

Vanessa Alarid, Vapor Technology Association

Senators Munoz and Ramos, and Representative Ruiloba

Section 1 – Defines the E-cigarette and nicotine liquid act

Section 2 – Defines: child-resistant packaging, delivery sale, delivery service, department (RLD), distributor, e-cigarette, electronic nicotine delivery system, flavoring, knowingly attractive to minors, licensee, manufacturer, minor, nicotine liquid, person, retailer, and self-service display.

Section 3 – License issuance

1. Manufacturer – license shall not exceed 5 years, Expires June 30th
2. Distributor – license shall not exceed 1 year, expires June 30th
3. sale of e-cigarettes or nicotine liquid
4. Shall not renew license if
 - a. the license has been revoked in the past two years.
 - b. Applicant convicted of a felony
 - c. The location is within 300 feet of church, religious building or school – before July 1, 2019 grandfathered
 - d. Proposed license violated zoning or ordinance governing body

Section 4 – Manufacturer License requirements, applications and renewal requirements and fees-

1. Manufacturer must have license with in NM issued by RLD
2. RLD form and documentation for renewal
3. Criminal background check for applicant, including all persons listed on the application
4. **Adherence to FDA rules and regulations for ingredient listing – makes it illegal to sell underground black market products such at THC/Vitamin E Acetate – causing illness, today**
5. Non-refundable license fee of \$1,000, as prorated

Section 5 – Distributor license requirements

1. Name and contact info of applicant
2. Business location
3. Criminal background check for applicant
4. Non-refundable license fee of \$500

Section 6 – Retailer license requirements; application and renewal requirements; fees

1. Everything above and non-refundable fee of \$150 for first retailer location
2. \$10 for each subsequent location

Section 7 – License application information

1. Any information changes from original application must be submitted to RLD, for a renewal change.
2. Notification within 10 business days
3. If a change in information violates the act, RLD may impose an administrative penalty
4. How licenses are issued and denied

Section 8 – Proration of Fees p 11

1. Except for the retailer license fee, licenses issued after June 30th will be prorated
2. License issued in first quarter subject to 25% of fee

Section 9 – Issuance of Licenses- reason for denial p 12

1. RLD may grand or deny within 60 days
2. Shall approve if application meets criteria
3. If renewal denied – RLD must state reason for decision
4. May reapply within 30 days, fee waived

Section 10 – License transfer and notice of changes

License shall not be transferred

- a. To a person other than the applicant
- b. From the location where the license was approved or renewed, unless approved
 - i. To transfer from one location to another, application with RLD
 - ii. Shall allow unless failed compliance

Section 11 – Display of License page 13

Manufactured, distributed, or sold (per act) must be displayed by original (unless waiting for the original).

Section 12 – E-Cigarette and Nicotine Administrative Fund page 13

- a. Fund created in the state treasury for the department for administration for the act
- b. Consists of fees and administrative penalties, appropriations, gifts, grants and donations
- c. Fund shall not revert to any other fund at end of fiscal year
- d. Distribution of funds made by warrant by Sec of DFA, by vouchers signed by Supt of RLD, or authorized person

Section 13 – The Department will retain fees and penalties p. 14

Monies collected shall be deposited in the administrative fund

Section 14 – Hearing Procedure p 14

1. Denial, suspension or revocation of a license, denial of transfer or imposition of fee- Licensee entitled to a hearing
2. Uniform licensing act
3. Subpoenas shall be issued and enforced per the Act, section 32

Section 15 – Use of Flavoring in Nicotine Liquid p. 14 – President Trump and Big tobacco

1. Licensed manufacturer may use flavoring
2. Licensed distributor or realtor may sell flavored nicotine liquid

Section 16 Prohibited Sales – manufacturing, labeling, marketing and safety requirement p 14

1. Person shall not knowingly sell offer, to or barter or give e-cigarette or nicotine liquid to a minor
2. Minor shall not procure, attempt to procure or possess and e-cigarette or nicotine liquid for the minor's own use or for use by another minor
3. Manufacturer, retailer, or distributor may not sell or offer to sell unless it is child resistant
4. Manufacturer shall not produce or retailer sell and product knowingly attractive to minors
5. It is not a defense to any of the acts that the person to whom the e-cigarette or nicotine liquid is sold or distributed did not use the e-cigarette or inhale or otherwise consume the nicotine liquid
6. An employer ahs not permit an employee who is a minor to sell e-cigarettes or nicotine liquid.

