

ASSEMBLY, No. 992

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

**Assemblyman Benson, Assemblywoman Jimenez, Assemblyman Caputo
and Assemblywoman Reynolds-Jackson**

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.



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.

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

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

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

15
16 2. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to
17 read as follows:

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

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

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

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

42 b. The establishment of all of the following shall constitute a
43 defense to any prosecution brought pursuant to subsection a. of this
44 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 (1) that the purchaser of the tobacco product **【or electronic**
2 **smoking device】** or the recipient of the promotional sample falsely
3 represented, by producing either a driver's license or non-driver
4 identification card issued by the New Jersey Motor Vehicle
5 Commission, a similar card issued pursuant to the laws of another
6 state or the federal government of Canada, or a photographic
7 identification card issued by a county clerk, that the purchaser or
8 recipient was of legal age to make the purchase or receive the
9 sample and, commencing one year after the effective date of
10 P.L. , c. (pending before the Legislature as this bill), the person
11 making the sale or distribution verifies the purchaser's age using an
12 electronic age verification system;

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

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

26 c. A **【person who】** retailer that violates the provisions of
27 subsection a. of this section **【,** including an employee of a retail
28 dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who
29 actually sells or otherwise provides a tobacco product to a person
30 under 21 years of age,**】** shall be liable to a civil penalty of not less
31 than **【\$250】** \$500 for the first violation, not less than **【\$500】**
32 \$1,000 for the second violation, and **【\$1,000】** not less than \$2,000
33 for the third and each subsequent violation. The civil penalty shall
34 be collected pursuant to the "Penalty Enforcement Law of 1999,"
35 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding
36 before the municipal court having jurisdiction. An official
37 authorized by statute or ordinance to enforce the State or local
38 health codes or a law enforcement officer having enforcement
39 authority in that municipality may issue a summons for a violation
40 of the provisions of subsection a. of this section, and may serve and
41 execute all process with respect to the enforcement of this section
42 consistent with the Rules of Court. A penalty recovered under the
43 provisions of this subsection shall be recovered by and in the name
44 of the State by the local health agency. The penalty shall be paid
45 into the treasury of the municipality in which the violation occurred
46 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 suspend or, after a second or subsequent violation
5 of the provisions of subsection a. of this section, revoke the license
6 issued under section 202 of P.L.1948, c.65 (C.54:40A-4) of a retail
7 dealer or a license issued under section 3 of P.L. , c. (C.)
8 (pending before the Legislature as Assembly Bill No.5923) of a
9 vapor business, as applicable. The licensee shall be subject to
10 administrative charges, based on a schedule issued by the Director
11 of the Division of Taxation, which may provide for a monetary
12 penalty in lieu of a suspension.

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

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

21 g. As used in this section:

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

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

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

1 approved by the federal Food and Drug Administration pursuant to
2 the “Federal Food, Drug, and Cosmetic Act,”
3 21 U.S.C. ss.301 et seq.
4 (cf: P.L.2017, c.118, s.2)

5
6 3. Section 1 of P.L.2015, c.294 (C.2A:170-51.9) is amended to
7 read as follows:

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

15 (1) any vapor product, unless:

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

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

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

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

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

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

33 **【As used in this section:**

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

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

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

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

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

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

38 c. In addition to the provisions of subsection b. of this section,
39 upon the recommendation of the municipality, following a hearing
40 by the municipality, the Division of Taxation in the Department of
41 the Treasury may suspend or, after a second or subsequent violation
42 of the provisions of subsection a. of this section, revoke the license
43 of a 【retail dealer】 vapor business issued under section 【202 of
44 P.L.1948, c.65 (C.54:40A-4)】 3 of P.L. , c. (C.) (pending
45 before the Legislature as Assembly Bill No.5923). The licensee
46 shall be subject to administrative charges, based on a schedule

1 issued by the Director of the Division of Taxation, which may
2 provide for a monetary penalty in lieu of a suspension.

3 d. As used in this section:

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

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

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

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

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,"
41 21 U.S.C. ss.301 et 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**

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

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

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

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

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

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

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

7 e. As used in this section:

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

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

26 “Vapor product” means any device that may be used to deliver
27 any aerosolized or vaporized substance to the person inhaling from
28 the device, including, but not limited to, an e-cigarette, e-cigar, e-
29 pipe, vape pen, or e-hookah. “Vapor product” includes any
30 component, part, or accessory of the device, and also includes any
31 substance that may be aerosolized or vaporized by such device,
32 regardless of whether the substance contains nicotine. “Vapor
33 product” does not include any drug, device, or combination product
34 approved by the federal Food and Drug Administration pursuant to
35 the “Federal Food, Drug, and Cosmetic Act,”
36 21 U.S.C. ss.301 et seq.
37 (cf: P.L.2017, c.118, s.3)

38
39 5. Section 7 of P.L.1966, c.36 (C.26:2F-7) is amended to read
40 as follows:

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

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

4 (b) Except as provided in subsection (c) of this section, grants
5 from the special projects and development fund for specific
6 purposes shall be made on an annual basis for a period not in excess
7 of 5 years and such grants shall be in diminishing amounts during
8 this period. The commissioner shall determine the conditions
9 applicable to each such grant including the extent of local financial
10 participation to be required. Grants from the special projects and
11 development fund to voluntary health agencies shall not exceed
12 40% of said fund.

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

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

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

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

35

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

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

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

1 penalty of up to ~~【\$1,000】~~ \$2,000 and may be subject to a license
2 suspension or revocation.

3 Proof of age ~~【may be】~~ is required for purchase."

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

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

9

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

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

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

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

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

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

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

33 (3) received payment for the sale from the prospective purchaser
34 by a credit or debit card that has been issued in the purchaser's
35 name or by check; ~~【and】~~

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

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

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

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

45

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

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

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

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

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

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

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

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

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

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

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

35
36 9. (New section) a. It shall be unlawful for a retailer, either
37 directly or indirectly by an agent or employee, or by a vending
38 machine owned by the retailer or located in the retailer's
39 establishment, to sell, offer for sale, give, furnish, or distribute for
40 commercial purpose at no cost or minimal cost or with coupons or
41 rebate offers, to any person any electronic smoking device that is
42 designed to mimic the appearance of another object, when the
43 appearance of the electronic smoking device makes it difficult for
44 the average person to determine, based on casual observance,
45 whether the item is the object it is designed to mimic or an
46 electronic smoking device. Prohibited designs shall include, but
47 shall not be limited to, electronic smoking devices designed to

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

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

26 c. In addition to the provisions of subsection b. of this section,
27 upon the recommendation of the municipality, following a hearing
28 by the municipality, the Division of Taxation in the Department of
29 the Treasury may suspend or, after a second or subsequent violation
30 of the provisions of subsection a. of this section, revoke the license
31 of a vapor business issued under section 3 of P.L. , c. (C.)
32 (pending before the Legislature as Assembly Bill No.5923). The
33 licensee shall be subject to administrative charges, based on a
34 schedule issued by the Director of the Division of Taxation, which
35 may provide for a monetary penalty in lieu of a suspension.

36 d. As used in this section,

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

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

4
5 10. This act shall take effect the first day of the fifth month next
6 following the date of enactment.

7
8
9 STATEMENT

10
11 This bill implements certain recommendations included in the
12 Electronic Smoking Device Task Force Report issued October 3,
13 2019, pursuant to Executive Order No.84.

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

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

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

37 The bill requires that, no later than one year after the effective
38 date of the bill, all tobacco and vapor product retailers are to
39 acquire and begin using an electronic age verification system to
40 prevent sales of tobacco and vapor products to persons under age
41 21.

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

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

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

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