

[First Reprint]

**ASSEMBLY, No. 5385**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED MAY 13, 2019

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Cumberland, Gloucester and Salem)**

**Assemblywoman ELIANA PINTOR MARIN**

**District 29 (Essex)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Concerns sale, taxation, and forfeiture of container e-liquid

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on June 17, 2019, with amendments.



**(Sponsorship Updated As Of: 5/24/2019)**

1 AN ACT concerning the sale <sup>1</sup>**[and]** <sup>1</sup>taxation <sup>1</sup>, and forfeiture<sup>1</sup>  
2 of container e-liquid, supplementing and amending P.L.1990,  
3 c.39 <sup>1</sup>,<sup>1</sup> and amending <sup>1</sup>N.J.S.2C:64-1 and<sup>1</sup> P.L.2018, c.50.

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

7  
8 1. Section 1 of P.L.1990, c.39 (C.54:40B-1) is amended to read  
9 as follows:

10 1. Sections 1 through 14 of P.L.1990, c.39 (C.54:40B-1 et seq.)  
11 shall be known and may be cited as the "Tobacco and **[Nicotine]**  
12 Vapor Products **[Wholesale Sales and Use]** Tax Act."  
13 (cf: P.L.2018, c.50, s.2)

14  
15 2. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read  
16 as follows:

17 2. As used in sections 2 through 14 and section 20 of P.L.1990,  
18 c.39 (C.54:40B-1 et seq.):

19 "Consumer" means a person except a distributor, manufacturer,  
20 or wholesaler who acquires a tobacco product for consumption,  
21 storage, or use in this State;

22 "Container e-liquid" means a container of liquid nicotine or other  
23 liquid where the liquid is marketed, sold, or intended for use in an  
24 electronic smoking device, but does not include a prefilled cartridge  
25 or other container where the cartridge or container is marketed,  
26 sold, or intended for use as, or as a part of, an electronic smoking  
27 device;

28 "Director" means the Director of the Division of Taxation in the  
29 Department of the Treasury;

30 "Distributor" means:

31 a person engaged in the business of selling tobacco products in  
32 this State who brings, or causes to be brought into this State from  
33 without the State a tobacco product for sale within this State,

34 a person who makes or manufactures tobacco products in this  
35 State for sale in the State,

36 a person engaged in the business of selling tobacco products  
37 without this State who ships or transports tobacco products to a  
38 person in this State to be sold to a retail dealer, or

39 a person who receives tobacco products without receiving proof  
40 that the tax has been or will be paid by another distributor;

41 "Dry snuff" means any finely cut, ground, or powdered  
42 smokeless tobacco that is intended to be sniffed through the nasal  
43 cavity, but does not include moist snuff;

44 "Electronic smoking device" means a nonlighted,  
45 noncombustible device that may be used to simulate smoking and

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SBA committee amendments adopted June 17, 2019.

1 that employs a mechanical heating element, battery, or circuit,  
2 regardless of shape or size, to produce aerosolized or vaporized  
3 nicotine or other substance for inhalation into the body of a person,  
4 including but not limited to a device that is manufactured,  
5 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-  
6 hookah, vape pen, or any other similar product with any other  
7 product name or descriptor;

8 "Liquid nicotine" means any solution containing nicotine that is  
9 designed or sold for use with an electronic smoking device;

10 "Manufacturer" means a person, wherever resident or located,  
11 who manufactures or produces, or causes to be manufactured or  
12 produced, a tobacco product and sells, uses, stores, or distributes  
13 the product regardless of whether it is intended for sale, use, or  
14 distribution within or without this State;

15 "Moist snuff" means any finely cut, ground, or powdered  
16 smokeless tobacco that is intended to be placed or dipped in the oral  
17 cavity, but does not include dry snuff;

18 "Person" means an individual, firm, corporation, copartnership,  
19 joint venture, association, receiver, trustee, guardian, executor,  
20 administrator, or any other person acting in a fiduciary capacity, or  
21 an estate, trust, or group or combination acting as a unit, the State  
22 Government and any political subdivision thereof, and the plural as  
23 well as the singular, unless the intention to give a more limited  
24 meaning is disclosed by the context;

