

# ASSEMBLY, No. 5120

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 10, 2020

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**SYNOPSIS**

Revises requirements for sale of tobacco and vapor products; increases penalties for prohibited sales; increases fees for cigarette and vapor business licensure.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/10/2020)**

A5120 CONAWAY, VAINIERI HUTTLE

2

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, P.L.2003, c.280 (C.45:14-40 et seq.), and  
4 P.L.1990, c.39 (C.54:40B-1 et seq.).

5

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

8

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

11 3. A person 21 years of age or older who purchases a tobacco  
12 product, including an electronic smoking device or vapor product,  
13 for a person who is under 21 years of age is a petty disorderly  
14 person.  
15 (cf: P.L.2017, c.118, s.1)

16

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

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

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

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

33 Unless a retailer restricts access to the retailer's establishment to  
34 persons who are 21 years of age and older, all tobacco products  
35 shall be maintained in a manner that restricts direct public access to  
36 the products, which manner may include maintaining the products  
37 in a locked cabinet, behind the sales counter, or in an area of the  
38 establishment where access is restricted to employees only.  
39 Commencing 90 days after the effective date of P.L. , c.  
40 (pending before the Legislature as this bill), no tobacco product  
41 may be sold or distributed unless the person conducting the sale or  
42 distribution verifies the purchaser's age using an electronic age  
43 verification system.

44 b. The establishment of all of the following shall constitute a

**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 defense to any prosecution brought pursuant to subsection a. of this  
2 section:

3 (1) that the purchaser of the tobacco product [or electronic  
4 smoking device] or the recipient of the promotional sample falsely  
5 represented, by producing either a driver's license or non-driver  
6 identification card issued by the New Jersey Motor Vehicle  
7 Commission, a similar card issued pursuant to the laws of another  
8 state or the federal government of Canada, or a photographic  
9 identification card issued by a county clerk, that the purchaser or  
10 recipient was of legal age to make the purchase or receive the  
11 sample and, commencing 90 days after the effective date of P.L. ,  
12 c. (pending before the Legislature as this bill), the person making  
13 the sale or distribution verifies the purchaser's age using an  
14 electronic age verification system;

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

20 (3) that the sale or distribution of the tobacco product [or  
21 electronic smoking device] was made in good faith, relying upon  
22 the production and, commencing 90 days after the effective date of  
23 P.L. , c. (pending before the Legislature as this bill), verification  
24 of the identification set forth in paragraph (1) of this subsection, the  
25 appearance of the purchaser or recipient, and in the reasonable  
26 belief that the purchaser or recipient was of legal age to make the  
27 purchase or receive the sample.

28 c. A [person who] retailer that violates the provisions of  
29 subsection a. of this section [, including an employee of a retail  
30 dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who  
31 actually sells or otherwise provides a tobacco product to a person  
32 under 21 years of age,] shall be liable to a civil penalty of not less  
33 than [\$250] \$500 for the first violation, not less than [\$500] \$1,000  
34 for the second violation, and [\$1,000] not less than \$2,000 for the  
35 third and each subsequent violation. The civil penalty shall be  
36 collected pursuant to the "Penalty Enforcement Law of 1999,"  
37 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding  
38 before the municipal court having jurisdiction. An official  
39 authorized by statute or ordinance to enforce the State or local  
40 health codes or a law enforcement officer having enforcement  
41 authority in that municipality may issue a summons for a violation  
42 of the provisions of subsection a. of this section, and may serve and  
43 execute all process with respect to the enforcement of this section  
44 consistent with the Rules of Court. A penalty recovered under the  
45 provisions of this subsection shall be recovered by and in the name  
46 of the State by the local health agency. The penalty shall be paid  
47 into the treasury of the municipality in which the violation occurred  
48 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] :

5 (1) shall, upon a third and each subsequent violation of the  
6 provisions of subsection a. of this section, following a hearing by  
7 the municipality, suspend [or, after a second or subsequent violation  
8 of the provisions of subsection a. of this section, revoke] , for a  
9 period of not less than three years, the license issued under section  
10 202 of P.L.1948, c.65 (C.54:40A-4) of a retail dealer or the license  
11 issued under section 4 of P.L.2019, c.147 (C.54:40B-3.3) of a vapor  
12 business, as applicable; 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 202 of P.L.1948, c.65 (C.54:40A-4)  
18 of a retail dealer or the license issued under section 4 of P.L.2019,  
19 c.147 (C.54:40B-3.3) of a vapor business, as applicable.

20 The licensee shall additionally be subject to administrative  
21 charges, based on a schedule issued by the Director of the Division  
22 of Taxation [, which may provide for a monetary penalty in lieu of a  
23 suspension].

