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SENATE BILL 369

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DEDE FELDMAN

AN ACT

RELATING TO PUBLIC HEALTH; ENACTING THE TOBACCO PREVENTION AND  
MINORS ACT; REPEALING THE TOBACCO PRODUCTS ACT; REPEALING AND  
ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES; MAKING  
AN APPROPRIATION.

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

Section 1. SHORT TITLE. -- This act may be cited as the  
"Tobacco Prevention and Minors Act".

Section 2. FINDINGS. -- The legislature finds that:

A. approximately four hundred fifty thousand  
Americans, including nearly two thousand two hundred New  
Mexicans, die each year of diseases caused by cigarette smoking,  
according to the American cancer society;

B. the United States surgeon general has determined  
that smoking is the leading cause of preventable death in the

1 United States;

2 C. nicotine in tobacco was found in a 1988 report of  
3 the United States surgeon general to be a powerfully addictive  
4 drug. Forty percent of all teenagers who smoke daily have made  
5 at least one serious but unsuccessful attempt to quit, according  
6 to the United States surgeon general. It is important,  
7 therefore, to prevent young people from using nicotine until  
8 they are mature and capable of making an informed and rational  
9 decision about its use and dangers;

10 D. every day more than three thousand minors begin  
11 smoking; of those, approximately one thousand will eventually  
12 die of tobacco-related illnesses, according to the United States  
13 department of health and human services;

14 E. an estimated two hundred fifty-five million packs  
15 of cigarettes are sold illegally to minors every year in the  
16 United States, according to the American journal of public  
17 health; and

18 F. fifty-eight percent of youths from the ages of  
19 twelve to seventeen years buy their own cigarettes, according to  
20 a 1992 report by the centers for disease control and prevention.

21 Section 3. DEFINITIONS.--As used in the Tobacco Prevention  
22 and Minors Act:

23 A. "minor" means an individual who is less than  
24 eighteen years of age;

25 B. "person" means an individual or other legal

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1 entity;

2 C. "place of business" means each location at which  
3 tobacco products are sold, including vending machines;

4 D. "tobacco product" means any substance that  
5 contains tobacco, including cigarettes, cigars, pipe tobacco,  
6 snuff, smoking tobacco or smokeless tobacco; and

7 E. "unit" means the tobacco use prevention unit in  
8 the department of health.

9 Section 4. TOBACCO USE PREVENTION UNIT--DUTIES.--

10 A. The "tobacco use prevention unit" is created in  
11 the department of health. The unit shall be headed by a  
12 director.

13 B. The unit shall:

14 (1) issue licenses for the sale of tobacco  
15 products;

16 (2) provide to persons licensed to sell tobacco  
17 products signs that meet the requirements specified in Section 6  
18 of the Tobacco Prevention and Minors Act;

19 (3) investigate, concurrently with local  
20 officials, violations of the Tobacco Prevention and Minors Act;

21 (4) impose civil fines under the Tobacco  
22 Prevention and Minors Act;

23 (5) bring license suspension, revocation and  
24 nonrenewal actions under the Tobacco Prevention and Minors Act;  
25 and

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1 (6) take such other action as it deems  
2 necessary or appropriate to administer and enforce the  
3 provisions of the Tobacco Prevention and Minors Act.

4 Section 5. LICENSES. --

5 A. A license for the sale of tobacco products shall  
6 be issued to a person for a specific place of business and shall  
7 be valid for a period not to exceed six years. A license is not  
8 assignable and is valid only for the person in whose name it is  
9 issued and for the specific place of business or vending machine  
10 designated on the license.

11 B. There is no fee for a license. It shall be  
12 available upon request from the unit, provided that the unit  
13 finds the requester has not previously violated provisions of  
14 the Tobacco Prevention and Minors Act or any other relevant law.  
15 A license holder may be made subject to reasonable terms and  
16 conditions the unit may impose.

17 Section 6. SIGNS CONCERNING SALES TO MINORS AND FALSE  
18 EVIDENCE OF AGE AND IDENTITY. --

19 A. The unit shall provide to each person licensed to  
20 sell tobacco products the following two signs:

21 (1) one sign that contains in red lettering at  
22 least one inch high on a white background a notice stating: "IT  
23 IS A VIOLATION OF THE LAW FOR CIGARETTES OR OTHER TOBACCO  
24 PRODUCTS TO BE SOLD OR DISTRIBUTED TO ANY PERSON UNDER THE AGE  
25 OF 18." and that includes on the sign a depiction of a pack of

