

# ASSEMBLY, No. 5922

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 7, 2019

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblywoman NANCY J. PINKIN**

**District 18 (Middlesex)**

**Co-Sponsored by:**

**Assemblyman Benson, Assemblywoman Jimenez, Assemblyman Caputo  
and Assemblywoman Reynolds-Jackson**

**SYNOPSIS**

Revises requirements for sale of tobacco and vapor products; increases penalties for prohibited sales.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/13/2019)**

1 AN ACT concerning tobacco and vapor products, amending various  
2 parts of the statutory law, and supplementing Title 2A of the  
3 New Jersey Statutes.

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

7  
8 1. Section 3 of P.L.1995, c.305 (C.2A:170-51.1) is amended to  
9 read as follows:

10 3. A person 21 years of age or older who purchases a tobacco  
11 product, including an electronic smoking device or vapor product,  
12 for a person who is under 21 years of age is a petty disorderly  
13 person.

14 (cf: P.L.2017, c.118, s.1)

15  
16 2. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to  
17 read as follows:

18 1. a. No **person** retailer, either directly or indirectly by an  
19 agent or employee, or by a vending machine owned by the **person**  
20 retailer or located in the **person's** retailer's establishment, shall  
21 sell, offer for sale, distribute for commercial purpose at no cost or  
22 minimal cost or with coupons or rebate offers, give or furnish, to a  
23 person under 21 years of age **:**

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

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

32 Tobacco products, electronic smoking devices, and vapor  
33 products shall be maintained in a manner that restricts direct public  
34 access to the products and devices, which manner may include  
35 maintaining the products and devices in a locked cabinet, behind the  
36 sales counter, or in an area of the establishment where access is  
37 restricted to employees only. Commencing one year after the  
38 effective date of P.L. , c. (pending before the Legislature as this  
39 bill), no tobacco product may be sold or distributed unless the  
40 person conducting the sale or distribution verifies the purchaser's  
41 age using an electronic age verification system.

42 b. The establishment of all of the following shall constitute a  
43 defense to any prosecution brought pursuant to subsection a. of this  
44 section:

**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 (1) that the purchaser of the tobacco product **【**or electronic  
2 smoking device**】** or the recipient of the promotional sample falsely  
3 represented, by producing either a driver's license or non-driver  
4 identification card issued by the New Jersey Motor Vehicle  
5 Commission, a similar card issued pursuant to the laws of another  
6 state or the federal government of Canada, or a photographic  
7 identification card issued by a county clerk, that the purchaser or  
8 recipient was of legal age to make the purchase or receive the  
9 sample and, commencing one year after the effective date of P.L. ,  
10 c. (pending before the Legislature as this bill), the person making  
11 the sale or distribution verifies the purchaser's age using an  
12 electronic age verification system;

13 (2) that the appearance of the purchaser of the tobacco product  
14 **【**or electronic smoking device**】** or the recipient of the promotional  
15 sample was such that an ordinary prudent person would believe the  
16 purchaser or recipient to be of legal age to make the purchase or  
17 receive the sample; and

18 (3) that the sale or distribution of the tobacco product **【**or  
19 electronic smoking device**】** was made in good faith, relying upon  
20 the production and, commencing one year after the effective date of  
21 P.L. , c. (pending before the Legislature as this bill), verification  
22 of the identification set forth in paragraph (1) of this subsection, the  
23 appearance of the purchaser or recipient, and in the reasonable  
24 belief that the purchaser or recipient was of legal age to make the  
25 purchase or receive the sample.

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

1 d. In addition to the provisions of subsection c. of this section,  
2 upon the recommendation of the municipality, following a hearing  
3 by the municipality, the Division of Taxation in the Department of  
4 the Treasury may suspend or, after a second or subsequent violation  
5 of the provisions of subsection a. of this section, revoke the license  
6 issued under section 202 of P.L.1948, c.65 (C.54:40A-4) of a retail  
7 dealer or a license issued under section 3 of P.L. , c. (C. )  
8 (pending before the Legislature as Assembly Bill No.5923) of a  
9 vapor business, as applicable. The licensee shall be subject to  
10 administrative charges, based on a schedule issued by the Director  
11 of the Division of Taxation, which may provide for a monetary  
12 penalty in lieu of a suspension.