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

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

32 g. As used in this section:

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

47 “Vapor product” means any device that may be used to deliver  
48 any aerosolized or vaporized substance to the person inhaling from

1 the device, including, but not limited to, an e-cigarette, e-cigar, e-  
2 pipe, vape pen, or e-hookah. "Vapor product" includes any  
3 component, part, or accessory of the device, and also includes any  
4 substance that may be aerosolized or vaporized by such device,  
5 regardless of whether the substance contains nicotine. "Vapor  
6 product" does not include any drug, device, or combination product  
7 approved by the federal Food and Drug Administration pursuant to  
8 the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. ss.301 et  
9 seq.  
10 (cf: P.L.2017, c.118, s.2)

11  
12 3. Section 1 of P.L.2015, c.294 (C.2A:170-51.9) is amended to  
13 read as follows:

14 1. a. No [person] retailer, either directly or indirectly by an  
15 agent or employee, or by a vending machine owned by the [person]  
16 retailer or located in the [person's] retailer's establishment, shall  
17 sell, offer for sale, give, furnish, or distribute for commercial  
18 purpose at no cost or minimal cost or with coupons or rebate offers,  
19 to any other person [, liquid nicotine in a liquid nicotine container,  
20 which is intended for use in a vapor product,] :

21 (1) any vapor product, unless the product includes any tracking  
22 feature required by, and is included in any database developed and  
23 maintained pursuant to, the provisions of section 15 of P.L. , c.  
24 (C. ) (pending before the Legislature as this bill);

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

27 (3) container e-liquid unless the [liquid nicotine] container e-  
28 liquid is sold, offered for sale, given, furnished, or distributed for  
29 commercial purpose in a child-resistant container; or

30 (4) vaping liquid that has been mixed with any other substance  
31 by any entity other than the manufacturer of the vaping 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  
48 cartridge that is sold, marketed, or intended for use in a vapor

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

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

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

36 c. In addition to the provisions of subsection b. of this section,  
37 [upon the recommendation of the municipality, following a hearing  
38 by the municipality,] the Division of Taxation in the Department of  
39 the Treasury [may] :

40 (1) shall, upon a third and each subsequent violation of the  
41 provisions of subsection a. of this section, following a hearing by  
42 the municipality, suspend [or, after a second or subsequent violation  
43 of the provisions of subsection a. of this section, revoke the] , for a  
44 period of not less than three years, the license [of a retail dealer]  
45 issued under section [202 of P.L.1948, c.65 (C.54:40A-4)] 4 of  
46 P.L.2019, c.147 (C.54:40B-3.3) of a vapor business; and

47 (2) notwithstanding the provisions of paragraph (1) of this  
48 subsection, upon a fourth or subsequent violation of the provisions

1 of subsection a. of this section, may, upon recommendation by the  
2 municipality and following a hearing by the municipality, revoke  
3 the license issued under section 4 of P.L.2019, c.147 (C.54:40B-  
4 3.3) of a vapor business.

5 The licensee shall additionally be subject to administrative  
6 charges, based on a schedule issued by the Director of the Division  
7 of Taxation [, which may provide for a monetary penalty in lieu of a  
8 suspension].

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

14 e. As used in this section:

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

21 “Container e-liquid” means a container of liquid nicotine or other  
22 liquid where the liquid is marketed, sold, or intended for use in an  
23 electronic smoking device, but does not include a prefilled cartridge  
24 or other container where the cartridge or container is marketed,  
25 sold, or intended for use as, or as a part of, an electronic smoking  
26 device.

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

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

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

43

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

46 3. a. A [person who] retailer that sells or gives to a person  
47 under 21 years of age any [cigarettes made of tobacco or of any  
48 other matter or substance which can be smoked, or any cigarette

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

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

17 (1) that the purchaser or recipient of the tobacco product [or  
18 electronic smoking device] falsely represented, by producing either  
19 a driver's license or non-driver identification card issued by the  
20 New Jersey Motor Vehicle Commission, a similar card issued  
21 pursuant to the laws of another state or the federal government of  
22 Canada, or a photographic identification card issued by a county  
23 clerk, that the purchaser or recipient was of legal age to purchase or  
24 receive the tobacco product [or electronic smoking device] and,  
25 commencing 90 days after the effective date of P.L. , c.  
26 (pending before the Legislature as this bill), the person making the  
27 sale or distribution verifies the purchaser's age using an electronic  
28 age verification system;

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

34 (3) that the sale or distribution of the tobacco product [or  
35 electronic smoking device] was made in good faith, relying upon  
36 the production and, commencing 90 days after the effective date of  
37 P.L. , c. (pending before the Legislature as this bill), verification  
38 of the identification set forth in paragraph (1) of this subsection, the  
39 appearance of the purchaser or recipient, and in the reasonable  
40 belief that the purchaser or recipient was of legal age to purchase or  
41 receive the tobacco product [or electronic smoking device].

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

45 d. The provisions of this section shall not apply to any medical  
46 cannabis, medical cannabis product, paraphernalia, or related  
47 supplies dispensed or sold to or on behalf of a registered qualifying  
48 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 “Tobacco product” means: any product containing, made of, or  
5 derived from tobacco or nicotine that is intended for human  
6 consumption or is likely to be consumed, whether inhaled,  
7 absorbed, or ingested by other means, including, but not limited to,  
8 a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, or snus;  
9 any vapor product; and any component, part, or accessory of a  
10 product containing, made of, or derived from tobacco or nicotine or  
11 a vapor product, regardless of whether the component, part, or  
12 accessory contains tobacco or nicotine. “Tobacco product”  
13 includes, but is not limited to, filters, rolling papers, blunt or hemp  
14 wraps, hookahs, and pipes. “Tobacco product” does not include  
15 any drug, device, or combination product approved by the federal  
16 Food and Drug Administration pursuant to the “Federal Food, Drug,  
17 and Cosmetic Act,” 21 U.S.C. ss.301 et seq.

