

1 SENATE BILL 360

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Linda M. Lopez

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO TOBACCO PRODUCTS; PROHIBITING THE SALE OF  
12 ELECTRONIC NICOTINE DELIVERY DEVICES TO MINORS; PROVIDING AN  
13 EXCEPTION FOR PRODUCTS APPROVED AS TOBACCO CESSATION PRODUCTS;  
14 PROHIBITING THE DISTRIBUTION OF FREE SAMPLES OF ELECTRONIC  
15 NICOTINE DELIVERY DEVICES; PROVIDING PENALTIES.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "30-49-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 49  
21 NMSA 1978 may be cited as the "Tobacco Products Act"."

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

24 "30-49-2. ~~[DEFINITION]~~ DEFINITIONS.--As used in the  
25 Tobacco Products Act:

.199157.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1           A. "minor" means an individual who is less than  
2 eighteen years of age; and

3           B. "tobacco product":

4                 (1) means:

5                         (a) any product containing, made of or  
6 derived from tobacco or nicotine that is intended for human  
7 consumption, whether smoked, heated, chewed, absorbed,  
8 dissolved, inhaled, snorted, sniffed or ingested by any other  
9 means, including cigarettes, cigars, little cigars, chewing  
10 tobacco, pipe tobacco or snuff; or

11                         (b) any electronic device that delivers  
12 nicotine or other substances to the person inhaling from the  
13 device, including an electronic cigarette, cigar, pipe or  
14 hookah; and

15                         (2) includes any component, part or accessory  
16 of a tobacco product, whether or not sold separately, but does  
17 not include any product that has been approved by the United  
18 States food and drug administration for sale as a tobacco  
19 cessation product or for other therapeutic purposes where such  
20 product is marketed and sold solely for such an approved  
21 purpose."

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

24           "30-49-3. TOBACCO--PROHIBITED SALES.--

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

.199157.1

underscored material = new  
[bracketed material] = delete

1 barter or give [~~any~~] a tobacco product to [~~any~~] a minor.

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

5 C. No person shall sell, offer to sell or deliver a  
6 tobacco product in a form other than [~~an~~] its original factory-  
7 sealed package."

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

10 "30-49-4. DOCUMENTARY EVIDENCE OF AGE AND IDENTITY.--  
11 Evidence of the age and identity of the person may be shown by  
12 any document that contains a picture of the person issued by a  
13 federal, state, county [~~or~~], municipal or tribal government,  
14 including a motor vehicle driver's license or an identification  
15 card issued to a member of the armed forces."

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

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

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

.199157.1

underscored material = new  
[bracketed material] = delete

1 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF  
2 TOBACCO PRODUCTS.--

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

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

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

14 B. Tobacco products may be sold by vending machines  
15 [~~in the following locations~~] only [~~(1) in locations not held~~  
16 ~~open to the public, including controlled areas within~~  
17 ~~factories, businesses and offices;~~

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

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

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

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

.199157.1

underscored material = new  
[bracketed material] = delete

1 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS AS FREE  
2 SAMPLES PROHIBITED--EXCEPTION.--

3 A. A person [~~who sells, distributes, promotes or~~  
4 ~~advertises tobacco products~~] shall not provide free samples of  
5 tobacco products to a minor.

6 B. The provisions of Subsection A of this section  
7 shall not apply to an individual who provides free samples of  
8 tobacco products [~~to a family member or to an acquaintance on~~  
9 ~~private property not held open to the public~~] in connection  
10 with the practice of cultural or ceremonial activities by  
11 Native Americans in accordance with the federal American Indian  
12 Religious Freedom Act, 42 U.S.C. 1996 and 1996a."

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

15 "30-49-9. SIGNS--POINT OF SALE.--A person [~~firm,~~  
16 ~~corporation, partnership or other entity~~] engaged in the sale  
17 at retail of tobacco products shall prominently display in the  
18 place where tobacco products are sold and where a tobacco  
19 product vending machine is located a printed sign or decal that  
20 reads as follows:

21 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A  
22 TOBACCO PRODUCT, INCLUDING AN ELECTRONIC SMOKING DEVICE, IS  
23 SUBJECT TO A FINE OF UP TO [~~\$1,000~~] \$100.

24 A PERSON WHO SELLS A TOBACCO PRODUCT, INCLUDING AN  
25 ELECTRONIC SMOKING DEVICE, TO A PERSON LESS THAN 18 YEARS OF

.199157.1

underscored material = new  
[bracketed material] = delete

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

2 SECTION 9. Section 30-49-11 NMSA 1978 (being Laws 1993,  
3 Chapter 244, Section 11) is amended to read:

4 "30-49-11. ~~[PREEMPTION]~~ EXPLICIT NONPREEMPTION.--~~[When a~~  
5 ~~municipality or county adopts an ordinance or a regulation~~  
6 ~~pertaining to sales of tobacco products, the ordinance or~~  
7 ~~regulation shall be consistent with the provisions of]~~ Nothing  
8 in the Tobacco Products Act shall be construed to preempt or in  
9 any manner preclude specific provisions of a county or  
10 municipal ordinance to prohibit the sale of tobacco products to  
11 minors; provided that the county or municipal ordinance is  
12 inclusive of all minimum standards and provisions for  
13 prohibiting the sale of tobacco products to minors pursuant to  
14 the Tobacco Products Act."

15 SECTION 10. Section 30-49-12 NMSA 1978 (being Laws 1993,  
16 Chapter 244, Section 12) is amended to read:

17 "30-49-12. PENALTY.--

18 A. Any person who violates any provision of  
19 Subsection A of Section ~~[3 or Sections 5, 7, 8 or 9 of the~~  
20 ~~Tobacco Products Act]~~ 30-49-3 NMSA 1978 or Section 30-49-7,  
21 30-49-8 or 30-49-9 NMSA 1978 is guilty of a misdemeanor and  
22 shall be sentenced pursuant to the provisions of Section  
23 31-19-1 NMSA 1978. Each violation is a separate and distinct  
24 offense.

25 B. Any minor who violates any provision of

.199157.1

underscoring material = new  
[bracketed material] = delete

1 Subsection B of Section [~~3 or Section 6 of the Tobacco Products~~  
2 ~~Act~~] 30-49-3 NMSA 1978 or Section 30-49-6 NMSA 1978 shall be  
3 punished by a fine not to exceed one hundred dollars (\$100) or  
4 forty-eight hours of community service.

5 C. The owner of a retail location at which a  
6 violation of Subsection A of this section occurs shall be  
7 assessed a fine of one thousand dollars (\$1,000) for each  
8 violation."

9 - 7 -