HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

ENDORSED BY THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE TOBACCO PRODUCTS ACT TO CHANGE THE TITLE OF THE ACT TO THE "TOBACCO PRODUCTS AND E-CIGARETTE ACT", TO PROHIBIT SALES OF E-CIGARETTES TO MINORS AND TO PROHIBIT THE ONLINE INTERNET SALE OF E-CIGARETTES TO A MINOR IN NEW MEXICO.

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

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

"30-49-1. SHORT TITLE.--[~~This act~~] Chapter 30, Article 49 NMSA 1978 may be cited as the "Tobacco Products and E-Cigarette Act"."

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

"30-49-2. [~~DEFINITION~~] DEFINITIONS.--As used in the

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

Tobacco Products and E-Cigarette Act:

A. "e-cigarette":

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

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

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

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

"30-49-3. TOBACCO AND E-CIGARETTE--PROHIBITED SALES.--

A. No person shall knowingly sell, offer to sell, barter or give [~~any~~] a tobacco product or an e-cigarette to [~~any~~] a minor.

B. No minor shall procure or attempt to procure any tobacco products or e-cigarette for [~~his~~] the minor's own use or for use by [~~any other~~] another minor.

C. No person shall sell, offer to sell or deliver a tobacco product or an e-cigarette in a form other than an original factory-sealed package."

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

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

"30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS OR E-CIGARETTES TO PERSON UNABLE TO PRODUCE IDENTITY CARD.--[~~Any~~] A person selling goods at retail or wholesale may refuse to sell tobacco products or e-cigarettes to [~~any~~] a person who is unable to produce an identity card as evidence that [~~he~~] the person is eighteen years of age or over."

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

"30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--No minor shall present any written, printed or photostatic evidence of age or identity that is false for the purpose of procuring or attempting to procure any tobacco products or e-cigarettes."

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

"30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF TOBACCO PRODUCTS AND E-CIGARETTES.--

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

(1) a person shall not sell tobacco products or e-cigarettes at a retail location in New Mexico by any means other than a direct, face-to-face exchange between the customer and the seller or the seller's employee; and

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

(2) a person selling goods at a retail location in New Mexico shall not use a self-service display for tobacco products or e-cigarettes. As used in this subsection, "self-service display" means a display to which the public has access without the assistance of the seller or the seller's employee.

B. Tobacco products or e-cigarettes may be sold by vending machines in the following locations only:

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

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

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

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

D. The online internet sale of e-cigarettes to a minor in New Mexico is prohibited."

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

"30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS OR E-CIGARETTES AS FREE SAMPLES PROHIBITED--EXCEPTION.--

A. A person who sells, distributes, promotes or advertises tobacco products or e-cigarettes shall not provide

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

free samples of tobacco products or e-cigarettes to a minor.

B. The provisions of Subsection A of this section shall not apply to an individual who provides free samples of tobacco products to a family member or to an acquaintance on private property not held open to the public."

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

"30-49-9. SIGNS--POINT OF SALE.--A person, firm, corporation, partnership or other entity engaged in the sale at retail of tobacco products or e-cigarettes shall prominently display in the place where tobacco products or e-cigarettes are sold and where a tobacco product or e-cigarette vending machine is located a printed sign or decal that reads as follows:

"A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A TOBACCO PRODUCT OR E-CIGARETTE IS SUBJECT TO A FINE OF UP TO $1,000.

A PERSON WHO SELLS A TOBACCO PRODUCT OR E-CIGARETTE TO A PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO $1,000.""

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

"30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The alcohol and gaming division of the regulation and licensing department and the appropriate law enforcement authorities in each county and municipality shall conduct random, unannounced

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

inspections of facilities where tobacco products or e-cigarettes are sold to ensure compliance with the provisions of the Tobacco Products and E-Cigarette Act."

SECTION 10. Section 30-49-11 NMSA 1978 (being Laws 1993, Chapter 244, Section 11) is amended to read:

"30-49-11. PREEMPTION.--When a municipality or county adopts an ordinance or a regulation pertaining to sales of tobacco products or e-cigarettes, the ordinance or regulation shall be consistent with the provisions of the Tobacco Products and E-Cigarette Act."

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

"30-49-12. PENALTY.--

A. Any person who violates any provision of Subsection A of Section [~~3 or Sections 5, 7, 8 or 9 of the Tobacco Products Act~~] 30-49-3 NMSA 1978 or Section 30-49-7, 30-49-8 or 30-49-9 NMSA 1978 is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Each violation is a separate and distinct offense.

B. Any minor who violates any provision of Subsection B of Section [~~3 or Section 6 of the Tobacco Products Act~~] 30-49-3 NMSA 1978 or Section 30-49-6 NMSA 1978 shall be punished by a fine not to exceed one hundred dollars ($100) or forty-eight hours of community service."

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