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

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

30

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

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

43 (b) Except as provided in subsection (c) of this section, grants  
44 from the special projects and development fund for specific  
45 purposes shall be made on an annual basis for a period not in excess  
46 of 5 years and such grants shall be in diminishing amounts during  
47 this period. The commissioner shall determine the conditions  
48 applicable to each such grant including the extent of local financial

1 participation to be required. Grants from the special projects and  
2 development fund to voluntary health agencies shall not exceed  
3 40% of said fund.

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

16 Each grant recipient shall report quarterly to the commissioner  
17 on the number of compliance check inspections it has completed  
18 and the results of those compliance checks. The commissioner shall  
19 determine any other conditions applicable to the grants.

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

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

26

27 6. Section 2 of P.L.1995, c.320 (C.26:3A2-20.1) is amended to  
28 read as follows:

29 2. a. The Commissioner of Health is authorized to enforce the  
30 provisions of section 1 of P.L.2000, c.87 (C.2A:170-51.4) with  
31 respect to the prohibition on the sale and commercial distribution of  
32 tobacco products to persons under 21 years of age. The  
33 commissioner may delegate the enforcement authority provided in  
34 this section to local health agencies, subject to the availability of  
35 sufficient funding. The commissioner shall report quarterly to the  
36 Legislature on the enforcement program's progress, use of grants  
37 awarded pursuant to section 7 of P.L.1966, c.36 (C.26:2F-7), results  
38 of enforcement efforts and other matters the commissioner deems  
39 appropriate. The commissioner shall establish standards for  
40 compliance inspections, including undercover compliance  
41 purchases, conducted by the Department of Health and local health  
42 agencies, which standards may include annual reporting by local  
43 health agencies conducting a compliance inspection concerning the  
44 number of inspections conducted, the number of violations cited,  
45 the amounts of any penalties collected, and any adverse actions  
46 taken against a retailer's tobacco retail dealer license or vapor  
47 business license.

1       b. The Department of the Treasury shall provide the  
2 commissioner with information about retail tobacco dealer licenses  
3 and vapor business licenses necessary to carry out the purpose of  
4 this section.

5 (cf: P.L.2017, c.118, s.5)

6

7       7. Section 202 of P.L.1948, c.65 (C.54:40A-4) is amended to  
8 read as follows:

9       202. a. All licenses shall be issued by the director, who shall  
10 make rules and regulations respecting applications therefor and  
11 issuance thereof.

12       b. The following individuals related to distributors, wholesale  
13 dealers, retail dealers operating more than nine cigarette vending  
14 machines, and retail dealers who sell cigarettes at retail at more  
15 than nine premises shall submit with applications for a license,  
16 fingerprints, which shall be processed through the Federal Bureau  
17 of Investigation and the New Jersey State Police, and such other  
18 information as the director may require:

19       (1) Individuals having any interest whatsoever in a  
20 proprietorship or company.

21       (2) Partners of a partnership, regardless of percentage.

22       (3) Joint venturers in a joint venture.

23       (4) Officers, directors, and all stockholders holding directly or  
24 indirectly a beneficial interest in more than 5% of the outstanding  
25 shares of a corporation.

26       (5) Employees receiving in excess of \$30,000.00 per annum  
27 compensation whether as salary, commission, bonus or otherwise  
28 and persons who, in the judgment of the director are employed in a  
29 supervisory capacity or have the power to make or substantially  
30 affect discretionary business judgments of the applicant entity with  
31 regard to the cigarette business.

32       (6) Other persons who the director establishes have the ability to  
33 control the applicant entity through any means including but not  
34 limited to, contracts, loans, mortgages or pledges of securities  
35 where such control is inimical to the policies of this act because  
36 such person is a career offender or a member of a career offender  
37 cartel as defined in paragraph (2) of subsection e. of this section.  
38 Individuals licensed pursuant to the "Casino Control Act,"  
39 P.L.1977, c.110 (C.5:12-1 et seq.) shall only be required to produce  
40 evidence of said licensure in satisfaction of the foregoing.

41       The provisions in this subsection as to wholesale dealers, retail  
42 dealers operating more than nine cigarette vending machines, and  
43 retail dealers who sell cigarettes at retail at more than nine premises  
44 do not apply to retail grocery stores and supermarkets primarily  
45 engaged in the self-service sale of foods and household supplies for  
46 off-premises consumption, to drug stores and pharmacies engaged  
47 in the retail sale of prescription drugs and patent medicines and  
48 which may carry a number of lines of related merchandise, or to

1 restaurants, hotels and motels operated by national corporations  
2 with such premises in six or more states and primarily engaged in  
3 the sale of foods for retail consumption or in the rental of rooms for  
4 lodging.

5 c. (1) The director shall not issue any license under this act  
6 where he has reasonable cause to believe that anyone required to  
7 submit information under this act has willfully withheld information  
8 requested of him for the purpose of determining the eligibility of  
9 the applicant to receive a license or where the director has  
10 reasonable cause to believe that information submitted in the  
11 application is false and misleading and is not made in good faith.

