

ASSEMBLY, No. 993

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Co-Sponsored by:

Assemblyman Benson, Assemblywomen Jimenez and Reynolds-Jackson

SYNOPSIS

Revises licensure and operational requirements for vapor businesses; revises taxes imposed on vapor products.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning vapor products, supplementing Title 54 of the
2 Revised Statutes, and revising various parts of the statutory law.

3

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

6

7 1. (New section) Sections 1 through 21 of
8 P.L. , c. (C.) (pending before the Legislature as this bill)
9 shall be known and may be cited as the "Vapor Products Tax Act."

10

11 2. (New section) As used in sections 1 through 21 of
12 P.L. , c. (C.):

13 "Basic vapor business" means a retail business licensed to sell
14 electronic smoking devices and liquid nicotine cartridges, but,
15 unless the vapor business is additionally licensed as a plenary vapor
16 business, no non-cartridge vaping liquids.

17 "Consumer" means a person except a distributor, manufacturer,
18 or wholesaler who acquires a vapor product for consumption,
19 storage, or use in this State.

20 "Director" means the Director of the Division of Taxation in the
21 Department of the Treasury.

22 "Distributor" means:

23 a person engaged in the business of selling vapor products in this
24 State who brings, or causes to be brought into this State from
25 without the State a vapor product for sale within this State;

26 a person who makes or manufactures vapor products in this State
27 for sale in the State;

28 a person engaged in the business of selling vapor products
29 without this State who ships or transports vapor products to a
30 person in this State to be sold to a vapor business, or

31 a person who receives vapor products without receiving proof
32 that the tax has been or will be paid by another distributor.

33 "Electronic smoking device" means any device that may be used
34 to deliver any aerosolized or vaporized substance to the person
35 inhaling from the device, including, but not limited to, an e-
36 cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic
37 smoking device includes any component, part, or accessory of the
38 device. "Electronic smoking device" does not include any device
39 that is a liquid nicotine cartridge as defined in this section or any
40 drug, device, or combination product approved by the federal Food
41 and Drug Administration pursuant to the "Federal Food, Drug, and
42 Cosmetic Act," 21 U.S.C. ss.301 et seq.

43 "Liquid nicotine cartridge" means a prefilled cartridge or other
44 container where the cartridge or container contains a vaping liquid
45 containing nicotine, is marketed, sold, or intended for use as, or as a
46 part of, an electronic smoking device, is prefilled and sealed by the
47 manufacturer, with the seal remaining permanently intact through

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 retail purchase and use, is only disposable and is not refillable, and
2 is not intended to be opened by the consumer.

3 "Manufacturer" means a person, wherever resident or located,
4 who manufactures or produces, or causes to be manufactured or
5 produced, a vapor product and sells, uses, stores, or distributes the
6 product regardless of whether it is intended for sale, use, or
7 distribution within or without this State.

8 "Non-cartridge vaping liquid" means vaping liquid that is
9 marketed, sold, or intended for use in an electronic smoking device
10 in a container that is not a liquid nicotine cartridge, which container
11 meets the packaging requirements set forth in section 1 of P.L.2015,
12 c.294 (C.2A:170-51.9), and which vaping liquid cannot be used in
13 or with an electronic smoking device unless the container is first
14 opened by the consumer to access the vaping liquid contained
15 within for the purposes of filling or refilling an electronic smoking
16 device.

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

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

28 "Plenary vapor business" means a retail business that is licensed
29 as a basic vapor business that is additionally licensed to sell non-
30 cartridge vaping liquids and that derives at least 50 percent of its
31 retail sales from the sale of vapor products.

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

34 "Treasurer" means the State Treasurer.

35 "Use" means the exercise of any right or power incidental to the
36 ownership of a vapor product, including a sale at retail.

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

41 "Vapor product" means any electronic smoking device, any
42 component part thereof, and any product designed for use with an
43 electronic smoking device, including, but not limited to, vaping
44 liquid. "Vapor product" does not include any drug, device, or
45 combination product approved by the federal Food and Drug
46 Administration pursuant to the "Federal Food, Drug, and Cosmetic
47 Act," 21 U.S.C. ss.301 et seq.

1 "Wholesaler" means a person, wherever resident or located, other
2 than a distributor as defined herein, who: purchases vapor products
3 from any other person who purchases from the manufacturer and
4 who acquires vapor products solely for the purpose of bona fide
5 resale to vapor businesses or to other persons for the purposes of
6 resale only; or services retail outlets by the maintenance of an
7 established place of business for the purchase of vapor products
8 including, but not limited to, the maintenance of warehousing
9 facilities for the storage and distribution of vapor products.

10
11 3. (New section) a. After the effective date of
12 P.L. , c. (C.) (pending before the Legislature as this bill),
13 electronic smoking devices and liquid nicotine shall not be sold at
14 retail in the State except by a licensed vapor business, and non-
15 cartridge liquid nicotine shall not be sold at retail in the State except
16 by a licensed plenary vapor business.

17 b. Vapor business licenses shall be issued by the director, who
18 shall make rules and regulations respecting application and
19 issuance. Each such license shall lapse on March 31 of the period
20 for which it is issued, and each such license shall be continued
21 annually upon the conditions that the licensee shall have paid the
22 required fee and complied with the provisions of
23 P.L. , c. (C.) (pending before the Legislature as this bill)
24 and the rules and regulations of the director made pursuant thereto.

