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SENATE BILL 232

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

John C. Ryan

AN ACT

RELATING TO PUBLIC HEALTH; PROHIBITING THE USE OR POSSESSION OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS AND VAPOR DEVICES BY MINORS IN CERTAIN SETTINGS; PROHIBITING THE SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS AND VAPOR DEVICES TO MINORS.

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

SECTION 1. A new section of the Dee Johnson Clean Indoor Air Act is enacted to read:

"[NEW MATERIAL] USE OR POSSESSION OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS AND VAPOR DEVICES BY MINORS PROHIBITED.--

A. It is unlawful for a minor to use or possess tobacco products, alternative nicotine products or vapor devices:

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1 (1) on the grounds of a public, private or
2 charter school where children attend classes in kindergarten
3 programs or grades one through twelve;

4 (2) on the premises of a preschool or daycare
5 facility;

6 (3) in school buses or other school vehicles;
7 and

8 (4) at any off-campus school-sponsored or
9 school-sanctioned event.

10 B. For purposes of this section:

11 (1) "alternative nicotine product" means a
12 noncombustible product derived from tobacco containing nicotine
13 and intended for human consumption, whether chewed, absorbed,
14 dissolved, ingested or consumed by any other means;

15 (2) "grounds" means buildings, parking lots,
16 playing fields or playgrounds that comprise school premises;

17 (3) "tobacco product" means a product
18 containing tobacco and intended for human consumption; and

19 (4) "vapor device" means a device, such as an
20 electronic cigarette, that employs a mechanical heating
21 element, battery or electronic circuit, regardless of shape or
22 size, that can be used to heat a liquid nicotine solution
23 contained in a vapor cartridge.

24 C. The provisions of this section do not apply to a
25 drug or device specifically approved by the federal food and

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1 drug administration for sale as a tobacco-use cessation product
2 or medical product and approved for use by minors."

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

5 "30-49-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 49
6 NMSA 1978 may be cited as the "Tobacco Products, Alternative
7 Nicotine Products and Vapor Devices Act."

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

10 "30-49-2. ~~[DEFINITION]~~ DEFINITIONS.--As used in the
11 Tobacco Products, Alternative Nicotine Products and Vapor
12 Devices Act:

13 A. "alternative nicotine product" means a
14 noncombustible product derived from tobacco containing nicotine
15 and intended for human consumption, whether chewed, absorbed,
16 dissolved, ingested or consumed by any other means;

17 B. "minor" means an individual who is less than
18 eighteen years of age;

19 C. "tobacco product" means a product containing
20 tobacco and intended for human consumption; and

21 D. "vapor device" means a device, such as an
22 electronic cigarette, that employs a mechanical heating
23 element, battery or electronic circuit, regardless of shape or
24 size, that can be used to heat a liquid nicotine solution
25 contained in a vapor cartridge."

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

3 "30-49-3. TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS
4 OR VAPOR DEVICES--PROHIBITED SALES.--

5 A. No person shall knowingly sell, offer to sell,
6 barter or give [~~any~~] a tobacco product, alternative nicotine
7 product or vapor device to [~~any~~] a minor.

8 B. No minor shall procure or attempt to procure any
9 tobacco products, alternative nicotine products or vapor
10 devices for [~~his~~] the minor's own use or for use by [~~any other~~]
11 another minor.

12 C. No person shall sell, offer to sell or deliver a
13 tobacco product, alternative nicotine product or vapor device
14 in a form other than an original factory-sealed package."

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

17 "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS, ALTERNATIVE
18 NICOTINE PRODUCTS AND VAPOR DEVICES TO PERSON UNABLE TO PRODUCE
19 IDENTITY CARD.--[~~Any~~] A person selling goods at retail or
20 wholesale may refuse to sell tobacco products, alternative
21 nicotine products or vapor devices to [~~any~~] a person who is
22 unable to produce an identity card as evidence that [~~he~~] the
23 person is eighteen years of age or over."

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

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1 "30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--
2 No minor shall present any written, printed or photostatic
3 evidence of age or identity that is false for the purpose of
4 procuring or attempting to procure any tobacco products,
5 alternative nicotine products or vapor devices."

