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SENATE BILL 9

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Gabriel Ramos and Jacob R. Candelaria

AN ACT

RELATING TO PUBLIC HEALTH; ENACTING THE E-CIGARETTE AND E-LIQUID ACT; RAISING THE AGE LIMIT FOR SALES OF E-CIGARETTES AND E-LIQUID; PROVIDING LICENSURE REQUIREMENTS FOR E-CIGARETTE AND E-LIQUID RETAILERS, MANUFACTURERS AND DISTRIBUTORS; PRESCRIBING POWERS AND DUTIES TO THE REGULATION AND LICENSING DEPARTMENT; PROHIBITING CERTAIN ACTS PERTAINING TO THE MANUFACTURE, SALE OR DISTRIBUTION OF E-CIGARETTES AND E-LIQUID; ESTABLISHING FEES; CREATING A FUND; 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:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1

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1 through 35 of this act may be cited as the "E-Cigarette and E-
2 Liquid Act".

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

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

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

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

18 (2) the e-cigarette or e-liquid is shipped
19 through a delivery service;

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

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

25 E. "distribute" means to purchase and store a

1 product and to offer the product for resale to retailers or
2 consumers;

3 F. "distributor" means a person that distributes e-
4 cigarettes or e-liquid in New Mexico, but does not include:

5 (1) a retailer;

6 (2) a manufacturer; or

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

12 G. "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 H. "e-liquid" means a liquid or other substance
2 intended for use in an e-cigarette, not including any
3 substance containing cannabis or oil derived from cannabis;

4 I. "electronic nicotine delivery system" means an
5 electronic device, whether composed of a heating element and
6 battery or an electronic circuit, that provides a vapor of
7 nicotine, the use or inhalation of which simulates smoking;

8 J. "flavoring" means a food grade additive or
9 synthetic flavoring substance that is used to add flavor and
10 that is not prohibited by the United States food and drug
11 administration as an additive in e-liquid;

12 K. "knowingly attractive to minors" means packaging
13 or labeling that contains:

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

16 (2) an imitation or mimicry of trademarks or
17 trade dress of products that are or have been primarily
18 marketed toward minors;

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

21 (4) images of food products primarily targeted
22 to minors such as juice boxes, soft drinks, soda pop, cereal,
23 candy or desserts, and all patent specific infringing flavors;

24 L. "licensee" means a holder of a license granted
25 pursuant to the E-Cigarette and E-Liquid Act;

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1 M. "manufacturer" means a person that manufactures,
2 fabricates, assembles, processes or labels e-cigarettes or e-
3 liquid or imports from outside the United States, directly or
4 indirectly, a product for sale or distribution in the United
5 States;

6 N. "minor" means an individual who is younger than
7 twenty-one years of age;

8 O. "person" means an individual, corporation, firm,
9 partnership, copartnership, association or other legal entity;

10 P. "retailer" means a person, whether located
11 within or outside of New Mexico, that sells e-cigarettes or e-
12 liquid at retail to a consumer in New Mexico; provided that the
13 sale is not for resale; and

14 Q. "self-service display" means a display to which
15 the public has access without the assistance of a retailer or
16 the retailer's employee.

17 SECTION 3. [NEW MATERIAL] DEPARTMENT--LICENSE ISSUANCE--
18 MANUFACTURE, DISTRIBUTION OR SALE OF E-CIGARETTES OR E-
19 LIQUID.--

20 A. Except as provided in Subsection C of this
21 section, the department shall issue licenses for the
22 manufacture, distribution or sale of e-cigarettes or e-liquid
23 in New Mexico to applicants who meet the requirements of the E-
24 Cigarette and E-Liquid Act.

25 B. The department shall issue or renew a:

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1 (1) license for the manufacture of e-
2 cigarettes or e-liquid for a term not to exceed five years,
3 with an expiration of June 30 of a calendar year; and

4 (2) license for the distribution or retail
5 sale of e-cigarettes or e-liquid for a term not to exceed one
6 year, with an expiration of June 30 of a calendar year.

