

# ASSEMBLY, No. 5385

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 13, 2019

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**

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

**Assemblywoman ELIANA PINTOR MARIN**

**District 29 (Essex)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Concerns sale and taxation of container e-liquid.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 5/24/2019)

1 AN ACT concerning the sale and taxation of container e-liquid,  
2 supplementing and amending P.L.1990, c.39 and amending  
3 P.L.2018, c.50.

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

7  
8 1. Section 1 of P.L.1990, c.39 (C.54:40B-1) is amended to read  
9 as follows:

10 1. Sections 1 through 14 of P.L.1990, c.39 (C.54:40B-1 et seq.)  
11 shall be known and may be cited as the "Tobacco and **[Nicotine]**  
12 **Vapor** Products **[Wholesale Sales and Use]** Tax Act."  
13 (cf: P.L.2018, c.50, s.2)

14  
15 2. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read  
16 as follows:

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

19 "Consumer" means a person except a distributor, manufacturer,  
20 or wholesaler who acquires a tobacco product for consumption,  
21 storage, or use in this State;

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

28 "Director" means the Director of the Division of Taxation in the  
29 Department of the Treasury;

30 "Distributor" means:

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

34 a person who makes or manufactures tobacco products in this  
35 State for sale in the State,

36 a person engaged in the business of selling tobacco products  
37 without this State who ships or transports tobacco products to a  
38 person in this State to be sold to a retail dealer, or

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

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

44 "Electronic smoking device" means a nonlighted,  
45 noncombustible device that may be used to simulate smoking and

**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 that employs a mechanical heating element, battery, or circuit,  
2 regardless of shape or size, to produce aerosolized or vaporized  
3 nicotine or other substance for inhalation into the body of a person,  
4 including but not limited to a device that is manufactured,  
5 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-  
6 hookah, vape pen, or any other similar product with any other  
7 product name or descriptor;

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

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

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

18 "Person" means an individual, firm, corporation, copartnership,  
19 joint venture, association, receiver, trustee, guardian, executor,  
20 administrator, or any other person acting in a fiduciary capacity, or  
21 an estate, trust, or group or combination acting as a unit, the State  
22 Government and any political subdivision thereof, and the plural as  
23 well as the singular, unless the intention to give a more limited  
24 meaning is disclosed by the context;

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

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

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

35 "Tobacco product" means any product containing, made, or  
36 derived from any tobacco, nicotine, or other chemicals or  
37 substances for consumption by a person, including, but not limited  
38 to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco,  
39 smoking tobacco and their substitutes, dry and moist snuff, and  
40 liquid nicotine, but does not include cigarette as defined in section  
41 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et  
42 seq.);

43 "Treasurer" means the State Treasurer;

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

46 "Vapor business" means a retail business where more than 50  
47 percent of its retail sales are derived from electronic smoking

1 devices, related accessories, and liquid nicotine, but does not  
2 include a retail business that does not sell container e-liquid;

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

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

7 a. purchases tobacco products from any other person who  
8 purchases from the manufacturer and who acquires tobacco  
9 products solely for the purpose of bona fide resale to retail dealers  
10 or to other persons for the purposes of resale only; or

11 b. services retail outlets by the maintenance of an established  
12 place of business for the purchase of tobacco products including,  
13 but not limited to, the maintenance of warehousing facilities for the  
14 storage and distribution of tobacco products.

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

16

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

19 5. a. There is imposed a tax upon the sale, use, or distribution of  
20 liquid nicotine within this State by a distributor or wholesaler to a  
21 retail dealer or consumer at the rate of \$0.10 per fluid milliliter on  
22 the volume of the liquid nicotine as listed by the manufacturer, and  
23 a proportionate rate on all fractional parts of a fluid milliliter of  
24 volume of liquid nicotine as listed by the manufacturer.

25 b. Unless liquid nicotine has already been or will be subject to  
26 the tax imposed in subsection a. of this section, if a distributor or  
27 wholesaler uses the liquid nicotine within the State, there is  
28 imposed upon the distributor or wholesaler a compensating use tax  
29 of \$0.10 per fluid milliliter of the volume of liquid nicotine as listed  
30 by the manufacturer, and a proportionate rate on all fractional parts  
31 of a fluid milliliter of the volume of liquid nicotine as listed by the  
32 manufacturer.

33 c. Unless a tax is due pursuant to subsection b. of this section,  
34 if a distributor or wholesaler has not paid the tax imposed in  
35 subsection a. of this section upon a sale that is subject to the tax  
36 imposed in that subsection a., there is imposed upon the retail  
37 dealer or consumer chargeable for the sale a compensating use tax  
38 of \$0.10 per fluid milliliter on the volume of the liquid nicotine as  
39 listed by the manufacturer, and a proportionate rate on all fractional  
40 parts of a fluid milliliter of the volume of liquid nicotine as listed  
41 by the manufacturer, which shall be collected in the manner  
42 provided in subsection b. of section 5 of P.L.1990, c.39 (C.54:40B-  
43 5).

44 d. The tax imposed pursuant to this section shall not apply to  
45 the retail sale of container e-liquid.

46 (cf: P.L.2018, c.50, s.5)

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

5 b. A vapor business operating in the State shall be required to  
6 be licensed as such. The director shall make rules and regulations  
7 respecting applications to be licensed as a vapor business in the  
8 State. For each license issued to a vapor business the vapor business  
9 shall pay to the director a fee of \$50 annually.

10

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

14 b. The tax imposed pursuant to this section shall be collected  
15 by the seller.

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

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

24

25 6. This act shall take effect 60 days following enactment, but  
26 the director may take anticipatory administrative action necessary to  
27 implement this act.

28

29

30

#### STATEMENT

31

32 This bill imposes licensing requirements on vapor businesses,  
33 limits the sale of container e-liquid to vapor businesses, and  
34 imposes a 10 percent tax on the sale of container e-liquid. The bill  
35 also exempts container e-liquid from the wholesale liquid nicotine  
36 tax, which pursuant to the bill, will only apply to non-container  
37 e-liquid.

38 Container e-liquid is a container of liquid nicotine or other liquid  
39 where the *liquid* is intended for use in an electronic smoking device,  
40 but not including prefilled containers where the *container* is  
41 intended for use in an electronic smoking device (e.g. cartridges).

42 A vapor business is a retail business where more than 50 percent  
43 of its retail sales are derived from electronic smoking devices,  
44 related accessories, and liquid nicotine. A retail business that does  
45 not sell container e-liquid is not included in the definition of vapor  
46 business.

47 Once this bill goes into effect, vapor businesses will be required  
48 to be licensed. The Director of Taxation will set the rules for

1 application of licensure. In addition, container e-liquid may only be  
2 sold by vapor businesses. This requirement ensures that container  
3 e-liquid is sold by businesses with expertise in proper use and  
4 consumption of e-liquid.

5 The bill also imposes a tax on container e-liquid at 10 percent of  
6 the retail price. However, the wholesale tax on tobacco and nicotine  
7 products (\$0.10 per fluid milliliter for liquid nicotine) will not  
8 apply to container e-liquid.