1 cigarettes and a can of smokeless tobacco at least two inches  
2 high defaced by a red diagonal diameter line through a  
3 surrounding red circle; and

4 (2) another sign that contains in red lettering  
5 at least one inch high on a white background a notice stating:  
6 "IT IS A VIOLATION OF THE LAW FOR A PERSON UNDER THE AGE OF 18  
7 TO PRESENT ANY FALSE EVIDENCE OF AGE OR IDENTITY FOR THE PURPOSE  
8 OF OBTAINING TOBACCO PRODUCTS. "

9 B. There shall be no fee to obtain the signs  
10 described in Subsection A of this section, and at least one copy  
11 of each sign shall be provided by the unit to every person that  
12 holds a license for the sale of tobacco products.

13 Section 7. DISPLAY OF LICENSE AND SIGNS.--A person that  
14 holds a license for the sale of tobacco products shall at all  
15 times publicly display in at least one conspicuous location at  
16 the specific place of business designated on the license:

17 A. the license or a copy of the license that  
18 authorizes the sale of tobacco products at the specific place of  
19 business or on the vending machine for which the license is  
20 issued; and

21 B. the signs that meet the requirements of Section 6  
22 of the Tobacco Prevention and Minors Act.

23 Section 8. PROHIBITIONS ON SALES APPLICABLE TO TOBACCO  
24 LICENSE HOLDERS AND THEIR EMPLOYEES AND AGENTS--VENDING  
25 MACHINES. --

1           A. A person that holds a license for the sale of  
2 tobacco products, or an employee or agent of that person, may  
3 not sell or distribute a tobacco product:

4                   (1) to a minor;

5                   (2) other than at the specific place of  
6 business for which a license has been issued for the sale of  
7 tobacco products; or

8                   (3) in any form other than an original factory-  
9 wrapped package of at least twenty cigarettes.

10           B. Tobacco products may be sold by vending machines  
11 in the following locations only:

12                   (1) in locations not open to the public,  
13 including controlled areas within factories, businesses and  
14 offices; or

15                   (2) in age-controlled public locations where  
16 minors are not permitted unless accompanied by a parent or  
17 guardian, including locations where alcoholic beverages are  
18 offered for sale for the purpose of consumption on the premises.

19           Section 9. PROHIBITION ON UNLICENSED SALE OR DISTRIBUTION  
20 OF TOBACCO PRODUCTS. --No person, other than a person who holds a  
21 license for the sale of tobacco products, or an employee or  
22 agent of that person, may sell, distribute or provide free  
23 samples of a tobacco product; provided, however, that nothing in  
24 this section applies to distribution by a person to family  
25 members on private property that is not open to the public.

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1           Section 10. DOCUMENTARY EVIDENCE OF AGE AND IDENTITY.--  
2 Evidence of the age and identity of the person seeking to  
3 purchase a tobacco product may be shown by any document that  
4 contains a photograph of the person issued by a federal, state,  
5 county or ~~municipal~~ government, including a motor vehicle  
6 driver's license or an identification card issued to a member of  
7 the armed forces.

8           Section 11. REFUSAL TO SELL TOBACCO PRODUCTS TO A PERSON  
9 UNABLE TO PRODUCE AN IDENTITY CARD.--Any person authorized to  
10 sell tobacco products at retail or wholesale shall refuse to  
11 sell tobacco products to any person who reasonably appears to be  
12 less than twenty-seven years of age and who is unable to produce  
13 an identity card with proper documentary evidence establishing  
14 that he is eighteen years of age or over.

15           Section 12. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY--  
16 PENALTIES FOR MINORS. --

17           A. No minor shall present any false written, printed  
18 or photostatic evidence of age or identity for the purpose of  
19 procuring or attempting to procure any tobacco products.

20           B. Any minor who violates the provisions of this  
21 section shall be punished by:

22                   (1) a civil fine not to exceed one hundred  
23 dollars (\$100);

24                   (2) having to perform twenty-four hours of  
25 ~~community~~ service; or

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1 (3) being required to complete a smoking  
2 cessation class.

3 C. Any minor who violates the provisions of this  
4 section for a second or subsequent time shall be punished by a  
5 combination of at least two of the three penalty options  
6 provided in Subsection B of this section.

7 Section 13. CIVIL FINES ON LICENSEES--GROUNDS FOR  
8 SUSPENSION, REVOCATION AND NONRENEWAL OF LICENSES.--

9 A. Any license holder for a specific place of  
10 business that violates a requirement of Section 7 of the Tobacco  
11 Prevention and Minors Act shall be subject to a civil fine of  
12 not more than one hundred dollars (\$100). Any license holder  
13 that violates that section for a second or subsequent time shall  
14 be subject to a civil fine of not more than five hundred dollars  
15 (\$500).