7 C. A license shall not be granted, maintained,
8 transferred or renewed pursuant to the E-Cigarette and E-Liquid
9 Act if any of the following conditions apply:

10 (1) the applicant has had a manufacturer,
11 distributor or retailer license revoked by the department or by
12 another state within the past two years;

13 (2) the location for the license or license
14 transfer is within three hundred feet of a church or other
15 religious building or a school; provided that this restriction
16 does not apply to a location at which e-cigarettes or e-liquid
17 has been lawfully manufactured, distributed or sold prior to
18 July 1, 2020; or

19 (3) the location for the license would result
20 in a violation of an existing zoning ordinance of a governing
21 body in which the proposed location would exist.

22 SECTION 4. [NEW MATERIAL] MANUFACTURER LICENSE
23 REQUIREMENTS--APPLICATION AND RENEWAL REQUIREMENTS--FEES.--

24 A. A person shall not manufacture e-cigarettes or
25 e-liquid at any location in the state without a manufacturer

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1 license issued by the department to that person or that
2 person's employer for that location.

3 B. An application for a manufacturer license or
4 manufacturer license renewal shall be submitted on a form
5 prescribed by the department and include:

6 (1) the name, telephone number, mailing
7 address and email address of the applicant and:

8 (a) if the applicant is a firm,
9 partnership or association, the name and address of each of its
10 members; or

11 (b) if the applicant is a corporation,
12 the name and address of its registered agent;

13 (2) the address of the applicant's principal
14 place of business and every location where the applicant
15 manufactures e-cigarettes or e-liquid;

16 (3) written consent allowing the department of
17 public safety to conduct a criminal history background check on
18 any person listed in the application;

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

22 (5) documentation that the applicant will
23 submit the applicable ingredient listing to the federal
24 secretary of health and human services as required pursuant to
25 21 USCA Section 387d(a)(1); and

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1 (6) a nonrefundable license fee of one
2 thousand dollars (\$1,000), or a lesser amount as prorated
3 pursuant to Section 8 of the E-Cigarette and E-Liquid Act.

4 SECTION 5. [NEW MATERIAL] DISTRIBUTOR LICENSE
5 REQUIREMENTS--APPLICATION AND RENEWAL REQUIREMENTS--FEES.--

6 A. A person shall not distribute e-cigarettes or e-
7 liquid from any location in the state without a distributor
8 license issued by the department to that person or that
9 person's employer for that location.

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

13 (1) the name, telephone number, mailing
14 address and email address of the applicant and:

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

18 (b) if the applicant is a corporation,
19 the name and address of its registered agent;

20 (2) the address of the applicant's principal
21 place of business and every location from which the applicant
22 distributes e-cigarettes or e-liquid;

23 (3) written consent allowing the department of
24 public safety to conduct a criminal history background check on
25 any person listed on the application; and

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1 (4) a nonrefundable license fee of five
2 hundred dollars (\$500), or a lesser amount as prorated pursuant
3 to Section 8 of the E-Cigarette and E-Liquid Act.

4 SECTION 6. [NEW MATERIAL] RETAILER LICENSE REQUIREMENTS--
5 APPLICATION AND RENEWAL REQUIREMENTS--FEES.--

6 A. A person shall not sell e-cigarettes or e-liquid
7 at any location in the state without a retailer license issued
8 by the department to that person or that person's employer for
9 that location.