25 c. If a vapor business sells or intends to sell vapor products at
26 two or more places of business, whether established or temporary,
27 or whether in the same building or not, a separate license
28 appropriate to the vapor products to be sold at that place of business
29 shall be required for each place of business. Each license, or
30 certificate thereof, and such other evidence of license shall be
31 exhibited in the place of business for which it is issued and in such
32 manner as may be prescribed by the director.

33 d. No basic vapor license shall be issued to any person except
34 upon payment of a \$500 fee, and no plenary vapor business license
35 shall be issued to any person except upon the payment of a \$500
36 fee. No license shall be assignable or transferable, but in the case
37 of death, bankruptcy, receivership, or incompetency of the licensee,
38 or if, for any other reason whatsoever, the business of the licensee
39 shall devolve upon another by operation of law, the director may, in
40 the director's discretion, extend said license for a limited time to the
41 executor, administrator, trustee, receiver, or person upon whom the
42 same has devolved.

43 e. The director shall require an applicant for a vapor business
44 license to include on the application the address of the place of
45 business where electronic smoking devices and liquid nicotine
46 cartridges and, if applicable, non-cartridge vaping liquids, will be
47 sold. If the place of business is moved to a different address than

1 that provided on the license application, the licensee shall notify the
2 director within 30 days of the change of address.

3 f. The director may, upon notice and after hearing, suspend or
4 revoke a license issued under this section to any person who
5 violates any of the provisions of P.L. , c. (C.) (pending
6 before the Legislature as this bill), or who, after being issued a
7 license becomes disqualified for licensure pursuant to
8 P.L. , c. (C.) (pending before the Legislature as this bill) or
9 of any rule or regulation of the director made pursuant thereto or if
10 the licensee has ceased to act in the capacity for which the license
11 was issued or for other good cause. No person whose license has
12 been suspended or revoked shall sell any vapor product or permit
13 any vapor product to be sold during the period of such suspension
14 or revocation on the premises occupied by that person or upon other
15 premises controlled by that person or others, or in any other manner
16 or form whatever. No disciplinary proceeding or action shall be
17 barred or abated by the expiration, transfer, surrender, continuance,
18 renewal, or extension of a license issued under the provisions of
19 P.L. , c. (C.) (pending before the Legislature as this bill).

20 g. The director shall maintain, on the division's Internet
21 website, a current list of persons issued a vapor business license
22 pursuant to this section.

23

24 4. (New section) a. The director is authorized to administer
25 and enforce the provisions of P.L. , c. (C.) (pending before
26 the Legislature as this bill) and in accordance with the
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
28 1 et seq.), to adopt rules and regulations as the director deems
29 necessary.

30 b. Every vapor business shall keep complete and accurate
31 records of all sales. The kind and form of such records may be
32 prescribed by the director and all records shall be so kept as to be
33 adequate to enable the director to determine the tax required to be
34 collected. The director or any authorized assistant may, during
35 reasonable business hours and without prior notice, make or cause
36 to be made physical inventories and examinations of all electronic
37 smoking devices and vaping liquid, including liquid nicotine
38 cartridges and non-cartridge vaping liquid, and records in the
39 possession of a vapor business. All such records shall be safely
40 preserved for a period of four years in such a manner to ensure their
41 security and accessibility for inspection by the director, supervisor,
42 or any authorized assistant engaged in the administration of
43 P.L. , c. (C.) (pending before the Legislature as this bill).
44 The director may consent to the destruction of any such records at
45 any time within the four-year period.

46 c. Notwithstanding any other provision of law to the contrary,
47 a person to whom a license is issued pursuant to section 3 of
48 P.L. , c. (C.) (pending before the Legislature as this bill)

1 shall, as a condition of the license, conspicuously post a legible sign
2 at the point of display of vapor products and at the point of sale.
3 The sign shall be at least six inches by three inches in bold letters at
4 least one-quarter inch high and shall read as follows:

5 "A retail business that sells or offers to sell a vapor product to a
6 person under 21 years of age shall pay a penalty of up to \$2,000 and
7 may be subject to a license suspension or revocation.

8 Proof of age is required for purchase."

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

13
14 5. (New section) a. There is imposed on the sale or use of
15 non-cartridge vaping liquid and electronic smoking devices sold
16 within the State a tax at the rate of 20 percent of the listed retail sale
17 price.

18 b. The tax imposed pursuant to this section shall be collected
19 by the seller.

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

22 d. The director shall prescribe the manner and method that the
23 tax shall be payable. The director may require such information
24 and records necessary for administration of the tax, including for
25 the purpose of consistent administration with other provisions of
26 P.L. , c. (C.) (pending before the Legislature as this bill).

27
28 6. (New section) a. Every vapor business required to collect
29 tax under section 5 of P.L. , c. (C.) (pending before the
30 Legislature as this bill) shall on or before the 20th day of each
31 month, make and file a return for the preceding month with the
32 director. The return shall show the total receipts from sales of
33 electronic smoking devices and non-cartridge vaping liquid, and the
34 amount of tax required to be collected and paid with respect to such
35 amount.

