABILITY.--The provisions
13 of the E-Cigarette and Nicotine Liquid Act do not apply to the
14 lawful purchase or use by a minor of a tobacco-cessation
15 product approved by the federal food and drug administration.

16 SECTION 26. Section 30-49-1 NMSA 1978 (being Laws 1993,
17 Chapter 244, Section 1, as amended) is amended to read:

18 "30-49-1. SHORT TITLE.--Chapter 30, Article 49 NMSA 1978
19 may be cited as the "Tobacco Products [~~E-Cigarette and Nicotine~~
20 ~~Liquid Container~~] Act".

21 SECTION 27. Section 30-49-2 NMSA 1978 (being Laws 1993,
22 Chapter 244, Section 2, as amended) is amended to read:

23 "30-49-2. DEFINITIONS.--As used in the Tobacco Products
24 [~~E-Cigarette and Nicotine Liquid Container~~] Act:

25 [A. ~~"child-resistant" means a package or container~~

1 ~~that is designed or constructed to be significantly difficult~~
2 ~~for children under five years of age to open or obtain a toxic~~
3 ~~or harmful amount of the substance contained therein within a~~
4 ~~reasonable time and not difficult for normal adults to use~~
5 ~~properly, but does not mean a package or container that all~~
6 ~~such children cannot open or obtain a toxic or harmful amount~~
7 ~~within a reasonable time;~~

8 B. ~~"e-cigarette":~~

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

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

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

22 G.] A. "minor" means an individual who is less than
23 eighteen years of age; and

24 [D. ~~"nicotine liquid container" means a bottle or~~
25 ~~other container of any substance containing nicotine where the~~

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

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

6 SECTION 28. Section 30-49-3 NMSA 1978 (being Laws 1993,
7 Chapter 244, Section 3, as amended) is amended to read:

8 "30-49-3. TOBACCO PRODUCTS [~~E-CIGARETTES AND NICOTINE~~
9 ~~LIQUID CONTAINERS]~~--PROHIBITED SALES.--

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

13 B. No minor shall procure or attempt to procure any
14 tobacco product [~~e-cigarette or nicotine liquid container]~~ for
15 the minor's own use or for use by 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; except that for the purpose of~~
22 ~~this subsection, "nicotine liquid container" does not include a~~
23 ~~cartridge that is pre-filled and sealed by the manufacturer and~~
24 ~~that is not intended to be opened by the consumer.~~

25 E. ~~The online internet sale of e-cigarettes or~~

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1 ~~nicotine liquid containers to a minor in New Mexico is~~
2 ~~prohibited.]"~~

3 SECTION 29. Section 30-49-5 NMSA 1978 (being Laws 1993,
4 Chapter 244, Section 5, as amended) is amended to read:

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

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

14 "30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--
15 [~~No~~] A minor shall not present any written, printed or
16 photostatic evidence of age or identity that is false for the
17 purpose of procuring or attempting to procure any tobacco
18 products [~~e-cigarettes or nicotine liquid containers~~]."

19 SECTION 31. Section 30-49-7 NMSA 1978 (being Laws 1993,
20 Chapter 244, Section 7, as amended) is amended to read:

21 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF
22 TOBACCO PRODUCTS [~~E-CIGARETTES AND NICOTINE LIQUID~~
23 ~~CONTAINERS~~].--

24 A. Except as provided in Subsections B and C of
25 this section:

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1 (1) a person shall not sell tobacco products
2 [~~e-cigarettes or nicotine liquid containers~~] at a retail
3 location in New Mexico by any means other than a direct, face-
4 to-face exchange between the customer and the seller or the
5 seller's employee; and

6 (2) a person selling goods at a retail
7 location in New Mexico shall not use a self-service display for
8 tobacco products [~~e-cigarettes or nicotine liquid containers.~~
9 ~~As used in this subsection, "self-service display" means a~~
10 ~~display to which the public has access without the assistance~~
11 ~~of the seller or the seller's employee~~].

12 B. Tobacco products [~~e-cigarettes and nicotine~~
13 ~~liquid containers~~] may be sold by vending machines only in age-
14 controlled locations where minors are not permitted.

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

17 SECTION 32. Section 30-49-8 NMSA 1978 (being Laws 1993,
18 Chapter 244, Section 8, as amended) is amended to read:

19 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS [~~E-CIGARETTES~~
20 ~~OR NICOTINE LIQUID CONTAINERS~~] AS FREE SAMPLES PROHIBITED--
21 EXCEPTION.--

22 A. A person shall not provide free samples of
23 tobacco products [~~e-cigarettes or nicotine liquid containers~~]
24 to a minor.

25 B. The provisions of Subsection A of this section

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1 shall not apply to an individual who provides free samples of
2 tobacco products [~~e-cigarettes or nicotine liquid containers~~]
3 in connection with the practice of cultural or ceremonial
4 activities in accordance with the federal American Indian
5 Religious Freedom Act, 42 U.S.C. 1996 and 1996a or its
6 successor act."

7 SECTION 33. Section 30-49-9 NMSA 1978 (being Laws 1993,
8 Chapter 244, Section 9, as amended) is amended to read:

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

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

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

23 SECTION 34. Section 30-49-10 NMSA 1978 (being Laws 1993,
24 Chapter 244, Section 10, as amended) is amended to read:

25 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The

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underscored material = new
~~[bracketed material] = delete~~

1 alcohol and gaming division of the regulation and licensing
2 department and the appropriate law enforcement authorities in
3 each county and municipality shall conduct random, unannounced
4 inspections of facilities where tobacco products [~~e-cigarettes~~
5 ~~or nicotine liquid containers~~] are sold to ensure compliance
6 with the provisions of the Tobacco Products [~~E-Cigarette and~~
7 ~~Nicotine Liquid Container~~] Act."

8 SECTION 35. Section 30-49-11 NMSA 1978 (being Laws 1993,
9 Chapter 244, Section 11, as amended) is amended to read:

10 "30-49-11. PREEMPTION.--When a municipality or county,
11 including a home rule municipality or urban county, adopts an
12 ordinance or a regulation pertaining to sales of tobacco
13 products [~~e-cigarettes or nicotine liquid containers~~], the
14 ordinance or regulation shall be consistent with the provisions
15 of the Tobacco Products [~~E-Cigarette and Nicotine Liquid~~
16 ~~Container~~] Act."

17 SECTION 36. Section 30-49-13 NMSA 1978 (being Laws 2015,
18 Chapter 98, Section 12) is amended to read:

19 "30-49-13. APPLICABILITY.--The provisions of the Tobacco
20 Products [~~E-Cigarette and Nicotine Liquid Container~~] Act do not
21 apply to the lawful purchase or use by a minor of a tobacco-
22 cessation product approved by the federal food and drug
23 administration."