10 B. An application for a retailer license or for a
11 retailer license renewal shall be submitted on a form
12 prescribed by the department and include:

13 (1) the name, telephone number, mailing
14 address and email address of the applicant and:

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

18 (b) if the applicant is a corporation,
19 the name and address of its registered agent;

20 (2) the address of the applicant's principal
21 place of business and every location where the applicant sells
22 e-cigarettes or e-liquid at retail;

23 (3) written consent allowing the department of
24 public safety to conduct a criminal history background check on
25 any person listed on the application; and

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1 (4) a nonrefundable license fee of one hundred
2 fifty dollars (\$150) for a license issued to a person for a
3 first retail location, or a lesser amount as prorated pursuant
4 to Section 8 of the E-Cigarette and E-Liquid Act, and ten
5 dollars (\$10.00) for each retail license issued for each
6 subsequent retail location.

7 SECTION 7. [NEW MATERIAL] LICENSE APPLICATION INFORMATION
8 CHANGES.--If the information submitted in an application
9 pursuant to the E-Cigarette and E-Liquid Act for a license or
10 for a license renewal changes, the licensee shall notify the
11 department within ten business days of the change. If a change
12 in the information required for an application results in a
13 violation of the E-Cigarette and E-Liquid Act, the department
14 may impose an administrative penalty as provided in that act.

15 SECTION 8. [NEW MATERIAL] PRORATION OF FEES.--

16 A. Except for retailer license fees of ten dollars
17 (\$10.00), license fees for licenses issued or renewed after
18 June 30 of a calendar year shall be prorated.

19 B. Each manufacturer license fee shall be prorated
20 as follows:

21 (1) a license issued in the first quarter of
22 the first year of a license term beginning on July 1 shall be
23 subject to the full amount of the license fee;

24 (2) a license issued in the second quarter of
25 the first year of a license term beginning on July 1 shall be

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1 subject to ninety-five percent of the license fee;

2 (3) a license issued in the third quarter of
3 the first year of a license term beginning on July 1 shall be
4 subject to ninety percent of the license fee; and

5 (4) a license issued in the fourth quarter of
6 the first year of a license term beginning on July 1 shall be
7 subject to eighty-five percent of the license fee.

8 C. Each distributor and retailer license fee shall
9 be prorated as follows:

10 (1) a license issued in the first quarter of a
11 license term beginning on July 1 shall be subject to the full
12 amount of the license fee;

13 (2) a license issued in the second quarter of
14 a license term beginning on July 1 shall be subject to seventy-
15 five percent of the license fee;

16 (3) a license issued in the third quarter of a
17 license term beginning on July 1 shall be subject to fifty
18 percent of the license fee; and

19 (4) a license issued in the fourth quarter of
20 a license term beginning on July 1 shall be subject to twenty-
21 five percent of the license fee.

22 SECTION 9. [NEW MATERIAL] ISSUANCE OF LICENSES--REASONS
23 FOR DENIAL.--

24 A. The department shall grant or deny an
25 application for a license or for a license renewal made

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1 pursuant to the E-Cigarette and E-Liquid Act not later than
2 sixty days after the complete application is filed. If the
3 department fails to respond within sixty days, the application
4 shall be deemed approved. The department shall approve the
5 application for issuance of a license or for a license renewal
6 if the department determines that the applicant meets the
7 requirements of the E-Cigarette and E-Liquid Act.

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

13 SECTION 10. [NEW MATERIAL] LICENSE TRANSFER--NOTICE OF
14 CHANGES.--

15 A. A license issued pursuant to the E-Cigarette and
16 E-Liquid Act shall not be transferred:

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

21 B. To transfer a license from one location to
22 another, the licensee shall file an application for the
23 proposed transfer. The department shall allow the transfer
24 unless any of the conditions provided in Subsection C of
25 Section 3 of the E-Cigarette and E-Liquid Act exist.

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1 SECTION 11. ~~[NEW MATERIAL]~~ DISPLAY OF LICENSE.--A license
2 issued for a location at which e-cigarettes or e-liquid is
3 manufactured, distributed or sold at retail pursuant to the E-
4 Cigarette and E-Liquid Act shall be prominently displayed at
5 that location so that it is in full public view at all times.
6 A copy or scanned image or facsimile of the license may be
7 displayed only up to thirty days or until the original license
8 is received by the licensee, whichever occurs first; provided
9 that the copy or scanned image or facsimile is of the original,
10 current and duly issued license.