25 "Place of business" means a place where a tobacco product is  
26 sold or where a tobacco product is brought or kept for the purpose  
27 of sale or consumption, including so far as may be applicable a  
28 vessel, vehicle, airplane, train or vending machine;

29 "Retail dealer" means a person who is engaged in this State in  
30 the business of selling any tobacco product at retail. A person  
31 placing a tobacco product vending machine at, or on any premises  
32 shall be deemed to be a retail dealer for each vending machine;

33 "Sale" means any sale, transfer, exchange, barter, or gift, in any  
34 manner or by any means whatsoever;

35 "Tobacco product" means any product containing, made, or  
36 derived from any tobacco, nicotine, or other chemicals or  
37 substances for consumption by a person, including, but not limited  
38 to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco,  
39 smoking tobacco and their substitutes, dry and moist snuff, and  
40 liquid nicotine, but does not include cigarette as defined in section  
41 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et  
42 seq.);

43 "Treasurer" means the State Treasurer;

44 "Use" means the exercise of any right or power incidental to the  
45 ownership of a tobacco product, including a sale at retail;

46 "Vapor business" means a retail business where more than 50  
47 percent of its retail sales are derived from electronic smoking

1 devices, related accessories, and liquid nicotine, but does not  
2 include a retail business that does not sell container e-liquid;

3 "Wholesale price" means the actual price for which a  
4 manufacturer sells tobacco products to a distributor; and

5 "Wholesaler" means a person, wherever resident or located, other  
6 than a distributor as defined herein, who:

7 a. purchases tobacco products from any other person who  
8 purchases from the manufacturer and who acquires tobacco  
9 products solely for the purpose of bona fide resale to retail dealers  
10 or to other persons for the purposes of resale only; or

11 b. services retail outlets by the maintenance of an established  
12 place of business for the purchase of tobacco products including,  
13 but not limited to, the maintenance of warehousing facilities for the  
14 storage and distribution of tobacco products.

15 (cf: P.L.2018, c.50, s.3)

16

17 3. Section 5 of P.L.2018, c.50 (C.54:40B-3.2) is amended to read  
18 as follows:

19 5. a. There is imposed a tax upon the sale, use, or distribution of  
20 liquid nicotine within this State by a distributor or wholesaler to a  
21 retail dealer or consumer at the rate of \$0.10 per fluid milliliter on the  
22 volume of the liquid nicotine as listed by the manufacturer, and a  
23 proportionate rate on all fractional parts of a fluid milliliter of volume  
24 of liquid nicotine as listed by the manufacturer.

25 b. Unless liquid nicotine has already been or will be subject to the  
26 tax imposed in subsection a. of this section, if a distributor or  
27 wholesaler uses the liquid nicotine within the State, there is imposed  
28 upon the distributor or wholesaler a compensating use tax of \$0.10 per  
29 fluid milliliter of the volume of liquid nicotine as listed by the  
30 manufacturer, and a proportionate rate on all fractional parts of a fluid  
31 milliliter of the volume of liquid nicotine as listed by the manufacturer.

32 c. Unless a tax is due pursuant to subsection b. of this section, if a  
33 distributor or wholesaler has not paid the tax imposed in subsection a.  
34 of this section upon a sale that is subject to the tax imposed in that  
35 subsection a., there is imposed upon the retail dealer or consumer  
36 chargeable for the sale a compensating use tax of \$0.10 per fluid  
37 milliliter on the volume of the liquid nicotine as listed by the  
38 manufacturer, and a proportionate rate on all fractional parts of a fluid  
39 milliliter of the volume of liquid nicotine as listed by the manufacturer,  
40 which shall be collected in the manner provided in subsection b. of  
41 section 5 of P.L.1990, c.39 (C.54:40B-5).

42 d. The tax imposed pursuant to this section shall not apply to the  
43 1[retail]1 sale 1, use, or distribution1 of container e-liquid.

44 (cf: P.L.2018, c.50, s.5)

45

46 4. (New Section) a. After the effective date of  
47 P.L. , c. (C. )(pending before the Legislature as this bill), container

1 e-liquid shall not be sold at retail in the State except by a licensed  
2 vapor business.