36 b. The director may permit or require returns to be made
37 covering other periods and upon such dates as the director may
38 specify. In addition, the director may require payments of tax
39 liability at such intervals and based upon such classifications as the
40 director may designate. In prescribing other periods to be covered
41 by the return or intervals or classifications for payment of tax
42 liability, the director may take into account the dollar volume of tax
43 involved as well as the need for ensuring the prompt and orderly
44 collection of the taxes imposed.

45 c. The form of returns shall be prescribed by the director and
46 shall contain such information as the director may deem necessary
47 for the proper administration of P.L. , c. (C.) (pending
48 before the Legislature as this bill). The director may require

1 amended returns to be filed within 20 days after notice and to
2 contain the information specified in the notice.

3

4 7. (New section) a. There is imposed a tax upon the sale, use,
5 or distribution of liquid nicotine cartridges within this State by a
6 distributor or wholesaler to a vapor business or consumer at the rate
7 of \$0.20 per fluid milliliter on the volume of the liquid nicotine as
8 listed by the manufacturer, and a proportionate rate on all fractional
9 parts of a fluid milliliter of volume of liquid nicotine as listed by
10 the manufacturer.

11 b. Unless a liquid nicotine cartridge has already been or will be
12 subject to the tax imposed in subsection a. of this section, if a
13 distributor or wholesaler uses the liquid nicotine cartridge within
14 the State, there is imposed upon the distributor or wholesaler a
15 compensating use tax of \$0.20 per fluid milliliter of the volume of
16 liquid nicotine as listed by the manufacturer, and a proportionate
17 rate on all fractional parts of a fluid milliliter of the volume of
18 liquid nicotine as listed by the manufacturer.

19 c. Unless a tax is due pursuant to subsection b. of this section,
20 if a distributor or wholesaler has not paid the tax imposed in
21 subsection a. of this section upon a sale that is subject to the tax
22 imposed in that subsection a., there is imposed upon the vapor
23 business or consumer chargeable for the sale a compensating use
24 tax of \$0.20 per fluid milliliter on the volume of the liquid nicotine
25 as listed by the manufacturer, and a proportionate rate on all
26 fractional parts of a fluid milliliter of the volume of liquid nicotine
27 as listed by the manufacturer, which shall be collected in the
28 manner provided in subsection d. of this section.

29 d. If a distributor or wholesaler fails to pay the tax imposed by
30 this section when required to pay the same, then in addition to all
31 other rights, obligations and remedies provided, the compensating
32 use tax imposed in this section shall be payable by the vapor
33 business or consumer directly to the director, and it shall be the
34 duty of the vapor business or consumer to file a return, on a form
35 prescribed by the director, with the director and to pay the tax to the
36 director within 20 days of the date the tax was required to be paid or
37 at other times as specified by the director.

38 e. The tax imposed pursuant to this section shall not apply to
39 the sale, use, or distribution of non-cartridge vaping liquid.

40

41 8. (New section) Every distributor or wholesaler shall be liable
42 to pay the tax required pursuant to section 7 of
43 P.L. , c. (C.) (pending before the Legislature as this bill)
44 when it has sold or otherwise disposed of the liquid nicotine
45 cartridge to the vapor business or consumer. The vapor business or
46 consumer shall be given an invoice, receipt or other statement or
47 memorandum stating that the tax has been paid or will be paid by
48 the distributor or wholesaler.

1 The director may provide by regulation that the tax upon liquid
2 nicotine cartridges, sold to a vapor business or consumer who pays
3 the distributor or wholesaler in installments, may be paid and the
4 return filed on the amount of each installment.

5
6 9. (New section) a. Every distributor or wholesaler required to
7 pay the tax imposed by section 7 of P.L. , c. (C.) (pending
8 before the Legislature as this bill) shall be personally liable for such
9 tax.

10 b. If a distributor or wholesaler fails to pay the tax imposed by
11 section 7 of P.L. , c. (C.) (pending before the Legislature
12 as this bill) when required to pay the same, then in addition to all
13 other rights, obligations and remedies provided, the compensating
14 use tax imposed in subsection d. of section 7 of
15 P.L. , c. (C.) (pending before the Legislature as this bill)
16 shall be payable by the vapor business or consumer directly to the
17 director, and it shall be the duty of the vapor business or consumer
18 to file a return, on a form prescribed by the director, with the
19 director and to pay the tax to the director within 20 days of the date
20 the tax was required to be paid or at other times as specified by the
21 director.

22
23 10. (New section) Within 15 days from the effective date of
24 P.L. , c. (C.) (pending before the Legislature as this bill),
25 or in the case of distributors or wholesalers commencing business
26 or opening new places of business after that date, within three days
27 after the commencement or opening, every distributor or wholesaler
28 required to pay the taxes imposed by section 7 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill) shall file
30 with the director a certificate of registration in a form prescribed by
31 the director unless a certificate of authority has been previously
32 issued to any distributor or wholesaler. The director shall issue,
33 without charge, to each registrant a certificate of authority requiring
34 the registrant to pay the tax and a duplicate thereof for each
35 additional place of business of the registrant. Each certificate or
36 duplicate shall state the place of business to which it is applicable.
37 The certificate of authority shall be prominently displayed in the
38 place of business of the registrant. Certificates shall be
39 nonassignable and nontransferable and shall be surrendered to the
40 director immediately upon the registrant's ceasing to do business at
41 the place named.

