

**NOTE:** At the time of the vote, the Legislature did not have an available copy of the bill text as voted on. For your convenience, Vote Smart staff has created this updated version of the bill by incorporating changes made by published Committee Reports and/or Amendments into the available text. This updated version accurately reflects the state of the bill as voted on.

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 433

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

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.--~~[This act]~~ Chapter 30, Article 49  
NMSA 1978 may be cited as the "Tobacco Products, E-Cigarette  
and Nicotine Liquid Container Act"."

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

3           "30-49-2. ~~[DEFINITION]~~ DEFINITIONS.--As used in the  
4 Tobacco Products, E-Cigarette and Nicotine Liquid Container  
5 Act:

6           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;

~~A. "child resistant" means a package or container~~  
7 ~~that satisfies the requirements for "special packaging"~~  
8 ~~pursuant to the federal Poison Prevention Packaging Act of~~  
9 ~~1970, 15 U.S.C. Section 1471 et seq.;~~

10           B. "e-cigarette":

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

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

20           (3) does not include any product regulated as

21 a drug or device by the United States food and drug  
22 administration under the Federal Food, Drug, and Cosmetic Act,  
23 21 U.S.C. Section 301 et seq.;

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

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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 ~~[any]~~ a tobacco product, an e-cigarette or a nicotine liquid container to ~~[any]~~ a minor.

B. No minor shall procure or attempt to procure any tobacco ~~[products]~~ product, e-cigarette or nicotine liquid container for ~~[his]~~ the minor's own use or for use by ~~[any other]~~ 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.--~~[Any]~~ A person selling goods at retail or wholesale may refuse to sell tobacco products, e-cigarettes or nicotine liquid containers to ~~[any]~~ a person who is unable to produce an identity card as evidence that ~~[he]~~ 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

1 exchange between the customer and the seller or the seller's  
2 employee; and

3 (2) a person selling goods at a retail  
4 location in New Mexico shall not use a self-service display for  
5 tobacco products, e-cigarettes or nicotine liquid containers.

6 As used in this subsection, "self-service display" means a  
7 display to which the public has access without the assistance  
8 of the seller or the seller's employee.

9 B. Tobacco products, e-cigarettes and nicotine  
10 liquid containers may be sold by vending machines [~~in the~~  
11 ~~following locations~~] only

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

15 ~~(2) in locations in which the vending machine~~  
16 ~~is equipped with a remote controlled lock out device; or~~

17 ~~(3)] in age-controlled locations where minors~~  
18 ~~are not permitted [unless accompanied by a parent or guardian].~~

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

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

23 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS, E-CIGARETTES  
24 OR NICOTINE LIQUID CONTAINERS AS FREE SAMPLES PROHIBITED--  
25 EXCEPTION.--

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A. A person ~~[who sells, distributes, promotes or advertises tobacco products]~~ 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 ~~[to a family member or to an acquaintance on private property not held open to the public]~~, 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 ~~[\$1,000]~~ \$100."

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

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

6 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The  
 7 alcohol and gaming division of the regulation and licensing  
 8 department and the appropriate law enforcement authorities in  
 9 each county and municipality shall conduct random, unannounced  
 10 inspections of facilities where tobacco products, e-cigarettes  
 11 or nicotine liquid containers are sold to ensure compliance  
 12 with the provisions of the Tobacco Products, E-Cigarette and  
 13 Nicotine Liquid Container Act."

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

16 "30-49-11. PREEMPTION.--When a municipality or county,  
 17 including a home rule municipality or urban county, adopts an  
 18 ordinance or a regulation pertaining to sales of tobacco  
 19 products, e-cigarettes or nicotine liquid containers, the  
 20 ordinance or regulation shall be consistent with the provisions  
 21 of the Tobacco Products, E-Cigarette and Nicotine Liquid  
 22 Container Act."

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

25 "30-49-12. PENALTY.--

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1           A. Any person who violates any provision of  
2 Subsection A, D or E of Section [3 or Sections 5, 7, 8 or 9 of  
3 the Tobacco Products Act] 30-49-3 NMSA 1978 or Section 30-49-7,  
4 30-49-8 or 30-49-9 NMSA 1978 is guilty of a misdemeanor and  
5 shall be sentenced pursuant to the provisions of Section  
6 31-19-1 NMSA 1978. Each violation is a separate and distinct  
7 offense.

8           B. Any minor who violates any provision of  
9 Subsection B of Section [3 or Section 6 of the Tobacco Products  
10 Act] 30-49-3 NMSA 1978 or Section 30-49-6 NMSA 1978 shall be  
11 punished by a fine not to exceed one hundred dollars (\$100) or  
12 forty-eight hours of community service."

13           **SECTION 12.** A new section of the Tobacco Products, E-  
14 Cigarette and Nicotine Liquid Container Act is enacted to read:

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

20           **SECTION 13.** TEMPORARY PROVISION.--Not later than August  
21 1, 2015, the public education department shall revise its  
22 tobacco, alcohol and drug free school districts policy to  
23 include e-cigarettes and nicotine liquid containers, as defined  
24 in Section 30-49-2 NMSA 1978.