

# ASSEMBLY, No. 4001

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 4, 2020

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Cumberland, Gloucester and Salem)**

**SYNOPSIS**

Establishes certain regulations regarding vapor products.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning the regulation of vapor products and amending  
2 and supplementing various parts of the statutory law.

3

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

6

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

9 3. A person 21 years of age or older who purchases a tobacco  
10 product, an electronic smoking device, or a vapor product for a  
11 person who is under 21 years of age is guilty of a petty disorderly  
12 **[person]** persons offense. Nothing in this section shall be  
13 construed to apply to medical cannabis, medical cannabis products,  
14 paraphernalia, or related supplies dispensed to or on behalf of a  
15 registered qualifying patient pursuant to the “Jake Honig  
16 Compassionate Use Medical Cannabis Act,” P.L.2009, c.307  
17 (C.24:6I-1 et al.).

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

19

20 2. Section 4 of P.L.2019, c.147 (C.54:40B-3.3) is amended to  
21 read as follows:

22 4. a. After the effective date of **[P.L.2019, c.147 (C.54:40B-**  
23 **3.3 et al.)]** P.L. , c. (C. ) (pending before the Legislature as  
24 this bill, container e-liquid shall not be sold at retail in the State  
25 except by a licensed vapor business. Only licensed vapor  
26 businesses shall be permitted to sell container e-liquid with a  
27 characterizing flavor including, but not limited to, tobacco.

28 No licensed vapor business, either directly or indirectly by an  
29 agent or employee, or by a vending machine owned by the licensed  
30 vapor business or located in the licensed vapor business, shall sell,  
31 offer for sale, distribute for commercial purpose at no cost or  
32 minimal cost or with coupons or rebate offers, give or furnish, any  
33 container e-liquid with a characterizing flavor including, but not  
34 limited to, tobacco:

35 (1) to any person under 21 years of age;

36 (2) unless such items utilize any tracking feature required by  
37 subsection b. of section 7 of P.L. , c. (C. ) (pending before  
38 the Legislature as this bill);

39 (3) unless such items are registered or included in the database  
40 developed and maintained pursuant to subsection a. of section 7 of  
41 P.L. , c. (C. ) (pending before the Legislature as this bill);

42 (4) unless the licensed vapor business refers to the database  
43 developed and maintained pursuant to subsection a. of section 7 of  
44 P.L. , c. (C. ) (pending before the Legislature as this bill)  
45 and determines that the potential purchaser has not exceeded the

**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.

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1 30-day maximum purchase quantity set by the Director of the  
2 Division of Taxation pursuant to subsection c. of section 7 of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill);

4 (5) unless access to the interior retail space of the establishment  
5 is physically restricted to persons 21 years of age or older pursuant  
6 to subsection d. of section 7 of P.L. , c. (C. ) (pending  
7 before the Legislature as this bill);

8 (6) unless the licensed vapor business also sells zero percent  
9 container e-liquid pursuant to subsection f. of section 7 of P.L. , c.  
10 (C. ) (pending before the Legislature as this bill);

11 (7) unless the container e-liquid is sold, offered for sale, given,  
12 furnished, or distributed for commercial purposes in a child  
13 resistant container;

14 (8) unless such items are placed in a sealed bag, with the  
15 appropriate warnings printed thereon, at the point of sale by the  
16 licensed vapor business pursuant to subsection h. of section 7 of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill);

18 (9) unless all customers are required to sign, including by  
19 electronic means, a document promulgated by the director pursuant  
20 to subsection i. of section 7 of P.L. , c. (C. ) (pending before  
21 the Legislature as this bill), acknowledging the dangers of vaping  
22 generally and the dangers of adulterating any vapor product;

23 (10) unless such items have a nicotine content of no more than  
24 two percent; and

25 (11) that has been mixed with any other substance by any entity  
26 other than the manufacturer of the items.

