

1 SENATE BILL 91

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Linda M. Lopez

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9  
10 AN ACT

11 RELATING TO PUBLIC HEALTH; BANNING THE SALE, PURCHASE OR  
12 PROVISION OF FREE SAMPLES OF FLAVORED E-CIGARETTE PRODUCTS;  
13 DEFINING TERMS; PROVIDING PENALTIES.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of the Tobacco Products, E-  
17 Cigarette and Nicotine Liquid Container Act is enacted to read:

18 "[NEW MATERIAL] PROHIBITED SALE OF FLAVORED E-CIGARETTE  
19 PRODUCTS.--

20 A. It is unlawful to knowingly sell, offer to sell,  
21 barter or give a flavored e-cigarette product to a person.

22 B. It is unlawful to procure or attempt to procure  
23 any flavored e-cigarette product."

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

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1 "30-49-2. DEFINITIONS.--As used in the Tobacco Products,  
2 E-Cigarette and Nicotine Liquid Container Act:

3 A. "characterizing flavor" means a distinguishable  
4 taste or aroma or both, other than the taste or aroma of  
5 tobacco, imparted by an e-cigarette product or any byproduct  
6 produced by the e-cigarette product. An e-cigarette product  
7 shall not be determined to have a characterizing flavor solely  
8 because of the use of additives or flavorings or the provision  
9 of ingredient information;

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

18 [~~B.~~] C. "e-cigarette":

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

24 (2) includes any such device, or any part  
25 thereof, whether manufactured, distributed, marketed or sold as

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1 an e-cigarette, e-cigar, e-pipe or any other product, name or  
2 descriptor; but

3 (3) does not include any product regulated as  
4 a drug or device by the United States food and drug  
5 administration under the Federal Food, Drug, and Cosmetic Act  
6 [~~21 U.S.C. Section 301 et seq.~~];

7 D. "e-cigarette product" means any product that is  
8 made of or derived from tobacco or nicotine and that is  
9 intended for human consumption by means of an e-cigarette;

10 E. "flavored e-cigarette product" means any e-  
11 cigarette or e-cigarette product that contains any ingredient,  
12 substance, chemical or compound, other than tobacco, water or  
13 reconstituted tobacco sheet that is added by the manufacturer  
14 to a tobacco product during the processing, manufacture or  
15 packing of a tobacco product, that imparts a characterizing  
16 flavor;

17 [~~G.~~] F. "minor" means an individual who is less  
18 than eighteen years of age; [~~and~~

19 ~~D.~~] G. "nicotine liquid container" means a bottle  
20 or other container of any substance containing nicotine where  
21 the substance is sold, marketed or intended for use in an e-  
22 cigarette; and

23 H. "tobacco product" means a:

24 (1) product that is made of or derived from  
25 tobacco or nicotine and that is intended for human consumption,

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1 whether smoked, heated, chewed, absorbed, dissolved, inhaled,  
2 snorted, sniffed or ingested by any other means, and includes  
3 cigars, cigarettes, chewing tobacco, e-cigarettes, e-cigarette  
4 products, pipe tobacco or snuff; and

5 (2) component, part or accessory used to  
6 consume tobacco, but does not include a product approved by the  
7 United States food and drug administration for sale as a  
8 tobacco-cessation product or for another therapeutic purpose,  
9 where the product is marketed and sold solely for that use, as  
10 approved by the United States food and drug administration."

11 SECTION 3. Section 30-49-7 NMSA 1978 (being Laws 1993,  
12 Chapter 244, Section 7, as amended) is amended to read:

13 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF  
14 TOBACCO PRODUCTS, E-CIGARETTES, E-CIGARETTE PRODUCTS AND  
15 NICOTINE LIQUID CONTAINERS.--

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

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

23 (2) a person selling goods at a retail  
24 location in New Mexico shall not use a self-service display for  
25 tobacco products, e-cigarettes, e-cigarette products or

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1 nicotine liquid containers. As used in this subsection, "self-  
2 service display" means a display to which the public has access  
3 without the assistance of the seller or the seller's employee.

4 B. Tobacco products, e-cigarettes, e-cigarette  
5 products and nicotine liquid containers may be sold by vending  
6 machines only:

7 (1) in age-controlled locations where minors  
8 are not permitted; and

9 (2) if the e-cigarettes or e-cigarette  
10 products are not flavored e-cigarette products.

11 C. The provisions of this section do not apply to  
12 written, telephonic or electronic sales of tobacco products or  
13 e-cigarette products."

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

16 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS, FLAVORED E-  
17 CIGARETTE PRODUCTS, E-CIGARETTES OR NICOTINE LIQUID CONTAINERS  
18 AS FREE SAMPLES PROHIBITED--EXCEPTION.--

19 A. ~~[A person shall not]~~ It is unlawful to provide  
20 free samples of tobacco products, e-cigarettes or nicotine  
21 liquid containers to a minor.

22 B. It is unlawful to provide free samples of  
23 flavored e-cigarette products to a person.

24 ~~[B.]~~ C. The provisions of ~~[Subsection]~~ Subsections  
25 A and B of this section shall not apply to an individual who

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1 provides free samples of tobacco products, flavored e-cigarette  
2 products, e-cigarettes or nicotine liquid containers in  
3 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 5. 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, e-cigarette products  
12 or nicotine liquid containers shall prominently display in the  
13 place where tobacco products, e-cigarettes, e-cigarette  
14 products or nicotine liquid containers are sold and where a  
15 tobacco product, e-cigarette, e-cigarette product or nicotine  
16 liquid container vending machine is located a printed sign or  
17 decal that reads as follows:

18 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A  
19 TOBACCO PRODUCT, AN E-CIGARETTE, AN E-CIGARETTE PRODUCT OR A  
20 NICOTINE LIQUID CONTAINER OR ANY PERSON WHO PURCHASES A  
21 FLAVORED E-CIGARETTE PRODUCT IS SUBJECT TO A FINE OF UP TO  
22 \$100.

23 A PERSON WHO SELLS A TOBACCO PRODUCT, AN E-CIGARETTE, AN  
24 E-CIGARETTE PRODUCT OR A NICOTINE LIQUID CONTAINER TO A PERSON  
25 LESS THAN 18 YEARS OF AGE OR WHO SELLS A FLAVORED E-CIGARETTE

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

2 SECTION 6. Section 30-49-12 NMSA 1978 (being Laws 1993,  
3 Chapter 244, Section 12, as amended) is amended to read:

4 "30-49-12. PENALTY.--

5 A. Any person who violates any provision of  
6 Subsection A, D or E of Section 30-49-3 NMSA 1978 [~~or~~], Section  
7 30-49-7, 30-49-8 or 30-49-9 NMSA 1978 or Subsection A of  
8 Section 1 of this 2020 act is guilty of a misdemeanor and shall  
9 be sentenced pursuant to the provisions of Section 31-19-1 NMSA  
10 1978. Each violation is a separate and distinct offense.

11 B. Any minor who violates any provision of  
12 Subsection B of Section 30-49-3 NMSA 1978 [~~or~~], Section 30-49-6  
13 NMSA 1978 or Subsection B of Section 1 of this 2020 act shall  
14 be punished by a fine not to exceed one hundred dollars (\$100)  
15 or forty-eight hours of community service."