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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; AMENDING THE TOBACCO PRODUCTS, E-CIGARETTE AND NICOTINE LIQUID CONTAINER ACT TO BAN THE SALE OF TOBACCO PRODUCTS, E-CIGARETTES OR NICOTINE LIQUID CONTAINERS TO PERSONS UNDER TWENTY-ONE YEARS OF AGE, WITH CERTAIN EXCEPTIONS; CONFORMING REQUIREMENTS FOR CERTAIN NOTICES WITH PENALTY PROVISIONS; DEFINING "TOBACCO PRODUCT".

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

**SECTION 1.** Section 30-49-2 NMSA 1978 (being Laws 1993, Chapter 244, Section 2, as amended) is amended to read:

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

A. "child-resistant" means a package or container that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic

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1 or harmful amount of the substance contained therein within a  
2 reasonable time and not difficult for normal adults to use  
3 properly, but does not mean a package or container that all  
4 such children cannot open or obtain a toxic or harmful amount  
5 within a reasonable time;

6 B. "e-cigarette":

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

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

16 (3) does not include any product regulated as  
17 a drug or device by the United States food and drug  
18 administration under the Federal Food, Drug, and Cosmetic Act  
19 [~~21 U.S.C. Section 301 et seq.~~];

20 C. "minor" means an individual who is less than  
21 [~~eighteen~~] twenty-one years of age [~~and~~], but does not include:

22 (1) an active duty military member who is at  
23 least eighteen years of age and who presents an identification  
24 card issued by the United States armed forces as proof of age;  
25 or

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1                   (2) an individual who is at least eighteen  
2 years of age on July 1, 2020;

3                   D. "nicotine liquid container" means a bottle or  
4 other container of any substance containing nicotine where the  
5 substance is sold, marketed or intended for use in an e-  
6 cigarette; and

7                   E. "tobacco product" means:

8                   (1) a product made of or derived from tobacco  
9 or nicotine that is intended for human consumption, whether  
10 smoked, heated, chewed, absorbed, dissolved, inhaled, snorted,  
11 sniffed or ingested by any other means, including cigars,  
12 cigarettes, chewing tobacco, e-cigarettes, pipe tobacco or  
13 snuff; and

14                   (2) a component, part or accessory used to  
15 consume tobacco, but does not include a product approved by the  
16 United States food and drug administration for sale as a  
17 tobacco cessation product or for another therapeutic purpose,  
18 where the product is marketed and sold solely for that use, as  
19 approved by the United States food and drug administration."

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

22                   "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS, E-CIGARETTES  
23 OR NICOTINE LIQUID CONTAINERS TO A PERSON UNABLE TO PRODUCE  
24 IDENTITY CARD.--A person selling goods at retail or wholesale  
25 [~~may~~] shall refuse to sell tobacco products, e-cigarettes or

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1 nicotine liquid containers to a person who is unable to produce  
2 an identity card as evidence that the person is [~~eighteen years~~  
3 ~~of age or over~~] not prohibited from purchasing tobacco  
4 products, e-cigarettes or nicotine liquid containers."

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

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

15 "A PERSON LESS THAN [~~18~~] 21 YEARS OF AGE WHO PURCHASES A  
16 TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER  
17 [~~IS~~] MAY BE SUBJECT TO A FINE OF UP TO \$100 OR UP TO 48 HOURS  
18 OF COMMUNITY SERVICE.

19 A PERSON WHO SELLS A TOBACCO PRODUCT, AN E-CIGARETTE OR A  
20 NICOTINE LIQUID CONTAINER TO A PERSON LESS THAN [~~18~~] 21 YEARS  
21 OF AGE [~~IS~~] MAY BE GUILTY OF A CRIMINAL MISDEMEANOR AND SUBJECT  
22 TO A FINE OF UP TO \$1,000."