

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5385

STATE OF NEW JERSEY

DATED: MAY 20, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5385.

This bill imposes licensing requirements on vapor businesses, limits the sale of container e-liquid to vapor businesses, and imposes a 10 percent tax on the sale of container e-liquid. The bill also exempts container e-liquid from the wholesale liquid nicotine tax, which pursuant to the bill, will only apply to non-container e-liquid.

Container e-liquid is a container of liquid nicotine or other liquid where the *liquid* is intended for use in an electronic smoking device, but not including prefilled containers where the *container* is intended for use in an electronic smoking device (e.g. cartridges).

A vapor business is a retail business where more than 50 percent of its retail sales are derived from electronic smoking devices, related accessories, and liquid nicotine. A retail business that does not sell container e-liquid is not included in the definition of vapor business.

Once this bill goes into effect, vapor businesses will be required to be licensed. The Director of Taxation will set the rules for application of licensure. In addition, container e-liquid may only be sold by vapor businesses. This requirement ensures that container e liquid is sold by businesses with expertise in proper use and consumption of e-liquid.

The bill also imposes a tax on container e-liquid at 10 percent of the retail price, including on non-nicotine e-liquid. However, the wholesale tax (\$0.10 per fluid milliliter for liquid nicotine) will not apply to container e-liquid.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate impact on State revenue. The tax revenue on container e-liquid at 10 percent of retail sale price will likely be lower than the revenue from the current \$0.10 per fluid milliliter tax. For example, a container of 30 milliliters of liquid nicotine is currently subject to \$3 in tax (\$0.10 per milliliter). If such an item sells for \$20, the tax under this bill will instead be \$2. However, it is unclear what percentage of liquid nicotine currently sold is container e-liquid.

In addition, the OLS notes that the tax on container e-liquid under this bill applies even if it lacks nicotine, which is not the case under current law. The new revenue on such e-liquid will therefore offset

some of the lost revenue resulting from the separate tax structure for container e-liquid. Furthermore, the imposition of a retail tax in place of a wholesale tax may reduce the instances of tax avoidance, which would also offset some of the lost revenue.