Section 17 - Documentary evidence of age and identity defense p 15

1. Retailer or employee of a retailer shall not knowingly, intentionally or negligently fail to verify the age of a consumer
2. Evidence of age and identity of person attempting to procure, in person shall be shown by a document that contains a picture of that person, issued by fed, state county, municipality, foreign gov't, including driver's license and ID card.
3. Sales through delivery method: age verification shall be completed through
 - a. Independent third-party age verification service
 1. Established legal age
 2. Comparing information available from public records to personal info
 3. Entered by the consumer during the consumer while ordering
4. Defenses for retailer or distributor accused of selling/distributing to a minor
 - a. Produced appropriate identification stating consumer was of legal age
 - b. Delivery system sales – age verification completed in accordance with subsection indicating legal age.

Section 18 - Presenting false evidence of age or identity p 17

Minor shall not present written, printed, photostatic evidence of age or identity that is false for the purpose of or attempting to procure

Section 19 – Vending Machines – restrictions p 17

1. Except for sub section B and C – retailer selling goods at a retail location shall not use a self-service display for e-cigarettes or nicotine liquid
2. Product may be sold by vending machine only in age-controlled location where minors are not permitted
3. Provisions do not apply to delivery sales that are in accordance with the act

Section 20 – Distribution of E-Cigarettes or nicotine liquid as free samples prohibited p 17

Section 21 - Sign, point of sale 17

1. Retailer – prominently display near sale of e-cigarette or nicotine liquid is sold and where vending machine is located a sign that reads:
 - a. A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASE AN E-CIGARETTE OR NICOTINE LIQUID IS SUBJECT TO A FINE OF UP TO \$100
 - b. A PERSON WHO SELLS AN E-CIGARETTE OR NICOTINE LIQUID TO A PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO \$1000

Section 22 Delivery Sales p18

1. Before the shipment of product, retailer must
 - a. Receive full payment and shall accept payment from consumer by
 - i. Check drawn on an account in the person's name
 - ii. Debit card issued in the consumer name
 - b. Retailer may ship product onto to a consumer whose age verification has been verified
 - c. Retailer may request the e-mail address of the consumer

Section 23 Criminal Penalties p 18

A person who violates a provision of Subsection A, C, D or F or Sections 16 or sections 19-21 of this act is guilty of a misdemeanor and shall be sentenced pursuant to the provision of Section 31-19-1, each violation is a separate and distinct act.

Section 24 Criminal Penalties – Unlicensed Activity p19

A person who manufactures, distributes, or sells product without a license required by the Act is guilty of a misdemeanor and shall be sentenced in accordance with provisions of Section 31-19-1 NMSA 1978

Section 25 Criminal Penalty- Possession by a minor p19

1. A minor who procures, attempts to procure or possess product in violation of Section 16 of Act or who violates Section 18 of Act is guilty of a petty misdemeanor and shall be punished by a fine not to exceed \$100 or 48 hours of community service

Section 26 Manufacturers, distributors and retailers – violations, license suspensions or revocation p 19

1. Dept. shall suspend or revoke license of a licensee or impose administrative penalty against licensee in the amount not more than \$10,000, or both
2. If the Dept finds licensee or employee of the licensee or contractor acting on behalf of the licensee has violated the provisions of the Act, provided that a violation the provisions of Section 16 or 17 shall be solely subject to the provisions of Sect 27

Section 27 - Administrative Penalties sale to minors or failure to verify age p 20

1. dept imposition of the following penalties against retailer, employee or contractor if offer to sell barter or gives product to a minor and fails to verify age of consumer in violation of Sect 16 or 17
 - a. first violation fine no greater than \$250
 - b. second violation at same location within 24 months fine not greater than \$2500
 - c. third violation at same location within 24 months \$5,000
 - d. fourth violation at same location within 24 months retailers license issued for that location shall be permanently revoked

Section 28 Monitored Compliance Inspections p 21

Department of Public Safety (DPS) and appropriate law enforcement authorities in each county and municipality shall:

1. conduct radon unannounced inspections of facilities where product is sold to ensure compliance

Section 29 Authority of Department of Public Safety p 21

DPS has authority over all investigations and enforcement activities required under Act,

1. except for provisions relating to the issuance, denial, suspension or revocation of licenses,
2. unless assistance is required

Section 30 Local law enforcement DPS Safety, reporting requirements and authority to request investigation p 21

1. within 30 days following date of citation- DPS or local law enforcement shall report alleged violations of the act to RLD
2. the Supt., of RLD may request the investigation of DPS to investigate licensees or activities the Supt believes violated Act.