27 b. Vapor business licenses shall be issued by the director, who  
28 shall make rules and regulations respecting application and  
29 issuance. Each such license shall lapse on March 31 of the period  
30 for which it is issued, and each such license shall be continued  
31 annually upon the conditions that the licensee shall have paid the  
32 required renewal fee of \$5,000 and complied with the provisions of  
33 P.L.2019, c.147 (C.54:40B-3.3 et al.) and the rules and regulations  
34 of the director made pursuant thereto.

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

42 No license shall be issued to any person except upon the  
43 payment of a **[\$50]** \$10,000 initial application fee except that  
44 persons and entities that possessed a vapor business license during  
45 the twelve month period prior to the effective date of P.L. , c.  
46 (C. ) (pending before the Legislature as this bill) shall not be  
47 required to submit an initial application fee. No license shall be  
48 assignable or transferable, but in the case of death, bankruptcy,

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1 receivership, or incompetency of the licensee, or if, for any other  
2 reason whatsoever, the business of the licensee shall devolve upon  
3 another by operation of law, the director may, in the director's  
4 discretion, extend said license for a limited time to the executor,  
5 administrator, trustee, receiver, or person upon whom the same has  
6 devolved.

7 No license shall be issued to any person except upon completion  
8 and submission to the director of satisfactory criminal history  
9 background checks for all owners, officers, directors, and  
10 employees as required pursuant to subsection e. of section 7 of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill).  
12 An applicant shall bear the cost of the completion and submission  
13 of the criminal background checks.

14 The director shall require an applicant for a vapor business  
15 license, to include on the application the address of the place of  
16 business where the container e-liquid will be sold. If the place of  
17 business is moved to a different address than that provided on the  
18 license application, the licensee shall notify the director within 30  
19 days of the change of address.

20 c. The establishment of any of the following shall constitute a  
21 defense to a prosecution brought pursuant to paragraph (1) of  
22 subsection a. of this section:

23 (1) the purchaser or the recipient of the promotional sample  
24 falsely represented, by producing either a driver's license or non-  
25 driver identification card issued by the New Jersey Motor Vehicle  
26 Commission, a similar card issued pursuant to the laws of another  
27 state or the federal government of Canada, or a photographic  
28 identification card issued by a county clerk, that the purchaser or  
29 recipient was of legal age to make the purchase or receive the  
30 sample and, commencing 90 days after the effective date of P.L. ,  
31 c. (C. ) (pending before the Legislature as this bill), the  
32 person making the sale or distribution verifies the purchaser's age  
33 using an electronic age verification system;

34 (2) that the appearance of the purchaser or the recipient of the  
35 promotional sample was such that an ordinary prudent person would  
36 believe the purchaser or recipient to be of legal age to make the  
37 purchase or receive the sample; and

38 (3) that the sale or distribution was made in good faith, relying  
39 upon the production and, commencing 90 days after the effective  
40 date of P.L. , c. (C. ) (pending before the Legislature as this  
41 bill), verification of the identification set forth in paragraph (1) of  
42 this subsection, the appearance of the purchaser or recipient, and a  
43 reasonable belief that the purchaser or recipient was of legal age to  
44 make the purchase or receive the sample.

45 d. A person or entity that violates the provisions of subsection  
46 a. of this section shall be liable to a civil penalty of not less than  
47 \$5,000 for the first violation, not less than \$10,000 for a second  
48 violation, and not less than \$20,000 for a third and each subsequent

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1 violation. The civil penalty shall be collected pursuant to the  
2 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10  
3 et seq.), in a summary proceeding before the municipal court having  
4 jurisdiction. An official authorized by statute or ordinance to  
5 enforce the State or local health codes, or a law enforcement officer  
6 having enforcement authority in that municipality, may issue a  
7 summons for a violation of the provisions of subsection a. of this  
8 section, and may serve and execute all process with respect to the  
9 enforcement of this section consistent with the Rules of Court. A  
10 penalty recovered under the provisions of this subsection shall be  
11 recovered by and in the name of the State by the local health  
12 agency. The penalty shall be paid into the treasury of the  
13 municipality in which the violation occurred for the general uses of  
14 the municipality.