12 (2) The director shall not issue a license under this act to a  
13 person that is a manufacturer or importer of cigarettes, tobacco  
14 products or processed tobacco if the manufacturer or importer does  
15 not possess a valid federal permit issued pursuant to section 5713 of  
16 the federal Internal Revenue Code of 1986, 26 U.S.C. s.5713, that is  
17 not suspended or revoked.

18 d. The director shall not issue any license under this act where  
19 he has reasonable cause to believe that anyone required to be  
20 licensed or anyone required to submit information under this act,  
21 has been convicted of any offense in any jurisdiction which would  
22 be at the time of conviction a crime involving moral turpitude.

23 It is further provided that any applicant or person required to  
24 submit information who has a charge pending pursuant to any of the  
25 foregoing shall disclose that fact to the director. The director may  
26 then withhold action on new applications or, in the case of an  
27 application for the renewal of a license, issue a temporary license  
28 until there has been a disposition of the charge. The director shall  
29 have the discretion to waive the prohibition against licensure herein  
30 provided upon the presentation of proof that a period of not less  
31 than five years has elapsed since the last conviction or the  
32 expiration of any period of incarceration imposed with respect  
33 thereto.

34 e. The director shall not issue any license where the applicant  
35 or anyone required to submit information has been identified as a  
36 career offender or a member of a career offender cartel in such a  
37 manner as to create a reasonable belief that the association is of  
38 such a nature as to be inimical to the policies of this act or to the  
39 taxation, distribution, and sale of cigarettes within the State. The  
40 director may request the Attorney General for advice respecting  
41 whether a person is a "career offender" within the meaning of this  
42 subsection, or is a "contumacious defiant" within the meaning of  
43 subsection f. of this section.

44 As used in this subsection:

45 (1) "career offender" means any person whose behavior is  
46 pursued in an occupational manner or context for the purpose of  
47 economic gain, utilizing such methods as are deemed criminal  
48 violations of the public policy of this State; and (2) "career offender

1 cartel" means any group of persons who operate together as career  
2 offenders.

3 f. The director shall not issue any license where the applicant  
4 or anyone required to submit information has been found to be  
5 contumaciously defiant before any legislative investigative body or  
6 other official investigative body of this State or of the United States  
7 when such body is engaged in the investigation of organized crime,  
8 official corruption or the cigarette industry itself.

9 g. Each such license shall lapse on March 31 of the period for  
10 which it is issued, and each such license shall be continued annually  
11 upon the conditions that the licensee shall have paid the required  
12 fee and complied with all the provisions of this act and the rules and  
13 regulations of the director made pursuant thereto.

14 h. For each license issued to a distributor there shall be paid to  
15 the director a fee of \$350.00. If a distributor sells or intends to sell  
16 cigarettes at two or more places of business, whether established or  
17 temporary, a separate license shall be required for each place of  
18 business. Each license, or certificate, thereof, and such other  
19 evidence of license shall be exhibited in the place of business for  
20 which it is issued and in such manner as may be prescribed by the  
21 director. The director shall require each licensed distributor to file  
22 with him a bond in an amount not less than the average monthly  
23 value of the cigarette stamps used by the licensed distributor to  
24 guarantee the proper performance of his duties and the discharge of  
25 his liabilities under this act. The bond shall be executed by such  
26 licensed distributor as principal, and by a corporation approved by  
27 the director and duly authorized to engage in business as a surety  
28 company in the State of New Jersey, as surety. The bond shall run  
29 concurrently with the distributor's license.

30 For each license issued to a manufacturer, and for each  
31 continuance thereof, there shall be paid to the director a fee of  
32 \$10.00.

33 For each license issued to a manufacturer's representative, and  
34 for each continuance thereof, there shall be paid to the director a fee  
35 of \$5.00.

36 For each license issued to a wholesale dealer there shall be paid  
37 to the director a fee of \$250.00. If a wholesale dealer sells or  
38 intends to sell cigarettes at 10 or more places of business, whether  
39 established or temporary, a separate license shall be required for  
40 each place of business. Each license, or certificate thereof, and such  
41 other evidence of license shall be exhibited in the place of business  
42 for which it is issued and in such manner as may be prescribed by  
43 the director.

44 For each license issued to a retail dealer and for each  
45 continuance thereof, excepting a retail dealer operating a cigarette  
46 vending machine, there shall be paid to the director a fee of [\$40 in  
47 1996 and \$50 in 1997 and each year thereafter] \$500. For each  
48 license issued to a retail dealer operating a vending machine for the

1 sale of cigarettes and for each continuance thereof, there shall be  
2 paid to the director a fee of [\$40 in 1996 and \$50 in 1997 and each  
3 year thereafter] \$500. Of the license fee of [\$40 and \$50,  
4 respectively, \$30 shall be credited in 1996 and \$40 shall be credited  
5 in 1997 and each year thereafter] \$500, \$450 shall be annually  
6 credited to the special projects and development fund in the  
7 Department of Health [and Senior Services] established pursuant to  
8 section 7 of P.L.1966, c.36 (C.26:2F-7) for the purposes specified  
9 therein, and [\$5] \$50 shall be credited each year [, beginning with  
10 1996,] to the division for administrative costs associated with the  
11 requirements established pursuant to subsection i. of this section  
12 and section 2 of P.L.1995, c.320 (C.26:3A2-20.1). The director  
13 shall determine and certify to the State Treasurer on a monthly basis  
14 the amount of revenues collected by the director which are to be  
15 credited to the special projects and development fund in the  
16 Department of Health.