3 b. <sup>1</sup>[A vapor business operating in the State shall be required to  
4 be licensed as such. The director shall make rules and regulations  
5 respecting applications to be licensed as a vapor business in the State.  
6 For each license issued to a vapor business the vapor business shall  
7 pay to the director a fee of \$50 annually.] Vapor business licenses  
8 shall be issued by the director, who shall make rules and regulations  
9 respecting application and issuance. Each such license shall lapse on  
10 March 31 of the period for which it is issued, and each such license  
11 shall be continued annually upon the conditions that the licensee shall  
12 have paid the required fee and complied with the provisions of P.L. ,  
13 c. (C. )(pending before the Legislature as this bill) and the rules and  
14 regulations of the director made pursuant thereto.

15 If a vapor business sells or intends to sell container e-liquid at two  
16 or more places of business, whether established or temporary, or  
17 whether in the same building or not, a separate license shall be  
18 required for each place of business. Each license, or certificate thereof,  
19 and such other evidence of license shall be exhibited in the place of  
20 business for which it is issued and in such manner as may be  
21 prescribed by the director.

22 No license shall be issued to any person except upon the payment  
23 of a \$50 fee. No license shall be assignable or transferable, but in the  
24 case of death, bankruptcy, receivership, or incompetency of the  
25 licensee, or if, for any other reason whatsoever, the business of the  
26 licensee shall devolve upon another by operation of law, the director  
27 may, in the director's discretion, extend said license for a limited time  
28 to the executor, administrator, trustee, receiver, or person upon whom  
29 the same has devolved.

30 The director shall require an applicant for a vapor business license,  
31 to include on the application the address of the place of business where  
32 the container e-liquid will be sold. If the place of business is moved to  
33 a different address than that provided on the license application, the  
34 licensee shall notify the director within 30 days of the change of  
35 address.

36 c. The director may, upon notice and after hearing, suspend or  
37 revoke the license or all licenses under this section issued to any  
38 person who violates any of the provisions of P.L. , c. (C. )(pending  
39 before the Legislature as this bill), or who, after being issued a license  
40 becomes disqualified for licensure pursuant to P.L. , c.  
41 (C. )(pending before the Legislature as this bill) or of any rule or  
42 regulation of the director made pursuant thereto or if the licensee has  
43 ceased to act in the capacity for which the license was issued or for  
44 other good cause. No person whose license has been suspended or  
45 revoked shall sell container e-liquid or permit container e-liquid to be  
46 sold during the period of such suspension or revocation on the  
47 premises occupied by that person or upon other premises controlled by  
48 that person or others, or in any other manner or form whatever. No

1 disciplinary proceeding or action shall be barred or abated by the  
2 expiration, transfer, surrender, continuance, renewal, or extension of a  
3 license issued under the provisions of P.L. , c. (C. )(pending before  
4 the Legislature as this bill).<sup>1</sup>

5  
6 5. (New Section) a. There is imposed a tax at the rate of 10  
7 percent of the listed retail sale price of container e-liquid sold  
8 within the State.

9 b. The tax imposed pursuant to this section shall be collected  
10 by the seller.

11 c. The seller shall be personally liable for the tax required to be  
12 collected pursuant to this section.

13 d. The director shall prescribe the manner and method that the  
14 tax shall be payable. The director may require such information and  
15 records necessary for administration of the tax, including for the  
16 purpose of consistent administration with other provisions of the  
17 "Tobacco and Vapor Products Tax Act," P.L.1990, c.39  
18 (C.54:40B-1 et seq.).

19  
20 <sup>1</sup>6. (New Section) a. The director is authorized to administer and  
21 enforce the provisions of P.L. , c. (C. )(pending before the  
22 Legislature as this bill) and in accordance with the "Administrative  
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to adopt rules  
24 and regulations as the director deems necessary.