13 e. A penalty imposed pursuant to this section shall be in  
14 addition to any penalty that may be imposed pursuant to section 3  
15 of P.L.1999, c.90 (C.2C:33-13.1).

16 f. The provisions of this section shall not apply to any medical  
17 cannabis, medical cannabis product, paraphernalia, or related  
18 supplies dispensed to or on behalf of a registered qualifying patient  
19 pursuant to the “Jake Honig Compassionate Use Medical Cannabis  
20 Act,” P.L.2009, c.307 (C.24:6I-1 et al.).

21 g. As used in this section:

22 “Retailer” means a person or entity issued a tobacco retail dealer  
23 license under section 202 of P.L.1948, c.65 (C.54:40A-4) or a vapor  
24 business license under section 3 of P.L. , c. (C. ) (pending  
25 before the Legislature as Assembly Bill No.5923).

26 “Tobacco product” means: any product containing, made of, or  
27 derived from tobacco or nicotine that is intended for human  
28 consumption or is likely to be consumed, whether inhaled,  
29 absorbed, or ingested by other means, including, but not limited to,  
30 a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, or snus;  
31 any vapor product; and any component, part, or accessory of a  
32 product containing, made of, or derived from tobacco or nicotine or  
33 a vapor product, regardless of whether the component, part, or  
34 accessory contains tobacco or nicotine. “Tobacco product”  
35 includes, but is not limited to, filters, rolling papers, blunt or hemp  
36 wraps, hookahs, and pipes. “Tobacco product” does not include  
37 any drug, device, or combination product approved by the federal  
38 Food and Drug Administration pursuant to the “Federal Food, Drug,  
39 and Cosmetic Act,” 21 U.S.C. ss.301 et seq.

40 “Vapor product” means any device that may be used to deliver  
41 any aerosolized or vaporized substance to the person inhaling from  
42 the device, including, but not limited to, an e-cigarette, e-cigar, e-  
43 pipe, vape pen, or e-hookah. “Vapor product” includes any  
44 component, part, or accessory of the device, and also includes any  
45 substance that may be aerosolized or vaporized by such device,  
46 regardless of whether the substance contains nicotine. “Vapor  
47 product” does not include any drug, device, or combination product  
48 approved by the federal Food and Drug Administration pursuant to

1 the “Federal Food, Drug, and Cosmetic Act,” 21 U.S.C. ss.301 et  
2 seq.

3 (cf: P.L.2017, c.118, s.2)

4  
5 3. Section 1 of P.L.2015, c.294 (C.2A:170-51.9) is amended to  
6 read as follows:

7 1. a. No **【person】** retailer, either directly or indirectly by an  
8 agent or employee, or by a vending machine owned by the **【person】**  
9 retailer or located in the **【person's】** retailer's establishment, shall  
10 sell, offer for sale, give, furnish, or distribute for commercial  
11 purpose at no cost or minimal cost or with coupons or rebate offers,  
12 to any other person **【**, liquid nicotine in a liquid nicotine container,  
13 which is intended for use in a vapor product, **】** :

14 (1) any vapor product, unless:

15 (a) the manufacturer of the product is registered, or has an  
16 application for registration currently pending, with the federal Food  
17 and Drug Administration;

18 (b) the manufacturer has listed the vapor product with the  
19 federal Food and Drug Administration; and

20 (c) the product includes the tracking feature as required by, and  
21 is included in the database developed and maintained pursuant to,  
22 the provisions of section 19 of P.L. , c. (C. ) (pending before  
23 the Legislature as Assembly Bill No.5923);

24 (2) any vaping liquid with a nicotine content of more than two  
25 percent;

26 (3) non-cartridge vaping liquid unless the **【liquid nicotine】** non-  
27 cartridge vaping liquid is sold, offered for sale, given, furnished, or  
28 distributed for commercial purpose in a child-resistant container; or

29 (4) any vaping liquid that has been mixed with any other  
30 substance by any entity other than the manufacturer of the vaping  
31 liquid.

