ASSEMBLY, No. 992

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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SYNOPSIS

Revises requirements for sale of tobacco and vapor products; increases penalties for prohibited sales.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning tobacco and vapor products, amending various parts of the statutory law, and supplementing Title 2A of the New Jersey Statutes.

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

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

3. A person 21 years of age or older who purchases a tobacco product, including an electronic smoking device or vapor product, for a person who is under 21 years of age is a petty disorderly person.

(cf: P.L.2017, c.118, s.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**]** retailer, either directly or indirectly by an agent or employee, or by a vending machine owned by the **[**person**]** retailer or located in the **[**person's**]** retailer's establishment, shall sell, offer for sale, 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**]** any tobacco product.

Tobacco products, electronic smoking devices, and vapor products shall be maintained in a manner that restricts direct public access to the products and devices, which manner may include maintaining the products and devices in a locked cabinet, behind the sales counter, or in an area of the establishment where access is restricted to employees only. Commencing one year after the effective date of P.L. , c. (pending before the Legislature as this bill), no tobacco product may be sold or distributed unless the person conducting the sale or distribution verifies the purchaser's age using an electronic age verification system.

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

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 the purchaser of the tobacco product ⟦or electronic smoking device⟧ or the recipient of 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 or receive the sample and, commencing one year after the effective date of P.L. , c. (pending before the Legislature as this bill), the person making the sale or distribution verifies the purchaser's age using an electronic age verification system;

(2) that the appearance of the purchaser 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 or receive the sample; and

(3) that the sale or distribution of the tobacco product ⟦or electronic smoking device⟧ was made in good faith, relying upon the production and, commencing one year after the effective date of P.L. , c. (pending before the Legislature as this bill), verification 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 make the purchase or receive the sample.

c. A ⟦person who⟧ retailer that 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⟧ $500 for the first violation, not less than ⟦$500⟧ $1,000 for the second violation, and ⟦$1,000⟧ not less than $2,000 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 or a license issued under section 3 of P.L. , c. (C.) (pending before the Legislature as Assembly Bill No.5923) of a vapor business, as applicable. 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).

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

g. As used in this section:

"Retailer" means a person or entity issued a tobacco retail dealer license under section 202 of P.L.1948, c.65 (C.54:40A-4) or a vapor business license under section 3 of P.L. , c. (C.) (pending before the Legislature as Assembly Bill No.5923).

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

"Vapor product" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Vapor product" includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, regardless of whether the substance contains nicotine. "Vapor product" does not include any drug, device, or combination product

approved by the federal Food and Drug Administration pursuant to the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. ss.301 et seq.
(cf: P.L.2017, c.118, s.2)

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

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

(1) any vapor product, unless:

(a) the manufacturer of the product is registered, or has an application for registration currently pending, with the federal Food and Drug Administration;

(b) the manufacturer has listed the vapor product with the federal Food and Drug Administration; and

(c) the product includes the tracking feature as required by, and is included in the database developed and maintained pursuant to, the provisions of section 19 of P.L. , c. (C.) (pending before the Legislature as Assembly Bill No.5923);

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

(3) non-cartridge vaping liquid unless the **[**liquid nicotine**]** non-cartridge vaping liquid is sold, offered for sale, given, furnished, or distributed for commercial purpose in a child-resistant container; or

(4) any vaping liquid that has been mixed with any other substance by any entity other than the manufacturer of the vaping liquid.

[As used in this section:

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

(2) "Liquid nicotine" means any solution containing nicotine which is designed or sold for use with an electronic smoking device.

(3) "Liquid nicotine container" means a bottle or other container of a liquid, wax, gel, or other substance containing nicotine, where the liquid or other contained substance is sold, marketed, or intended for use in a vapor product. "Liquid nicotine container"

does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in a vapor product, provided that such cartridge is prefilled and sealed by the manufacturer, with the seal remaining permanently intact through retail purchase and use; is only disposable and is not refillable; and is not intended to be opened by the consumer.

