

1 SENATE BILL 450

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO NICOTINE LIQUID; ENACTING THE E-CIGARETTE AND
12 NICOTINE LIQUID ACT; PROVIDING LICENSURE REQUIREMENTS FOR E-
13 CIGARETTE AND NICOTINE LIQUID RETAILERS, MANUFACTURERS AND
14 DISTRIBUTORS; PRESCRIBING DUTIES TO THE REGULATION AND
15 LICENSING DEPARTMENT WITH RESPECT TO THOSE LICENSES;
16 PROHIBITING CERTAIN ACTS PERTAINING TO THE MANUFACTURE, SALE OR
17 DISTRIBUTION OF E-CIGARETTE AND NICOTINE LIQUID; PROVIDING FOR
18 INSPECTIONS; ESTABLISHING FEES; CHANGING THE NAME OF THE
19 TOBACCO PRODUCTS, E-CIGARETTE AND NICOTINE LIQUID CONTAINER ACT
20 TO THE TOBACCO PRODUCTS ACT; REMOVING REFERENCES TO E-
21 CIGARETTES AND NICOTINE LIQUID CONTAINERS FROM THE TOBACCO
22 PRODUCTS ACT; PROVIDING ADMINISTRATIVE AND CRIMINAL PENALTIES;
23 MAKING AN APPROPRIATION.

24
25 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 26 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;

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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.;

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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 eight 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;

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

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1 (3) written consent allowing the New Mexico
2 state police division of the department of public safety to
3 conduct a criminal history background check on any person
4 listed on the application;

5 (4) a nonrefundable application fee of one
6 hundred fifty dollars (\$150); and

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

9 SECTION 7. [NEW MATERIAL] ISSUANCE OF LICENSES--REASONS
10 FOR DENIAL.--

11 A. The department shall grant or deny an
12 application for a license or for a license renewal made
13 pursuant to the E-Cigarette and Nicotine Liquid Act not later
14 than sixty days after the complete application is filed. The
15 department shall approve the application for issuance of a
16 license or for a license renewal if the department determines
17 that all of the requirements pursuant to the E-Cigarette and
18 Nicotine Liquid Act have been met.

19 B. If a complete application for a license or for a
20 license renewal is denied, the department shall state the
21 reasons for the denial. The applicant may reapply within
22 thirty days after the date of the denial. The department shall
23 not charge a fee for a reapplication made within that period.

24 SECTION 8. [NEW MATERIAL] LICENSE TRANSFER--NOTICE OF
25 CHANGES.--

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

3 (1) from the licensee to another person; or

4 (2) from the location where the license was
5 approved or renewed to another location, unless approved by the
6 department.

7 B. The department shall allow a license to be
8 transferred from one location to another pursuant to Subsection
9 A of this section if the license has not been suspended or
10 revoked.

11 C. If the information submitted in an application
12 pursuant to the E-Cigarette and Nicotine Liquid Act for a
13 license or for a license renewal changes, the licensee shall
14 notify the department within ten business days of the change.
15 If a change in the information required for an application
16 results in a violation of the E-Cigarette and Nicotine Liquid
17 Act, the department may impose an administrative penalty as
18 provided in that act.

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

22 SECTION 10. [NEW MATERIAL] FEES AND ADMINISTRATIVE
23 PENALTIES RETAINED BY THE DEPARTMENT.--Application fees and
24 administrative penalties collected by the department pursuant
25 to the E-Cigarette and Nicotine Liquid Act shall be retained by

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1 the department for the administration of that act.

2 SECTION 11. [NEW MATERIAL] MANUFACTURERS, DISTRIBUTORS
3 AND RETAILERS--VIOLATIONS--LICENSE SUSPENSION OR REVOCATION.--

4 The department may suspend or revoke a license of a licensee or
5 impose an administrative penalty against a licensee in an
6 amount not more than ten thousand dollars (\$10,000), or both,
7 when the department finds that the licensee has violated any
8 provision of the E-Cigarette and Nicotine Liquid Act.

9 SECTION 12. [NEW MATERIAL] HEARING PROCEDURE.--Before the
10 revocation, suspension or fine is effective against a licensee,
11 the licensee shall be entitled to a hearing pursuant to the
12 procedures provided in the Uniform Licensing Act and within
13 fifteen days from the date the licensee requests a hearing.

