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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC HEALTH; BANNING THE SALE, PURCHASE OR
PROVISION OF FREE SAMPLES OF FLAVORED TOBACCO PRODUCTS;
DEFINING TERMS; CONFORMING REQUIREMENTS FOR CERTAIN NOTICES
WITH PENALTY PROVISIONS; PROVIDING PENALTIES.

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

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

"[NEW MATERIAL] PROHIBITED SALE OF FLAVORED TOBACCO
PRODUCTS.--

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

B. It is unlawful to procure or attempt to procure
any flavored tobacco product."

SECTION 2. Section 30-49-2 NMSA 1978 (being Laws 1993,

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1 Chapter 244, Section 2, as amended) is amended to read:

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

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

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

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

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

25 (2) includes any such device, or any part

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1 thereof, whether manufactured, distributed, marketed or sold as
2 an e-cigarette, e-cigar, e-pipe or any other product, name or
3 descriptor; but

4 (3) does not include any product regulated as
5 a drug or device by the United States food and drug
6 administration under the Federal Food, Drug, and Cosmetic Act
7 [~~21 U.S.C. Section 301 et seq.~~];

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

14 [~~E.~~] E. "minor" means an individual who is less
15 than eighteen years of age; [~~and~~

16 [~~D.~~] F. "nicotine liquid container" means a bottle
17 or other container of any substance containing nicotine where
18 the substance is sold, marketed or intended for use in an e-
19 cigarette; and

20 G. "tobacco product" means a:

21 (1) product that is made of or derived from
22 tobacco or nicotine and that is intended for human consumption,
23 whether smoked, heated, chewed, absorbed, dissolved, inhaled,
24 snorted, sniffed or ingested by any other means, and includes
25 cigars, cigarettes, chewing tobacco, e-cigarettes, pipe tobacco

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1 or snuff; and

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

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

10 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF
11 TOBACCO PRODUCTS, E-CIGARETTES AND NICOTINE LIQUID
12 CONTAINERS.--

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

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

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

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1 B. Tobacco products, e-cigarettes and nicotine
2 liquid containers may be sold by vending machines only:

3 (1) in age-controlled locations where minors
4 are not permitted; and

5 (2) if the tobacco products are not flavored
6 tobacco products.

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

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

11 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS, FLAVORED
12 TOBACCO PRODUCTS, E-CIGARETTES OR NICOTINE LIQUID CONTAINERS AS
13 FREE SAMPLES PROHIBITED--EXCEPTION.--

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

17 B. It is unlawful to provide free samples of
18 flavored tobacco products to a person.

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

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1 successor act."

2 SECTION 5. Section 30-49-9 NMSA 1978 (being Laws 1993,
3 Chapter 244, Section 9, as amended) is amended to read:

4 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,
5 corporation, partnership or other entity engaged in the sale at
6 retail of tobacco products, e-cigarettes or nicotine liquid
7 containers shall prominently display in the place where tobacco
8 products, e-cigarettes or nicotine liquid containers are sold
9 and where a tobacco product, e-cigarette or nicotine liquid
10 container vending machine is located a printed sign or decal
11 that reads as follows:

12 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A
13 TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER
14 OR ANY PERSON WHO PURCHASES A FLAVORED TOBACCO PRODUCT IS
15 SUBJECT TO A FINE OF UP TO \$100 OR UP TO 48 HOURS OF COMMUNITY
16 SERVICE.

17 A PERSON WHO SELLS A TOBACCO PRODUCT, AN E-CIGARETTE OR A
18 NICOTINE LIQUID CONTAINER TO A PERSON LESS THAN 18 YEARS OF AGE
19 OR WHO SELLS A FLAVORED TOBACCO PRODUCT IS GUILTY OF A CRIMINAL
20 MISDEMEANOR AND IS SUBJECT TO A FINE OF UP TO \$1,000."

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

23 "30-49-12. PENALTY.--

24 A. Any person who violates any provision of
25 Subsection A, D or E of Section 30-49-3 NMSA 1978 [or], Section
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1 30-49-7, 30-49-8 or 30-49-9 NMSA 1978 or Subsection A of
2 Section 1 of this 2020 act is guilty of a misdemeanor and shall
3 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
4 1978. Each violation is a separate and distinct offense.

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