Section 31 Authority of the Department p 22

1. Dept has authority over all matters relating to the insurance, denials, suspension revocation or transfer or licenses under the Act.

2. The Supt RLD may request DPS to provide investigatory enforcement support

Section 32 Administrative Authority and Powers p22

1. Supt of RLD is authorized to examine and require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require that person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings
2. Supt of RLD with counsel, is vested with the power to issue subpoenas, in no case shall they be made returnable less than 5 days from date of service
3. Subpoena issued by legal counsel for RLD Dept. shall state with reasonable certainty
 - a. the nature of the evidence required to be produced
 - b. The time and place of hearing
 - c. Nature of the inquire or investigation and
 - d. Consequences of failure to obey the subpoena
 - e. Shall bear the seal of the Dept and attested by the Supt of RLD
4. After services of subpoena upon a person
 - a. If person neglects or refused to appear or produce records or other evidence or neglects or refused testimony, as required
 - i. Supt of RLD may invoke the aid of the District courts in the enforcement
 - ii. Where appropriate the court shall issue its order requiring the person to appear and testify or produce the books or records
 - iii. May punish the person for contempt
5. RLD shall require criminal history background checks to be conducted by DPS for purposes of administrating the licensing provisions of the Act
 - a. For criminal history background, RLD shall require fingerprinting for licensee required by Act
 - b. Fingerprint cards shall be submitted by RLD to DPS for processing through FBI
 - c. Supt RLD shall establish procedures within the RLD dept to maintain confidentiality of information received by DPS and FBI investigations

Section 33 Administrative Rules and Orders – Presumption of Correctness p 24

1. Supt of RLD shall issue and file, as required by law all rules and orders necessary to administer the licensing provisions of the Act
2. Directives issued by the Supt RLD shall for substantially as follows
 - a. Rules are written statement of Supt, of general application to licensees, interpreting and exemplifying the statutes to which the rules relate
 - b. Rulings are written statemen of the Supt interpreting the statute to which the rules relate and are of limited application to one or a small number of licensees
 - c. Orders are written statements of the Supt to implement the Supt's decision after a hearing
3. To be effective
4. A rule must first be issued as proposed and filed for public inspection
 - a. Distribution of the rule shall be made to interested person and their comments invited
 - b. After the proposed rule has been filed for 30 days and public hearing has been held, Supt my issue the rule as a final rule by filing as required by law
5. Supt of RLD shall furnish a copy of the rules to al licensees and other interested person at a nominal cost
6. A rule or order issued by Supt is presumed to be a proper implementation of the licensing provisions of the Act
7. All rules are applied prospectively, only

Section 34 Preemption p 25

When Municipality, county, including home rule municipality or urban county, adopts an ordinance or a regulation pertaining to the sale of produce , the ordinance or regulation shall be consistent with the provision of the Act

Section 35 Applicability p 26

The provision of the Act do not apply to the lawful purchase of use of a minor for tobacco-cessation product approved by the FDA

Section 36 Section p 26

30-49-1 NMSA amended to read

Short title – Chapter 30, Article 49 NMSA may be cited as the “Tobacco Products Act”

Section 37 -46 p 26-32

Removal of e-cigarettes and nicotine liquid containers from the Tobacco Products Act

Section 47 pa 32

Appropriation of \$250,000 from the GF to the Act for subsequent years of enactment of Act

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 450

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

DISCUSSION DRAFT

AN ACT

RELATING TO NICOTINE LIQUID; ENACTING THE E-CIGARETTE AND
NICOTINE LIQUID ACT; PROVIDING LICENSURE REQUIREMENTS FOR E-
CIGARETTE AND NICOTINE 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-CIGARETTE AND
NICOTINE 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
2 Nicotine Liquid Act".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the E-
4 Cigarette and Nicotine 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 nicotine 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 nicotine liquid is
19 shipped 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 nicotine liquid in New Mexico, but does not
5 include:

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

13 G. "e-cigarette":

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

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

23 (3) does not include any product regulated as
24 a drug or device by the United States food and drug
25 administration under the Federal Food, Drug, and Cosmetic Act,