14 SECTION 13. [NEW MATERIAL] USE OF FLAVORING IN NICOTINE
15 LIQUID.--

16 A. A licensed manufacturer may use flavoring as an
17 ingredient in nicotine liquid.

18 B. A licensed distributor or licensed retailer may
19 sell nicotine liquid containing flavors.

20 SECTION 14. [NEW MATERIAL] PROHIBITED SALES--
21 MANUFACTURING--LABELING--MARKETING--SAFETY REQUIREMENTS.--

22 A. A person shall not knowingly sell, offer to
23 sell, barter or give an e-cigarette or nicotine liquid to a
24 minor.

25 B. A minor shall not procure, attempt to procure or

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1 possess an e-cigarette or nicotine liquid for the minor's own
2 use or for use by another minor.

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

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

9 E. It is not a defense to any of the acts
10 prohibited in this section that the person to whom the e-
11 cigarette or nicotine liquid is sold or distributed did not use
12 the e-cigarette or inhale or otherwise consume the nicotine
13 liquid.

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

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

19 B. Except as provided in Subsection C of this
20 section, evidence of the age and identity of a person
21 attempting to procure an e-cigarette or nicotine liquid may be
22 shown by a document that contains a picture of the person and
23 is issued by a federal, state, county or municipal government,
24 including a motor vehicle driver's license or an identification
25 card.

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1 C. For each sale made through a delivery sales
2 method, age verification shall be completed through an
3 independent, third-party age verification service that
4 establishes that a consumer is of legal age by comparing
5 information available from public records to personal
6 information entered by the consumer during the ordering
7 process.

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

11 (1) the consumer produced a driver's license
12 or an identification card in accordance with Subsection B of
13 this section indicating that the consumer was of legal age to
14 make the purchase; and

15 (2) for a sale made through a delivery sales
16 method, the retailer or distributor had an age verification
17 completed in accordance with Subsection C of this section
18 indicating that the consumer was of legal age to make the
19 purchase.

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

25 **SECTION 17. [NEW MATERIAL] VENDING MACHINES--RESTRICTIONS**

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1 ON SALES OF E-CIGARETTES AND NICOTINE LIQUID.--

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

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

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

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

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

21 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES AN E-
22 CIGARETTE OR NICOTINE LIQUID IS SUBJECT TO A FINE OF UP TO
23 \$100.

24 A PERSON WHO SELLS AN E-CIGARETTE OR NICOTINE LIQUID TO A
25 PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO

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1 \$1,000.".

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

3 A. Before a retailer ships e-cigarettes or nicotine
4 liquid for a delivery sale, the retailer must receive full
5 payment for the purchase and shall accept payment from the
6 consumer by a:

7 (1) check drawn on an account in the
8 consumer's name;

9 (2) credit card issued in the consumer's name;
10 or

11 (3) debit card issued in the consumer's name.

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

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

17 SECTION 21. [NEW MATERIAL] CRIMINAL PENALTIES.--A person
18 who violates any provision of Subsection A, C or D of Section
19 14 or Sections 17 through 19 of the E-Cigarette and Nicotine
20 Liquid Act is guilty of a misdemeanor and shall be sentenced
21 pursuant to the provisions of Section 31-19-1 NMSA 1978. Each
22 violation is a separate and distinct offense.

23 SECTION 22. [NEW MATERIAL] PENALTY--POSSESSION OR
24 PROCUREMENT OF AN E-CIGARETTE OR NICOTINE LIQUID BY MINOR.--A
25 minor who procures, attempts to procure or possesses an e-

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1 cigarette or nicotine liquid in violation of Section 14 of the
2 E-Cigarette and Nicotine Liquid Act or who violates Section 16
3 of the E-Cigarette and Nicotine Liquid Act shall be punished by
4 a fine not to exceed one hundred dollars (\$100) or forty-eight
5 hours of community service.

6 SECTION 23. [NEW MATERIAL] ADMINISTRATIVE PENALTIES.--

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

14 (1) for a first violation in a twenty-four-
15 month period, a fine no greater than two hundred fifty dollars
16 (\$250);

17 (2) for a second violation in a twenty-four-
18 month period, a fine no greater than two thousand five hundred
19 dollars (\$2,500);

20 (3) for a third violation in a twenty-four-
21 month period, a fine no greater than five thousand dollars
22 (\$5,000); and

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

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1 B. The department may impose the following
2 administrative penalties for an employee of a retailer who
3 sells, offers to sell, barter or gives an e-cigarette or
4 nicotine liquid to a minor or fails to verify the age of a
5 consumer in violation of the provisions of Section 15 of the E-
6 Cigarette and Nicotine Liquid Act:

7 (1) for a first violation in a twenty-four-
8 month period, a fine no greater than one hundred fifty dollars
9 (\$150);

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

13 (3) for a third violation in a twenty-four-
14 month period, a fine no greater than one thousand dollars
15 (\$1,000).

