

1 HOUSE BILL 205

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Elizabeth "Liz" Thomson and Joanne J. Ferrary

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7
8 FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

9
10 AN ACT

11 RELATING TO TOBACCO PRODUCTS; PROHIBITING THE SALE, POSSESSION
12 OR PURCHASE OF FLAVORED TOBACCO PRODUCTS; DEFINING TERMS;
13 CONFORMING CERTAIN NOTICE REQUIREMENTS; PROVIDING PENALTIES.

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

16 SECTION 1. Section 61-37-1 NMSA 1978 (being Laws 2020,
17 Chapter 46, Section 1) is amended to read:

18 "61-37-1. SHORT TITLE.--~~[This act]~~ Chapter 61, Article 37
19 NMSA 1978 may be cited as the "Tobacco Products Act"."

20 SECTION 2. A new section of the Tobacco Products Act is
21 enacted to read:

22 "[NEW MATERIAL] PROHIBITED SALE, PURCHASE OR POSSESSION OF
23 FLAVORED TOBACCO PRODUCTS.--

24 A. It is unlawful to knowingly sell, offer to sell,
25 barter or give a flavored tobacco product to a person.

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1 B. It is unlawful to purchase, possess or attempt
2 to purchase or possess any flavored tobacco product."

3 **SECTION 3.** A new section of the Tobacco Products Act is
4 enacted to read:

5 "[NEW MATERIAL] PENALTIES.--

6 A. Any person who violates the provisions of
7 Subsection A or B of Section 2 of this 2021 act is guilty of a
8 misdemeanor and shall be sentenced pursuant to the provisions
9 of Section 31-19-1 NMSA 1978. Each violation is a separate and
10 distinct offense.

11 B. Any minor who violates the provisions of
12 Subsection B of Section 2 of this 2021 act shall be punished by
13 a fine not to exceed one hundred dollars (\$100) or forty-eight
14 hours of community service."

15 **SECTION 4.** Section 61-37-2 NMSA 1978 (being Laws 2020,
16 Chapter 46, Section 2) is amended to read:

17 "61-37-2. DEFINITIONS.--As used in the Tobacco Products
18 Act:

19 A. "characterizing flavor" means a distinguishable
20 taste or aroma or both, other than the taste or aroma of
21 tobacco, imparted by a tobacco product or any byproduct
22 produced by the tobacco product. A tobacco product shall not
23 be determined to have a characterizing flavor solely because of
24 the use of additives or flavorings or the provision of
25 ingredient information;

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1 ~~[A.]~~ B. "child-resistant packaging" means packaging
2 or a container that is designed or constructed to be
3 significantly difficult for children under five years of age to
4 open or obtain a toxic or harmful amount of the substance
5 contained therein within a reasonable time and not difficult
6 for a normal adult to use properly, but does not mean packaging
7 or a container that all such children cannot open or obtain a
8 toxic or harmful amount within a reasonable time;

9 ~~[B.]~~ C. "contraband tobacco products" means any
10 tobacco products possessed, sold, bartered or given in
11 violation of the Tobacco Products Act;

12 ~~[C.]~~ D. "delivery sale" means a sale of tobacco
13 products to a consumer in New Mexico in which:

14 (1) the consumer submits an order for the sale
15 by telephone, over the internet or through the mail or another
16 delivery system; and

17 (2) the tobacco product is shipped through a
18 delivery service;

19 ~~[D.]~~ E. "delivery service" means a person,
20 including the United States postal service, that is engaged in
21 the delivery of letters, packages or containers;

22 ~~[E.]~~ F. "director" means the director of the
23 alcoholic beverage control division of the regulation and
24 licensing department;

25 ~~[F.]~~ G. "distribute" means to purchase and store a

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1 product and to offer the product for resale to retailers or
2 consumers;

3 ~~[G.]~~ H. "distributor" means a person that
4 distributes tobacco products in New Mexico, but does not
5 include:

- 6 (1) a retailer;
- 7 (2) a manufacturer; or
- 8 (3) a common or contract carrier;