11 SECTION 12. ~~[NEW MATERIAL]~~ E-CIGARETTE AND E-LIQUID
12 ADMINISTRATION FUND--CREATED--PURPOSE.--The "e-cigarette and e-
13 liquid administration fund" is created in the state treasury.
14 The fund consists of fees and administrative penalties
15 collected by the department pursuant to the E-Cigarette and E-
16 Liquid Act, appropriations by the legislature, gifts, grants
17 and donations. Money in the fund at the end of a fiscal year
18 shall not revert to any other fund. The department shall
19 administer the fund, and money in the fund is appropriated to
20 the department for the administration of the E-Cigarette and E-
21 Liquid Act. Disbursements from the fund shall be made by
22 warrant of the secretary of finance and administration pursuant
23 to vouchers signed by the superintendent of regulation and
24 licensing or the superintendent's authorized representative.

25 SECTION 13. ~~[NEW MATERIAL]~~ FEES AND ADMINISTRATIVE

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1 PENALTIES RETAINED BY THE DEPARTMENT.--Application fees and
2 administrative penalties collected by the department pursuant
3 to the E-Cigarette and E-Liquid Act shall be deposited into the
4 e-cigarette and e-liquid administration fund.

5 SECTION 14. [NEW MATERIAL] HEARING PROCEDURE.--If the
6 department denies, suspends or revokes a license, denies the
7 transfer of a license or imposes an administrative penalty
8 against a licensee, the licensee shall be entitled to a hearing
9 pursuant to the procedures provided in the Uniform Licensing
10 Act; provided that subpoenas shall be issued and enforced in
11 accordance with the provisions of Section 32 of the E-Cigarette
12 and E-Liquid Act.

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

15 A. A licensed manufacturer may use flavoring as an
16 ingredient in e-liquid.

17 B. A licensed distributor or licensed retailer may
18 sell e-liquid containing flavors.

19 SECTION 16. [NEW MATERIAL] PROHIBITED SALES--
20 MANUFACTURING--LABELING--MARKETING--SAFETY REQUIREMENTS.--

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

23 B. A minor shall not procure, attempt to procure or
24 possess an e-cigarette or e-liquid for the minor's own use or
25 for use by another minor.

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

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

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

11 F. An employer shall not permit an employee who is
12 a minor to sell e-cigarettes or e-liquid.

13 SECTION 17. [NEW MATERIAL] DOCUMENTARY EVIDENCE OF AGE
14 AND IDENTITY--DEFENSE.--

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

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

25 C. For each sale made through a delivery sales

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

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

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

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

19 SECTION 18. [NEW MATERIAL] PRESENTING FALSE EVIDENCE OF
20 AGE OR IDENTITY.--A minor shall not present any written,
21 printed or photostatic evidence of age or identity that is
22 false for the purpose of procuring or attempting to procure an
23 e-cigarette or e-liquid.

24 SECTION 19. [NEW MATERIAL] VENDING MACHINES--RESTRICTIONS
25 ON SALES OF E-CIGARETTES AND E-LIQUID.--

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

5 B. E-cigarettes and e-liquid may be sold by vending
6 machines only in age-controlled locations where minors are not
7 permitted pursuant to the age requirements in the E-Cigarette
8 and E-Liquid Act.

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

12 **SECTION 20. [NEW MATERIAL] DISTRIBUTION OF E-CIGARETTES**
13 **OR E-LIQUID AS FREE SAMPLES PROHIBITED.--**A person shall not
14 provide free samples of e-cigarettes or e-liquid to a minor.

