The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 98

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

SENATE BILL 433, as amended

Introduced by
CHAPTER 98

AN ACT
RELATING TO PUBLIC HEALTH; AMENDING THE TOBACCO PRODUCTS ACT
TO CHANGE THE TITLE OF THE ACT TO THE "TOBACCO PRODUCTS,
E-CIGARETTE AND NICOTINE LIQUID CONTAINER ACT", TO PROHIBIT
SALES OF E-CIGARETTES AND NICOTINE LIQUID CONTAINERS TO
MINORS, TO REQUIRE NICOTINE LIQUID CONTAINERS TO BE SOLD IN
CHILD-RESISTANT PACKAGING AND TO PROHIBIT THE ONLINE INTERNET
SALE OF E-CIGARETTES AND NICOTINE LIQUID CONTAINERS TO A
MINOR IN NEW MEXICO; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:
SECTION 1. Section 30-49-1 NMSA 1978 (being Laws 1993,
Chapter 244, Section 1) is amended to read:
"30-49-1. SHORT TITLE.-- Chapter 30, Article 49
NMSA 1978 may be cited as the "Tobacco Products, E-Cigarette
and Nicotine Liquid Container Act."

SECTION 2. Section 30-49-2 NMSA 1978 (being Laws 1993,
Chapter 244, Section 2) 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 or harmful amount of the substance contained therein
within a reasonable time and not difficult for normal adults
to use properly, but does not mean a package or container
that all such children cannot open or obtain a toxic or
harmful amount within a reasonable time;

E. "e-cigarette":

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

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

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

C. "minor" means an individual who is less than
eighteen years of age; and

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

SECTION 3. Section 30-49-3 NMSA 1978 (being Laws 1993,
Chapter 244, Section 3) is amended to read:
"30-49-3. TOBACCO PRODUCTS, E-CIGARETTES AND NICOTINE LIQUID CONTAINERS--PROHIBITED SALES.--

A. No person shall knowingly sell, offer to sell, barter or give a tobacco product, an e-cigarette or a nicotine liquid container to a minor.

B. No minor shall procure or attempt to procure any tobacco product, e-cigarette or nicotine liquid container for the minor's own use or for use by another minor.

C. No person shall sell, offer to sell or deliver a tobacco product, an e-cigarette or a nicotine liquid container in a form other than an original factory-sealed package.

D. No person shall sell or offer to sell any nicotine liquid container at retail in this state unless such container is child-resistant; except that for the purpose of this subsection, "nicotine liquid container" does not include a cartridge that is pre-filled and sealed by the manufacturer and that is not intended to be opened by the consumer.

E. The online internet sale of e-cigarettes or nicotine liquid containers to a minor in New Mexico is prohibited."

SECTION 4. Section 30-49-5 NMSA 1978 (being Laws 1993, Chapter 244, Section 5) is amended to read:

"30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS, E-CIGARETTES OR NICOTINE LIQUID CONTAINERS TO PERSON UNABLE
TO PRODUCE IDENTITY CARD.--A person selling goods at retail
or wholesale may refuse to sell tobacco products,
e-cigarettes or nicotine liquid containers to a person who is
unable to produce an identity card as evidence that the
person is eighteen years of age or over."

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

"30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR
IDENTITY.--No minor shall present any written, printed or
photostatic evidence of age or identity that is false for the
purpose of procuring or attempting to procure any tobacco
products, e-cigarettes or nicotine liquid containers."

SECTION 6. Section 30-49-7 NMSA 1978 (being Laws 1993,
Chapter 244, Section 7, as amended) is amended to read:

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

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

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

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

B. Tobacco products, e-cigarettes and nicotine
liquid containers may be sold by vending machines only in
age-controlled locations where minors are not permitted.

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

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

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

A. A person shall not provide free samples of
tobacco products, e-cigarettes or nicotine liquid containers
to a minor.

B. The provisions of Subsection A of this section
shall not apply to an individual who provides free samples of
tobacco products, e-cigarettes or nicotine liquid containers
in connection with the practice of cultural or ceremonial
activities in accordance with the federal American Indian
Religious Freedom Act, 42 U.S.C. 1996 and 1996a or its
successor act."

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

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

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

A PERSON WHO Sells A TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER TO A PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO $1,000."."

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

"30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The alcohol and gaming division of the regulation and licensing department and the appropriate law enforcement authorities in each county and municipality shall conduct random, unannounced inspections of facilities where tobacco products, e-cigarettes or nicotine liquid containers are sold to ensure
compliance with the provisions of the Tobacco Products,
E-Cigarette and Nicotine Liquid Container Act."

SECTION 10. Section 30-49-11 NMSA 1978 (being Laws
1993, Chapter 244, Section 11) is amended to read:

"30-49-11. PREEMPTION.--When a municipality or county,
including a home rule municipality or urban county, adopts an
ordinance or a regulation pertaining to sales of tobacco
products, e-cigarettes or nicotine liquid containers, the
ordinance or regulation shall be consistent with the
provisions of the Tobacco Products, E-Cigarette and Nicotine
Liquid Container Act."

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

"30-49-12. PENALTY.--

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

B. Any minor who violates any provision of
Subsection B of Section 30-49-3 NMSA 1978 or Section 30-49-6
NMSA 1978 shall be punished by a fine not to exceed one
hundred dollars ($100) or forty-eight hours of community
service."
SECTION 12. A new section of the Tobacco Products, E-Cigarette and Nicotine Liquid Container Act is enacted to read:

"APPLICABILITY.--The provisions of the Tobacco Products, E-Cigarette and Nicotine Liquid Container Act do not apply to the lawful purchase or use by a minor of a tobacco-cessation product approved by the federal food and drug administration."

SECTION 13. TEMPORARY PROVISION.--Not later than August 1, 2015, the public education department shall revise its tobacco, alcohol and drug free school districts policy to include e-cigarettes and nicotine liquid containers, as defined in Section 30-49-2 NMSA 1978.
Approved by me this 8th day of April, 2015

Governor Susana Martinez
State of New Mexico