42
43 11. (New section) Every distributor or wholesaler required to
44 pay a tax imposed by section 7 of P.L. , c. (C.) (pending
45 before the Legislature as this bill) shall keep records of the volume
46 of liquid nicotine contained in cartridges sold, and of the tax
47 payable thereon, in such form as the director may require. Records
48 shall include a true copy of each invoice, receipt, statement or

1 memorandum upon which the provisions of section 8 of
2 P.L. , c. (C.) (pending before the Legislature as this bill)
3 require that the tax paid be stated. Records shall be available for
4 inspection and examination at any time upon demand by the
5 director or duly authorized agent or employee and shall be
6 preserved for a period of three years, except that the director may
7 consent to their destruction within that period or may require that
8 they be kept longer.

9
10 12. (New section) a. Every distributor or wholesaler required to
11 pay tax under section 7 of P.L. , c. (C.) (pending before the
12 Legislature as this bill) shall, on or before August 20, 2020, and on
13 or before the 20th day of each month thereafter, make and file a
14 return for the preceding month with the director. The return shall
15 show the total volume of liquid nicotine contained in cartridges sold
16 during the period and the amount of taxes required to be paid with
17 respect to such volume. The return shall also reflect any use tax
18 due.

19 b. The director may permit or require returns to be made
20 covering other periods and upon such dates as the director may
21 specify. In addition, the director may require payments of tax
22 liability at such intervals and based upon such classifications as the
23 director may designate. In prescribing other periods to be covered
24 by the return or intervals or classifications for payment of tax
25 liability, the director may take into account the dollar volume of tax
26 involved as well as the need for ensuring the prompt and orderly
27 collection of the taxes imposed.

28 c. The form of returns shall be prescribed by the director and
29 shall contain such information as the director may deem necessary
30 for the proper administration of P.L. , c. (C.) (pending
31 before the Legislature as this bill). The director may require
32 amended returns to be filed within 20 days after notice and to
33 contain the information specified in the notice.

34
35 13. (New section) Every distributor or wholesaler required to
36 file a return under P.L. , c. (C.) (pending before the
37 Legislature as this bill) shall, at the time of filing the return, pay to
38 the director the taxes imposed by section 7 of P.L. , c. (C.)
39 (pending before the Legislature as this bill). Taxes for the period
40 for which a return is required to be filed or for a lesser interval as
41 shall have been designated by the director, shall be due and payable
42 to the director on the date limited for the filing of the return for the
43 period, or on the date limited for such lesser interval as the director
44 has designated, without regard to whether a return is filed or
45 whether the return which is filed correctly shows the total volume
46 of liquid nicotine contained in cartridges that is taxable during the
47 period or the taxes due thereon. If the director deems it necessary
48 to protect the revenues to be obtained under section 7 of

1 P.L. , c. (C.) (pending before the Legislature as this bill),
2 the director may require a distributor or wholesaler required to pay
3 the tax imposed by section 7 of P.L. , c. (C.) (pending
4 before the Legislature as this bill) to file with the director a bond,
5 issued by a surety company authorized to transact business in this
6 State as to solvency and responsibility, in an amount as the director
7 may fix, to secure the payment of any tax or penalties or interest
8 due or which may become due from the distributor or wholesaler
9 under section 7 of P.L. , c. (C.) (pending before the
10 Legislature as this bill). If the director determines that a distributor
11 or wholesaler is to file a bond, the director shall give notice to the
12 distributor or wholesaler to that effect specifying the amount of the
13 bond required. The distributor or wholesaler shall file the bond
14 within five days after the giving of notice unless within the five
15 days the distributor or wholesaler requests in writing a hearing
16 before the director at which the necessity, propriety and amount of
17 the bond shall be determined by the director. The determination
18 shall be final and shall be complied with within 15 days after the
19 giving of notice thereof. In lieu of bond, securities approved by the
20 director or cash in an amount as the director may prescribe, may be
21 deposited, which shall be kept in the custody of the director who
22 may at any time without notice to the depositor apply them to any
23 tax or interest or penalties due, and for that purpose the securities
24 may be sold by the director at public or private sale without notice
25 to the depositor thereof.

26
27 14. (New section) If a return required by P.L. , c. (C.)
28 (pending before the Legislature as this bill) is not filed, or if a
29 return when filed is incorrect or insufficient, the amount of tax due
30 shall be determined by the director from such information as may
31 be available. If necessary, the tax may be estimated on the basis of
32 external indices, such as purchases, location, scale of charges,
33 comparable charges, number of employees or other factors. Notice
34 of the determination shall be given to the distributor, wholesaler,
35 vapor business, or consumer liable for the payment of the tax. The
36 determination shall finally and irrevocably fix the tax unless the
37 wholesaler, distributor, vapor business, or consumer against whom
38 it is assessed, within 30 days after the notice date of the
39 determination, shall apply to the director for a hearing, or unless the
40 director on the director's motion shall redetermine the same. After
41 the hearing the director shall give notice of the determination to the
42 wholesaler, distributor, vapor business, or consumer against whom
43 the tax is assessed.