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

b. A **[**person who**]** retailer that violates the provisions of subsection a. of this section shall be liable to a civil penalty of not less than **[**$250**]** $500 for the first violation, not less than **[**$500**]** $1,000 for the second violation, and **[**$1,000**]** $2,000 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.

c. In addition to the provisions of subsection b. 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 of a **[**retail dealer**]** vapor business issued under section **[**202 of P.L.1948, c.65 (C.54:40A-4)**]** 3 of P.L. , c. (C.) (pending before the Legislature as Assembly Bill No.5923). 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.

d. As used in this section:

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

"Liquid nicotine cartridge" means a prefilled cartridge or other container containing vaping liquid that contains nicotine, that is marketed, sold, or intended for use as, or as a part of, an electronic smoking device, is prefilled and sealed by the manufacturer, with the seal remaining permanently intact through retail purchase and use, is only disposable and is not refillable, and is not intended to be opened by the consumer;

"Non-cartridge vaping liquid" means vaping liquid that is marketed, sold, or intended for use in an electronic smoking device in a container that is not a liquid nicotine cartridge, which vaping liquid cannot be used in or with an electronic smoking device unless the container is first opened by the consumer to access the vaping liquid contained within for the purposes of filling or refilling an electronic smoking device;

"Retailer" means a person or entity issued a vapor business license under section 3 of P.L. , c. (C.) (pending before the Legislature as Assembly Bill No.5923).

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

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

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

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

3. a. A **[**person who**]** retailer that 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. A **[**person who**]** retailer that 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**]** and, commencing one year after the effective date of P.L. c. (pending before the Legislature as this bill), the person making the sale or distribution verifies the purchaser's age using an electronic age verification system;

(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 sale or distribution of the tobacco product **[**or electronic smoking device**]** was made in good faith, relying upon the production and, commencing one year after the effective date of P.L. , c. (pending before the Legislature as this bill), verification 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).

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

e. As used in this section:

"Retailer" means a person or entity issued a tobacco retail dealer license under section 202 of P.L.1948, c.65 (C.54:40A-4) or a vapor business license under section 3 of P.L. , c. (C.) (pending before the Legislature as Assembly Bill No.5923).

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

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

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

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

7. (a) There is hereby established a special projects and development fund which shall consist of all funds appropriated or otherwise made available for the purposes set forth in this section. The commissioner, with the approval of the Public Health Council, may make grants from the special projects and development fund to local health agencies, to hospitals, and to voluntary health agencies to provide State health assistance for new health services and for

special health projects in order to stimulate continued development of health services and to assure the citizens of New Jersey the benefits of the most advanced health protection techniques.

(b) Except as provided in subsection (c) of this section, grants from the special projects and development fund for specific purposes shall be made on an annual basis for a period not in excess of 5 years and such grants shall be in diminishing amounts during this period. The commissioner shall determine the conditions applicable to each such grant including the extent of local financial participation to be required. Grants from the special projects and development fund to voluntary health agencies shall not exceed 40% of said fund.

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

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

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

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

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

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

"A **[**person who**]** retail business that sells or offers to sell a tobacco product to a person under 21 years of age shall pay a

penalty of up to ⟦$1,000⟧ $2,000 and may be subject to a license suspension or revocation.

Proof of age ⟦may be⟧ is required for purchase."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. (New section) A person shall not engage in a retail sale of or vapor products in this State unless the sale is a face-to-face sale,

except that a person may engage in a non-face-to-face sale of a vapor product to a person in this State if the following conditions are met:

a. The seller has verified payment of, paid, or collected all applicable State taxes, including the taxes imposed on vapor products pursuant to sections 4 and 5 of P.L. , c. (C.) (pending before the Legislature as Assembly Bill No.5923), as applicable, and the sales or use taxes imposed by the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), due on the vapor product; and