32 **【As used in this section:**

33 (1) "Child-resistant container" means a container which is  
34 designed and constructed in a manner that meets the federal  
35 effectiveness specifications set forth in 16 C.F.R. 1700.15 and the  
36 special packaging testing requirements set forth in 16 CFR 1700.20,  
37 so that it is significantly difficult for a child five years of age or  
38 younger to open the package or otherwise risk exposure to liquid  
39 nicotine.

40 (2) "Liquid nicotine" means any solution containing nicotine  
41 which is designed or sold for use with an electronic smoking  
42 device.

43 (3) "Liquid nicotine container" means a bottle or other container  
44 of a liquid, wax, gel, or other substance containing nicotine, where  
45 the liquid or other contained substance is sold, marketed, or  
46 intended for use in a vapor product. "Liquid nicotine container"  
47 does not include a liquid or other substance containing nicotine in a

1 cartridge that is sold, marketed, or intended for use in a vapor  
2 product, provided that such cartridge is prefilled and sealed by the  
3 manufacturer, with the seal remaining permanently intact through  
4 retail purchase and use; is only disposable and is not refillable; and  
5 is not intended to be opened by the consumer.

6 (4) "Vapor product" means any non-combustible product  
7 containing nicotine that employs a heating element, power source,  
8 electronic circuit, or other electronic, chemical, or mechanical  
9 means, regardless of shape or size, to produce vapor from nicotine  
10 in a solution or any form. "Vapor product" includes, but is not  
11 limited to, any electronic cigarette, electronic cigar, electronic  
12 cigarillo, electronic pipe, or similar product or device, and any  
13 vapor cartridge or other container of nicotine in a solution or other  
14 form that is intended to be used with, or in, any such device.  
15 "Vapor product" does not include any product that is approved, and  
16 that is regulated as a prescription drug delivery service, by the  
17 United States Food and Drug Administration under Chapter V of  
18 the Food, Drug, and Cosmetic Act.】

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

37 c. In addition to the provisions of subsection b. of this section,  
38 upon the recommendation of the municipality, following a hearing  
39 by the municipality, the Division of Taxation in the Department of  
40 the Treasury may suspend or, after a second or subsequent violation  
41 of the provisions of subsection a. of this section, revoke the license  
42 of a 【retail dealer】 vapor business issued under section 【202 of  
43 P.L.1948, c.65 (C.54:40A-4)】 3 of P.L. , c. (C. ) (pending  
44 before the Legislature as Assembly Bill No.5923). The licensee  
45 shall be subject to administrative charges, based on a schedule  
46 issued by the Director of the Division of Taxation, which may  
47 provide for a monetary penalty in lieu of a suspension.

1        d. As used in this section:

2        "Child-resistant container" means a container which is designed  
3 and constructed in a manner that meets the federal effectiveness  
4 specifications set forth in 16 C.F.R. 1700.15 and the special  
5 packaging testing requirements set forth in 16 CFR 1700.20, so that  
6 it is significantly difficult for a child five years of age or younger to  
7 open the package or otherwise risk exposure to vaping liquid.

8        "Liquid nicotine cartridge" means a prefilled cartridge or other  
9 container containing vaping liquid that contains nicotine, that is  
10 marketed, sold, or intended for use as, or as a part of, an electronic  
11 smoking device, is prefilled and sealed by the manufacturer, with  
12 the seal remaining permanently intact through retail purchase and  
13 use, is only disposable and is not refillable, and is not intended to  
14 be opened by the consumer;

15        "Non-cartridge vaping liquid" means vaping liquid that is  
16 marketed, sold, or intended for use in an electronic smoking device  
17 in a container that is not a liquid nicotine cartridge, which vaping  
18 liquid cannot be used in or with an electronic smoking device unless  
19 the container is first opened by the consumer to access the vaping  
20 liquid contained within for the purposes of filling or refilling an  
21 electronic smoking device;

22        "Retailer" means a person or entity issued a vapor business  
23 license under section 3 of P.L. , c. (C. ) (pending before the  
24 Legislature as Assembly Bill No.5923).