16 B. Any license holder for a specific place of  
17 business, or any of its employees or agents that violates a  
18 provision in Section 8 of the Tobacco Prevention and Minors Act  
19 shall each be subject to a civil fine of:

20 (1) one hundred dollars (\$100) for the first  
21 violation;

22 (2) two hundred fifty dollars (\$250) for the  
23 second violation within any two-year period;

24 (3) five hundred dollars (\$500) for the third  
25 violation within any two-year period;

1 (4) one thousand dollars (\$1,000) for the  
2 fourth violation within any two-year period; and

3 (5) five thousand dollars (\$5,000) for any  
4 additional violation within any two-year period.

5 C. In addition to the civil fines provided in  
6 Subsection B of this section, if a person that holds a license  
7 for the sale of tobacco products for a specific place of  
8 business violates a provision of Section 8 of the Tobacco  
9 Prevention and Minors Act, the license:

10 (1) may be suspended for a period not to exceed  
11 twenty-four hours upon a first violation of that section;

12 (2) may be suspended for a period not to exceed  
13 two consecutive days upon a second violation of that section  
14 within any two-year period;

15 (3) may be suspended for a period not to exceed  
16 one week upon a third violation of that section within any  
17 two-year period;

18 (4) shall be suspended for a period not to  
19 exceed one month upon a fourth violation of that section within  
20 any two-year period; and

21 (5) shall be revoked by the director of the  
22 unit and not renewed by the director upon a fifth conviction of  
23 that section within any two-year period.

24 D. With regard to the sanctions in Subsection C of  
25 this section, the hearing officer may consider the following as

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1 mitigating factors prior to imposing a license suspension or  
2 revocation:

3 (1) the license holder informed each of its  
4 employees and agents in writing of the applicable laws regarding  
5 sales of tobacco products to any person under the age of  
6 eighteen;

7 (2) the license holder engaged in a consistent  
8 practice of requiring employees and agents to refuse to sell  
9 tobacco products to any person who appears to be less than  
10 twenty-seven years of age and who is unable to produce an  
11 identity card as evidence that he is eighteen years of age or  
12 over; and

13 (3) the license holder has established and  
14 imposed sanctions against employees and agents for noncompliance  
15 with the license holder's written policies and actual practices  
16 regarding the sale of tobacco products.

17 E. Any person that violates a provision of Section 9  
18 of the Tobacco Prevention and Minors Act shall be subject to a  
19 civil fine of one thousand dollars (\$1,000). Any person that  
20 violates that section for a second or subsequent time shall be  
21 subject to a civil fine of five thousand dollars (\$5,000).

22 F. A violation committed by an employee or agent,  
23 and attributed to a license holder, shall be counted only once  
24 for purposes of the preceding subsections.

25 Section 14. ENFORCEMENT--HEARING OFFICER--LIMITATIONS--

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1 WAIVER-- COSTS-- PUBLIC HEARING-- RECORD-- RIGHT TO APPEAL. --

2 A. The unit shall, after written notice by certified  
3 mail and hearing, impose the sanctions set forth in Section 13  
4 of the Tobacco Prevention and Minors Act.

5 B. If the license holder, employee or agent does not  
6 mail a request for a hearing within thirty days, the hearing  
7 officer shall take the action contemplated in the notice, and  
8 the action shall be final and not subject to judicial review.

9 C. All hearings that include telephonic hearings,  
10 held pursuant to the Tobacco Prevention and Minors Act, shall be  
11 conducted by a hearing officer designated by the secretary of  
12 health.

13 D. No action shall be initiated by the unit later  
14 than one year after the discovery of the conduct that is the  
15 basis for the action.

16 E. The charged license holder, employee or agent  
17 shall bear all costs of the hearing unless excused by the  
18 hearing officer from paying all or part of the costs, or unless  
19 the charged license holder, employee or agent prevails at the  
20 hearing.

21 F. All hearings under the Tobacco Prevention and  
22 Minors Act shall be open to the public.

23 G. In all hearings conducted under the Tobacco  
24 Prevention and Minors Act, a complete record shall be made of  
25 all evidence received during the course of the hearing. The

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1 record shall be preserved by any stenographic method in use in  
2 the district courts of New Mexico or, in the discretion of the  
3 hearing officer, by tape recording.