16 **SECTION 24. [NEW MATERIAL] MONITORED COMPLIANCE--**
17 **INSPECTIONS.--**The alcohol and gaming division of the department
18 and the appropriate law enforcement authorities in each county
19 and municipality shall conduct random, unannounced inspections
20 of facilities where e-cigarettes or nicotine liquid is sold to
21 ensure compliance with the provisions of the E-Cigarette and
22 Nicotine Liquid Act.

23 **SECTION 25. [NEW MATERIAL] PREEMPTION.--**When a
24 municipality or county, including a home rule municipality or
25 urban county, adopts an ordinance or a regulation pertaining to

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1 sales of e-cigarettes or nicotine liquid, the ordinance or
2 regulation shall be consistent with the provisions of the E-
3 Cigarette and Nicotine Liquid Act.

4 SECTION 26. [NEW MATERIAL] APPLICABILITY.--The provisions
5 of the E-Cigarette and Nicotine Liquid Act do not apply to the
6 lawful purchase or use by a minor of a tobacco-cessation
7 product approved by the federal food and drug administration.

8 SECTION 27. Section 30-49-1 NMSA 1978 (being Laws 1993,
9 Chapter 244, Section 1, as amended) is amended to read:

10 "30-49-1. SHORT TITLE.--Chapter 30, Article 49 NMSA 1978
11 may be cited as the "Tobacco Products [~~E-Cigarette and Nicotine~~
12 ~~Liquid Container~~] Act".

13 SECTION 28. Section 30-49-2 NMSA 1978 (being Laws 1993,
14 Chapter 244, Section 2, as amended) is amended to read:

15 "30-49-2. DEFINITIONS.--As used in the Tobacco Products
16 [~~E-Cigarette and Nicotine Liquid Container~~] Act:

17 ~~[A. "child-resistant" means a package or container~~
18 ~~that is designed or constructed to be significantly difficult~~
19 ~~for children under five years of age to open or obtain a toxic~~
20 ~~or harmful amount of the substance contained therein within a~~
21 ~~reasonable time and not difficult for normal adults to use~~
22 ~~properly, but does not mean a package or container that all~~
23 ~~such children cannot open or obtain a toxic or harmful amount~~
24 ~~within a reasonable time;~~

25 B. "e-cigarette":

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1 ~~(1) means any electronic oral device, whether~~
2 ~~composed of a heating element and battery or an electronic~~
3 ~~circuit, that provides a vapor of nicotine or any other~~
4 ~~substances the use or inhalation of which simulates smoking;~~
5 ~~and~~

6 ~~(2) includes any such device, or any part~~
7 ~~thereof, whether manufactured, distributed, marketed or sold as~~
8 ~~an e-cigarette, e-cigar, e-pipe or any other product, name or~~
9 ~~descriptor; but~~

10 ~~(3) does not include any product regulated as~~
11 ~~a drug or device by the United States food and drug~~
12 ~~administration under the Federal Food, Drug, and Cosmetic Act,~~
13 ~~21 U.S.C. Section 301 et seq.;~~

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

16 ~~[D. "nicotine liquid container" means a bottle or~~
17 ~~other container of any substance containing nicotine where the~~
18 ~~substance is sold, marketed or intended for use in an e-~~
19 ~~cigarette]~~

20 B. "self-service display" means a display to which
21 the public has access without the assistance of the seller or
22 the seller's employee."

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

25 "30-49-3. TOBACCO PRODUCTS [~~E-CIGARETTES AND NICOTINE~~

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1 ~~LIQUID CONTAINERS]~~--PROHIBITED SALES.--

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

5 B. No minor shall procure or attempt to procure any
6 tobacco product [~~e-cigarette or nicotine liquid container~~] for
7 the minor's own use or for use by another minor.

8 C. No person shall sell, offer to sell or deliver a
9 tobacco product [~~an e-cigarette or a nicotine liquid container~~]
10 in a form other than an original factory-sealed package.