17 If a retail dealer sells or intends to sell cigarettes at two or more  
18 places of business, whether established or temporary, or whether in  
19 the same building or not, a separate license shall be required for  
20 each place of business. Each vending machine for the sale of  
21 cigarettes shall be separately licensed and be deemed a separate  
22 place of business. Each license, or certificate thereof, and such  
23 other evidence of license shall be exhibited in the place of business  
24 for which it is issued and in such manner as may be prescribed by  
25 the director.

26 Any person licensed only as a distributor or as a manufacturer or  
27 as a manufacturer's representative or as a wholesale dealer or as a  
28 retail dealer shall not operate in any other capacity except under  
29 that for which he is licensed herein, unless the appropriate license  
30 or licenses therefor are first secured.

31 For each license issued to a consumer and for each continuance  
32 thereof there shall be paid to the director a fee of \$1.00. Each  
33 license, or certificate thereof, or such other evidence of license as  
34 may be prescribed by the director, shall be so kept by the consumer  
35 as to be readily available for inspection.

36 No license shall be issued to any person except upon the  
37 payment of the full fee therefor, any statute or exemption to the  
38 contrary notwithstanding. No license shall be assignable or  
39 transferable, except as hereinafter provided, but in the case of death,  
40 bankruptcy, receivership, or incompetency of the licensee, or if for  
41 any other reason whatsoever the business of the licensee shall  
42 devolve upon another by operation of law, the director may, in his  
43 discretion, extend said license for a limited time to the executor,  
44 administrator, trustee, receiver, or person upon whom the same has  
45 devolved. A purchaser or assignee of a licensed wholesaler or  
46 licensed distributor, or any other person upon whom the business of  
47 a licensed wholesaler or licensed distributor shall devolve by  
48 operation of law, shall upon application to the director, be entitled

1 to an assignment or transfer of the wholesale or distributor license  
2 for the balance of the existing license period upon payment of a  
3 transfer fee of \$5.00 and subject to his qualification to be a licensed  
4 wholesaler or licensed distributor under the provisions of this act.  
5 The license issued for each vending machine for the sale of  
6 cigarettes may be transferred from machine to machine in the same  
7 ownership. No refund of the license fee shall be paid to any person  
8 upon the surrender or revocation of any license except a license fee  
9 paid or collected in error. But, upon payment of a \$1.00 fee, there  
10 may be obtained (1) a duplicate license, or certificate thereof, in the  
11 event the original is lost, destroyed or defaced, and (2) an amended  
12 license, or certificate thereof, upon a change in the location of the  
13 place of business of any distributor or dealer.

14 i. The director shall require an applicant for a cigarette retail  
15 dealer license, including a license to operate a vending machine for  
16 the sale of cigarettes, to include on the application the address of  
17 the place of business where the cigarettes will be sold or the address  
18 where the vending machine will be located, as the case may be.

19 If the place of business or the vending machine is moved to a  
20 different address than that provided on the license application, the  
21 licensee shall notify the director within 30 days of the change of  
22 address.

23 (cf: P.L.2013, c.145, s.1)

24

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

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

35 "A [person who]retailer that sells or offers to sell a tobacco  
36 product to a person under 21 years of age shall pay a penalty of up  
37 to [\$1,000] \$2,000 and may be subject to a license suspension or  
38 revocation.

39 Proof of age [may be] is required for purchase."

40 b. Each licensee shall be required, within 90 days after the  
41 effective date of P.L. , c. (pending before the Legislature as this  
42 bill), to acquire a system that can be used to electronically verify  
43 the age of an individual purchasing a tobacco product.

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

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

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

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

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

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

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

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

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

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

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

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

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

36

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

39       4. a. After the effective date of P.L.2019, c.147 (C.54:40B-3.3  
40 et al.), container e-liquid shall not be sold at retail in the State  
41 except by a licensed vapor business.

42       b. Vapor business licenses shall be issued by the director, who  
43 shall make rules and regulations respecting application and  
44 issuance. Each such license shall lapse on March 31 of the period  
45 for which it is issued, and each such license shall be continued  
46 annually upon the conditions that the licensee shall have paid the  
47 required fee and complied with the provisions of P.L.2019, c.147

1 (C.54:40B-3.3 et al.) and the rules and regulations of the director  
2 made pursuant thereto.

3 If a vapor business sells or intends to sell container e-liquid at  
4 two or more places of business, whether established or temporary,  
5 or whether in the same building or not, a separate license shall be  
6 required for each place of business. Each license, or certificate  
7 thereof, and such other evidence of license shall be exhibited in the  
8 place of business for which it is issued and in such manner as may  
9 be prescribed by the director.

10 No license shall be issued to any person except upon the  
11 payment of a [~~\$50~~] \$500 fee. No license shall be assignable or  
12 transferable, but in the case of death, bankruptcy, receivership, or  
13 incompetency of the licensee, or if, for any other reason  
14 whatsoever, the business of the licensee shall devolve upon another  
15 by operation of law, the director may, in the director's discretion,  
16 extend said license for a limited time to the executor, administrator,  
17 trustee, receiver, or person upon whom the same has devolved.