25        "Vaping liquid" means any solution, including a liquid, wax, gel,  
26 or other substance, regardless of whether the solution contains  
27 nicotine that is designed or sold for use with an electronic smoking  
28 device.

29        "Vapor product" means any device that may be used to deliver  
30 any aerosolized or vaporized substance to the person inhaling from  
31 the device, including, but not limited to, an e-cigarette, e-cigar, e-  
32 pipe, vape pen, or e-hookah. "Vapor product" includes any  
33 component, part, or accessory of the device, and also includes any  
34 substance that may be aerosolized or vaporized by such device,  
35 regardless of whether the substance contains nicotine. "Vapor  
36 product" does not include any drug, device, or combination product  
37 approved by the federal Food and Drug Administration pursuant to  
38 the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. ss.301 et  
39 seq.

40 (cf: P.L.2015, c.294, s.1)

41

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

44        3. a. A **[person who]** retailer that sells or gives to a person  
45 under 21 years of age any **[cigarettes made of tobacco or of any**  
46 **other matter or substance which can be smoked, or any cigarette**  
47 **paper or tobacco in any form, including smokeless tobacco, or any**  
48 **electronic smoking device that can be used to deliver nicotine or**

1 other substances to the person inhaling from the device, including,  
2 but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or  
3 any cartridge or other component of the device or related product,  
4 including an employee of a retail dealer licensee under P.L.1948,  
5 c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides  
6 a] tobacco product [or electronic smoking device to a person under  
7 21 years of age,] shall be punished by a fine as provided for a  
8 [petty] disorderly persons offense. A [person who] retailer that  
9 has been previously punished under this section and who commits  
10 another offense under it may be punishable by a fine of twice that  
11 provided for a [petty] disorderly persons offense.

12 b. The establishment of all of the following shall constitute a  
13 defense to any prosecution brought pursuant to subsection a. of this  
14 section:

15 (1) that the purchaser or recipient of the tobacco product [or  
16 electronic smoking device] falsely represented, by producing either  
17 a driver's license or non-driver identification card issued by the  
18 New Jersey Motor Vehicle Commission, a similar card issued  
19 pursuant to the laws of another state or the federal government of  
20 Canada, or a photographic identification card issued by a county  
21 clerk, that the purchaser or recipient was of legal age to purchase or  
22 receive the tobacco product [or electronic smoking device] and,  
23 commencing one year after the effective date of P.L. c. (pending  
24 before the Legislature as this bill), the person making the sale or  
25 distribution verifies the purchaser's age using an electronic age  
26 verification system;

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

32 (3) that the sale or distribution of the tobacco product [or  
33 electronic smoking device] was made in good faith, relying upon  
34 the production and, commencing one year after the effective date of  
35 P.L. , c. (pending before the Legislature as this bill), verification  
36 of the identification set forth in paragraph (1) of this subsection, the  
37 appearance of the purchaser or recipient, and in the reasonable  
38 belief that the purchaser or recipient was of legal age to purchase or  
39 receive the tobacco product [or electronic smoking device].

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

43 d. The provisions of this section shall not apply to any medical  
44 cannabis, medical cannabis product, paraphernalia, or related  
45 supplies dispensed or sold to or on behalf of a registered qualifying  
46 patient pursuant to the provisions of the "Jake Honig



1 Compassionate Use Medical Cannabis Act,” P.L.2009, c.307  
2 (C.24:6I-1 et al.).

3 e. As used in this section:

4 “Retailer” means a person or entity issued a tobacco retail dealer  
5 license under section 202 of P.L.1948, c.65 (C.54:40A-4) or a vapor  
6 business license under section 3 of P.L. , c. (C. ) (pending  
7 before the Legislature as Assembly Bill No.5923).

