

ASSEMBLY, No. 4896

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 17, 2019

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblyman JOHN ARMATO

District 2 (Atlantic)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

**Assemblyman Benson, Assemblywomen Pinkin, Jimenez and
Assemblyman Tully**

SYNOPSIS

Prohibits delivery of electronic smoking devices and tobacco products to individuals under 21 years of age.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/8/2019)

1 AN ACT concerning electronic smoking devices and tobacco
2 products, amending P.L.2000, c.87 and P.L.1999, c.90, and
3 supplementing Title 24 of the New Jersey Statutes.

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

7
8 1. (New section) a. No person shall complete a delivery of a
9 tobacco product or electronic smoking device to a residence without
10 first obtaining, upon delivery of the tobacco product or electronic
11 smoking device, the signature of an individual who is at least 21
12 years of age and who resides in that residence.

13 b. A violation of this section shall constitute a violation of
14 subsection a. of section 1 of P.L.2000, c.87 (C.2A:170-51.4) and
15 section 3 of P.L.1999, c.90 (C.2C:33-13.1).

16
17 2. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to
18 read as follows:

19 1. a. No person, either directly or indirectly by an agent or
20 employee, or by a vending machine owned by the person or located
21 in the person's establishment, shall sell, offer for sale, complete a
22 delivery to a residence without first obtaining, upon delivery, the
23 signature of an individual who is at least 21 years of age and who
24 resides in that residence, distribute for commercial purpose at no
25 cost or minimal cost or with coupons or rebate offers, give or
26 furnish, to a person under 21 years of age:

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

30 (2) any electronic smoking device that can be used to deliver
31 nicotine or other substances to the person inhaling from the device,
32 including, but not limited to, an electronic cigarette, cigar, cigarillo,
33 or pipe, or any cartridge or other component of the device or related
34 product.

35 b. The establishment of all of the following shall constitute a
36 defense to any prosecution brought pursuant to subsection a. of this
37 section:

38 (1) that the purchaser of the tobacco product or electronic
39 smoking device, the individual signing for the delivery of the
40 tobacco product or electronic smoking device, or the recipient of
41 the promotional sample falsely represented, by producing either a
42 driver's license or non-driver identification card issued by the New
43 Jersey Motor Vehicle Commission, a similar card issued pursuant to
44 the laws of another state or the federal government of Canada, or a
45 photographic identification card issued by a county clerk, that the

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 purchaser or recipient was of legal age to make the purchase, sign
2 for the delivery, or receive the sample;

3 (2) that the appearance of the purchaser of the tobacco product
4 or electronic smoking device, the individual signing for the delivery
5 of the tobacco product or electronic smoking device, or the
6 recipient of the promotional sample was such that an ordinary
7 prudent person would believe the purchaser or recipient to be of
8 legal age to make the purchase, sign for the delivery, or receive the
9 sample; and

10 (3) that the sale, delivery, or distribution of the tobacco product
11 or electronic smoking device was made in good faith, relying upon
12 the production of the identification set forth in paragraph (1) of this
13 subsection, the appearance of the purchaser, signer, or recipient,
14 and in the reasonable belief that the purchaser, signer, or recipient
15 was of legal age to make the purchase or receive the sample.

16 c. A person who violates the provisions of subsection a. of this
17 section, including an employee of a retail dealer licensee under
18 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise
19 provides a tobacco product to a person under 21 years of age, shall
20 be liable to a civil penalty of not less than \$250 for the first
21 violation, not less than \$500 for the second violation, and \$1,000
22 for the third and each subsequent violation. The civil penalty shall
23 be collected pursuant to the "Penalty Enforcement Law of 1999,"
24 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding
25 before the municipal court having jurisdiction. An official
26 authorized by statute or ordinance to enforce the State or local
27 health codes or a law enforcement officer having enforcement
28 authority in that municipality may issue a summons for a violation
29 of the provisions of subsection a. of this section, and may serve and
30 execute all process with respect to the enforcement of this section
31 consistent with the Rules of Court. A penalty recovered under the
32 provisions of this subsection shall be recovered by and in the name
33 of the State by the local health agency. The penalty shall be paid
34 into the treasury of the municipality in which the violation occurred
35 for the general uses of the municipality.

36 d. In addition to the provisions of subsection c. of this section,
37 upon the recommendation of the municipality, following a hearing
38 by the municipality, the Division of Taxation in the Department of
39 the Treasury may suspend or, after a second or subsequent violation
40 of the provisions of subsection a. of this section, revoke the license
41 issued under section 202 of P.L.1948, c.65 (C.54:40A-4) of a retail
42 dealer. The licensee shall be subject to administrative charges,
43 based on a schedule issued by the Director of the Division of
44 Taxation, which may provide for a monetary penalty in lieu of a
45 suspension.

46 e. A penalty imposed pursuant to this section shall be in
47 addition to any penalty that may be imposed pursuant to section 3
48 of P.L.1999, c.90 (C.2C:33-13.1).
49 (cf: P.L.2017, c.118, s.2)

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

3 3. a. A person who delivers, sells, or gives to a person under
4 21 years of age any cigarettes made of tobacco or of any other
5 matter or substance which can be smoked, or any cigarette paper or
6 tobacco in any form, including smokeless tobacco, or any electronic
7 smoking device that can be used to deliver nicotine or other
8 substances to the person inhaling from the device, including, but not
9 limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any
10 cartridge or other component of the device or related product,
11 including an employee of a retail dealer licensee under
12 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise
13 provides a tobacco product or electronic smoking device to a person
14 under 21 years of age, shall be punished by a fine as provided for a
15 petty disorderly persons offense. A person who has been previously
16 punished under this section and who commits another offense under
17 it may be punishable by a fine of twice that provided for a petty
18 disorderly persons offense.

19 b. The establishment of all of the following shall constitute a
20 defense to any prosecution brought pursuant to subsection a. of this
21 section:

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

30 (2) that the appearance of the purchaser or recipient of the
31 tobacco product or electronic smoking device was such that an
32 ordinary prudent person would believe the purchaser or recipient to
33 be of legal age to purchase or receive the tobacco product or
34 electronic smoking device; and

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

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

45 (cf: P.L.2017, c.118, s.3)

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47 4. The Department of Health, pursuant to the "Administrative
48 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt

1 rules and regulations as are necessary to effectuate the provisions of
2 this act.

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4 5. This act shall take effect 180 days after enactment.

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STATEMENT

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9 This bill prohibits the delivery of electronic smoking devices to
10 individuals under the age of 21. Under the bill, it is unlawful to
11 deliver an electronic smoking device or tobacco product to a
12 residence without first obtaining, upon delivery, the signature of an
13 individual who is at least 21 years and who resides in that
14 residence. A person who violates the provisions of the bill is to be
15 subject to the civil and criminal penalties that apply to individuals
16 who sell or furnish tobacco products and electronic smoking
17 devices to persons under 21 years of age.