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HOUSE BILL 94

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Joanne J. Ferrary

AN ACT

RELATING TO TOBACCO PRODUCTS; PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS; DEFINING TERMS; CONFORMING CERTAIN NOTICE REQUIREMENTS.

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

SECTION 1. Section 61-37-2 NMSA 1978 (being Laws 2020, Chapter 46, Section 2) is amended to read:

"61-37-2. DEFINITIONS.--As used in the Tobacco Products Act:

A. "characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of

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1 ingredient information;

2           ~~[A.]~~ B. "child-resistant packaging" means packaging  
3 or a container that is designed or constructed to be  
4 significantly difficult for children under five years of age to  
5 open or obtain a toxic or harmful amount of the substance  
6 contained therein within a reasonable time and not difficult  
7 for a normal adult to use properly, but does not mean packaging  
8 or a container that all such children cannot open or obtain a  
9 toxic or harmful amount within a reasonable time;

10           ~~[B.]~~ C. "contraband tobacco products" means any  
11 tobacco products possessed, sold, bartered or given in  
12 violation of the Tobacco Products Act;

13           ~~[C.]~~ D. "delivery sale" means a sale of tobacco  
14 products to a consumer in New Mexico in which:

15                   (1) the consumer submits an order for the sale  
16 by telephone, over the internet or through the mail or another  
17 delivery system; and

18                   (2) the tobacco product is shipped through a  
19 delivery service;

20           ~~[D.]~~ E. "delivery service" means a person,  
21 including the United States postal service, that is engaged in  
22 the delivery of letters, packages or containers;

23           ~~[E.]~~ F. "director" means the director of the  
24 alcoholic beverage control division of the regulation and  
25 licensing department;

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1           ~~[F.]~~ G. "distribute" means to purchase and store a  
2 product and to offer the product for resale to retailers or  
3 consumers;

4           ~~[G.]~~ H. "distributor" means a person that  
5 distributes tobacco products in New Mexico, but does not  
6 include:

7                   (1) a retailer;

8                   (2) a manufacturer; or

9                   (3) a common or contract carrier;

10           ~~[H.]~~ I. "division" means the alcoholic beverage  
11 control division of the regulation and licensing department;

12           ~~[I.]~~ J. "e-cigarette":

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

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

22                   (3) does not include any product regulated as  
23 a drug or device by the United States food and drug  
24 administration under the Federal Food, Drug, and Cosmetic Act,  
25 21 U.S.C. Section 301 et seq.;

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1           ~~[J.]~~ K. "electronic nicotine delivery system" means  
2 an electronic device, including e-cigarettes, whether composed  
3 of a heating element and battery or an electronic circuit, that  
4 provides a vapor or aerosol of nicotine, the use or inhalation  
5 of which simulates smoking;

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

12           ~~[K.]~~ M. "knowingly attractive to minors" means  
13 packaging or labeling that contains:

- 14                   (1) a cartoon-like character that mimics  
15 characters primarily aimed at entertaining minors;  
16                   (2) an imitation or mimicry of trademarks or  
17 trade dress of products that are or have been primarily  
18 marketed toward minors; or  
19                   (3) a symbol or celebrity image that is  
20 primarily used to market products to minors;

21           ~~[L.]~~ N. "licensee" means a holder of a license  
22 issued by the division pursuant to the Tobacco Products Act;

23           ~~[M.]~~ O. "manufacturer" means a person that  
24 manufactures, fabricates, assembles, processes or labels  
25 tobacco products or imports from outside the United States,

1 directly or indirectly, a tobacco product for sale or  
2 distribution in the United States;

3 [N-] P. "minor" means an individual who is younger  
4 than twenty-one years of age;

5 [O-] Q. "nicotine liquid" means a liquid or other  
6 substance containing nicotine where the liquid or substance is  
7 sold, marketed or intended for use in an electronic nicotine  
8 delivery system;

9 [P-] R. "person" means an individual, corporation,  
10 firm, partnership, copartnership, association or other legal  
11 entity;

12 [Q-] S. "retailer" means a person, whether located  
13 within or outside of New Mexico, that sells tobacco products at  
14 retail to a consumer in New Mexico; provided that the sale is  
15 not for resale;

16 [R-] T. "self-service display" means a display to  
17 which the public has access without the assistance of a  
18 retailer or the retailer's employee; and

19 [S-] U. "tobacco product" means a product made or  
20 derived from tobacco or nicotine that is intended for human  
21 consumption, whether smoked, chewed, absorbed, dissolved,  
22 inhaled, snorted, sniffed or ingested by any other means,  
23 including cigars, cigarettes, chewing tobacco, pipe tobacco,  
24 snuff, e-cigarettes or electronic nicotine delivery systems."

25 SECTION 2. Section 61-37-3 NMSA 1978 (being Laws 2020,

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1 Chapter 46, Section 3) is amended to read:

2 "61-37-3. PROHIBITED SALES--MANUFACTURING--LABELING--  
3 MARKETING--SAFETY REQUIREMENTS.--

4 A. A person shall not knowingly, intentionally or  
5 negligently sell, offer to sell, barter or give a tobacco  
6 product to a minor.

7 B. A person or a licensee shall not knowingly,  
8 intentionally or negligently sell, offer to sell, barter or  
9 give a flavored tobacco product.

10 [~~B.~~] C. A licensee shall not sell, offer to sell or  
11 deliver a tobacco product in a form other than an original  
12 manufacturer-sealed package, except for individually sold  
13 cigars or loose leaf pipe tobacco.

14 [~~C.~~] D. A licensee shall not sell, offer to sell or  
15 deliver nicotine liquid in this state unless such liquid is in  
16 child-resistant packaging, except that for the purpose of this  
17 subsection, "nicotine liquid" does not include nicotine liquid  
18 in a cartridge that is pre-filled and sealed by the  
19 manufacturer and that is not intended to be opened by the  
20 consumer.

21 [~~D.~~] E. A manufacturer shall not produce and a  
22 distributor or retailer shall not sell tobacco products that  
23 are knowingly attractive to minors."

24 SECTION 3. Section 61-37-15 NMSA 1978 (being Laws 2020,  
25 Chapter 46, Section 15) is amended to read:

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1 "61-37-15. VENDING MACHINES--RESTRICTIONS ON SALES OF  
2 TOBACCO PRODUCTS.--

3 A. Except as provided in Subsections B and C of  
4 this section, a retailer selling goods at a retail location in  
5 New Mexico shall not use a self-service display for tobacco  
6 products.

7 B. Tobacco products may be sold by vending machines  
8 only:

9 (1) in age-controlled locations where minors  
10 are not permitted; and

11 (2) if the tobacco products are not flavored  
12 tobacco products.

13 C. The sales and display of cigars may be allowed  
14 only:

15 (1) in age-controlled locations where minors  
16 are not permitted; and

17 (2) if the cigars are not flavored tobacco  
18 products."

19 SECTION 4. Section 61-37-17 NMSA 1978 (being Laws 2020,  
20 Chapter 46, Section 17) is amended to read:

21 "61-37-17. SIGNS--POINT OF SALE.--A retailer shall  
22 prominently display in the place where tobacco products are  
23 sold and where a tobacco product vending machine is located [~~a~~]  
24 printed [~~sign~~] signs or [~~decal~~] decals that [~~reads~~] read as  
25 follows:

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A. "IT IS ILLEGAL FOR A PERSON UNDER 21 YEARS OF  
AGE TO PURCHASE TOBACCO PRODUCTS."; and

B. "IT IS ILLEGAL TO SELL FLAVORED TOBACCO  
PRODUCTS."."