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

8 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF
9 TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS AND VAPOR
10 DEVICES.--

11 A. Except as provided in Subsections B and C of
12 this section:

13 (1) a person shall not sell tobacco products,
14 alternative nicotine products or vapor devices at a retail
15 location in New Mexico by any means other than a direct, face-
16 to-face exchange between the customer and the seller or the
17 seller's employee; and

18 (2) a person selling goods at a retail
19 location in New Mexico shall not use a self-service display for
20 tobacco products, alternative nicotine products or vapor
21 devices. As used in this subsection, "self-service display"
22 means a display to which the public has access without the
23 assistance of the seller or the seller's employee.

24 B. Tobacco products, alternative nicotine products
25 or vapor devices may be sold by vending machines in the

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1 following locations only:

2 (1) in locations not held open to the public,
3 including controlled areas within factories, businesses and
4 offices;

5 (2) in locations in which the vending machine
6 is equipped with a remote-controlled lock-out device; or

7 (3) in age-controlled locations where minors
8 are not permitted unless accompanied by a parent or guardian.

9 C. The provisions of this section do not apply to
10 written, telephonic or electronic sales."

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

13 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS, ALTERNATIVE
14 NICOTINE PRODUCTS AND VAPOR DEVICES AS FREE SAMPLES
15 PROHIBITED--EXCEPTION.--

16 A. A person who sells, distributes, promotes or
17 advertises tobacco products, alternative nicotine products or
18 vapor devices shall not provide free samples of tobacco
19 products, alternative nicotine products or vapor devices to a
20 minor.

21 B. The provisions of Subsection A of this section
22 shall not apply to an individual who provides free samples of
23 tobacco products, alternative nicotine products or vapor
24 devices to a family member or to an acquaintance on private
25 property not held open to the public."

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

3 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,
4 corporation, partnership or other entity engaged in the sale at
5 retail of tobacco products, alternative nicotine products or
6 vapor devices shall prominently display in the place where
7 tobacco products, alternative nicotine products or vapor
8 devices are sold and where a tobacco product, alternative
9 nicotine product or vapor device vending machine is located a
10 printed sign or decal that reads as follows:

11 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A
12 TOBACCO PRODUCT, ALTERNATIVE NICOTINE PRODUCT OR VAPOR DEVICE
13 IS SUBJECT TO A FINE OF UP TO \$1,000.

14 A PERSON WHO SELLS A TOBACCO PRODUCT, ALTERNATIVE NICOTINE
15 PRODUCT OR VAPOR DEVICE TO A PERSON LESS THAN 18 YEARS OF AGE
16 IS SUBJECT TO A FINE OF UP TO \$1,000."."

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

19 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The
20 alcohol and gaming division of the regulation and licensing
21 department and the appropriate law enforcement authorities in
22 each county and municipality shall conduct random, unannounced
23 inspections of facilities where tobacco products, alternative
24 nicotine products or vapor devices are sold to ensure
25 compliance with the provisions of the Tobacco Products,

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1 Alternative Nicotine Products and Vapor Devices Act."

2 SECTION 11. Section 30-49-11 NMSA 1978 (being Laws 1993,
3 Chapter 244, Section 11) is amended to read:

4 "30-49-11. PREEMPTION.--When a municipality or county
5 adopts an ordinance or a regulation pertaining to sales of
6 tobacco products, alternative nicotine products or vapor
7 devices, the ordinance or regulation shall be consistent with
8 the provisions of the Tobacco Products, Alternative Nicotine
9 Products and Vapor Devices Act."

10 SECTION 12. A new section of the Tobacco Products,
11 Alternative Nicotine Products and Vapor Devices Act is enacted
12 to read:

13 "[NEW MATERIAL] APPLICABILITY.--The provisions of the
14 Tobacco Products, Alternative Nicotine Products and Vapor
15 Devices Act do not apply to a drug or device specifically
16 approved by the federal food and drug administration for sale
17 as a tobacco-use cessation product or medical product and
18 approved for use by minors."