8 “Tobacco product” means: any product containing, made of, or  
9 derived from tobacco or nicotine that is intended for human  
10 consumption or is likely to be consumed, whether inhaled,  
11 absorbed, or ingested by other means, including, but not limited to,  
12 a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, or snus;  
13 any vapor product; and any component, part, or accessory of a  
14 product containing, made of, or derived from tobacco or nicotine or  
15 a vapor product, regardless of whether the component, part, or  
16 accessory contains tobacco or nicotine. “Tobacco product”  
17 includes, but is not limited to, filters, rolling papers, blunt or hemp  
18 wraps, hookahs, and pipes. “Tobacco product” does not include  
19 any drug, device, or combination product approved by the federal  
20 Food and Drug Administration pursuant to the “Federal Food, Drug,  
21 and Cosmetic Act,” 21 U.S.C. ss.301 et seq.

22 “Vapor product” means any device that may be used to deliver  
23 any aerosolized or vaporized substance to the person inhaling from  
24 the device, including, but not limited to, an e-cigarette, e-cigar, e-  
25 pipe, vape pen, or e-hookah. “Vapor product” includes any  
26 component, part, or accessory of the device, and also includes any  
27 substance that may be aerosolized or vaporized by such device,  
28 regardless of whether the substance contains nicotine. “Vapor  
29 product” does not include any drug, device, or combination product  
30 approved by the federal Food and Drug Administration pursuant to  
31 the “Federal Food, Drug, and Cosmetic Act,” 21 U.S.C. ss.301 et  
32 seq.

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

34

35 5. Section 7 of P.L.1966, c.36 (C.26:2F-7) is amended to read  
36 as follows:

37 7. (a) There is hereby established a special projects and  
38 development fund which shall consist of all funds appropriated or  
39 otherwise made available for the purposes set forth in this section.  
40 The commissioner, with the approval of the Public Health Council,  
41 may make grants from the special projects and development fund to  
42 local health agencies, to hospitals, and to voluntary health agencies  
43 to provide State health assistance for new health services and for  
44 special health projects in order to stimulate continued development  
45 of health services and to assure the citizens of New Jersey the  
46 benefits of the most advanced health protection techniques.

47 (b) Except as provided in subsection (c) of this section, grants  
48 from the special projects and development fund for specific

1 purposes shall be made on an annual basis for a period not in excess  
2 of 5 years and such grants shall be in diminishing amounts during  
3 this period. The commissioner shall determine the conditions  
4 applicable to each such grant including the extent of local financial  
5 participation to be required. Grants from the special projects and  
6 development fund to voluntary health agencies shall not exceed  
7 40% of said fund.

8 (c) (1) Grants from the special projects and development fund  
9 shall be made on an annual basis to local health agencies for local  
10 enforcement efforts concerning the sale and commercial distribution  
11 of tobacco and vapor products to persons under the age of 21 years,  
12 in an amount determined by the commissioner. The grants shall be  
13 distributed based on the number of cigarette retail dealer, vapor  
14 business, and cigarette vending machine licenses issued within a  
15 local health agency's jurisdictional authority in order to ensure  
16 Statewide coverage and Statewide consistency of enforcement  
17 efforts; except that the commissioner may designate up to 5% of  
18 available funds, annually, for incentive grants to local health  
19 agencies to enhance enforcement efforts.

20 Each grant recipient shall report quarterly to the commissioner  
21 on the number of compliance check inspections it has completed  
22 and the results of those compliance checks. The commissioner shall  
23 determine any other conditions applicable to the grants.

24 (2) Beginning in 1999, notwithstanding the provisions of  
25 paragraph (1) of this subsection to the contrary, the commissioner  
26 may make grants from the special projects and development fund to  
27 public and private local agencies to reduce teenage use of addictive  
28 substances.

