

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5385

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 2019

The Senate Budget and Appropriations Committee reports favorably and with committee amendment Assembly Bill No. 5385.

As amended and reported, Assembly Bill No. 5385 imposes licensing requirements on vapor businesses, limits the sale of container e-liquid to vapor businesses, and imposes a 10 percent tax on the retail 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 and keep records of sales. The Director of Taxation will set the rules for application of licensure and is empowered to revoke licenses.

A seller may be liable for a penalty of up to \$1000 each day that a seller sells container e-liquid without a license. In addition, container e-liquid will be subject to forfeiture if it is possessed for retail sale by a person that is not licensed.

Under the bill, 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. However, the wholesale tax on liquid nicotine (\$0.10 per fluid milliliter) will not apply to container e-liquid.

As amended, the bill will take effect at the start of the fifth month following enactment.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) add provisions regarding licensure and regulation of vapor businesses;
- 2) make a correction to the provision excluding container e-liquid from the wholesale tax so that all container e-liquid transactions would be exempt from the tax;
- 3) delay the effective date.

FISCAL IMPACT:

The Office of Legislative Services estimates that this bill will result in an indeterminate net impact on annual State revenue, an indeterminate increase in annual State expenditures, and an indeterminate potential increase in annual county expenditures.

The bill will have four countervailing State revenue effects. An indeterminate annual State revenue decrease will occur because in most instances the new tax rate that will be applied to sales of container e-liquid under the bill will result in lower tax liabilities relative to current law. Specifically, container e-liquid will be taxed at 10 percent of retail sale price when it is currently taxed at \$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 and what the average price of container e-liquid sold in New Jersey is.

The bill will also cause three indeterminate annual State revenue increases accruing from: a) the new retail sales tax on container e-liquid applying to sales of container e-liquids that lack nicotine when nicotine-free container e-liquids are not taxable under the current wholesale tax; b) the new annual \$50 licensing fee for vapor business licenses; and c) penalties the Division of Taxation may impose for selling container e-liquid without a license.

Additionally, the bill may increase by indeterminate amounts annual State administrative expenditures associated with the regulation and enforcement of the legal sale of container e-liquid and annual county expenditures insofar as offenders are committed to county jail for the failure to pay penalties.