25 b. Every vapor business shall keep complete and accurate records  
26 of all sales. The kind and form of such records may be prescribed by  
27 the director and all records shall be so kept as to be adequate to enable  
28 the director to determine the tax required to be collected. The director  
29 or any authorized assistant may, during reasonable business hours and  
30 without prior notice, make or cause to be made physical inventories  
31 and examinations of all container e-liquid and records in the  
32 possession of a vapor business. All such records shall be safely  
33 preserved for a period of four years in such a manner to ensure their  
34 security and accessibility for inspection by the director, supervisor, or  
35 any authorized assistant engaged in the administration of P.L. , c.  
36 (C. )(pending before the Legislature as this bill). The director may  
37 consent to the destruction of any such records at any time within the  
38 four-year period.<sup>1</sup>

39  
40 <sup>1</sup>7. (New Section) a. Any person who engages in any business or  
41 activity for which a license is required under the provisions of P.L. , c.  
42 (C. )(pending before the Legislature as this bill), without first having  
43 obtained a license to do so, or who, having had such a license, shall  
44 continue to engage in or conduct such business after any such license  
45 shall have been revoked, or during a suspension thereof, shall be liable  
46 to a penalty of not more than \$1,000, which penalty shall be sued for,  
47 and shall be recoverable in the name of the director; and each day that

1 any such business is so engaged in or conducted shall be deemed a  
2 separate offense.

3 b. The Superior Court and every municipal court within their  
4 respective jurisdictions, and with respect to offenses occurring within  
5 the territorial jurisdiction of the court, shall have jurisdiction over  
6 proceedings to enforce and collect the penalty. The proceedings shall  
7 be brought by and in the name of the director. They shall be summary  
8 and in accordance with the “Penalty Enforcement Law of 1999,”  
9 P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be either in the  
10 nature of a summons or warrant.

11 If judgment be rendered for the plaintiff, the court shall cause any  
12 defendant who refuses or fails to pay forthwith the amount of the  
13 judgment rendered against the defendant and all costs and charges  
14 incident thereto, to be committed to the county jail for such period as  
15 the court shall determine, not exceeding 60 days.

16 c. In case a person shall, after conviction of any violation of  
17 P.L. , c. (C. )(pending before the Legislature as this bill), be again  
18 convicted of violating the same provision thereof, the person may be  
19 liable to a penalty for such further violation, in double the maximum  
20 penalty which might have been imposed on the first conviction, to be  
21 sued for and recovered in the manner above set forth. In case any  
22 defendant against whom judgment has been rendered for a money  
23 penalty under this subsection, shall fail or neglect to pay forthwith the  
24 amount of said penalty, the court shall commit him to jail for such  
25 number of days not exceeding 180 days, as the court shall determine.

26 d. All penalties recovered for violations of this act shall be paid to  
27 the director and by the director accounted for and paid to the State  
28 Treasurer as in the case of State taxes.

29 e. The costs recoverable in any such proceeding shall be recovered  
30 by the director in the event of judgment in the director’s favor. If the  
31 judgment be for the defendant it shall be without costs against the  
32 director. All expenses incident to the recovery of any penalty pursuant  
33 to the provisions of this section shall be paid for as any other expense  
34 incident to the administration of P.L. , c. (C. )(pending before the  
35 Legislature as this bill).<sup>1</sup>

36  
37 <sup>1</sup>8. (New section) a. Every vapor business required to collect tax  
38 under P.L. , c. (C. )(pending before the Legislature as this bill) shall  
39 on or before the 20th day of each month, make and file a return for the  
40 preceding month with the director. The return shall show the total  
41 receipts from sales of container e-liquid and the amount of tax required  
42 to be collected and paid with respect to such amount.

43 b. The director may permit or require returns to be made covering  
44 other periods and upon such dates as the director may specify. In  
45 addition, the director may require payments of tax liability at such  
46 intervals and based upon such classifications as the director may  
47 designate. In prescribing other periods to be covered by the return or  
48 intervals or classifications for payment of tax liability, the director

1 may take into account the dollar volume of tax involved as well as the  
2 need for ensuring the prompt and orderly collection of the taxes  
3 imposed.

4 c. The form of returns shall be prescribed by the director and  
5 shall contain such information as the director may deem necessary for  
6 the proper administration of this act. The director may require  
7 amended returns to be filed within 20 days after notice and to contain  
8 the information specified in the notice.<sup>1</sup>

9  
10 <sup>1</sup>9. (New section) a. All container e-liquid possessed for retail  
11 sale by a person that is not licensed as a vapor business pursuant to  
12 section 4 of P.L. , c. (C. )(pending before the Legislature as this  
13 bill) are declared to be prima facie contraband goods and may be  
14 seized by the director, the director's agents or employees, or by any  
15 peace officer of this State, when so ordered by the director, without a  
16 warrant.