15 e. The director may, upon notice and after hearing, suspend or  
16 revoke the license or all licenses under this section issued to any  
17 person who violates any of the provisions of P.L.2019, c.147  
18 (C.54:40B-3.3 et al.), or who, after being issued a license becomes  
19 disqualified for licensure pursuant to P.L.2019, c.147 (C.54:40B-3.3  
20 et al.) or of any rule or regulation of the director made pursuant  
21 thereto or if the licensee has ceased to act in the capacity for which  
22 the license was issued or for other good cause. No person whose  
23 license has been suspended or revoked shall sell **【container e-**  
24 **liquid】 vapor products** or permit **【container e-liquid】 vapor**  
25 **products** to be sold during the period of such suspension or  
26 revocation on the premises occupied by that person or upon other  
27 premises controlled by that person or others, or in any other manner  
28 or form whatever. No disciplinary proceeding or action shall be  
29 barred or abated by the expiration, transfer, surrender, continuance,  
30 renewal, or extension of a license issued under the provisions of  
31 P.L.2019, c.147 (C.54:40B-3.3 et al.).

32 f. Nothing in this section shall be construed to apply to  
33 medical cannabis, medical cannabis products, paraphernalia, or  
34 related supplies dispensed to or on behalf of a registered qualifying  
35 patient pursuant to the "Jake Honig Compassionate Use Medical  
36 Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.).

37 (cf: P.L.2019, c.147, s.4)

38

39 3. Section 11 of P.L.2019, c.147 (C.54:40B-3.9) is amended to  
40 read as follows:

41 11. In addition to the license required by section 4 of P.L.2019,  
42 c.147 (C.54:40B-3.3), a municipality may adopt an ordinance  
43 concerning the licensure and regulation of a vapor business **【.**  
44 **Nothing in P.L.2019, c.147 (C.54:40B-3.3 et al.) shall be construed**  
45 **to preempt the provisions of any existing or new municipal**  
46 **ordinance concerning the licensure and regulation of a vapor**  
47 **business】 , which may include assessing a separate vapor business**  
48 **permit fee, not to exceed \$500 annually, against any entity**

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1 operating a licensed vapor business. The full amount of any permit  
2 fees collected by a municipality pursuant to this section, less  
3 administrative costs, shall be used to fund compliance inspections,  
4 including undercover compliance purchases, conducted by the local  
5 health agency having jurisdiction consistent with the requirements  
6 established by the Commissioner of Health pursuant to section 2 of  
7 P.L.1995, c.320 (C.26:3A2-20.1).

8 Nothing in this section shall be construed to apply to medical  
9 cannabis, medical cannabis products, paraphernalia, or related  
10 supplies dispensed to or on behalf of a registered qualifying patient  
11 pursuant to the “Jake Honig Compassionate Use Medical Cannabis  
12 Act,” P.L.2009, c.307 (C.24:6I-1 et al.).  
13 (cf: P.L.2019, c.147, s.11)

14

15 4. (New section) a. It shall be unlawful for a licensed vapor  
16 business, either directly or indirectly, by an agent or employee, or  
17 by a vending machine owned by the licensed vapor business or  
18 located in the licensed vapor business’s establishment, to sell, offer  
19 for sale, give, furnish, or distribute for commercial purpose at no  
20 cost or minimal cost or with coupons or rebate offers, to any person  
21 any electronic smoking device that is designed to mimic the  
22 appearance of another object, when the appearance of the electronic  
23 smoking device makes it difficult for the average person to  
24 determine, based on casual observance, whether the item is the  
25 object it is designed to mimic or an electronic smoking  
26 device. Prohibited designs shall include, but shall not be limited  
27 to, electronic smoking devices designed to resemble a pen or other  
28 writing utensil, flash drive or universal serial bus drive, mobile  
29 phone, clothing, jewelry, cosmetic product, eating utensil, or  
30 personal hygiene product, provided that nothing in this section shall  
31 be construed to prohibit the sale, offer for sale, or commercial  
32 distribution of an electronic smoking device designed to resemble a  
33 product traditionally used for the consumption of tobacco, including  
34 a cigarette, cigarette pack, pipe, cigar, or hookah.