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1 21 U.S.C. Section 301 et seq.;

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

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

10 J. "knowingly attractive to minors" means packaging
11 or labeling that contains:

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

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

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

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

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

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1 M. "minor" means an individual who is younger than
2 eighteen years of age;

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

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

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

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

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

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

24 B. The department shall issue or renew a:

- 25 (1) license for the manufacture of e-

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1 cigarettes or nicotine liquid for a term not to exceed five
2 years, with an expiration of June 30 of a calendar year; and

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

7 C. A license shall not be granted, maintained,
8 transferred or renewed pursuant to the E-Cigarette and Nicotine
9 Liquid 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 applicant has been convicted of a
14 felony;

15 (3) the location for the license or license
16 transfer is within three hundred feet of a church or other
17 religious building or a school; provided that this restriction
18 does not apply to a location at which e-cigarettes or nicotine
19 liquid is lawfully manufactured, distributed or sold prior to
20 July 1, 2019; or

21 (4) the location for the license would result
22 in a violation of a zoning or other ordinance of a governing
23 body in which the proposed location would exist.

24 SECTION 4. [NEW MATERIAL] MANUFACTURER LICENSE
25 REQUIREMENTS--APPLICATION AND RENEWAL REQUIREMENTS--FEES.--

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1 A. A person shall not manufacture e-cigarettes or
2 nicotine liquid at any location in the state without a
3 manufacturer license issued by the department to that person or
4 that person's employer for that location.

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

8 (1) the name, telephone number, mailing
9 address and email address of the applicant and:

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

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

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

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

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

24 (5) documentation that the applicant will
25 submit the applicable ingredient listing to the federal

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1 secretary of health and human services as required pursuant to
2 21 USCA Section 387d(a) (1); and

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

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

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

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

16 (1) the name, telephone number, mailing
17 address and email address of 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 its registered agent;

23 (2) the address of the applicant's principal
24 place of business and every location from which the applicant
25 distributes e-cigarettes or nicotine liquid;

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

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

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

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

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

16 (1) the name, telephone number, mailing
17 address and email address of 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 its registered agent;

23 (2) the address of the applicant's principal
24 place of business and every location where the applicant sells
25 e-cigarettes or nicotine liquid at retail;

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

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

10 SECTION 7. [NEW MATERIAL] LICENSE APPLICATION INFORMATION
11 CHANGES.--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 8. [NEW MATERIAL] PRORATION OF FEES.--

20 A. Except for retailer license fees of ten dollars
21 (\$10.00), license fees for licenses issued or renewed after
22 June 30 of a calendar year shall be prorated.

23 B. Each manufacturer license fee shall be prorated
24 as follows:

25 (1) a license issued in the first quarter of

1 the first year of a license term beginning on July 1 shall be
2 subject to the full amount of the license fee;

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

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

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

12 C. Each distributor and retailer license fee shall
13 be prorated as follows:

14 (1) a license issued in the first quarter of a
15 license term beginning on July 1 shall be subject to the full
16 amount of the license fee;

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

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

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

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1 SECTION 9. ~~[NEW MATERIAL]~~ ISSUANCE OF LICENSES--REASONS
2 FOR DENIAL.--

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

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

16 SECTION 10. ~~[NEW MATERIAL]~~ LICENSE TRANSFER--NOTICE OF
17 CHANGES.--

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

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

24 B. To transfer a license from one location to
25 another, the licensee shall file an application for the

1 proposed transfer. The department shall allow the transfer
 2 unless any of the conditions provided in Subsection C of
 3 Section 3 of the E-Cigarette and Nicotine Liquid Act exist.

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

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

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1 administration pursuant to vouchers signed by the
2 superintendent of regulation and licensing or the
3 superintendent's authorized representative.

4 SECTION 13. [NEW MATERIAL] FEES AND ADMINISTRATIVE
5 PENALTIES RETAINED BY THE DEPARTMENT.--Application fees and
6 administrative penalties collected by the department pursuant
7 to the E-Cigarette and Nicotine Liquid Act shall be deposited
8 into the e-cigarette and nicotine liquid administration fund.