29 (cf: P.L.2017, c.118, s.4)

30

31 6. Section 2 of P.L.1987, c.423 (C.54:40A-4.1) is amended to  
32 read as follows;

33 2. a. Notwithstanding any other provision of law to the  
34 contrary, a person to whom a license is issued pursuant to P.L.1948,  
35 c.65 (C.54:40A-1 et seq.) shall, as a condition of the license,  
36 conspicuously post a legible sign at the point of display of the  
37 tobacco products and at the point of sale. The sign, which also shall  
38 be posted conspicuously on any licensed cigarette vending machine,  
39 shall be at least six inches by three inches in bold letters at least  
40 one-quarter inch high and shall read as follows:

41 "A **person who** retail business that sells or offers to sell a  
42 tobacco product to a person under 21 years of age shall pay a  
43 penalty of up to **[\$1,000]** \$2,000 and may be subject to a license  
44 suspension or revocation.

45 Proof of age **may be** is required for purchase."

46 b. Each licensee shall be required, within one year after the  
47 effective date of P.L. , c. (pending before the Legislature as this

1 bill), to acquire a system that can be used to electronically verify  
2 the age of an individual purchasing a tobacco product.

3 (cf: P.L.2017, c.118, s.6)

4

5 7. Section 4 of P.L.2005, c.85 (C.54:40A-49) is amended to  
6 read as follows:

7 4. A person shall not engage in a retail sale of cigarettes in this  
8 State unless the sale is a face-to-face sale, except that a person may  
9 engage in a non-face-to-face sale of cigarettes to a person in this  
10 State if the following conditions are met:

11 a. The seller has fully complied with all of the requirements of  
12 the Jenkins Act, 15 U.S.C. s.375 et seq., for shipments to this State;

13 b. The seller has verified payment of, paid, or collected all  
14 applicable State taxes, including the cigarette taxes imposed by the  
15 "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) and the  
16 sales or use taxes imposed by the "Sales and Use Tax Act,"  
17 P.L.1966, c.30 (C.54:32B-1 et seq.), due on the cigarettes; and

18 c. The seller has, before mailing or shipping the cigarettes:

19 (1) obtained from the purchaser reliable confirmation that the  
20 purchaser is at least 21 years old and a statement by the purchaser  
21 under penalty of perjury certifying the purchaser's date of birth and  
22 address;

23 (2) made good faith effort to verify the information contained in  
24 the certification provided by the purchaser against a commercially  
25 available database or has obtained a photocopy or other image of a  
26 government-issued identification bearing the purchaser's image and  
27 stating the date of birth or age of the purchaser;

28 (3) received payment for the sale from the prospective purchaser  
29 by a credit or debit card that has been issued in the purchaser's  
30 name or by check; **[and]**

31 (4) verified that a credit or debit card used for payment has been  
32 issued in the purchaser's name, and the address to which the  
33 cigarettes are being shipped matches the credit or debit card  
34 company's address for the cardholder; and

35 (5) mailed or shipped the cigarettes using a method that requires  
36 age verification at the time of delivery.

37 Sellers taking an order for a non-face-to-face sale may request  
38 that prospective purchasers provide their e-mail addresses.

39 (cf: P.L.2017, c.118, s.7)

40

41 8. (New section) A person shall not engage in a retail sale of  
42 or vapor products in this State unless the sale is a face-to-face sale,  
43 except that a person may engage in a non-face-to-face sale of a  
44 vapor product to a person in this State if the following conditions  
45 are met:

46 a. The seller has verified payment of, paid, or collected all  
47 applicable State taxes, including the taxes imposed on vapor  
48 products pursuant to sections 4 and 5 of P.L. , c. (C. )

1 (pending before the Legislature as Assembly Bill No.5923), as  
2 applicable, and the sales or use taxes imposed by the "Sales and Use  
3 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), due on the vapor  
4 product; and

5 b. The seller has, before mailing or shipping the vapor product:

6 (1) obtained from the purchaser reliable confirmation that the  
7 purchaser is at least 21 years old and a statement by the purchaser  
8 under penalty of perjury certifying the purchaser's date of birth and  
9 address;

10 (2) made good faith effort to verify the information contained in  
11 the certification provided by the purchaser against a commercially  
12 available database or has obtained a photocopy or other image of a  
13 government-issued identification bearing the purchaser's image and  
14 stating the date of birth or age of the purchaser;

15 (3) received payment for the sale from the prospective purchaser  
16 by a credit or debit card that has been issued in the purchaser's  
17 name or by check;

18 (4) verified that a credit or debit card used for payment has been  
19 issued in the purchaser's name, and the address to which the vapor  
20 product is being shipped matches the credit or debit card company's  
21 address for the cardholder; and

22 (5) mailed or shipped the vapor product using a method that  
23 requires age verification at the time of delivery.