44
45 15. (New section) The taxes imposed by P.L. , c. (C.)
46 (pending before the Legislature as this bill) shall be governed in all
47 respects by the provisions of the State Tax Uniform Procedure Law,
48 R.S.54:48-1 et seq., except only to the extent that a specific

1 provision of P.L. , c. (C.) (pending before the Legislature
2 as this bill) may be in conflict therewith.

3

4 16. (New section) In addition to the powers granted in
5 P.L. , c. (C.) (pending before the Legislature as this bill),
6 the director may:

7 a. Make, adopt and amend rules and regulations appropriate to
8 the carrying out of P.L. , c. (C.) (pending before the
9 Legislature as this bill).

10 b. Extend, for cause shown by general regulation or individual
11 authorization, the time of filing any return for a period not
12 exceeding three months on such terms and conditions as the director
13 may require; and for cause shown, remit penalties and interest as
14 provided for in the State Uniform Tax Procedure Law, R.S.54:48-1
15 et seq.

16 c. Delegate functions and powers to any officer or employee of
17 the division, and such of the director's powers as the director may
18 deem necessary to carry out efficiently the provisions of
19 P.L. , c. (C.) (pending before the Legislature as this bill),
20 and the person or persons to whom such power has been delegated
21 shall possess and may exercise all of the power and perform all of
22 the duties as delegated.

23 d. Require any distributor or wholesaler required to pay tax to
24 keep detailed records of all volumes of liquid nicotine on which
25 taxes are payable, and names and addresses of wholesalers,
26 distributors, vapor businesses, and consumers, and other facts
27 relevant in determining the amount of tax due and to furnish such
28 information upon request to the director.

29 e. Assess, determine, revise and readjust the taxes imposed by
30 P.L. , c. (C.) (pending before the Legislature as this bill).

31 f. Enter into agreements with other states and the District of
32 Columbia, providing for the reciprocal enforcement of similar tax
33 laws imposed by the states entering into such an agreement. The
34 agreement may empower the duly authorized officer of any
35 contracting state, which extends like authority to officers or
36 employees of this State, to sue for the collection of that state's taxes
37 in the courts of this State.

38

39 17. (New section) Any person failing to file a return or to pay
40 or pay over any tax imposed under P.L. , c. (C.) (pending
41 before the Legislature as this bill) to the director within the time
42 required by P.L. , c. (C.) (pending before the Legislature as
43 this bill) shall be subject to such penalties and interest as are
44 provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et
45 seq. Unpaid penalties and interest may be determined, assessed,
46 collected and enforced in the same manner as the taxes imposed by
47 P.L. , c. (C.) (pending before the Legislature as this bill).

1 18. (New section) a. Any person who engages in any business
2 or activity for which a license is required under the provisions of
3 P.L. , c. (C.) (pending before the Legislature as this bill),
4 without first having obtained a license to do so, or who, having had
5 such a license, shall continue to engage in or conduct such business
6 after any such license shall have been revoked, or during a
7 suspension thereof, shall be liable to a penalty of not more than
8 \$1,000, which penalty shall be sued for, and shall be recoverable in
9 the name of the director; and each day that any such business is so
10 engaged in or conducted shall be deemed a separate offense.

11 b. The Superior Court and every municipal court within their
12 respective jurisdictions, and with respect to offenses occurring
13 within the territorial jurisdiction of the court, shall have jurisdiction
14 over proceedings to enforce and collect the penalty. The
15 proceedings shall be brought by and in the name of the director.
16 They shall be summary and in accordance with the "Penalty
17 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
18 Process shall be either in the nature of a summons or warrant.

19 If judgment be rendered for the plaintiff, the court shall cause
20 any defendant who refuses or fails to pay forthwith the amount of
21 the judgment rendered against the defendant and all costs and
22 charges incident thereto, to be committed to the county jail for such
23 period as the court shall determine, not exceeding 60 days.

24 c. In case a person shall, after conviction of any violation of
25 P.L. , c. (C.) (pending before the Legislature as this bill),
26 be again convicted of violating the same provision thereof, the
27 person may be liable to a penalty for such further violation, in
28 double the maximum penalty which might have been imposed on
29 the first conviction, to be sued for and recovered in the manner
30 above set forth. In case any defendant against whom judgment has
31 been rendered for a money penalty under this subsection, shall fail
32 or neglect to pay forthwith the amount of said penalty, the court
33 shall commit him to jail for such number of days not exceeding 180
34 days, as the court shall determine.

35 d. All penalties recovered for violations of
36 P.L. , c. (C.) (pending before the Legislature as this bill)
37 shall be paid to the director and by the director accounted for and
38 paid to the State Treasurer as in the case of State taxes.

39 e. The costs recoverable in any such proceeding shall be
40 recovered by the director in the event of judgment in the director's
41 favor. If the judgment be for the defendant it shall be without costs
42 against the director. All expenses incident to the recovery of any
43 penalty pursuant to the provisions of this section shall be paid for as
44 any other expense incident to the administration of
45 P.L. , c. (C.) (pending before the Legislature as this bill).
46

47 19. (New section) a. The director shall establish a database that
48 may be used to track all vapor products sold in New Jersey.