35 b. A licensed vapor business, that violates the provisions of  
36 subsection a. of this section shall be liable to a civil penalty of not  
37 less than \$5,000 for the first violation and not less than \$10,000 for  
38 a second, and not less than \$20,000 for the third and each  
39 subsequent violation. The civil penalty shall be collected pursuant  
40 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
41 (C.2A:58-10 et seq.), in a summary proceeding before the municipal  
42 court having jurisdiction. An official authorized by statute or  
43 ordinance to enforce the State or local health codes, or a law  
44 enforcement officer having enforcement authority in that  
45 municipality, may issue a summons for a violation of the provisions  
46 of subsection a. of this section, and may serve and execute all  
47 process with respect to the enforcement of this section consistent  
48 with the Rules of Court. A penalty recovered under the provisions

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1 of this subsection shall be recovered by and in the name of the State  
2 by the local health agency. The penalty shall be paid into the  
3 treasury of the municipality in which the violation occurred for the  
4 general uses of the municipality.

5 c. In addition to the provisions of subsection b. of this section,  
6 following a hearing by the municipality, the Division of Taxation in  
7 the Department of the Treasury:

8 (1) shall, upon a third and each subsequent violation of the  
9 provisions of subsection a. of this section, following a hearing by  
10 the municipality, suspend, for a period of not less than three years,  
11 the license issued under section 4 of P.L.2019, c.147 (C.54:40B-  
12 3.3) of a vapor business; and

13 (2) notwithstanding the provisions of paragraph (1) of this  
14 subsection, upon a fourth or subsequent violation of the provisions  
15 of subsection a. of this section, may, upon recommendation by the  
16 municipality and following a hearing by the municipality, revoke  
17 the license issued under section 4 of P.L.2019, c.147 (C.54:40B-  
18 3.3) of a vapor business.

19 The licensee shall additionally be subject to administrative  
20 charges, based on a schedule issued by the Director of the Division  
21 of Taxation.

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

33  
34 5. (New section) A person shall not engage in a retail purchase  
35 of vapor products in this State unless the purchase is a direct, face-  
36 to-face purchase between a retailer and a consumer; no person shall  
37 purchase vapor products via the Internet while present in this  
38 jurisdiction. Any person who sells, offers or exposes for sale, or  
39 possesses with intent to sell vapor products via the Internet to a  
40 purchaser located in this State is guilty of a crime of the fourth  
41 degree. Any person present within the jurisdiction of this State who  
42 purchases vapor products via the Internet is guilty of a petty  
43 disorderly persons offense.

44 Nothing in this section shall be construed to apply to medical  
45 cannabis, medical cannabis products, paraphernalia, or related  
46 supplies dispensed to or on behalf of a registered qualifying patient  
47 pursuant to the “Jake Honig Compassionate Use Medical Cannabis  
48 Act,” P.L.2009, c.307 (C.24:6I-1 et al.).

1       6. (New section) The Director of the Division of Taxation in  
2 the Department of the Treasury, in conjunction with the  
3 Commissioner of the Department of Health, shall adopt rules and  
4 regulations in accordance with the Administrative Procedures Act,  
5 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of  
6 this act, including the following:

7       a. The establishment of an electronic database that shall be used  
8 to track all container e-liquid with a characterizing flavor including,  
9 but not limited to, tobacco sold by licensed vapor businesses in this  
10 State for the purpose of ensuring that no person purchases such  
11 items in excess of the 30-day limit provided for in subsection c. of  
12 this section, and ensuring product integrity and compliance with  
13 applicable State and federal laws. Information in the database may  
14 include, the manufacturer of the item, the date of purchase at retail,  
15 the quantity purchased in every sale, consumer safety alerts for the  
16 product, and any other information as may be required by the  
17 Director of the Division of Taxation.