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

17 SECTION 15. [NEW MATERIAL] USE OF FLAVORING IN NICOTINE
18 LIQUID.--

19 A. A licensed manufacturer may use flavoring as an
20 ingredient in nicotine liquid.

21 B. A licensed distributor or licensed retailer may
22 sell nicotine liquid containing flavors.

23 SECTION 16. [NEW MATERIAL] PROHIBITED SALES--
24 MANUFACTURING--LABELING--MARKETING--SAFETY REQUIREMENTS.--

25 A. A person shall not knowingly sell, offer to

1 sell, barter or give an e-cigarette or nicotine liquid to a
2 minor.

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

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

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

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

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

19 SECTION 17. [NEW MATERIAL] DOCUMENTARY EVIDENCE OF AGE
20 AND IDENTITY--DEFENSE.--

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

24 B. Except as provided in Subsection C of this
25 section, evidence of the age and identity of a person

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1 attempting to procure an e-cigarette or nicotine liquid in
2 person shall be shown by a document that contains a picture of
3 that person and is issued by a federal, state, county,
4 municipal or foreign government, including a motor vehicle
5 driver's license or an identification card.

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

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

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

20 (2) for a sale made through a delivery sales
21 method, the retailer or distributor had an age verification
22 completed in accordance with Subsection C of this section
23 indicating that the consumer was of legal age to make the
24 purchase.

25 SECTION 18. [NEW MATERIAL] PRESENTING FALSE EVIDENCE OF

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1 AGE OR IDENTITY.--A minor shall not present any written,
2 printed or photostatic evidence of age or identity that is
3 false for the purpose of procuring or attempting to procure an
4 e-cigarette or nicotine liquid.

5 SECTION 19. [NEW MATERIAL] VENDING MACHINES--RESTRICTIONS
6 ON SALES OF E-CIGARETTES AND NICOTINE LIQUID.--

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

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

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

17 SECTION 20. [NEW MATERIAL] DISTRIBUTION OF E-CIGARETTES
18 OR NICOTINE LIQUID AS FREE SAMPLES PROHIBITED.--A person shall
19 not provide free samples of e-cigarettes or nicotine liquid to
20 a minor.

21 SECTION 21. [NEW MATERIAL] SIGNS--POINT OF SALE.--A
22 retailer shall prominently display in the place where e-
23 cigarettes or nicotine liquid is sold and where an e-cigarette
24 or nicotine liquid vending machine is located a printed sign or
25 decal that reads as follows:

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1 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES AN E-
2 CIGARETTE OR NICOTINE LIQUID IS SUBJECT TO A FINE OF UP TO
3 \$100.

4 A PERSON WHO SELLS AN E-CIGARETTE OR NICOTINE LIQUID TO A
5 PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO
6 \$1,000."

7 SECTION 22. [NEW MATERIAL] DELIVERY SALES.--

8 A. Before a retailer ships e-cigarettes or nicotine
9 liquid for a delivery sale, the retailer must receive full
10 payment for the purchase and shall accept payment from the
11 consumer by a:

- 12 (1) check drawn on an account in the
13 consumer's name;
14 (2) credit card issued in the consumer's name;
15 or
16 (3) debit card issued in the consumer's name.

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

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

22 SECTION 23. [NEW MATERIAL] CRIMINAL PENALTIES.--A person
23 who violates a provision of Subsection A, C, D or F of Section
24 16 or Sections 19 through 21 of the E-Cigarette and Nicotine
25 Liquid Act is guilty of a misdemeanor and shall be sentenced

1 pursuant to the provisions of Section 31-19-1 NMSA 1978. Each
2 violation is a separate and distinct offense.

3 SECTION 24. [NEW MATERIAL] CRIMINAL PENALTIES--UNLICENSED
4 ACTIVITIES.--A person who manufactures, distributes or sells e-
5 cigarettes or nicotine liquid without a license required
6 pursuant to the E-Cigarette and Nicotine Liquid Act is guilty
7 of a misdemeanor and shall be sentenced in accordance with the
8 provisions of Section 31-19-1 NMSA 1978.

9 SECTION 25. [NEW MATERIAL] CRIMINAL PENALTY--POSSESSION
10 OR PROCUREMENT OF AN E-CIGARETTE OR NICOTINE LIQUID BY MINOR.--
11 A minor who procures, attempts to procure or possesses an e-
12 cigarette or nicotine liquid in violation of Section 16 of the
13 E-Cigarette and Nicotine Liquid Act or who violates Section 18
14 of the E-Cigarette and Nicotine Liquid Act is guilty of a petty
15 misdemeanor and shall be punished by a fine not to exceed one
16 hundred dollars (\$100) or forty-eight hours of community
17 service.