1 Information in the database shall be made available upon request to
2 the Division of Taxation in the Department of the Treasury, the
3 Department of Health, and the Division of Consumer Affairs in the
4 Department of Law and Public Safety. At a minimum, the tracking
5 database shall enable entities having regulatory authority over the
6 sale of vapor products in the State to use the tracking feature
7 developed by the director pursuant to subsection b. of this section to
8 verify that the product meets the requirements to be sold in New
9 Jersey. Manufacturers of vapor products shall be required to upload
10 to the database product information for each vapor product intended
11 for sale in New Jersey, which product information shall, at a
12 minimum, identify the product manufacturer, include the batch, lot,
13 and serial numbers for the product, and include any other
14 information as the director may specify by regulation.
15 Manufacturers shall additionally report to the database, and update
16 as needed, any consumer safety alerts for the product.

17 b. The director shall develop a standardized tracking feature to
18 be included on all vapor products sold in the State. The tracking
19 feature may be a stamp issued by the division, a barcode imprinted
20 on the vapor product by the manufacturer, or any other feature the
21 director deems appropriate, provided that the feature is scannable
22 and, when scanned, provides access to the product information for
23 the vapor product included in the tracking database established
24 pursuant to subsection a. of this section and verify that the vapor
25 product meets the requirements to be sold in New Jersey.

26 c. Commencing 60 days after the date the director develops the
27 standardized tracking feature as provided in subsection b. of this
28 section, manufacturers shall be required to include the tracking
29 feature on each vapor product made available for sale in New
30 Jersey, and no vapor product may be sold or offered for sale in the
31 State, including to a wholesaler or distributor, unless the product
32 includes the tracking feature.

33
34 20. (New section) a. All electronic smoking devices and liquid
35 nicotine cartridges possessed for retail sale by a person that is not
36 licensed as a vapor business pursuant to section 3 of
37 P.L. , c. (C.) (pending before the Legislature as this bill),
38 and all non-cartridge vaping liquids possessed for retail sale by a
39 person that is not licensed as a plenary vapor business pursuant to
40 section 3 of P.L. , c. (C.) (pending before the Legislature
41 as this bill) are declared to be prima facie contraband goods and
42 may be seized by the director, the director's agents or employees, or
43 by any peace officer of this State, when so ordered by the director,
44 without a warrant.

45 b. The director may direct the return of any unlawfully
46 possessed vapor products upon reasonable belief that the owner has

1 not willfully or intentionally evaded any licensing requirement
2 imposed by P.L. , c. (C.) (pending before the Legislature as
3 this bill).

4 c. The director may authorize for law enforcement purposes the
5 use of any vapor product forfeited in accordance with this section.

6 d. The seizure of any unlawfully possessed vapor product shall
7 not relieve any person from a fine, imprisonment or other penalty
8 for violation of any of the provisions of P.L. , c. (C.)
9 (pending before the Legislature as this bill). The director, the
10 director's agents, employees, and any peace officer of this State,
11 when directed so to do, shall not in any way be responsible in any
12 court for the seizure or the confiscation of any unlawfully possessed
13 vapor product.

14
15 21. (New section) a. In addition to the license required by
16 section 3 of P.L. , c. (C.) (pending before the Legislature
17 as this bill), a municipality may adopt an ordinance concerning the
18 licensure and regulation of a vapor business, which may include
19 assessing a separate vapor business permit fee against any entity
20 operating a licensed vapor business. The full amount of any permit
21 fees collected by a municipality pursuant to this section, less
22 administrative costs, shall be used to fund compliance inspections,
23 including undercover compliance purchases, conducted by the local
24 health agency having jurisdiction consistent with the requirements
25 established by the Commissioner of Health pursuant to section 2 of
26 P.L.1995, c.320 (C.26:3A2-20.1).

27 b. Nothing in P.L. , c. (C.) (pending before the
28 Legislature as this bill) shall be construed to preempt the provisions
29 of any municipal ordinance concerning the licensure and regulation
30 of a vapor business that is in effect on the effective date of
31 P.L. , c. (C.) (pending before the Legislature as this bill) or
32 that is enacted subsequent to that effective date.

33
34 22. N.J.S.2C:64-1 is amended to read as follows;

35 2C:64-1. a. Any interest in the following shall be subject to
36 forfeiture and no property right shall exist in them:

37 (1) Controlled dangerous substances, firearms which are
38 unlawfully possessed, carried, acquired or used, illegally possessed
39 gambling devices, untaxed or otherwise contraband cigarettes or
40 tobacco products, unlawfully possessed **【container e-liquid】** vapor
41 products, untaxed special fuel, unlawful sound recordings and
42 audiovisual works and items bearing a counterfeit mark. These
43 shall be designated prima facie contraband.

44 (2) All property which has been, or is intended to be, utilized in
45 furtherance of an unlawful activity, including, but not limited to,
46 conveyances intended to facilitate the perpetration of illegal acts, or
47 buildings or premises maintained for the purpose of committing
48 offenses against the State.

1 (3) Property which has become or is intended to become an
2 integral part of illegal activity, including, but not limited to, money
3 which is earmarked for use as financing for an illegal gambling
4 enterprise.