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

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

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

41

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

44 11. In addition to the license required by section 4 of P.L.2019,  
45 c.147 (C.54:40B-3.3), a municipality may adopt an ordinance  
46 concerning the licensure and regulation of a vapor business, which  
47 may include assessing a separate vapor business permit fee against  
48 any entity operating a licensed vapor business. The full amount of

1 any permit fees collected by a municipality pursuant to this section,  
2 less administrative costs, shall be used to fund compliance  
3 inspections, including undercover compliance purchases, conducted  
4 by the local health agency having jurisdiction consistent with the  
5 requirements established by the Commissioner of Health pursuant  
6 to section 2 of P.L.1995, c.320 (C.26:3A2-20.1). Nothing in  
7 P.L.2019, c.147 (C.54:40B-3.3 et al.) shall be construed to preempt  
8 the provisions of any existing or new municipal ordinance  
9 concerning the licensure and regulation of a vapor business.  
10 (cf: P.L.2019, c.147, s.11)

11  
12 12. (New section) a. It shall be unlawful for a retailer, either  
13 directly or indirectly by an agent or employee, or by a vending  
14 machine owned by the retailer or located in the retailer's  
15 establishment, to sell, offer for sale, give, furnish, or distribute for  
16 commercial purpose at no cost or minimal cost or with coupons or  
17 rebate offers, to any person any electronic smoking device that is  
18 designed to mimic the appearance of another object, when the  
19 appearance of the electronic smoking device makes it difficult for  
20 the average person to determine, based on casual observance,  
21 whether the item is the object it is designed to mimic or an  
22 electronic smoking device. Prohibited designs shall include, but  
23 shall not be limited to, electronic smoking devices designed to  
24 resemble a pen or other writing utensil, flash drive or universal  
25 serial bus drive, mobile phone, clothing, jewelry, cosmetic product,  
26 eating utensil, or personal hygiene product, provided that nothing in  
27 this section shall be construed to prohibit the sale, offer for sale, or  
28 commercial distribution of an electronic smoking device designed  
29 to resemble a product traditionally used for the consumption of  
30 tobacco, including a cigarette, cigarette pack, pipe, cigar, or  
31 hookah.

32 b. A retailer that violates the provisions of subsection a. of this  
33 section shall be liable to a civil penalty of not less than \$1,000 for  
34 the first violation and not less than \$2,000 for a second or  
35 subsequent violation. The civil penalty shall be collected pursuant  
36 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
37 (C.2A:58-10 et seq.), in a summary proceeding before the municipal  
38 court having jurisdiction. An official authorized by statute or  
39 ordinance to enforce the State or local health codes, or a law  
40 enforcement officer having enforcement authority in that  
41 municipality, may issue a summons for a violation of the provisions  
42 of subsection a. of this section, and may serve and execute all  
43 process with respect to the enforcement of this section consistent  
44 with the Rules of Court. A penalty recovered under the provisions  
45 of this subsection shall be recovered by and in the name of the State  
46 by the local health agency. The penalty shall be paid into the  
47 treasury of the municipality in which the violation occurred for the  
48 general uses of the municipality.

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

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

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

15 The licensee shall additionally be subject to administrative  
16 charges, based on a schedule issued by the Director of the Division  
17 of Taxation.

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

29  
30 13. (New section) a. No person, either directly or indirectly by  
31 an agent or employee, or by a vending machine located on the  
32 premises, shall sell or offer for sale at a pharmacy practice site that  
33 has been issued a permit under P.L.2003, c.280 (C.45:14-40 et  
34 seq.), or at a business entity that has a pharmacy practice site  
35 located on its premises, any tobacco product.

36 b. Nothing in subsection a. of this section shall be construed to  
37 prohibit a pharmacy practice site or business entity that has a  
38 pharmacy practice site located on its premises from selling or  
39 offering for sale smoking cessation products approved by the  
40 federal Food and Drug Administration, and nothing in subsection a.  
41 of this section shall be construed to prohibit a pharmacy practice  
42 site, or a business entity that has a pharmacy practice site located on  
43 its premises, that has been issued a medical cannabis dispensary  
44 permit pursuant to the “Jake Honig Compassionate Use Medical  
45 Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.), from dispensing  
46 medical cannabis, paraphernalia, and related supplies to or on  
47 behalf of a registered qualifying patient.

1 c. The owner of a pharmacy practice site or a business entity  
2 that has a pharmacy practice site located on its premises that  
3 violates the provisions of subsection a. of this section shall be liable  
4 to a civil penalty of not less than \$500 for the first violation, not  
5 less than \$1,000 for the second violation, and not less than \$2,000  
6 for the third and each subsequent violation. The civil penalty shall  
7 be collected pursuant to the "Penalty Enforcement Law of 1999,"  
8 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding  
9 before the municipal court having jurisdiction. An official  
10 authorized by statute or ordinance to enforce the State or local  
11 health codes or a law enforcement officer having enforcement  
12 authority in that municipality may issue a summons for a violation  
13 of the provisions of subsection a. of this section, and may serve and  
14 execute all process with respect to the enforcement of this section  
15 consistent with the Rules of Court. A penalty recovered under the  
16 provisions of this subsection shall be recovered by and in the name  
17 of the State by the local health agency. The penalty shall be paid  
18 into the treasury of the municipality in which the violation occurred  
19 for the general uses of the municipality.