15 **SECTION 21. [NEW MATERIAL] SIGNS--POINT OF SALE.--**A
16 retailer shall prominently display in the place where e-
17 cigarettes or e-liquid is sold and where an e-cigarette or e-
18 liquid vending machine is located a printed sign or decal that
19 reads as follows:

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

22 A PERSON WHO SELLS AN E-CIGARETTE OR E-LIQUID TO A PERSON
23 LESS THAN 21 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO
24 \$1,000."

25 **SECTION 22. [NEW MATERIAL] DELIVERY SALES.--**

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

4 (1) check drawn on an account in the
5 consumer's name;

6 (2) credit card issued in the consumer's name;
7 or

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

9 B. A retailer may ship e-cigarettes or e-liquid
10 only to a consumer whose age has been verified pursuant to
11 Section 17 of the E-Cigarette and E-Liquid Act.

12 C. A retailer taking a delivery sale order may
13 request the email address of the consumer.

14 **SECTION 23. [NEW MATERIAL] CRIMINAL PENALTIES.--**A person
15 who violates a provision of Subsection A, C, D or F of Section
16 16 or Sections 19 through 21 of the E-Cigarette and E-Liquid
17 Act is guilty of a misdemeanor and shall be sentenced pursuant
18 to the provisions of Section 31-19-1 NMSA 1978. Each violation
19 is a separate and distinct offense.

20 **SECTION 24. [NEW MATERIAL] CRIMINAL PENALTIES--UNLICENSED**
21 **ACTIVITIES.--**A person who manufactures, distributes or sells e-
22 cigarettes or e-liquid without a license required pursuant to
23 the E-Cigarette and E-Liquid Act is guilty of a misdemeanor and
24 shall be sentenced in accordance with the provisions of Section
25 31-19-1 NMSA 1978.

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1 SECTION 25. [NEW MATERIAL] CRIMINAL PENALTY--POSSESSION
2 OR PROCUREMENT OF AN E-CIGARETTE OR E-LIQUID BY MINOR.-- A
3 minor who procures, attempts to procure or possesses an e-
4 cigarette or e-liquid in violation of Section 16 of the E-
5 Cigarette and E-Liquid Act or who violates Section 18 of the E-
6 Cigarette and E-Liquid Act is guilty of a petty misdemeanor and
7 shall be punished by a fine not to exceed one hundred dollars
8 (\$100) or eight hours of community service.

9 SECTION 26. [NEW MATERIAL] MANUFACTURERS, DISTRIBUTORS
10 AND RETAILERS--VIOLATIONS--LICENSE SUSPENSION OR REVOCATION--
11 ADMINISTRATIVE PENALTIES.--The department may suspend or revoke
12 a license of a licensee or impose an administrative penalty
13 against a licensee in an amount not more than ten thousand
14 dollars (\$10,000), or both, if the department finds that the
15 licensee, an employee of the licensee or a contractor acting on
16 behalf of the licensee has violated a provision of the E-
17 Cigarette and E-Liquid Act; provided that a violation of the
18 provisions of Section 16 or 17 of the E-Cigarette and E-Liquid
19 Act shall be solely subject to the provisions of Section 27 of
20 that act.

21 SECTION 27. [NEW MATERIAL] ADMINISTRATIVE PENALTIES--SALE
22 TO MINORS OR FAILURE TO VERIFY AGE.--The department shall
23 impose the following administrative penalties against a
24 retailer if the retailer, an employee of the retailer or
25 contractor acting on behalf of the retailer sells, offers to

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1 sell, barter or gives an e-cigarette or e-liquid to a minor or
2 fails to verify the age of a consumer in violation of the
3 provisions of Section 16 or 17 of the E-Cigarette and E-Liquid
4 Act:

5 A. for a first violation occurring at a location
6 for which a retail license is issued, a fine no greater than
7 two hundred fifty dollars (\$250);

8 B. for a second violation occurring at the same
9 location within twenty-four months of the first violation, a
10 fine no greater than two thousand five hundred dollars
11 (\$2,500);

12 C. for a third violation occurring at the same
13 location within twenty-four months of the first violation, a
14 fine no greater than five thousand dollars (\$5,000); and

15 D. for a fourth violation occurring at the same
16 location within twenty-four months of the first violation, the
17 retailer's license issued for that location shall be
18 permanently revoked.

