

§§4-9,11 -
Title 54.
Subtitle 7A.
Chapter 40B.
(Rename)
Tobacco and
Vapor Products
Tax
C.54:40B-3.3 to
54:40B-3.9
§12 - Note

(CORRECTED COPY)

P.L. 2019, CHAPTER 147, *approved June 30, 2019*

Assembly No. 5385 (*Second Reprint*)

1 AN ACT concerning the sale ¹**【and】** ¹taxation 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;

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 "Director" means the Director of the Division of Taxation in the
2 Department of the Treasury;

3 "Distributor" means:

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

7 a person who makes or manufactures tobacco products in this
8 State for sale in the State,

9 a person engaged in the business of selling tobacco products
10 without this State who ships or transports tobacco products to a
11 person in this State to be sold to a retail dealer, or

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

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

17 "Electronic smoking device" means a nonlighted,
18 noncombustible device that may be used to simulate smoking and
19 that employs a mechanical heating element, battery, or circuit,
20 regardless of shape or size, to produce aerosolized or vaporized
21 nicotine or other substance for inhalation into the body of a person,
22 including but not limited to a device that is manufactured,
23 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-
24 hookah, vape pen, or any other similar product with any other
25 product name or descriptor;

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

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

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

36 "Person" means an individual, firm, corporation, copartnership,
37 joint venture, association, receiver, trustee, guardian, executor,
38 administrator, or any other person acting in a fiduciary capacity, or
39 an estate, trust, or group or combination acting as a unit, the State
40 Government and any political subdivision thereof, and the plural as
41 well as the singular, unless the intention to give a more limited
42 meaning is disclosed by the context;

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

47 "Retail dealer" means a person who is engaged in this State in
48 the business of selling any tobacco product at retail. A person

1 placing a tobacco product vending machine at, or on any premises
2 shall be deemed to be a retail dealer for each vending machine;

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

5 "Tobacco product" means any product containing, made, or
6 derived from any tobacco, nicotine, or other chemicals or
7 substances for consumption by a person, including, but not limited
8 to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco,
9 smoking tobacco and their substitutes, dry and moist snuff, and
10 liquid nicotine, but does not include cigarette as defined in section
11 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-
12 1 et seq.);

13 "Treasurer" means the State Treasurer;

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

16 "Vapor business" means a retail business where more than 50
17 percent of its retail sales are derived from electronic smoking
18 devices, related accessories, and liquid nicotine, but does not
19 include a retail business that does not sell container e-liquid;

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

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

24 a. purchases tobacco products from any other person who
25 purchases from the manufacturer and who acquires tobacco
26 products solely for the purpose of bona fide resale to retail dealers
27 or to other persons for the purposes of resale only; or

28 b. services retail outlets by the maintenance of an established
29 place of business for the purchase of tobacco products including,
30 but not limited to, the maintenance of warehousing facilities for the
31 storage and distribution of tobacco products.

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

33

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

36 5. a. There is imposed a tax upon the sale, use, or distribution of
37 liquid nicotine within this State by a distributor or wholesaler to a
38 retail dealer or consumer at the rate of \$0.10 per fluid milliliter on the
39 volume of the liquid nicotine as listed by the manufacturer, and a
40 proportionate rate on all fractional parts of a fluid milliliter of volume
41 of liquid nicotine as listed by the manufacturer.

42 b. Unless liquid nicotine has already been or will be subject to the
43 tax imposed in subsection a. of this section, if a distributor or
44 wholesaler uses the liquid nicotine within the State, there is imposed
45 upon the distributor or wholesaler a compensating use tax of \$0.10 per
46 fluid milliliter of the volume of liquid nicotine as listed by the
47 manufacturer, and a proportionate rate on all fractional parts of a fluid
48 milliliter of the volume of liquid nicotine as listed by the manufacturer.

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

11 d. The tax imposed pursuant to this section shall not apply to the
12 '[retail]' sale, use, or distribution' of container e-liquid.
13 (cf: P.L.2018, c.50, s.5)
14

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

19 b. '[A vapor business operating in the State shall be required to
20 be licensed as such. The director shall make rules and regulations
21 respecting applications to be licensed as a vapor business in the State.
22 For each license issued to a vapor business the vapor business shall
23 pay to the director a fee of \$50 annually.] Vapor business licenses
24 shall be issued by the director, who shall make rules and regulations
25 respecting application and issuance. Each such license shall lapse on
26 March 31 of the period for which it is issued, and each such license
27 shall be continued annually upon the conditions that the licensee shall
28 have paid the required fee and complied with the provisions of P.L. ,
29 c. (C.)(pending before the Legislature as this bill) and the rules and
30 regulations of the director made pursuant thereto.

31 If a vapor business sells or intends to sell container e-liquid at two
32 or more places of business, whether established or temporary, or
33 whether in the same building or not, a separate license shall be
34 required for each place of business. Each license, or certificate thereof,
35 and such other evidence of license shall be exhibited in the place of
36 business for which it is issued and in such manner as may be
37 prescribed by the director.

38 No license shall be issued to any person except upon the payment
39 of a \$50 fee. No license shall be assignable or transferable, but in the
40 case of death, bankruptcy, receivership, or incompetency of the
41 licensee, or if, for any other reason whatsoever, the business of the
42 licensee shall devolve upon another by operation of law, the director
43 may, in the director's discretion, extend said license for a limited time
44 to the executor, administrator, trustee, receiver, or person upon whom
45 the same has devolved.

46 The director shall require an applicant for a vapor business license,
47 to include on the application the address of the place of business where
48 the container e-liquid will be sold. If the place of business is moved to

1 a different address than that provided on the license application, the
2 licensee shall notify the director within 30 days of the change of
3 address.

