ASSEMBLY, No. 977

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Prohibits delivery of electronic smoking devices and tobacco products to individuals under 21 years of age.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning electronic smoking devices and tobacco products, amending P.L.2000, c.87 and P.L.1999, c.90, and supplementing Title 24 of the New Jersey Statutes.

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

1. (New section) a. No person shall complete a delivery of a tobacco product or electronic smoking device to a residence without first obtaining, upon delivery of the tobacco product or electronic smoking device, the signature of an individual who is at least 21 years of age and who resides in that residence. Consistent with federal law, the provisions of this subsection shall not apply to an individual performing his or her assigned duties as an employee of the United States Postal Service.

b. A violation of this section shall constitute a violation of subsection a. of section 1 of P.L.2000, c.87 (C.2A:170-51.4) and section 3 of P.L.1999, c.90 (C.2C:33-13.1).

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

1. a. No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, <u>complete a delivery to a residence without first obtaining, upon delivery, the signature of an individual who is at least 21 years of age and who resides in that residence,</u> distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person under 21 years of age:

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

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

<u>Consistent with federal law, the provisions of this subsection shall not apply to an individual performing his or her assigned duties as an employee of the United States Postal Service.</u>

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

(1) that the purchaser of the tobacco product or electronic smoking device<u>, the individual signing for the delivery of the tobacco product or electronic smoking device,</u> or the recipient of

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 <u>thus</u> is new matter.

the promotional sample falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, or a photographic identification card issued by a county clerk, that the purchaser or recipient was of legal age to make the purchase, sign for the delivery, or receive the sample;

(2) that the appearance of the purchaser of the tobacco product or electronic smoking device, the individual signing for the delivery of the tobacco product or electronic smoking device, or the recipient of the promotional sample was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to make the purchase, sign for the delivery, or receive the sample; and

(3) that the sale, delivery, or distribution of the tobacco product or electronic smoking device was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser, signer, or recipient, and in the reasonable belief that the purchaser, signer, or recipient was of legal age to make the purchase or receive the sample.

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

d. In addition to the provisions of subsection c. of this section, upon the recommendation of the municipality, following a hearing by the municipality, the Division of Taxation in the Department of the Treasury may suspend or, after a second or subsequent violation of the provisions of subsection a. of this section, revoke the license issued under section 202 of P.L.1948, c.65 (C.54:40A-4) of a retail dealer. The licensee shall be subject to administrative charges, based on a schedule issued by the Director of the Division of

Taxation, which may provide for a monetary penalty in lieu of a suspension.

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

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

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

3. a. A person who delivers, sells, or gives to a person under 21 years of age any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, or any electronic smoking device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any cartridge or other component of the device or related product, including an employee of a retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a tobacco product or electronic smoking device to a person under 21 years of age, shall be punished by a fine as provided for a petty disorderly persons offense. Consistent with federal law, the provisions of this subsection shall not apply to an individual performing his or her assigned duties as an employee of the United States Postal Service. A person who has been previously punished under this section and who commits another offense under it may be punishable by a fine of twice that provided for a petty disorderly persons offense.

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

(1) that the purchaser or recipient of the tobacco product or electronic smoking device falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, or a photographic identification card issued by a county clerk, that the purchaser or recipient was of legal age to purchase or receive the tobacco product or electronic smoking device;

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

(3) that the delivery, sale, or distribution of the tobacco product or electronic smoking device was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the

reasonable belief that the purchaser or recipient was of legal age to purchase or receive the tobacco product or electronic smoking device.

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

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

4. The Department of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt rules and regulations as are necessary to effectuate the provisions of this act.

5. This act shall take effect 180 days after enactment.

STATEMENT

This bill prohibits the delivery of electronic smoking devices to individuals under the age of 21. Under the bill, it is unlawful to deliver an electronic smoking device or tobacco product to a residence without first obtaining, upon delivery, the signature of an individual who is at least 21 years and who resides in that residence. A person who violates the provisions of the bill is to be subject to the civil and criminal penalties that apply to individuals who sell or furnish tobacco products and electronic smoking devices to persons under 21 years of age.

The bill provides that the prohibition on the delivery of tobacco products and electronic smoking devices to individuals under the age of 21 is not to apply to an individual performing his or her assigned duties as an employee of the United States Postal Service.