

SENATE, No. 3054

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:

Senator ROBERT M. GORDON

District 38 (Bergen)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

Senator Codey

SYNOPSIS

Prohibits sale of electronic smoking devices to minors.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/8/2009)

1 AN ACT prohibiting the sale of electronic smoking devices to
2 minors and amending P.L.2000, c.87 and P.L.1999, c.90.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to
8 read as follows:

9 1. a. No person, either directly or indirectly by an agent or
10 employee, or by a vending machine owned by the person or located
11 in the person's establishment, shall sell, offer for sale, distribute for
12 commercial purpose at no cost or minimal cost or with coupons or
13 rebate offers, give or furnish, to a person under 19 years of age~~[,]~~:

14 (1) any cigarettes made of tobacco or of any other matter or
15 substance which can be smoked, or any cigarette paper or tobacco
16 in any form, including smokeless tobacco; or

17 (2) any electronic smoking device that can be used to deliver
18 nicotine or other substances to the person inhaling from the device,
19 including, but not limited to, an electronic cigarette, cigar, cigarillo,
20 or pipe, or any cartridge or other component of the device or related
21 product.

22 b. The establishment of all of the following shall constitute a
23 defense to any prosecution brought pursuant to subsection a. of this
24 section:

25 (1) that the purchaser of the tobacco product or electronic
26 smoking device or the recipient of the promotional sample falsely
27 represented, by producing either a driver's license or non-driver
28 identification card issued by the New Jersey Motor Vehicle
29 Commission, a similar card issued pursuant to the laws of another
30 state or the federal government of Canada, or a photographic
31 identification card issued by a county clerk, that the purchaser or
32 recipient was of legal age to make the purchase or receive the
33 sample;

34 (2) that the appearance of the purchaser of the tobacco product
35 or electronic smoking device or the recipient of the promotional
36 sample was such that an ordinary prudent person would believe the
37 purchaser or recipient to be of legal age to make the purchase or
38 receive the sample; and

39 (3) that the sale or distribution of the tobacco product or
40 electronic smoking device was made in good faith, relying upon the
41 production of the identification set forth in paragraph (1) of this
42 subsection, the appearance of the purchaser or recipient, and in the
43 reasonable belief that the purchaser or recipient was of legal age to
44 make the purchase or receive the sample.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 c. A person who violates the provisions of subsection a. of this
2 section, including an employee of a retail dealer licensee under
3 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise
4 provides a tobacco product to a person under 19 years of age, shall
5 be liable to a civil penalty of not less than \$250 for the first
6 violation, not less than \$500 for the second violation, and \$1,000
7 for the third and each subsequent violation. The civil penalty shall
8 be collected pursuant to the "Penalty Enforcement Law of 1999,"
9 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding
10 before the municipal court having jurisdiction. An official
11 authorized by statute or ordinance to enforce the State or local
12 health codes or a law enforcement officer having enforcement
13 authority in that municipality may issue a summons for a violation
14 of the provisions of subsection a. of this section, and may serve and
15 execute all process with respect to the enforcement of this section
16 consistent with the Rules of Court. A penalty recovered under the
17 provisions of this subsection shall be recovered by and in the name
18 of the State by the local health agency. The penalty shall be paid
19 into the treasury of the municipality in which the violation occurred
20 for the general uses of the municipality.

21 d. In addition to the provisions of subsection c. of this section,
22 upon the recommendation of the municipality, following a hearing
23 by the municipality, the Division of Taxation in the Department of
24 the Treasury may suspend or, after a second or subsequent violation
25 of the provisions of subsection a. of this section, revoke the license
26 issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail
27 dealer. The licensee shall be subject to administrative charges,
28 based on a schedule issued by the Director of the Division of
29 Taxation, which may provide for a monetary penalty in lieu of a
30 suspension.

31 e. A penalty imposed pursuant to this section shall be in
32 addition to any penalty that may be imposed pursuant to section 3
33 of P.L.1999, c. 90 (C.2C:33-13.1).
34 (cf: P.L.2005, c.384, s.1)
35

36 2. Section 3 of P.L.1999, c.90 (C.2C:33-13.1) is amended to
37 read as follows:

38 3. a. A person who sells or gives to a person under 19 years of
39 age any cigarettes made of tobacco or of any other matter or
40 substance which can be smoked, or any cigarette paper or tobacco
41 in any form, including smokeless tobacco, or any electronic
42 smoking device that can be used to deliver nicotine or other
43 substances to the person inhaling from the device, including, but not
44 limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any
45 cartridge or other component of the device or related product,
46 including an employee of a retail dealer licensee under P.L.1948,
47 c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a
48 tobacco product or electronic smoking device to a person under 19

1 years of age, shall be punished by a fine as provided for a petty
2 disorderly persons offense. A person who has been previously
3 punished under this section and who commits another offense under
4 it may be punishable by a fine of twice that provided for a petty
5 disorderly persons offense.