18       b. The development of a standardized tracking feature to be  
19 included on all container e-liquid with a characterizing flavor  
20 including, but not limited to, tobacco sold by licensed vapor  
21 businesses in the State that may be used to identify illicit,  
22 counterfeit, adulterated, or otherwise illegal or unsafe items. The  
23 tracking feature may be a stamp or any other feature the Director of  
24 the Division of Taxation deems appropriate. The tracking feature  
25 shall, in conjunction with the electronic database established in  
26 subsection a. of this section and in addition to any other function  
27 required by the Director of the Division of Taxation, allow the  
28 director to determine the total quantity purchased by any individual  
29 in a 30-day period and if any individual purchaser exceeded the 30-  
30 day limit as provided for in subsection c. of this section.

31       c. A 30-day maximum purchase quantity for all container e-  
32 liquid with a characterizing flavor including, but not limited to,  
33 tobacco sold by licensed vapor businesses in the State to help  
34 prevent the bulk purchase and resale to persons under the age of 21.  
35 The 30-day maximum purchase quantity may use total milliliters of  
36 liquid nicotine or other metric, as determined by the Director of the  
37 Division of Taxation, in order to allow reasonable purchases  
38 without enabling illegal resale to those under the age of 21.

39       d. Requirements for the installation of systems designed to  
40 restrict access to the interior of a licensed vapor business to only  
41 person 21 years of age or over. Such systems may include, but shall  
42 not be limited to, exterior or interior doors or turnstiles that unlock  
43 and allow access to a licensed vapor business's retail space using an  
44 electronic age verification system. Following the effective date of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill),  
46 licensed vapor businesses shall certify in writing that the licensee  
47 will coordinate with the Director of the Division of Taxation to  
48 develop and implement a plan to ensure no one under the age of 21



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1 will be permitted access to the licensed vapor business premises and  
2 failure to enforce this prohibition shall make a licensed vapor  
3 business liable to a civil penalty as provided in subsection d. of  
4 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
5 this bill).

6 e. The development of procedures and criteria for screening,  
7 monitoring, and performing criminal history record background  
8 checks of any owner, director, officer, and employee of a licensed  
9 vapor business to be performed at the expense of the vapor business  
10 license applicant or license holder.

11 f. The development of regulations governing the requirement  
12 that all licensed vapor businesses carry zero nicotine container e-  
13 liquid and appropriate signage.

14 g. The development of signage and display restrictions and  
15 requirements for all licensed vapor businesses including, but not  
16 limited to, the following:

17 (1) Signage to be displayed by all licensed vapor businesses at  
18 the point of sale regarding the long-term health effects of vaping  
19 and the ill effects of underage vaping.

20 (2) Signage to be displayed on the exterior of a licensed vapor  
21 business including what, if any, colors, illumination, and content  
22 are allowed.

23 h. The development of a standardized sealable, one-time use  
24 bag with warnings printed thereon explaining the dangers of vaping,  
25 underaged vaping, and adulterating any vapor products after  
26 purchase. The bag shall be designed to not be reusable after being  
27 sealed by the licensed vapor business and subsequently opened by  
28 the purchaser.

29 i. The development of a document to be signed, including by  
30 electronic means, by purchasers at the point of sale, acknowledging  
31 the dangers of vaping, underaged vaping, and adulterating any  
32 vapor products after purchase.

33 j. Nothing in this section shall be construed to apply to  
34 medical cannabis, medical cannabis products, paraphernalia, or  
35 related supplies dispensed to or on behalf of a registered qualifying  
36 patient pursuant to the "Jake Honig Compassionate Use Medical  
37 Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.).