9 ~~[H.]~~ I. "division" means the alcoholic beverage
10 control division of the regulation and licensing department;

11 ~~[I.]~~ J. "e-cigarette":

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

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

21 (3) does not include any product regulated as
22 a drug or device by the United States food and drug
23 administration under the Federal Food, Drug, and Cosmetic Act,
24 21 U.S.C. Section 301 et seq.;

25 ~~[J.]~~ K. "electronic nicotine delivery system" means

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1 an electronic device, including e-cigarettes, whether composed
2 of a heating element and battery or an electronic circuit, that
3 provides a vapor or aerosol of nicotine, the use or inhalation
4 of which simulates smoking;

5 L. "flavored tobacco product" means any tobacco
6 product that contains any ingredient, substance, chemical or
7 compound, other than tobacco, water or reconstituted tobacco
8 sheet that is added by the manufacturer to a tobacco product
9 during the processing, manufacture or packing of a tobacco
10 product, that imparts a characterizing flavor;

11 [~~K.~~] M. "knowingly attractive to minors" means
12 packaging or labeling that contains:

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

15 (2) an imitation or mimicry of trademarks or
16 trade dress of products that are or have been primarily
17 marketed toward minors; or

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

20 [~~L.~~] N. "licensee" means a holder of a license
21 issued by the division pursuant to the Tobacco Products Act;

22 [~~M.~~] O. "manufacturer" means a person that
23 manufactures, fabricates, assembles, processes or labels
24 tobacco products or imports from outside the United States,
25 directly or indirectly, a tobacco product for sale or

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1 distribution in the United States;

2 [N-] P. "minor" means an individual who is younger
3 than twenty-one years of age;

4 [O-] Q. "nicotine liquid" means a liquid or other
5 substance containing nicotine where the liquid or substance is
6 sold, marketed or intended for use in an electronic nicotine
7 delivery system;

8 [P-] R. "person" means an individual, corporation,
9 firm, partnership, copartnership, association or other legal
10 entity;

11 [Q-] S. "retailer" means a person, whether located
12 within or outside of New Mexico, that sells tobacco products at
13 retail to a consumer in New Mexico; provided that the sale is
14 not for resale;

15 [R-] T. "self-service display" means a display to
16 which the public has access without the assistance of a
17 retailer or the retailer's employee; and

18 [S-] U. "tobacco product" means a product made or
19 derived from tobacco or nicotine that is intended for human
20 consumption, whether smoked, chewed, absorbed, dissolved,
21 inhaled, snorted, sniffed or ingested by any other means,
22 including cigars, cigarettes, chewing tobacco, pipe tobacco,
23 snuff, e-cigarettes or electronic nicotine delivery systems."

24 SECTION 5. Section 61-37-15 NMSA 1978 (being Laws 2020,
25 Chapter 46, Section 15) is amended to read:

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1 "61-37-15. VENDING MACHINES--RESTRICTIONS ON SALES OF
2 TOBACCO PRODUCTS.--

3 A. Except as provided in Subsections B and C of
4 this section, a retailer selling goods at a retail location in
5 New Mexico shall not use a self-service display for tobacco
6 products.

7 B. Tobacco products may be sold by vending machines
8 only:

9 (1) in age-controlled locations where minors
10 are not permitted; and

11 (2) if the tobacco products are not flavored
12 tobacco products.

13 C. The sales and display of cigars may be allowed
14 only:

15 (1) in age-controlled locations where minors
16 are not permitted; and

17 (2) if the cigars are not flavored tobacco
18 products."

19 SECTION 6. Section 61-37-17 NMSA 1978 (being Laws 2020,
20 Chapter 46, Section 17) is amended to read:

21 "61-37-17. SIGNS--POINT OF SALE.--A retailer shall
22 prominently display in the place where tobacco products are
23 sold and where a tobacco product vending machine is located a
24 printed sign or decal that reads as follows:

25 "IT IS ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO
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1 PURCHASE TOBACCO PRODUCTS OR FOR ANY PERSON TO PURCHASE A
2 FLAVORED TOBACCO PRODUCT."."

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