19 SECTION 28. [NEW MATERIAL] MONITORED COMPLIANCE--
20 INSPECTIONS.--The department of public safety and the
21 appropriate law enforcement authorities in each county and
22 municipality shall conduct random, unannounced inspections of
23 facilities where e-cigarettes or e-liquid is sold to ensure
24 compliance with the provisions of the E-Cigarette and E-Liquid
25 Act.

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1 SECTION 29. ~~[NEW MATERIAL]~~ AUTHORITY OF DEPARTMENT OF
2 PUBLIC SAFETY.--The department of public safety has authority
3 over all investigations and enforcement activities required
4 under the E-Cigarette and E-Liquid Act except for those
5 provisions relating to the issuance, denial, suspension or
6 revocation of licenses, unless its assistance is requested by
7 the superintendent of regulation and licensing.

8 SECTION 30. ~~[NEW MATERIAL]~~ LOCAL LAW ENFORCEMENT--
9 DEPARTMENT OF PUBLIC SAFETY--REPORTING REQUIREMENTS--AUTHORITY
10 TO REQUEST INVESTIGATIONS.--

11 A. Within thirty days following the date of
12 issuance of a citation pursuant to the provisions of the E-
13 Cigarette and E-Liquid Act, the department of public safety or
14 the law enforcement agency of a municipality or county shall
15 report alleged violations of that act to the regulation and
16 licensing department.

17 B. The superintendent of regulation and licensing
18 may request the investigators of the department of public
19 safety to investigate licensees or activities that the
20 superintendent has reasonable cause to believe are in violation
21 of the E-Cigarette and E-Liquid Act.

22 SECTION 31. ~~[NEW MATERIAL]~~ AUTHORITY OF THE DEPARTMENT.--
23 The department has the authority over all matters relating to
24 the issuance, denial, suspension, revocation or transfer of
25 licenses under the E-Cigarette and E-Liquid Act. The

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1 superintendent of regulation and licensing may request the
2 department of public safety to provide investigatory and
3 enforcement support as deemed necessary.

4 SECTION 32. [NEW MATERIAL] ADMINISTRATIVE AUTHORITY AND
5 POWERS.--

6 A. For the purpose of administering the licensing
7 provisions of the E-Cigarette and E-Liquid Act, the
8 superintendent of regulation and licensing is authorized to
9 examine and to require the production of any pertinent records,
10 books, information or evidence, to require the presence of any
11 person and to require that person to testify under oath
12 concerning the subject matter of the inquiry and to make a
13 permanent record of the proceedings.

14 B. The superintendent of regulation and licensing,
15 through the legal counsel for the department, is vested with
16 the power to issue subpoenas. In no case shall a subpoena be
17 made returnable less than five days from the date of service.

18 C. A subpoena issued by the legal counsel for the
19 department shall state with reasonable certainty the nature of
20 the evidence required to be produced, the time and place of the
21 hearing, the nature of the inquiry or investigation and the
22 consequences of failure to obey the subpoena and shall bear the
23 seal of the department and be attested to by the superintendent
24 of regulation and licensing.

25 D. After service of a subpoena upon a person, if a

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1 person neglects or refuses to appear or produce records or
2 other evidence in response to the subpoena or neglects or
3 refuses to give testimony, as required, the superintendent of
4 regulation and licensing may invoke the aid of the district
5 courts in the enforcement of the subpoena. In appropriate
6 cases, the court shall issue its order requiring the person to
7 appear and testify or produce the books or records and may,
8 upon failure of the person to comply with the order, punish the
9 person for contempt.