38

39 7. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read  
40 as follows:

41 2. As used in sections 2 through 14 and section 20 of P.L.1990,  
42 c.39 (C.54:40B-1 et seq.):

43 "Consumer" means a person except a distributor, manufacturer,  
44 or wholesaler who acquires a tobacco product for consumption,  
45 storage, or use in this State;

46 "Container e-liquid" means a container of liquid nicotine or other  
47 liquid, including that with a characterizing flavor such as, but not  
48 limited to, tobacco, where the liquid is marketed, sold, or intended

1 for use in an electronic smoking device, but does not include a  
2 prefilled cartridge or other container where the cartridge or  
3 container is marketed, sold, or intended for use as, or as a part of,  
4 an electronic smoking device;

5 "Director" means the Director of the Division of Taxation in the  
6 Department of the Treasury;

7 "Distributor" means:

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

11 a person who makes or manufactures tobacco products in this  
12 State for sale in the State,

13 a person engaged in the business of selling tobacco products  
14 without this State who ships or transports tobacco products to a  
15 person in this State to be sold to a retail dealer, or

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

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

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

30 "Licensed vapor business" means a retail business which is  
31 licensed by the director to sell container e-liquid with a  
32 characterizing flavor including, but not limited to, tobacco, but does  
33 not include a retail business that does not sell container e-liquid.

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

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

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

44 "Person" means an individual, firm, corporation, copartnership,  
45 joint venture, association, receiver, trustee, guardian, executor,  
46 administrator, or any other person acting in a fiduciary capacity, or  
47 an estate, trust, or group or combination acting as a unit, the State  
48 Government and any political subdivision thereof, and the plural as

1 well as the singular, unless the intention to give a more limited  
2 meaning is disclosed by the context;

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

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

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

13 "Tobacco product" means any product containing, made, or  
14 derived from any tobacco, nicotine, or other chemicals or  
15 substances for consumption by a person, including, but not limited  
16 to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco,  
17 smoking tobacco and their substitutes, dry and moist snuff, and  
18 liquid nicotine, but does not include cigarette as defined in section  
19 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et  
20 seq.);

21 "Treasurer" means the State Treasurer;

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

24 **["Vapor business" means a retail business where more than 50**  
25 **percent of its retail sales are derived from electronic smoking**  
26 **devices, related accessories, and liquid nicotine, but does not**  
27 **include a retail business that does not sell container e-liquid;】**

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

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

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

43 a. purchases tobacco products from any other person who  
44 purchases from the manufacturer and who acquires tobacco  
45 products solely for the purpose of bona fide resale to retail dealers  
46 or to other persons for the purposes of resale only; or

47 b. services retail outlets by the maintenance of an established  
48 place of business for the purchase of tobacco products including,

1 but not limited to, the maintenance of warehousing facilities for the  
2 storage and distribution of tobacco products.

3 (cf: P.L. 2019, c.147, s.2)

4

5 8. Section 1 of P.L.2019, c.425 (C.2A:170-51.12) is amended  
6 to read as follows:

7 1. a. No retailer, either directly or indirectly by an agent or  
8 employee, or by a vending machine owned by the retailer or located  
9 in the retailer's establishment, shall sell, offer for sale, distribute for  
10 commercial purpose at no cost or minimal cost or with coupons or  
11 rebate offers, give or furnish, to a person any vapor product that has  
12 a characterizing flavor.

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

31 c. In addition to the provisions of subsection b. of this section,  
32 the Division of Taxation in the Department of the Treasury:

33 (1) shall, upon a third and each subsequent violation of the  
34 provisions of subsection a. of this section, following a hearing by  
35 the municipality, suspend, for a period of not less than three years,  
36 the license issued under section 4 of P.L.2019, c.147 (C.54:40B-  
37 3.3) of a vapor business; and

38 (2) notwithstanding the provisions of paragraph (1) of this  
39 subsection, upon a fourth or subsequent violation of the provisions  
40 of subsection a. of this section, may, upon recommendation by the  
41 municipality and following a hearing by the municipality, revoke  
42 the license issued under section 4 of P.L.2019, c.147 (C.54:40B-  
43 3.3) of a vapor business.