18 SECTION 26. [NEW MATERIAL] MANUFACTURERS, DISTRIBUTORS
19 AND RETAILERS--VIOLATIONS--LICENSE SUSPENSION OR REVOCATION--
20 ADMINISTRATIVE PENALTIES.--The department may suspend or revoke
21 a license of a licensee or impose an administrative penalty
22 against a licensee in an amount not more than ten thousand
23 dollars (\$10,000), or both, if the department finds that the
24 licensee, an employee of the licensee or a contractor acting on
25 behalf of the licensee has violated a provision of the E-

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1 Cigarette and Nicotine Liquid Act; provided that a violation of
2 the provisions of Section 16 or 17 of the E-Cigarette and
3 Nicotine Liquid Act shall be solely subject to the provisions
4 of Section 27 of that act.

5 SECTION 27. [NEW MATERIAL] ADMINISTRATIVE PENALTIES--SALE
6 TO MINORS OR FAILURE TO VERIFY AGE.--The department shall
7 impose the following administrative penalties against a
8 retailer if the retailer, an employee of the retailer or
9 contractor acting on behalf of the retailer sells, offers to
10 sell, barter or gives an e-cigarette or nicotine liquid to a
11 minor or fails to verify the age of a consumer in violation of
12 the provisions of Section 16 or 17 of the E-Cigarette and
13 Nicotine Liquid Act:

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

17 B. for a second violation occurring at the same
18 location within twenty-four months of the first violation, a
19 fine no greater than two thousand five hundred dollars
20 (\$2,500);

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

24 D. for a fourth violation occurring at the same
25 location within twenty-four months of the first violation, the

1 retailer's license issued for that location shall be
 2 permanently revoked.

3 SECTION 28. [NEW MATERIAL] MONITORED COMPLIANCE--
 4 INSPECTIONS.--The department of public safety and the
 5 appropriate law enforcement authorities in each county and
 6 municipality shall conduct random, unannounced inspections of
 7 facilities where e-cigarettes or nicotine liquid is sold to
 8 ensure compliance with the provisions of the E-Cigarette and
 9 Nicotine Liquid Act.

10 SECTION 29. [NEW MATERIAL] AUTHORITY OF DEPARTMENT OF
 11 PUBLIC SAFETY.--The department of public safety has authority
 12 over all investigations and enforcement activities required
 13 under the E-Cigarette and Nicotine Liquid Act except for those
 14 provisions relating to the issuance, denial, suspension or
 15 revocation of licenses, unless its assistance is requested by
 16 the superintendent of regulation and licensing.

17 SECTION 30. [NEW MATERIAL] LOCAL LAW ENFORCEMENT--
 18 DEPARTMENT OF PUBLIC SAFETY--REPORTING REQUIREMENTS--AUTHORITY
 19 TO REQUEST INVESTIGATIONS.--

20 A. Within thirty days following the date of
 21 issuance of a citation pursuant to the provisions of the E-
 22 Cigarette and Nicotine Liquid Act, the department of public
 23 safety or the law enforcement agency of a municipality or
 24 county shall report alleged violations of that act to the
 25 regulation and licensing department.

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1 B. The superintendent of regulation and licensing
2 may request the investigators of the department of public
3 safety to investigate licensees or activities that the
4 superintendent has reasonable cause to believe are in violation
5 of the E-Cigarette and Nicotine Liquid Act.

6 SECTION 31. [NEW MATERIAL] AUTHORITY OF THE DEPARTMENT.--

7 The department has the authority over all matters relating to
8 the issuance, denial, suspension, revocation or transfer of
9 licenses under the E-Cigarette and Nicotine Liquid Act. The
10 superintendent of regulation and licensing may request the
11 department of public safety to provide investigatory and
12 enforcement support as deemed necessary.

13 SECTION 32. [NEW MATERIAL] ADMINISTRATIVE AUTHORITY AND
14 POWERS.--

15 A. For the purpose of administering the licensing
16 provisions of the E-Cigarette and Nicotine Liquid Act, the
17 superintendent of regulation and licensing is authorized to
18 examine and to require the production of any pertinent records,
19 books, information or evidence, to require the presence of any
20 person and to require that person to testify under oath
21 concerning the subject matter of the inquiry and to make a
22 permanent record of the proceedings.