6 b. The establishment of all of the following shall constitute a
7 defense to any prosecution brought pursuant to subsection a. of this
8 section:

9 (1) that the purchaser or recipient of the tobacco product or
10 electronic smoking device falsely represented, by producing either a
11 driver's license or non-driver identification card issued by the New
12 Jersey Motor Vehicle Commission, a similar card issued pursuant to
13 the laws of another state or the federal government of Canada, or a
14 photographic identification card issued by a county clerk, that the
15 purchaser or recipient was of legal age to purchase or receive the
16 tobacco product or electronic smoking device;

17 (2) that the appearance of the purchaser or recipient of the
18 tobacco product or electronic smoking device was such that an
19 ordinary prudent person would believe the purchaser or recipient to
20 be of legal age to purchase or receive the tobacco product or
21 electronic smoking device; and

22 (3) that the sale or distribution of the tobacco product or
23 electronic smoking device was made in good faith, relying upon the
24 production of the identification set forth in paragraph (1) of this
25 subsection, the appearance of the purchaser or recipient, and in the
26 reasonable belief that the purchaser or recipient was of legal age to
27 purchase or receive the tobacco product or electronic smoking
28 device.

29 c. A penalty imposed pursuant to this section shall be in
30 addition to any penalty that may be imposed pursuant to section 1
31 of P.L.2000, c.87 (C.2A:170-51.4).

32 (cf: P.L.2005, c.384, s.5)

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34 3. This act shall take effect on the 60th day after enactment.

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STATEMENT

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39 This bill extends the current statutory prohibition on the sale of
40 tobacco products to persons under 19 years of age to apply to
41 electronic smoking devices, commonly known as e-cigarettes.

42 The provisions of this bill would apply to the sale or distribution
43 of electronic smoking devices that can be used to deliver nicotine or
44 other substances to the person inhaling from the device, including,
45 but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or
46 any cartridge or other component of the device or related product.

47 A person who violates the provisions of this bill would be
48 subject to the existing statutory civil and criminal penalties for the

1 sale or distribution of tobacco products to persons under 19 years of
2 age, as follows:

3 -- The criminal penalties are a fine as provided for a petty
4 disorderly persons offense (\$500) for a first offense and a fine of
5 twice that amount for a subsequent offense.

6 -- The civil penalties are not less than \$250 for the first
7 violation, not less than \$500 for the second violation, and \$1,000
8 for the third and each subsequent violation; and possible
9 suspension, or (after a second or subsequent violation) revocation of
10 the license of a retail dealer issued under section 202 of P.L.1948,
11 c.65 (C.54:40A-4).

12 -- A civil penalty imposed would be in addition to any criminal
13 penalty that may be imposed and vice versa.

14 The bill takes effect on the 60th day after enactment.

15 It should be noted that:

- 16 • An e-cigarette is operated by a battery that warms liquid nicotine
17 and propylene glycol from a replaceable plastic cartridge when a
18 person inhales the device. Propylene glycol is a liquid that
19 vaporizes when a person exhales and produces a mist that is
20 nearly identical in appearance to tobacco smoke.
- 21 • Propylene glycol is used in antifreeze; and, according to a 2009
22 statement by Health Canada, the Canadian federal government
23 agency with regulatory jurisdiction over health issues, "the
24 inhalation of propylene glycol is a known irritant."
- 25 • Health Canada issued a public advisory to not purchase or use e-
26 cigarettes "as these products may pose health risks and have not
27 been fully evaluated for safety, quality and efficacy by Health
28 Canada" and ordered persons importing, advertising, or selling
29 these products in Canada to cease doing so.
- 30 • The federal Food and Drug Administration (FDA) has refused
31 entry to shipments of e-cigarettes coming into this country on the
32 grounds that these are unapproved drug device products;
33 however, enough of these devices have made their way into this
34 country that they are sold online and in some shopping mall
35 kiosks.
- 36 • The World Health Organization issued a statement in 2008 that it
37 does not consider e-cigarettes "to be a legitimate therapy for
38 smokers trying to quit."
- 39 • These devices have not been submitted to the FDA for evaluation
40 or approval, and New Jersey's own Senator Frank Lautenberg has
41 requested that the FDA take e-cigarettes off the market until they
42 are proven safe for public use.