11 [~~D. No person shall sell or offer to sell any~~
12 ~~nicotine liquid container at retail in this state unless such~~
13 ~~container is child-resistant; except that for the purpose of~~
14 ~~this subsection, "nicotine liquid container" does not include a~~
15 ~~cartridge that is pre-filled and sealed by the manufacturer and~~
16 ~~that is not intended to be opened by the consumer.~~

17 E. ~~The online internet sale of e-cigarettes or~~
18 ~~nicotine liquid containers to a minor in New Mexico is~~
19 ~~prohibited.]"~~

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

22 "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS [~~E-CIGARETTES~~
23 ~~OR NICOTINE LIQUID CONTAINERS]~~ TO PERSON UNABLE TO PRODUCE
24 IDENTITY CARD.--A person selling goods at retail or wholesale
25 may refuse to sell tobacco products [~~e-cigarettes or nicotine~~

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1 ~~liquid containers~~] to a person who is unable to produce an
2 identity card as evidence that the person is eighteen years of
3 age or over."

4 SECTION 31. Section 30-49-6 NMSA 1978 (being Laws 1993,
5 Chapter 244, Section 6, as amended) is amended to read:

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

11 SECTION 32. Section 30-49-7 NMSA 1978 (being Laws 1993,
12 Chapter 244, Section 7, as amended) is amended to read:

13 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF
14 TOBACCO PRODUCTS [~~E-CIGARETTES AND NICOTINE LIQUID~~
15 ~~CONTAINERS~~].--

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

18 (1) a person shall not sell tobacco products
19 [~~e-cigarettes or nicotine liquid containers~~] at a retail
20 location in New Mexico by any means other than a direct, face-
21 to-face exchange between the customer and the seller or the
22 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 [~~e-cigarettes or nicotine liquid containers~~.

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1 ~~As used in this subsection, "self-service display" means a~~
2 ~~display to which the public has access without the assistance~~
3 ~~of the seller or the seller's employee].~~

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

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

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

11 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS [~~E-CIGARETTES~~
12 ~~OR NICOTINE LIQUID CONTAINERS~~] AS FREE SAMPLES PROHIBITED--
13 EXCEPTION.--

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

17 B. The provisions of Subsection A of this section
18 shall not apply to an individual who provides free samples of
19 tobacco products [~~e-cigarettes or nicotine liquid containers~~]
20 in connection with the practice of cultural or ceremonial
21 activities in accordance with the federal American Indian
22 Religious Freedom Act, 42 U.S.C. 1996 and 1996a or its
23 successor act."

24 SECTION 34. Section 30-49-9 NMSA 1978 (being Laws 1993,
25 Chapter 244, Section 9, as amended) is amended to read:

.212179.3

underscored material = new
[bracketed material] = delete

1 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,
2 corporation, partnership or other entity engaged in the sale at
3 retail of tobacco products [~~e-cigarettes or nicotine liquid~~
4 ~~containers~~] shall prominently display in the place where
5 tobacco products [~~e-cigarettes or nicotine liquid containers~~]
6 are sold and where a tobacco product [~~e-cigarette or nicotine~~
7 ~~liquid container~~] vending machine is located a printed sign or
8 decal that reads as follows:

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

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

15 SECTION 35. Section 30-49-10 NMSA 1978 (being Laws 1993,
16 Chapter 244, Section 10, as amended) is amended to read:

17 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The
18 alcohol and gaming division of the regulation and licensing
19 department and the appropriate law enforcement authorities in
20 each county and municipality shall conduct random, unannounced
21 inspections of facilities where tobacco products [~~e-cigarettes~~
22 ~~or nicotine liquid containers~~] are sold to ensure compliance
23 with the provisions of the Tobacco Products [~~E-Cigarette and~~
24 ~~Nicotine Liquid Container~~] Act."

25 SECTION 36. Section 30-49-11 NMSA 1978 (being Laws 1993,

.212179.3

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

1 Chapter 244, Section 11, as amended) is amended to read:

2 "30-49-11. PREEMPTION.--When a municipality or county,
3 including a home rule municipality or urban county, adopts an
4 ordinance or a regulation pertaining to sales of tobacco
5 products [~~e-cigarettes or nicotine liquid containers~~], the
6 ordinance or regulation shall be consistent with the provisions
7 of the Tobacco Products [~~E-Cigarette and Nicotine Liquid~~
8 ~~Container~~] Act."

9 SECTION 37. Section 30-49-13 NMSA 1978 (being Laws 2015,
10 Chapter 98, Section 12) is amended to read:

11 "30-49-13. APPLICABILITY.--The provisions of the Tobacco
12 Products [~~E-Cigarette and Nicotine Liquid Container~~] Act do not
13 apply to the lawful purchase or use by a minor of a tobacco-
14 cessation product approved by the federal food and drug
15 administration."