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

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

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

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

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

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

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

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

9. (New section) a. It shall be unlawful for a retailer, either directly or indirectly by an agent or employee, or by a vending machine owned by the retailer or located in the retailer’s establishment, to sell, offer for sale, give, furnish, or distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, to any person any electronic smoking device that is designed to mimic the appearance of another object, when the appearance of the electronic smoking device makes it difficult for the average person to determine, based on casual observance, whether the item is the object it is designed to mimic or an electronic smoking device. Prohibited designs shall include, but shall not be limited to, electronic smoking devices designed to

resemble a pen or other writing utensil, flash drive or universal serial bus drive, mobile phone, clothing, jewelry, cosmetic product, eating utensil, or personal hygiene product, provided that nothing in this section shall be construed to prohibit the sale, offer for sale, or commercial distribution of an electronic smoking device designed to resemble a product traditionally used for the consumption of tobacco, including a cigarette, cigarette pack, pipe, cigar, or hookah.

b. A retailer that violates the provisions of subsection a. of this section shall be liable to a civil penalty of not less than $1,000 for the first violation and not less than $2,000 for a second or 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.

c. In addition to the provisions of subsection b. 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 of a vapor business issued under section 3 of P.L. , c. (C.) (pending before the Legislature as Assembly Bill No.5923). 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.

d. As used in this section,

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

"Retailer" means a person or entity issued a vapor business license under section 3 of P.L. , c. (C.) (pending before the Legislature as Assembly Bill No.5923).

10. This act shall take effect the first day of the fifth month next following the date of enactment.

STATEMENT

This bill implements certain recommendations included in the Electronic Smoking Device Task Force Report issued October 3, 2019, pursuant to Executive Order No.84.

Specifically, the bill increases the penalties that apply to any retailer that sells tobacco or vapor products to a person younger than 21 years of age. Current law provides that a person who violates the prohibition against underage sales is liable to a civil penalty of at least $250 for a first offense, at least $500 for a second offense, and $500 for a third or subsequent offense. The bill will double these penalties to $500 for a first offense, $1,000 for a second offense, and $2,000 for a third or subsequent offense, and clarifies that all penalties are assessed against the retailer where the prohibited sale is made, and not against an employee who makes a prohibited sale.

Current law also provides that a person who sells a tobacco or vapor product to a person under 21 years of age is liable to the fine applicable to petty disorderly persons offenses, which is $500. This bill increases this fine by providing that a retailer that makes a prohibited underage sale is liable to the fine applicable to disorderly persons offenses, which is $1,000.

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

The bill requires that, no later than one year after the effective date of the bill, all tobacco and vapor product retailers are to acquire and begin using an electronic age verification system to prevent sales of tobacco and vapor products to persons under age 21.

The bill additionally requires that all tobacco and vapor products to be maintained in a manner that restricts public access to the products, which may include maintaining the products behind the sales counter, in a locked cabinet, or in an area of the establishment that is restricted to employees only.

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

The bill establishes a number of requirements concerning the sale of vapor products. Specifically, the bill requires that no vapor product may be sold unless its manufacturer is registered, or has applied for registration, with the federal Food and Drug Administration (FDA), and the manufacturer has listed the vapor product with the FDA. The bill prohibits the sale of vaping liquids that contain nicotine in a concentration of more than two percent and vaping liquids products that were mixed with any other substance by any entity other than the manufacturer. The bill additionally prohibits the sale of vapor products that are not included in the electronic tracking database to be established under, and do not include the tracking feature required by, companion legislation currently pending as Assembly Bill No.5923. Sale of a vapor product in violation of these restrictions will be punishable by a civil penalty of at least $500 for a first offense, at least $1,000 for a second offense, and at least $2,000 for a third or subsequent offense.

The bill prohibits the sale of electronic smoking devices that are designed to mimic the appearance of another object, when the appearance of the electronic smoking device makes it difficult for the average person to determine, based on casual observance, whether the item is the object it is designed to mimic or an electronic smoking device. Prohibited designs will include, but not be limited to, devices designed to resemble a pen or other writing utensil, flash drive or universal serial bus drive, mobile phone, clothing, jewelry, cosmetic product, eating utensil, or personal hygiene product; however, it will not be prohibited to sell an electronic smoking device designed to resemble a product traditionally used for the consumption of tobacco, such as a cigarette, cigarette pack, pipe, cigar, or hookah. A violation of this prohibition will be punishable by a civil penalty of $1,000 for a first offense and $2,000 for a second or subsequent offense.