5 (4) Proceeds of illegal activities, including, but not limited to,
6 property or money obtained as a result of the sale of prima facie
7 contraband as defined by **【subsection a.】** paragraph (1) of this
8 subsection, proceeds of illegal gambling, prostitution, bribery and
9 extortion.

10 b. Any article subject to forfeiture under this chapter may be
11 seized by the State or any law enforcement officer as evidence
12 pending a criminal prosecution pursuant to **【section】** N.J.S.2C:64-4
13 or, when no criminal proceeding is instituted, upon process issued
14 by any court of competent jurisdiction over the property, except that
15 seizure without such process may be made when not inconsistent
16 with the Constitution of this State or the United States, and when

17 (1) The article is prima facie contraband; or

18 (2) The property subject to seizure poses an immediate threat to
19 the public health, safety or welfare.

20 c. For the purposes of this section:

21 "Items bearing a counterfeit mark" means items bearing a
22 counterfeit mark as defined in N.J.S.2C:21-32.

23 "Unlawful sound recordings and audiovisual works" means
24 sound recordings and audiovisual works as those terms are defined
25 in N.J.S.2C:21-21 which were produced in violation of
26 N.J.S.2C:21-21.

27 "Unlawfully possessed **【container e-liquid】** vapor product"
28 means **【container e-liquid】** an electronic smoking device or liquid
29 nicotine cartridge, as those terms are defined in section 2 of
30 **【P.L.1990, c.39 (C.54:40B-2)】** P.L. , c. (C.) (pending
31 before the Legislature as this bill), that is possessed for retail sale
32 by a person that is not licensed as a basic or plenary vapor business
33 pursuant to section **【4 of P.L.2019, c.147 (C.54:40B-3.3)】** 3 of
34 P.L. , c. (C.) (pending before the Legislature as this bill),
35 and non-cartridge vaping liquid, as that term is defined in section 2
36 of P.L. , c. (C.) (pending before the Legislature as this
37 bill), that is possessed for retail sale by a person that is not licensed
38 as a plenary vapor business pursuant to section 3 of
39 P.L. , c. (C.) (pending before the Legislature as this bill).

40 "Untaxed special fuel" means diesel fuel, No. 2 fuel oil and
41 kerosene on which the motor fuel tax imposed pursuant to
42 R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or
43 transferred in this State in a manner not authorized pursuant to
44 R.S.54:39-1 et seq. or P.L.1938, c.163 (C.56:6-1 et seq.).
45 (cf: P.L.2019, c.147, s.10)

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

3 2. a. The Commissioner of Health is authorized to enforce the
4 provisions of section 1 of P.L.2000, c.87 (C.2A:170-51.4) with
5 respect to the prohibition on the sale and commercial distribution of
6 tobacco and vapor products to persons under 21 years of age. The
7 commissioner may delegate the enforcement authority provided in
8 this section to local health agencies, subject to the availability of
9 sufficient funding. The commissioner shall report quarterly to the
10 Legislature on the enforcement program's progress, use of grants
11 awarded pursuant to section 7 of P.L.1966, c.36 (C.26:2F-7), results
12 of enforcement efforts and other matters the commissioner deems
13 appropriate. The commissioner shall establish standards for
14 compliance inspections, including undercover compliance
15 purchases, conducted by the Department of Health and local health
16 agencies, which standards shall include annual reporting by any
17 entity conducting a compliance inspection concerning the number
18 of inspections conducted, the number of violations cited, the
19 amounts of any penalties collected, and any adverse actions taken
20 against a retailer's tobacco retail dealer license or vapor business
21 license.

22 b. The Department of the Treasury shall provide the
23 commissioner with information about retail tobacco dealer licenses
24 and vapor business licenses necessary to carry out the purpose of
25 this section.
26 (cf: P.L.2017, c.118, s.5)

27
28 24. Section 1 of P.L.1990, c.39 (C.54:40B-1) is amended to read
29 as follows:

30 1. Sections 1 through 14 of P.L.1990, c.39 (C.54:40B-1 et seq.)
31 shall be known and may be cited as the "Tobacco **【and Vapor】**
32 Products Tax Act."
33 (cf: P.L.2019, c.147, s.1)

34
35 25. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read
36 as follows:

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

39 "Consumer" means a person except a distributor, manufacturer,
40 or wholesaler who acquires a tobacco product for consumption,
41 storage, or use in this State;

42 **【**"Container e-liquid" means a container of liquid nicotine or
43 other liquid where the liquid is marketed, sold, or intended for use
44 in an electronic smoking device, but does not include a prefilled
45 cartridge or other container where the cartridge or container is
46 marketed, sold, or intended for use as, or as a part of, an electronic
47 smoking device;**】**

1 "Director" means the Director of the Division of Taxation in the
2 Department of the Treasury;

3 "Distributor" means:
4 a person engaged in the business of selling tobacco products in
5 this State who brings, or causes to be brought into this State from
6 without the State a tobacco product for sale within this State,
7 a person who makes or manufactures tobacco products in this
8 State for sale in the State,
9 a person engaged in the business of selling tobacco products
10 without this State who ships or transports tobacco products to a
11 person in this State to be sold to a retail dealer, or
12 a person who receives tobacco products without receiving proof
13 that the tax has been or will be paid by another distributor;