17 b. The director may direct the return of any unlawfully possessed  
18 container e-liquid upon reasonable belief that the owner has not  
19 willfully or intentionally evaded any licensing requirement imposed by  
20 P.L. , c. (C. )(pending before the Legislature as this bill).

21 c. The director may authorize the use for law enforcement  
22 purposes the use of any container e-liquid forfeited in accordance with  
23 this section.

24 d. The seizure of any unlawfully possessed container e-liquid  
25 shall not relieve any person from a fine, imprisonment or other penalty  
26 for violation of any of the provisions of P.L. , c. (C. )(pending  
27 before the Legislature as this bill). The director, the director's agents,  
28 employees, and any peace officer of this State, when directed so to do,  
29 shall not in any way be responsible in any court for the seizure or the  
30 confiscation of any unlawfully possessed container e-liquid.<sup>1</sup>

31

32 <sup>1</sup>10. N.J.S.2C:64-1 is amended to read as follows:

33 2C:64-1. Property Subject to Forfeiture.

34 a. Any interest in the following shall be subject to forfeiture and  
35 no property right shall exist in them:

36 (1) Controlled dangerous substances, firearms which are  
37 unlawfully possessed, carried, acquired or used, illegally possessed  
38 gambling devices, untaxed or otherwise contraband cigarettes or  
39 tobacco products, unlawfully possessed container e-liquid, untaxed  
40 special fuel, unlawful sound recordings and audiovisual works and  
41 items bearing a counterfeit mark. These shall be designated prima  
42 facie contraband.

43 (2) All property which has been, or is intended to be, utilized in  
44 furtherance of an unlawful activity, including, but not limited to,  
45 conveyances intended to facilitate the perpetration of illegal acts, or  
46 buildings or premises maintained for the purpose of committing  
47 offenses against the State.



1 (3) Property which has become or is intended to become an  
2 integral part of illegal activity, including, but not limited to, money  
3 which is earmarked for use as financing for an illegal gambling  
4 enterprise.

5 (4) Proceeds of illegal activities, including, but not limited to,  
6 property or money obtained as a result of the sale of prima facie  
7 contraband as defined by subsection a. (1), proceeds of illegal  
8 gambling, prostitution, bribery and extortion.

9 b. Any article subject to forfeiture under this chapter may be  
10 seized by the State or any law enforcement officer as evidence pending  
11 a criminal prosecution pursuant to section 2C:64-4 or, when no  
12 criminal proceeding is instituted, upon process issued by any court of  
13 competent jurisdiction over the property, except that seizure without  
14 such process may be made when not inconsistent with the Constitution  
15 of this State or the United States, and when

16 (1) The article is prima facie contraband; or

17 (2) The property subject to seizure poses an immediate threat to  
18 the public health, safety or welfare.

19 c. For the purposes of this section:

20 "Items bearing a counterfeit mark" means items bearing a  
21 counterfeit mark as defined in N.J.S.2C:21-32.

22 "Unlawful sound recordings and audiovisual works" means sound  
23 recordings and audiovisual works as those terms are defined in  
24 N.J.S.2C:21-21 which were produced in violation of N.J.S.2C:21-21.

25 "Unlawfully possessed container e-liquid" means container e-  
26 liquid as defined in section 2 of P.L.1990, c.39 (C.54:40B-2) that is  
27 possessed for retail sale by a person that is not licensed as a vapor  
28 business pursuant to section 4 of P.L. , c. (C. )(pending before the  
29 Legislature as this bill).

30 "Untaxed special fuel" means diesel fuel, No. 2 fuel oil and  
31 kerosene on which the motor fuel tax imposed pursuant to R.S.54:39-1  
32 et seq. is not paid that is delivered, possessed, sold or transferred in  
33 this State in a manner not authorized pursuant to R.S.54:39-1 et seq. or  
34 P.L.1938, c.163 (C.56:6-1 et seq.).<sup>1</sup>

35 (cf: P.L.2011, c.80, s.4)

36

37 <sup>1</sup>**[6.] 11.**<sup>1</sup> This act shall take effect <sup>1</sup>**[60 days]** on the first day of  
38 the fifth month<sup>1</sup> following enactment, but the director may take  
39 anticipatory administrative action necessary to implement this act.