23 B. The superintendent of regulation and licensing,
24 through the legal counsel for the department, is vested with
25 the power to issue subpoenas. In no case shall a subpoena be

1 made returnable less than five days from the date of service.

2 C. A subpoena issued by the legal counsel for the
3 department shall state with reasonable certainty the nature of
4 the evidence required to be produced, the time and place of the
5 hearing, the nature of the inquiry or investigation and the
6 consequences of failure to obey the subpoena and shall bear the
7 seal of the department and be attested to by the superintendent
8 of regulation and licensing.

9 D. After service of a subpoena upon a person, if a
10 person neglects or refuses to appear or produce records or
11 other evidence in response to the subpoena or neglects or
12 refuses to give testimony, as required, the superintendent of
13 regulation and licensing may invoke the aid of the district
14 courts in the enforcement of the subpoena. In appropriate
15 cases, the court shall issue its order requiring the person to
16 appear and testify or produce the books or records and may,
17 upon failure of the person to comply with the order, punish the
18 person for contempt.

19 E. The regulation and licensing department shall
20 require criminal history background checks to be conducted by
21 the department of public safety for purposes of administering
22 the licensing provisions of the E-Cigarette and Nicotine Liquid
23 Act. For purposes of conducting the criminal history
24 background check, the regulation and licensing department shall
25 require the fingerprinting of applicants for licenses as

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1 required by the E-Cigarette and Nicotine Liquid Act.
2 Fingerprint cards shall be submitted by the regulation and
3 licensing department to the department of public safety records
4 bureau for processing through the federal bureau of
5 investigation. The superintendent shall establish procedures
6 within the regulation and licensing department to maintain the
7 confidentiality of information received from the department of
8 public safety and the federal bureau of investigation.

9 SECTION 33. [NEW MATERIAL] ADMINISTRATIVE RULES AND
10 ORDERS--PRESUMPTION OF CORRECTNESS.--

11 A. The superintendent of regulation and licensing
12 shall issue and file as required by law all rules and orders
13 necessary to administer the licensing provisions of the E-
14 Cigarette and Nicotine Liquid Act.

15 B. Directives issued by the superintendent of
16 regulation and licensing shall be in a form substantially as
17 follows:

18 (1) rules are written statements of the
19 superintendent, of general application to licensees,
20 interpreting and exemplifying the statutes to which the rules
21 relate;

22 (2) rulings are written statements of the
23 superintendent interpreting the statutes to which the rulings
24 relate and are of limited application to one or a small number
25 of licensees; and

1 (3) orders are written statements of the
 2 superintendent to implement the superintendent's decision after
 3 a hearing.

4 C. To be effective, a rule shall first be issued as
 5 a proposed rule and filed for public inspection in the office
 6 of the superintendent of regulation and licensing.
 7 Distribution of the rule shall be made to interested persons
 8 and their comments shall be invited. After the proposed rule
 9 has been on file for thirty days and a public hearing has been
 10 held, the superintendent may issue the rule as a final rule by
 11 filing as required by law.

12 D. The superintendent of regulation and licensing
 13 shall furnish a copy of the rules to all licensees and other
 14 interested persons at a nominal cost.

15 E. A rule or order issued by the superintendent of
 16 regulation and licensing is presumed to be a proper
 17 implementation of the licensing provisions of the E-Cigarette
 18 and Nicotine Liquid Act.

19 F. All rules and orders shall be applied
 20 prospectively only.

21 SECTION 34. [NEW MATERIAL] PREEMPTION.--When a
 22 municipality or county, including a home rule municipality or
 23 urban county, adopts an ordinance or a regulation pertaining to
 24 sales of e-cigarettes or nicotine liquid, the ordinance or
 25 regulation shall be consistent with the provisions of the E-

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1 Cigarette and Nicotine Liquid Act.

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

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

8 "30-49-1. SHORT TITLE.--Chapter 30, Article 49 NMSA 1978
9 may be cited as the "Tobacco Products [~~E-Cigarette and Nicotine~~
10 ~~Liquid Container~~] Act".