10 E. The regulation and licensing department shall
11 require criminal history background checks to be conducted by
12 the department of public safety for purposes of administering
13 the licensing provisions of the E-Cigarette and E-Liquid Act.
14 For purposes of conducting the criminal history background
15 check, the regulation and licensing department shall require
16 the fingerprinting of applicants for licenses as required by
17 the E-Cigarette and E-Liquid Act. Fingerprint cards shall be
18 submitted by the regulation and licensing department to the
19 department of public safety records bureau for processing
20 through the federal bureau of investigation. The
21 superintendent shall establish procedures within the regulation
22 and licensing department to maintain the confidentiality of
23 information received from the department of public safety and
24 the federal bureau of investigation.

25 SECTION 33. [NEW MATERIAL] ADMINISTRATIVE RULES AND

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1 ORDERS--PRESUMPTION OF CORRECTNESS.--

2 A. The superintendent of regulation and licensing
3 shall issue and file as required by law all rules and orders
4 necessary to administer the licensing provisions of the E-
5 Cigarette and E-Liquid Act.

6 B. Directives issued by the superintendent of
7 regulation and licensing shall be in a form substantially as
8 follows:

9 (1) rules are written statements of the
10 superintendent, of general application to licensees,
11 interpreting and exemplifying the statutes to which the rules
12 relate;

13 (2) rulings are written statements of the
14 superintendent interpreting the statutes to which the rulings
15 relate and are of limited application to one or a small number
16 of licensees; and

17 (3) orders are written statements of the
18 superintendent to implement the superintendent's decision after
19 a hearing.

20 C. To be effective, a rule shall first be issued as
21 a proposed rule and filed for public inspection in the office
22 of the superintendent of regulation and licensing.

23 Distribution of the rule shall be made to interested persons
24 and their comments shall be invited. After the proposed rule
25 has been on file for thirty days and a public hearing has been

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1 held, the superintendent may issue the rule as a final rule by
2 filing as required by law.

3 D. The superintendent of regulation and licensing
4 shall furnish a copy of the rules to all licensees and other
5 interested persons at a nominal cost.

6 E. A rule or order issued by the superintendent of
7 regulation and licensing is presumed to be a proper
8 implementation of the licensing provisions of the E-Cigarette
9 and E-Liquid Act.

10 F. All rules and orders shall be applied
11 prospectively only.

12 SECTION 34. [NEW MATERIAL] PREEMPTION.--When a
13 municipality or county, including a home rule municipality or
14 urban county, adopts an ordinance or a regulation pertaining to
15 sales of e-cigarettes or e-liquid, the ordinance or regulation
16 shall be consistent with the provisions of the E-Cigarette and
17 E-Liquid Act.

18 SECTION 35. [NEW MATERIAL] APPLICABILITY.--The provisions
19 of the E-Cigarette and E-Liquid Act do not apply to the lawful
20 purchase or use by a minor of a tobacco-cessation product
21 approved by the federal food and drug administration.

22 SECTION 36. Section 30-49-1 NMSA 1978 (being Laws 1993,
23 Chapter 244, Section 1, as amended) is amended to read:

24 "30-49-1. SHORT TITLE.--Chapter 30, Article 49 NMSA 1978
25 may be cited as the "Tobacco Products [~~E-Cigarette and Nicotine~~

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1 ~~Liquid Container] Act".~~"

2 SECTION 37. Section 30-49-2 NMSA 1978 (being Laws 1993,
3 Chapter 244, Section 2, as amended) is amended to read:

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

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

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

24 (3) ~~does not include any product regulated as~~
25 ~~a drug or device by the United States food and drug~~

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1 ~~administration under the Federal Food, Drug, and Cosmetic Act,~~
2 ~~21 U.S.C. Section 301 et seq.;~~

3 ~~G.]~~ A. "minor" means an individual who is less than
4 eighteen years of age; and

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

9 B. "self-service display" means a display to which
10 the public has access without the assistance of the seller or
11 the seller's employee."