44 A licensee whose license is subject to suspension or revocation  
45 shall additionally be subject to administrative charges, based on a  
46 schedule issued by the Director of the Division of Taxation.

47 d. Nothing in this section shall be construed to apply to  
48 medical cannabis, medical cannabis products, paraphernalia, or

1 related supplies dispensed to or on behalf of a registered qualifying  
2 patient pursuant to the "Jake Honig Compassionate Use Medical  
3 Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.) or vapor  
4 businesses licensed by the Director of the Division of Taxation in  
5 the Department of the Treasury pursuant to section 4 of P.L.2019,  
6 c.147 (C.54:40B-3.3).

7 e. As used in this section:

8 "Characterizing flavor" means a distinguishable flavor, taste, or  
9 aroma other than tobacco, including, but not limited to, any fruit,  
10 chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage,  
11 herb, mint, menthol, wintergreen, or spice flavoring, that is  
12 imparted, prior to or during consumption, by a vapor product,  
13 including any smoke or vapor emanating from that product. A  
14 vapor product shall be deemed to have a characterizing flavor if the  
15 product is advertised or marketed as having or producing any such  
16 distinguishable flavor, taste, or aroma.

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

28 (cf: P.L.2019, c.425, s.1)

29

30 9. This act shall take effect immediately.

31

32

33

#### STATEMENT

34

35 This bill establishes certain regulations regarding vapor products.  
36 Under the bill, a person 21 years of age or older who purchases an  
37 electronic smoking device, or a vapor product for a person who is  
38 under 21 years of age is guilty of a petty disorderly persons offense.

39 The bill's provisions do not apply to any medical cannabis,  
40 medical cannabis product, paraphernalia, or related supplies  
41 dispensed or sold to or on behalf of a registered qualifying patient  
42 pursuant to the provisions of the "Jake Honig Compassionate Use  
43 Medical Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.).

44 Under the bill, only licensed vapor businesses are to be permitted  
45 to sell container e-liquid with a characterizing flavor including, but  
46 not limited to, tobacco. No licensed vapor business is to sell any  
47 container e-liquid with a characterizing flavor including, but not  
48 limited to, tobacco: (1) to any person under 21 years of age; (2)

1 unless such items utilize a tracking feature; (3) unless such items  
2 are registered; (4) unless the licensed vapor business refers to the  
3 database developed and maintained pursuant to the bill's provisions  
4 and determines that the potential purchaser has not exceeded the 30-  
5 day maximum purchase quantity set by the Director of the Division  
6 of Taxation; (5) unless access to the interior retail space of the  
7 establishment is physically restricted to persons 21 years of age or  
8 older; (6) unless the licensed vapor business also sells zero percent  
9 container e-liquid; (7) unless the container e-liquid is sold, offered  
10 for sale, given, furnished, or distributed for commercial purposes in  
11 a child resistant container; (8) unless such items are placed in a  
12 sealed bag, with the appropriate warnings printed thereon, at the  
13 point of sale by the licensed vapor business; (9) unless all  
14 customers are required to sign, including by electronic means a  
15 document acknowledging the dangers of vaping generally and the  
16 dangers of adulterating any vapor product; (10) unless such items  
17 have a nicotine content of no more than two percent; and (11) that  
18 has been mixed with any other substance by any entity other than  
19 the manufacturer of the items.

20 Vapor business licenses require a \$5,000 renewal fee under the  
21 bill. The bill provides that a municipality may adopt an ordinance  
22 concerning the licensure and regulation of a vapor business, which  
23 may include assessing a separate vapor business permit fee, not to  
24 exceed \$500 annually, against any entity operating a licensed vapor  
25 business.