24 Sellers taking an order for a non-face-to-face sale may request  
25 that prospective purchasers provide their e-mail addresses.

26 c. Nothing in this section shall relieve the seller of vapor  
27 products from any other applicable requirement of law relating to  
28 the sale of vapor products.

29

30 9. (New section) a. It shall be unlawful for a retailer, either  
31 directly or indirectly by an agent or employee, or by a vending  
32 machine owned by the retailer or located in the retailer's  
33 establishment, to sell, offer for sale, give, furnish, or distribute for  
34 commercial purpose at no cost or minimal cost or with coupons or  
35 rebate offers, to any person any electronic smoking device that is  
36 designed to mimic the appearance of another object, when the  
37 appearance of the electronic smoking device makes it difficult for  
38 the average person to determine, based on casual observance,  
39 whether the item is the object it is designed to mimic or an  
40 electronic smoking device. Prohibited designs shall include, but  
41 shall not be limited to, electronic smoking devices designed to  
42 resemble a pen or other writing utensil, flash drive or universal  
43 serial bus drive, mobile phone, clothing, jewelry, cosmetic product,  
44 eating utensil, or personal hygiene product, provided that nothing in  
45 this section shall be construed to prohibit the sale, offer for sale, or  
46 commercial distribution of an electronic smoking device designed  
47 to resemble a product traditionally used for the consumption of

1 tobacco, including a cigarette, cigarette pack, pipe, cigar, or  
2 hookah.

3 b. A retailer that violates the provisions of subsection a. of this  
4 section shall be liable to a civil penalty of not less than \$1,000 for  
5 the first violation and not less than \$2,000 for a second or  
6 subsequent violation. The civil penalty shall be collected pursuant  
7 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
8 (C.2A:58-10 et seq.), in a summary proceeding before the municipal  
9 court having jurisdiction. An official authorized by statute or  
10 ordinance to enforce the State or local health codes, or a law  
11 enforcement officer having enforcement authority in that  
12 municipality, may issue a summons for a violation of the provisions  
13 of subsection a. of this section, and may serve and execute all  
14 process with respect to the enforcement of this section consistent  
15 with the Rules of Court. A penalty recovered under the provisions  
16 of this subsection shall be recovered by and in the name of the State  
17 by the local health agency. The penalty shall be paid into the  
18 treasury of the municipality in which the violation occurred for the  
19 general uses of the municipality.

20 c. In addition to the provisions of subsection b. of this section,  
21 upon the recommendation of the municipality, following a hearing  
22 by the municipality, the Division of Taxation in the Department of  
23 the Treasury may suspend or, after a second or subsequent violation  
24 of the provisions of subsection a. of this section, revoke the license  
25 of a vapor business issued under section 3 of P.L. , c. (C. )  
26 (pending before the Legislature as Assembly Bill No.5923). The  
27 licensee shall be subject to administrative charges, based on a  
28 schedule issued by the Director of the Division of Taxation, which  
29 may provide for a monetary penalty in lieu of a suspension.

30 d. As used in this section,

31 "Electronic smoking device" means any device that may be used  
32 to deliver any aerosolized or vaporized substance to the person  
33 inhaling from the device, including, but not limited to, an e-  
34 cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic  
35 smoking device includes any component, part, or accessory of the  
36 device, and also includes any substance that may be aerosolized or  
37 vaporized by such device, regardless of whether the substance  
38 contains nicotine. "Electronic smoking device" does not include  
39 any drug, device, or combination product approved by the federal  
40 Food and Drug Administration pursuant to the "Federal Food, Drug,  
41 and Cosmetic Act," 21 U.S.C. ss.301 et seq.

42 "Retailer" means a person or entity issued a vapor business  
43 license under section 3 of P.L. , c. (C. ) (pending before the  
44 Legislature as Assembly Bill No.5923).