12 SECTION 38. Section 30-49-3 NMSA 1978 (being Laws 1993,
13 Chapter 244, Section 3, as amended) is amended to read:

14 "30-49-3. TOBACCO PRODUCTS [~~E-CIGARETTES AND NICOTINE~~
15 ~~LIQUID CONTAINERS]~~--PROHIBITED SALES.--

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

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

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

25 ~~[D. No person shall sell or offer to sell any~~

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1 ~~nicotine liquid container at retail in this state unless such~~
2 ~~container is child-resistant; except that for the purpose of~~
3 ~~this subsection, "nicotine liquid container" does not include a~~
4 ~~cartridge that is pre-filled and sealed by the manufacturer and~~
5 ~~that is not intended to be opened by the consumer.~~

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

9 SECTION 39. Section 30-49-5 NMSA 1978 (being Laws 1993,
10 Chapter 244, Section 5, as amended) is amended to read:

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

18 SECTION 40. Section 30-49-6 NMSA 1978 (being Laws 1993,
19 Chapter 244, Section 6, as amended) is amended to read:

20 "30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--
21 [~~No~~] A minor shall not present any written, printed or
22 photostatic evidence of age or identity that is false for the
23 purpose of procuring or attempting to procure any tobacco
24 products [~~e-cigarettes or nicotine liquid containers]~~."

25 SECTION 41. Section 30-49-7 NMSA 1978 (being Laws 1993,

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1 Chapter 244, Section 7, as amended) is amended to read:

2 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF
3 TOBACCO PRODUCTS [~~E-CIGARETTES AND NICOTINE LIQUID~~
4 ~~CONTAINERS~~].--

5 A. Except as provided in Subsections B and C of
6 this section:

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

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

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

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

23 SECTION 42. Section 30-49-8 NMSA 1978 (being Laws 1993,
24 Chapter 244, Section 8, as amended) is amended to read:

25 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS [~~E-CIGARETTES~~

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1 ~~OR NICOTINE LIQUID CONTAINERS]~~ AS FREE SAMPLES PROHIBITED--
2 EXCEPTION.--

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

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

13 SECTION 43. Section 30-49-9 NMSA 1978 (being Laws 1993,
14 Chapter 244, Section 9, as amended) 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
19 tobacco products [~~e-cigarettes or nicotine liquid containers~~]
20 are sold and where a tobacco product [~~e-cigarette or nicotine~~
21 ~~liquid container~~] vending machine is located a printed sign or
22 decal 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 \$100.

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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
3 AGE IS SUBJECT TO A FINE OF UP TO \$1,000."

4 **SECTION 44.** Section 30-49-10 NMSA 1978 (being Laws 1993,
5 Chapter 244, Section 10, as amended) is amended to read:

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

15 **SECTION 45.** Section 30-49-11 NMSA 1978 (being Laws 1993,
16 Chapter 244, Section 11, as amended) is amended to read:

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

24 **SECTION 46.** Section 30-49-13 NMSA 1978 (being Laws 2015,
25 Chapter 98, Section 12) is amended to read:

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1 "30-49-13. APPLICABILITY.--The provisions of the Tobacco
2 Products [~~E-Cigarette and Nicotine Liquid Container~~] Act do not
3 apply to the lawful purchase or use by a minor of a tobacco-
4 cessation product approved by the federal food and drug
5 administration."

6 SECTION 47. APPROPRIATION.--One million dollars
7 (\$1,000,000) is appropriated from the general fund to the e-
8 cigarette and e-liquid administration fund for expenditure in
9 fiscal year 2021 and subsequent fiscal years to administer the
10 provisions of the E-Cigarette and E-Liquid Act. Any unexpended
11 or unencumbered balance remaining at the end of a fiscal year
12 shall not revert to the general fund.

13 SECTION 48. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2020.