20 d. In addition to the provisions of subsection c. of this section,  
21 a pharmacy practice site at which a violation of subsection a. of this  
22 section occurs may be subject to disciplinary action by the Board of  
23 Pharmacy, and a business entity that has a pharmacy practice site  
24 located on its premises at which a violation of subsection a. of this  
25 section occurs may be subject to disciplinary action by an agency,  
26 board, office, or other appropriate governmental entity having  
27 jurisdiction.

28 e. As used in this section:

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

43 "Vapor product" means any device that may be used to deliver  
44 any aerosolized or vaporized substance to the person inhaling from  
45 the device, including, but not limited to, an e-cigarette, e-cigar, e-  
46 pipe, vape pen, or e-hookah. "Vapor product" includes any  
47 component, part, or accessory of the device, and also includes any  
48 substance that may be aerosolized or vaporized by such device,

1 regardless of whether the substance contains nicotine. “Vapor  
2 product” does not include any drug, device, or combination product  
3 approved by the federal Food and Drug Administration pursuant to  
4 the “Federal Food, Drug, and Cosmetic Act,” 21 U.S.C. ss.301 et  
5 seq.

6  
7 14. (New section) A person shall not engage in a retail sale of  
8 or vapor products in this State unless the sale is a face-to-face sale,  
9 except that a person may engage in a non-face-to-face sale of a  
10 vapor product to a person in this State if the following conditions  
11 are met:

12 a. The seller has verified payment of, paid, or collected all  
13 applicable State taxes, including the taxes imposed on liquid  
14 nicotine pursuant to section 5 of P.L.2018, c.50 (C.54:40B-3.2) and  
15 the taxes imposed on container e-liquid pursuant to section 5 of  
16 P.L.2019, c.147 (C.54:40B-3.4), as applicable, and the sales or use  
17 taxes imposed by the "Sales and Use Tax Act," P.L.1966, c.30  
18 (C.54:32B-1 et seq.), due on the vapor product; and

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

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

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

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

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

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

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

40 c. Nothing in this section shall relieve the seller of vapor  
41 products from any other applicable requirement of law relating to  
42 the sale of vapor products.

43  
44 15. (New section) a. The director shall adopt, by regulation,  
45 requirements for the establishment of an electronic database that  
46 shall be used to track all vapor products sold in New Jersey for the  
47 purpose of ensuring product integrity and compliance with  
48 applicable State and federal laws. Information in the database shall

1 include, but shall not limited to, the manufacturer of the product  
2 and the batch, lot, and serial numbers of the product, consumer  
3 safety alerts for the product, and any other information as may be  
4 required by the director.

5 b. The director shall adopt, by regulation, requirements for the  
6 development of a standardized tracking feature to be included on all  
7 vapor products sold in the State that may be used to identify illicit,  
8 counterfeit, adulterated, or otherwise illegal or unsafe vapor  
9 products in New Jersey. The tracking feature may be a stamp issued  
10 by the division, a barcode imprinted on the vapor product by the  
11 manufacturer, or any other feature the director deems appropriate.  
12 The director shall designate the appropriate means of including the  
13 standardized tracking feature on vapor products.

14

15 16. This act shall take effect July 1, 2020.

16

17

18

#### STATEMENT

19

20 This bill increases the penalties that apply to any retailer that  
21 sells tobacco or vapor products to a person younger than 21 years of  
22 age. Current law provides that a person who violates the  
23 prohibition against underage sales is liable to a civil penalty of not  
24 less than \$250 for a first offense, not less than \$500 for a second  
25 offense, and \$500 for a third or subsequent offense. In addition, a  
26 person's cigarette retail dealer license may be suspended following  
27 a first violation or revoked following a second or subsequent  
28 violation, based on the recommendation of the municipality and  
29 following a hearing, provided that the current law allows for the  
30 imposition of an administrative penalty in lieu of suspension or  
31 revocation.

32 The bill will increase these penalties to \$500 for a first offense,  
33 \$1,000 for a second offense, and \$2,000 for a third or subsequent  
34 offense, and clarify that all penalties are assessed against the  
35 retailer where the prohibited sale is made, and not against an  
36 employee who makes a prohibited sale. The bill further provides  
37 for mandatory three-year suspension of a retail dealer or vapor  
38 business license following a third and each subsequent violation,  
39 except that a license may be revoked following a fourth or  
40 subsequent violation, based on the recommendation of the  
41 municipality. A retailer subject to adverse licensure action will also  
42 be subject to administrative penalties. The bill removes language  
43 authorizing the assessment of an administrative penalty in lieu of  
44 license suspension or revocation.

45 Current law also provides that a person who sells a tobacco or  
46 vapor product to a person under 21 years of age is liable to the \$500  
47 fine applicable to petty disorderly persons offenses, which fine is  
48 doubled for a subsequent offense. The bill increases this fine by

1 providing that a retailer that makes a prohibited underage sale is  
2 liable to the \$1,000 fine applicable to disorderly persons offenses,  
3 which fine will still be doubled for a subsequent violation.