4 c. The director may, upon notice and after hearing, suspend or
5 revoke the license or all licenses under this section issued to any
6 person who violates any of the provisions of P.L. , c. (C.)(pending
7 before the Legislature as this bill), or who, after being issued a license
8 becomes disqualified for licensure pursuant to P.L. ,
9 c. (C.)(pending before the Legislature as this bill) or of any rule or
10 regulation of the director made pursuant thereto or if the licensee has
11 ceased to act in the capacity for which the license was issued or for
12 other good cause. No person whose license has been suspended or
13 revoked shall sell container e-liquid or permit container e-liquid to be
14 sold during the period of such suspension or revocation on the
15 premises occupied by that person or upon other premises controlled by
16 that person or others, or in any other manner or form whatever. No
17 disciplinary proceeding or action shall be barred or abated by the
18 expiration, transfer, surrender, continuance, renewal, or extension of a
19 license issued under the provisions of P.L. , c. (C.)(pending before
20 the Legislature as this bill).¹

21

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

25 b. The tax imposed pursuant to this section shall be collected
26 by the seller.

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

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

35

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

41 b. Every vapor business shall keep complete and accurate records
42 of all sales. The kind and form of such records may be prescribed by
43 the director and all records shall be so kept as to be adequate to enable
44 the director to determine the tax required to be collected. The director
45 or any authorized assistant may, during reasonable business hours and
46 without prior notice, make or cause to be made physical inventories
47 and examinations of all container e-liquid and records in the
48 possession of a vapor business. All such records shall be safely

1 preserved for a period of four years in such a manner to ensure their
2 security and accessibility for inspection by the director, supervisor, or
3 any authorized assistant engaged in the administration of P.L. , c.
4 (C.)(pending before the Legislature as this bill). The director may
5 consent to the destruction of any such records at any time within the
6 four-year period.¹

7
8 ¹7. (New Section) a. Any person who engages in any business or
9 activity for which a license is required under the provisions of P.L. , c.
10 (C.)(pending before the Legislature as this bill), without first having
11 obtained a license to do so, or who, having had such a license, shall
12 continue to engage in or conduct such business after any such license
13 shall have been revoked, or during a suspension thereof, shall be liable
14 to a penalty of not more than \$1,000, which penalty shall be sued for,
15 and shall be recoverable in the name of the director; and each day that
16 any such business is so engaged in or conducted shall be deemed a
17 separate offense.

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

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

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

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

44 e. The costs recoverable in any such proceeding shall be
45 recovered by the director in the event of judgment in the director's
46 favor. If the judgment be for the defendant it shall be without costs
47 against the director. All expenses incident to the recovery of any
48 penalty pursuant to the provisions of this section shall be paid for as

1 any other expense incident to the administration of
2 P.L. , c. (C.)(pending before the Legislature as this bill).¹
3

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

10 b. The director may permit or require returns to be made covering
11 other periods and upon such dates as the director may specify. In
12 addition, the director may require payments of tax liability at such
13 intervals and based upon such classifications as the director may
14 designate. In prescribing other periods to be covered by the return or
15 intervals or classifications for payment of tax liability, the director
16 may take into account the dollar volume of tax involved as well as the
17 need for ensuring the prompt and orderly collection of the taxes
18 imposed.

19 c. The form of returns shall be prescribed by the director and
20 shall contain such information as the director may deem necessary for
21 the proper administration of this act. The director may require
22 amended returns to be filed within 20 days after notice and to contain
23 the information specified in the notice.¹
24

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

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

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

39 d. The seizure of any unlawfully possessed container e-liquid
40 shall not relieve any person from a fine, imprisonment or other penalty
41 for violation of any of the provisions of P.L. , c. (C.)(pending
42 before the Legislature as this bill). The director, the director's agents,
43 employees, and any peace officer of this State, when directed so to do,
44 shall not in any way be responsible in any court for the seizure or the
45 confiscation of any unlawfully possessed container e-liquid.¹
46

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

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

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

4 (1) Controlled dangerous substances, firearms which are
5 unlawfully possessed, carried, acquired or used, illegally possessed
6 gambling devices, untaxed or otherwise contraband cigarettes or
7 tobacco products, unlawfully possessed container e-liquid, untaxed
8 special fuel, unlawful sound recordings and audiovisual works and
9 items bearing a counterfeit mark. These shall be designated prima
10 facie contraband.

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

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

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

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

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

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

34 c. For the purposes of this section:

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

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

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

45 "Untaxed special fuel" means diesel fuel, No. 2 fuel oil and
46 kerosene on which the motor fuel tax imposed pursuant to R.S.54:39-1
47 et seq. is not paid that is delivered, possessed, sold or transferred in

1 this State in a manner not authorized pursuant to R.S.54:39-1 et seq. or
2 P.L.1938, c.163 (C.56:6-1 et seq.).¹
3 (cf: P.L.2011, c.80, s.4)

4
5 ²11. In addition to the license required by section 4 of P.L. , c.
6 (C.)(pending before the Legislature as this bill), a municipality
7 may adopt an ordinance concerning the licensure and regulation of a
8 vapor business. Nothing in P.L. , c. (C.)(pending before the
9 Legislature as this bill) shall be construed to preempt the provisions
10 of any existing or new municipal ordinance concerning the
11 licensure and regulation of a vapor business.²

12
13 ¹**[6.]** ²**[11.1]** ^{12.2} This act shall take effect ¹**[60 days]** on the
14 first day of the fifth month¹ following enactment, but the director may
15 take anticipatory administrative action necessary to implement this act.

16
17
18 _____
19
20 Concerns sale, taxation, and forfeiture of container e-liquid.