

[Second Reprint]

ASSEMBLY, No. 5385

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 13, 2019

Sponsored by:

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Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator TROY SINGLETON

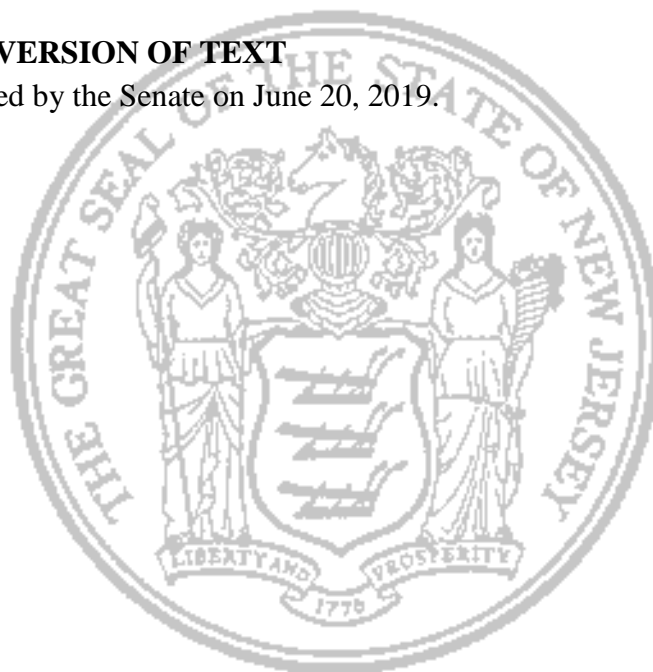
District 7 (Burlington)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on June 20, 2019.



(Sponsorship Updated As Of: 6/28/2019)

1 AN ACT concerning the sale ¹**【and】**,¹ taxation ¹, and forfeiture¹ of
2 container e-liquid, supplementing and amending P.L.1990, c.39
3 ¹,¹ and amending ¹N.J.S.2C:64-1 and¹ 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;

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:

¹Senate SBA committee amendments adopted June 17, 2019.

²Senate floor amendments adopted June 20, 2019.

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

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

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

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

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

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

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

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

37 "Tobacco product" means any product containing, made, or
38 derived from any tobacco, nicotine, or other chemicals or
39 substances for consumption by a person, including, but not limited
40 to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco,
41 smoking tobacco and their substitutes, dry and moist snuff, and
42 liquid nicotine, but does not include cigarette as defined in section
43 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-
44 1 et seq.);

45 "Treasurer" means the State Treasurer;

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

1 “Vapor business” means a retail business where more than 50
2 percent of its retail sales are derived from electronic smoking
3 devices, related accessories, and liquid nicotine, but does not
4 include a retail business that does not sell container e-liquid;

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

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

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

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

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

18

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

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

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

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

44 d. The tax imposed pursuant to this section shall not apply to the
45 '[retail]' sale¹, use, or distribution¹ of container e-liquid.

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

1 4. (New Section) a. After the effective date of
2 P.L. , c. (C.)(pending before the Legislature as this bill), container
3 e-liquid shall not be sold at retail in the State except by a licensed
4 vapor business.

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

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

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

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

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

1 premises occupied by that person or upon other premises controlled by
2 that person or others, or in any other manner or form whatever. No
3 disciplinary proceeding or action shall be barred or abated by the
4 expiration, transfer, surrender, continuance, renewal, or extension of a
5 license issued under the provisions of P.L. , c. (C.)(pending before
6 the Legislature as this bill).¹

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

11 b. The tax imposed pursuant to this section shall be collected
12 by the seller.

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

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

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

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

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

1 and shall be recoverable in the name of the director; and each day that
2 any such business is so engaged in or conducted shall be deemed a
3 separate offense.

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

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

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

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

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

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

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

1 intervals or classifications for payment of tax liability, the director
2 may take into account the dollar volume of tax involved as well as the
3 need for ensuring the prompt and orderly collection of the taxes
4 imposed.

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

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

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

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

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

32
33 ¹10. N.J.S.2C:64-1 is amended to read as follows:

34 2C:64-1. Property Subject to Forfeiture.

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

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

44 (2) All property which has been, or is intended to be, utilized in
45 furtherance of an unlawful activity, including, but not limited to,
46 conveyances intended to facilitate the perpetration of illegal acts, or
47 buildings or premises maintained for the purpose of committing
48 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.).¹

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

36
37 ²11. In addition to the license required by section 4 of P.L. , c.
38 (C.)(pending before the Legislature as this bill), a municipality
39 may adopt an ordinance concerning the licensure and regulation of a
40 vapor business. Nothing in P.L. , c. (C.)(pending before the
41 Legislature as this bill) shall be construed to preempt the provisions
42 of any existing or new municipal ordinance concerning the
43 licensure and regulation of a vapor business.²

44
45 ¹[6.] ²[11.] ²12. This act shall take effect ¹[60 days] on the
46 first day of the fifth month¹ following enactment, but the director may
47 take anticipatory administrative action necessary to implement this act.