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

10 The bill requires that, no later than 90 days after the effective  
11 date of the bill, all tobacco and vapor product retailers are to  
12 acquire and begin using an electronic age verification system to  
13 prevent sales of tobacco and vapor products to persons under age  
14 21. The bill additionally requires that, unless the retailer restricts  
15 access to the retailer's establishment to persons age 21 years and  
16 older, all tobacco and vapor products are to be maintained in a  
17 manner that restricts public access to the products, which may  
18 include maintaining the products behind the sales counter, in a  
19 locked cabinet, or in an area of the establishment that is restricted to  
20 employees only.

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

28 The bill revises the current requirement that vaping liquids be  
29 sold in child-resistant containers to additionally: (1) prohibit the  
30 sale of vaping liquids that contain nicotine in a concentration of  
31 more than two percent; (2) prohibit the sale of vaping liquids  
32 products that were mixed with any other substance by any entity  
33 other than the manufacturer; and (3) prohibit the sale of any vapor  
34 product that is not included in the database to be established  
35 pursuant to the bill.

36 The current penalties for sale of a vaping liquid that is not in a  
37 child-resistant container are \$250 for a first violation, \$500 for a  
38 second violation, and \$1,000 for a third or subsequent violation, in  
39 addition to possible license suspension or revocation. The bill  
40 makes these penalties applicable to any sale prohibited under the  
41 bill, and doubles the penalties to \$500 for a first offense, \$1,000 for  
42 a second offense, and \$2,000 for a third or subsequent offense. In  
43 addition, a retailer will be subject to a mandatory three-year license  
44 suspension following a third and each subsequent violation, and a  
45 potential license revocation following a fourth or subsequent  
46 violation, if recommended by the municipality. Violators subject to  
47 adverse licensure action will also be subject to administrative  
48 penalties.

1       The bill prohibits the sale of electronic smoking devices that are  
2 designed to mimic the appearance of another object, when the  
3 appearance of the electronic smoking device makes it difficult for  
4 the average person to determine, based on casual observance,  
5 whether the item is the object it is designed to mimic or an  
6 electronic smoking device. Prohibited designs will include, but not  
7 be limited to, devices designed to resemble a pen or other writing  
8 utensil, flash drive or universal serial bus drive, mobile phone,  
9 clothing, jewelry, cosmetic product, eating utensil, or personal  
10 hygiene product; however, it will not be prohibited to sell an  
11 electronic smoking device designed to resemble a product  
12 traditionally used for the consumption of tobacco, such as a  
13 cigarette, cigarette pack, pipe, cigar, or hookah. A violation of this  
14 prohibition will be punishable by a civil penalty of \$1,000 for a first  
15 offense and \$2,000 for a second or subsequent offense, plus a  
16 mandatory three-year license suspension following a third and each  
17 subsequent violation, and a possible license revocation following a  
18 fourth or subsequent violation, if recommended by the municipality.  
19 Violators subject to adverse licensure action will also be subject to  
20 administrative penalties.

21       The bill clarifies that the various restrictions on the sale of  
22 tobacco and vapor products do not apply to any medical cannabis,  
23 paraphernalia, or related supplies dispensed to or on behalf of a  
24 registered medical cannabis patient by an alternative treatment  
25 center under the “Jake Honig Compassionate Use Medical Cannabis  
26 Act,” P.L.2009, c.307 (C.24:6I-1 et al.).

27       The bill requires the Commissioner of Health to establish  
28 standards for compliance inspections, including undercover  
29 compliance purchases, conducted by the Department of Health and  
30 by local boards of health, which may include annual reporting  
31 concerning the results of compliance inspections.

32       Current law provides for a \$50 licensure fee for tobacco retail  
33 dealers and vapor businesses. The bill increases these licensure  
34 fees to \$500. The bill further authorizes municipalities to assess an  
35 additional permit fee against vapor businesses, provided that the full  
36 amount of any permit fees collected, less administrative costs, are to  
37 be used to fund compliance inspections, including undercover  
38 compliance purchases, made by the local health agency.

39       The bill prohibits pharmacy practice sites, and business entities  
40 that have a pharmacy practice site located on the premises, from  
41 selling or offering for sale any tobacco product, including vapor  
42 products. A violation of this prohibition will be punishable by a  
43 civil penalty of \$1,000 for a first offense and \$2,000 for a second or  
44 subsequent offense. In addition, pharmacy practice sites will be  
45 subject to disciplinary action by the Board of Pharmacy, and  
46 business entities with a pharmacy practice site located on the  
47 premises will be subject to disciplinary action by any agency,  
48 board, or office having jurisdiction. The prohibition will not apply

1 to smoking cessation products approved by the federal Food and  
2 Drug Administration, and will not restrict the dispensing of medical  
3 cannabis and related supplies if the pharmacy holds a medical  
4 cannabis dispensary permit.

5 The bill requires the Director of the Division of Taxation to  
6 adopt, by regulation, requirements for the establishment of an  
7 electronic database that will be used to track all vapor products sold  
8 in New Jersey for the purpose of ensuring product integrity and  
9 compliance with State and federal law. Additionally, the director  
10 will be required to adopt requirements for the development of a  
11 standardized tracking feature to be included on all vapor products  
12 sold in the State that may be used to identify illicit, counterfeit,  
13 adulterated, or otherwise illegal or unsafe vapor products in the  
14 State.