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

13 "30-49-2. DEFINITIONS.--As used in the Tobacco Products
14 [~~E-Cigarette and Nicotine Liquid Container~~] Act:

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

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

24 ~~(1) means any electronic oral device, whether~~
25 ~~composed of a heating element and battery or an electronic~~

1 circuit, that provides a vapor of nicotine or any other
 2 substances the use or inhalation of which simulates smoking;
 3 and

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

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

12 ~~C.]~~ A. "minor" means an individual who is less than
 13 eighteen years of age; and

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

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

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

23 "30-49-3. TOBACCO PRODUCTS [~~E-CIGARETTES AND NICOTINE~~
 24 ~~LIQUID CONTAINERS]~~--PROHIBITED SALES.--

25 A. No person shall knowingly sell, offer to sell,

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1 barter or give a tobacco product [~~an e-cigarette or a nicotine~~
2 ~~liquid container~~] to a minor.

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

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

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

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

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

20 "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS [~~E-CIGARETTES~~
21 ~~OR NICOTINE LIQUID CONTAINERS~~] TO PERSON UNABLE TO PRODUCE
22 IDENTITY CARD.--A person selling goods at retail or wholesale
23 may refuse to sell tobacco products [~~e-cigarettes or nicotine~~
24 ~~liquid containers~~] to a person who is unable to produce an
25 identity card as evidence that the person is eighteen years of

1 age or over."

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

4 "30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--
5 [~~Ne~~] A minor shall not present any written, printed or
6 photostatic evidence of age or identity that is false for the
7 purpose of procuring or attempting to procure any tobacco
8 products [~~e-cigarettes or nicotine liquid containers~~]."

9 SECTION 41. Section 30-49-7 NMSA 1978 (being Laws 1993,
10 Chapter 244, Section 7, as amended) is amended to read:

11 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF
12 TOBACCO PRODUCTS [~~E-CIGARETTES AND NICOTINE LIQUID~~
13 ~~CONTAINERS~~].--

14 A. Except as provided in Subsections B and C of
15 this section:

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

21 (2) a person selling goods at a retail
22 location in New Mexico shall not use a self-service display for
23 tobacco products [~~e-cigarettes or nicotine liquid containers~~.
24 ~~As used in this subsection, "self-service display" means a~~
25 ~~display to which the public has access without the assistance~~

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1 ~~of the seller or the seller's employee]~~.

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

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

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

9 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS [~~E-CIGARETTES~~
10 ~~OR NICOTINE LIQUID CONTAINERS]~~ AS FREE SAMPLES PROHIBITED--
11 EXCEPTION.--

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

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

22 SECTION 43. Section 30-49-9 NMSA 1978 (being Laws 1993,
23 Chapter 244, Section 9, as amended) is amended to read:

24 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,
25 corporation, partnership or other entity engaged in the sale at

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1 retail of tobacco products [~~e-cigarettes or nicotine liquid~~
 2 ~~containers~~] shall prominently display in the place where
 3 tobacco products [~~e-cigarettes or nicotine liquid containers~~]
 4 are sold and where a tobacco product [~~e-cigarette or nicotine~~
 5 ~~liquid container~~] vending machine is located a printed sign or
 6 decal that reads as follows:

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

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

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

15 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The
 16 alcohol and gaming division of the regulation and licensing
 17 department and the appropriate law enforcement authorities in
 18 each county and municipality shall conduct random, unannounced
 19 inspections of facilities where tobacco products [~~e-cigarettes~~
 20 ~~or nicotine liquid containers~~] are sold to ensure compliance
 21 with the provisions of the Tobacco Products [~~E-Cigarette and~~
 22 ~~Nicotine Liquid Container~~] Act."

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

25 "30-49-11. PREEMPTION.--When a municipality or county,

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

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

9 "30-49-13. APPLICABILITY.--The provisions of the Tobacco
10 Products [~~E-Cigarette and Nicotine Liquid Container~~] Act do not
11 apply to the lawful purchase or use by a minor of a tobacco-
12 cessation product approved by the federal food and drug
13 administration."

14 SECTION 47. APPROPRIATION.--Two hundred fifty thousand
15 dollars (\$250,000) is appropriated from the general fund to the
16 e-cigarette and nicotine liquid administration fund for
17 expenditure in fiscal year 2020 and subsequent fiscal years to
18 administer the provisions of the E-Cigarette and Nicotine
19 Liquid Act. Any unexpended or unencumbered balance remaining
20 at the end of a fiscal year shall not revert to the general
21 fund.

22 SECTION 48. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2019.

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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;

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

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

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

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

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

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

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

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

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

(4) documentation that the applicant will submit the applicable ingredient listing to the federal 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~~

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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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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."

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