26 Under the bill, it is unlawful for a licensed vapor business to sell  
27 an electronic smoking device designed to mimic the appearance of  
28 another object, when the appearance of the electronic smoking  
29 device makes it difficult for the average person to determine, based  
30 on casual observance, whether the item is the object it is designed  
31 to mimic or an electronic smoking device. Prohibited designs  
32 include electronic smoking devices designed to resemble a pen or  
33 other writing utensil, flash drive or universal serial bus drive,  
34 mobile phone, clothing, jewelry, cosmetic product, eating utensil, or  
35 personal hygiene product, provided that nothing in this section shall  
36 be construed to prohibit the sale, offer for sale, or commercial  
37 distribution of an electronic smoking device designed to resemble a  
38 product traditionally used for the consumption of tobacco, including  
39 a cigarette, cigarette pack, pipe, cigar, or hookah.

40 The bill provides that a person is not to engage in a retail  
41 purchase of vapor products in this State unless the purchase is a  
42 direct, face-to-face purchase between a retailer and a consumer and  
43 that no person is to purchase vapor products via the Internet while  
44 present in this State. Any person who sells, offers or exposes for  
45 sale, or possesses with intent to sell vapor products via the Internet  
46 to a purchaser located within this State is guilty of a crime of the  
47 fourth degree. Any person present within the jurisdiction of this

1 State who purchases vapor products via the Internet is guilty of a  
2 petty disorderly persons offense.

3 The bill provides for the establishment of an electronic database  
4 that is to track all container e-liquid with a characterizing flavor  
5 including, but not limited to, tobacco sold by licensed vapor  
6 businesses in this State for the purpose of ensuring that no person  
7 purchases such items in excess of the 30-day limit provided for in  
8 the bill, and ensuring product integrity and compliance with  
9 applicable State and federal laws. Information in the database may  
10 include, the manufacturer of the item, the date of purchase at retail,  
11 the quantity purchased in every sale, consumer safety alerts for the  
12 product, and any other information as may be required by the  
13 Director of the Division of Taxation. The development of a  
14 standardized tracking feature to be included on all container e-  
15 liquid with a characterizing flavor including, but not limited to,  
16 tobacco sold by licensed vapor businesses in the State that may be  
17 used to identify illicit, counterfeit, adulterated, or otherwise illegal  
18 or unsafe items. The tracking feature may be a stamp or any other  
19 feature the Director of the Division of Taxation deems appropriate.

20 The bill provides for a 30-day maximum purchase quantity for  
21 all container e-liquid with a characterizing flavor including, but not  
22 limited to, tobacco sold by licensed vapor businesses in the State to  
23 help prevent the bulk purchase and resale to persons under the age  
24 of 21. The 30-day maximum purchase quantity may use total  
25 milliliters of liquid nicotine or other metric, as determined by the  
26 Director of the Division of Taxation, in order to allow reasonable  
27 purchases without enabling illegal resale to those under the age of  
28 21. The bill also provides for requirements for the installation of  
29 systems designed to restrict access to the interior of a licensed  
30 vapor business to only person 21 years of age or over. Such  
31 systems are to include exterior or interior doors or turnstiles that  
32 unlock and allow access to a licensed vapor business's retail space  
33 using an electronic age verification system.

34 The bill provides for the development of procedures and criteria  
35 for screening, monitoring, and performing criminal history record  
36 background checks of any owner, director, officer, and employee of  
37 a licensed vapor business to be performed at the expense of the  
38 vapor business license applicant or license holder, the development  
39 of signage and display restrictions and requirements for all licensed  
40 vapor businesses, the development of a standardized sealable, one-  
41 time use bag with warnings printed thereon explaining the dangers  
42 of vaping, underaged vaping, and adulterating any vapor products  
43 after purchase, and the development of a document to be signed,  
44 including by electronic means, by purchasers at the point of sale,  
45 acknowledging the dangers of vaping, underaged vaping, and  
46 adulterating any vapor products after purchase.  
47 products.