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46 10. This act shall take effect the first day of the fifth month next  
47 following the date of enactment.

STATEMENT

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This bill implements certain recommendations included in the Electronic Smoking Device Task Force Report issued October 3, 2019, pursuant to Executive Order No.84.

Specifically, the bill increases the penalties that apply to any retailer that sells tobacco or vapor products to a person younger than 21 years of age. Current law provides that a person who violates the prohibition against underage sales is liable to a civil penalty of at least \$250 for a first offense, at least \$500 for a second offense, and \$500 for a third or subsequent offense. The bill will double these penalties to \$500 for a first offense, \$1,000 for a second offense, and \$2,000 for a third or subsequent offense, and clarifies that all penalties are assessed against the retailer where the prohibited sale is made, and not against an employee who makes a prohibited sale.

Current law also provides that a person who sells a tobacco or vapor product to a person under 21 years of age is liable to the fine applicable to petty disorderly persons offenses, which is \$500. This bill increases this fine by providing that a retailer that makes a prohibited underage sale is liable to the fine applicable to disorderly persons offenses, which is \$1,000.

Current law provides that a person who purchases tobacco products for someone younger than 21 years of age is guilty of a petty disorderly persons offense, which offense is punishable by imprisonment for up to 30 days, a fine of up to \$500, or both. The bill provides that the offense also applies to the purchase of vapor products for someone younger than 21 years of age as well.

The bill requires that, no later than one year after the effective date of the bill, all tobacco and vapor product retailers are to acquire and begin using an electronic age verification system to prevent sales of tobacco and vapor products to persons under age 21.

The bill additionally requires that all tobacco and vapor products to be maintained in a manner that restricts public access to the products, which may include maintaining the products behind the sales counter, in a locked cabinet, or in an area of the establishment that is restricted to employees only.

Current law requires all cigarette sales take place in a face-to-face transaction unless the seller has ensured that all State taxes have been paid on the cigarettes and takes certain enumerated steps to verify the purchaser is over 21 years of age. The bill establishes identical requirements for vapor products and adds a new requirement for both cigarettes and vapor products requiring age verification at the time of delivery.

The bill establishes a number of requirements concerning the sale of vapor products. Specifically, the bill requires that no vapor product may be sold unless its manufacturer is registered, or has

1 applied for registration, with the federal Food and Drug  
2 Administration (FDA), and the manufacturer has listed the vapor  
3 product with the FDA. The bill prohibits the sale of vaping liquids  
4 that contain nicotine in a concentration of more than two percent  
5 and vaping liquids products that were mixed with any other  
6 substance by any entity other than the manufacturer. The bill  
7 additionally prohibits the sale of vapor products that are not  
8 included in the electronic tracking database to be established under,  
9 and do not include the tracking feature required by, companion  
10 legislation currently pending as Assembly Bill No.5923. Sale of a  
11 vapor product in violation of these restrictions will be punishable by  
12 a civil penalty of at least \$500 for a first offense, at least \$1,000 for  
13 a second offense, and at least \$2,000 for a third or subsequent  
14 offense.

15 The bill prohibits the sale of electronic smoking devices that are  
16 designed to mimic the appearance of another object, when the  
17 appearance of the electronic smoking device makes it difficult for  
18 the average person to determine, based on casual observance,  
19 whether the item is the object it is designed to mimic or an  
20 electronic smoking device. Prohibited designs will include, but not  
21 be limited to, devices designed to resemble a pen or other writing  
22 utensil, flash drive or universal serial bus drive, mobile phone,  
23 clothing, jewelry, cosmetic product, eating utensil, or personal  
24 hygiene product; however, it will not be prohibited to sell an  
25 electronic smoking device designed to resemble a product  
26 traditionally used for the consumption of tobacco, such as a  
27 cigarette, cigarette pack, pipe, cigar, or hookah. A violation of this  
28 prohibition will be punishable by a civil penalty of \$1,000 for a first  
29 offense and \$2,000 for a second or subsequent offense.