4 H. Any person entitled to a hearing under the  
5 Tobacco Prevention and Minors Act who is aggrieved by an adverse  
6 decision issued after the hearing by the hearing officer may  
7 obtain a review of the decision in the district court of Santa  
8 Fe county. In order to obtain the review, the aggrieved person  
9 shall, within twenty days after the date of service of the  
10 decision, file with the court a notice of appeal, a copy of  
11 which shall be served on the director of the unit, stating all  
12 exceptions taken to the decision. The court shall not consider  
13 any exceptions not stated in the petition.

14 I. Failure to file a notice of appeal in the manner  
15 and within the time provided in Subsection H of this section  
16 shall operate as a waiver of the right to judicial review and  
17 shall result in the decision of the hearing officer becoming  
18 final. However, for good cause shown within the time stated,  
19 the judge of the district court may issue an order granting one  
20 extension of time not to exceed sixty days.

21 J. Within thirty days after service of the copy of  
22 the notice of appeal, the hearing officer shall prepare, certify  
23 and file with the clerk of the district court of Santa Fe county  
24 the record of the case. That shall include a copy of the notice  
25 of hearing, a complete transcript or tape recording of the

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1 testimony taken at the hearing, copies of all pertinent  
2 documents and other written evidence introduced at the hearing,  
3 a copy of the hearing officer's decision and a copy of the  
4 notice of appeal. For good cause shown within the time stated,  
5 the judge of the district court may issue an order granting one  
6 extension of time not to exceed sixty days.

7 K. The court may affirm the decision, reverse the  
8 decision or remand the case for further proceedings.

9 Section 15. PREEMPTION. -- Nothing contained in the Tobacco  
10 Prevention and Minors Act shall be construed to restrict the  
11 power or authority of any county, city, town, village or other  
12 legal political subdivision to adopt and enforce additional  
13 local laws, ordinances or regulations that comply with at least  
14 the minimum applicable standards set forth in the Tobacco  
15 Prevention and Minors Act.

16 Section 16. APPROPRIATION. -- Two hundred forty-five  
17 thousand dollars (\$245,000) is appropriated from the general  
18 fund to the department of health for expenditure in fiscal year  
19 1998 to hire a director of the tobacco use prevention unit and  
20 contract for or hire a hearing officer as needed and three  
21 investigators, as well as to pay for other expenses of the  
22 department for the purposes of carrying out the Tobacco  
23 Prevention and Minors Act. Any unexpended or unencumbered  
24 balance remaining at the end of fiscal year 1998 shall revert to  
25 the general fund.



1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997  
3  
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5 February 28, 1997  
6

7 Mr. President:  
8

9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred  
10

11 SENATE BILL 369  
12

13 has had it under consideration and reports same WITHOUT  
14 RECOMMENDATION, and thence referred to the JUDICIARY  
15 COMMITTEE.  
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17 Respectfully submitted,  
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22 Shannon Robinson, Chairman  
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25 Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

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KEYBOARD(TYPE SLUGS)

Page 16

Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boitano, Garcia, Ingle, Vernon

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

SB 369/a

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March 14, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE BILL 369, as amended

has had it under consideration and reports same with recommendation that  
it DO PASS, amended as follows:

1. On page 1, lines 13 and 14, strike "; MAKING AN APPROPRIATION".
2. On page 13, strike lines 16 through 25.
3. Renumber the succeeding sections accordingly.
4. On page 14, line 9, after the comma strike "1997" and insert in lieu thereof "1998".

Respectfully submitted,

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

FINANCE COMMITTEE/SB 369

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Ben D. Altamirano, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Altamirano, Ingle, Lyons, Romero

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

SB 369/a

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March 14, 1997

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Respectfully submitted,

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

FINANCE COMMITTEE/SB 369

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\_\_\_\_\_  
Ben D. Altamirano, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Altamirano, Ingle, Lyons, Romero

Absent: None

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. 118007. 1

. 114891. 2

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

SB 369/a

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March 14, 1997

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Respectfully submitted,

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

FINANCE COMMITTEE/SB 369

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\_\_\_\_\_  
Ben D. Altamirano, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Altamirano, Ingle, Lyons, Romero

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

FINANCE COMMITTEE/SB 369

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 21, 1997

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE BILL 369, as amended

AMENDMENT sponsored by SENATOR SMITH

1. On page 3, line 11, strike "department of health" and insert in lieu thereof "attorney general's office".

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

FINANCE COMMITTEE/SB 369

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Senator John Arthur Smith

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_

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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 21, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred  
SENATE BILL 369, as amended  
has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

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Thomas P. Foy, Chairman

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Alwin, Luna, Rios, Sanchez

Absent: None

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