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

17 **["Electronic smoking device" means a nonlighted,**
18 **noncombustible device that may be used to simulate smoking and**
19 **that employs a mechanical heating element, battery, or circuit,**
20 **regardless of shape or size, to produce aerosolized or vaporized**
21 **nicotine or other substance for inhalation into the body of a person,**
22 **including but not limited to a device that is manufactured,**
23 **distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-**
24 **hookah, vape pen, or any other similar product with any other**
25 **product name or descriptor;**

26 "Liquid nicotine" means any solution containing nicotine that is
27 designed or sold for use with an electronic smoking device; **】**

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

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

36 "Person" means an individual, firm, corporation, copartnership,
37 joint venture, association, receiver, trustee, guardian, executor,
38 administrator, or any other person acting in a fiduciary capacity, or
39 an estate, trust, or group or combination acting as a unit, the State
40 Government and any political subdivision thereof, and the plural as
41 well as the singular, unless the intention to give a more limited
42 meaning is disclosed by the context;

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

47 "Retail dealer" means a person who is engaged in this State in
48 the business of selling any tobacco product at retail. A person

1 placing a tobacco product vending machine at, or on any premises
2 shall be deemed to be a retail dealer for each vending machine;

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

5 "Tobacco product" means any product containing **█**, made, or
6 derived from **█** any tobacco **█**, nicotine, or other chemicals or
7 substances **█** for consumption by a person, including, but not limited
8 to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco,
9 smoking tobacco and their substitutes, and dry and moist snuff **█**,
10 and liquid nicotine **█**, but does not include cigarette as defined in
11 section 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-
12 1 et seq.) or any vapor product as defined in section 2 of the "Vapor
13 Products Tax Act," P.L. , c. (C.) (pending before the
14 Legislature as this bill);

15 "Treasurer" means the State Treasurer;

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

18 **█** "Vapor business" means a retail business where more than 50
19 percent of its retail sales are derived from electronic smoking
20 devices, related accessories, and liquid nicotine, but does not
21 include a retail business that does not sell container e-liquid; **█**

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

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

26 a. purchases tobacco products from any other person who
27 purchases from the manufacturer and who acquires tobacco
28 products solely for the purpose of bona fide resale to retail dealers
29 or to other persons for the purposes of resale only; or

30 b. services retail outlets by the maintenance of an established
31 place of business for the purchase of tobacco products including,
32 but not limited to, the maintenance of warehousing facilities for the
33 storage and distribution of tobacco products.

34 (cf: P.L.2019, c.147, s.2)

35

36 26. Section 3 of P.L.1990, c.39 (C.54:40B-3) is amended to read
37 as follows:

38 3. a. There is imposed a tax of 30% upon the wholesale price
39 upon the sale, use, or distribution of a tobacco product within this
40 State, except that if the product is **█**:

41 (1) **█** moist snuff, the tax shall be imposed as provided in section
42 3 of P.L.2006, c.37 (C.54:40B-3.1) **█**; or

43 (2) liquid nicotine, the tax shall be imposed as provided in
44 section 5 of P.L.2018, c.50 (C.54:40B-3.2) **█**.

45 b. Unless a tobacco product has already been or will be subject
46 to the wholesale sales tax imposed in subsection a. of this section, if
47 a distributor or wholesaler uses a tobacco product within this State,

1 there is imposed upon the distributor or wholesaler a compensating
2 use tax of 30% measured by the sales price of a similar tobacco
3 product to a distributor, except that if the product is moist snuff [or
4 liquid nicotine], the tax shall be imposed as provided in section 3 of
5 P.L.2006, c.37 (C.54:40B-3.1) [or section 5 of P.L.2018, c.50
6 (C.54:40B-3.2), respectively].

7 c. Unless a wholesale use tax is due pursuant to subsection b.
8 of this section, if a distributor or wholesaler has not paid the
9 wholesale sales tax imposed in subsection a. of this section upon a
10 sale that is subject to the wholesale sales tax imposed in that
11 subsection a., there is imposed upon the retail dealer or consumer
12 chargeable for the sale a compensating use tax of 30% of the price
13 paid or charged for the tobacco product, except that if the product is
14 moist snuff [or liquid nicotine], the tax shall be imposed as
15 provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1) [or section
16 5 of P.L.2018, c.50 (C.54:40B-3.2), respectively], which shall be
17 collected in the manner provided in subsection b. of section 5 of
18 P.L.1990, c.39 (C.54:40B-5).
19 (cf: P.L.2018, c.50, s.4)

20

21 27. Section 5 of P.L.2018, c.50 (C.54:40B-3.2) and sections 4
22 through 9 and section 11 of P.L.2019, c.147 (C.54:40B-3.3 et seq.)
23 are repealed.

24

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

27

28

29

STATEMENT

30

31 This bill implements certain recommendations included in the
32 Electronic Smoking Device Task Force Report issued October 3,
33 2019, pursuant to Executive Order No.84.

34 In particular, this bill revises the requirements for the licensure
35 and operation of vapor businesses, increases and expands the taxes
36 imposed on vapor products, and establishes a tracking system for
37 vapor products made available for sale in New Jersey.

38 Specifically, current law places various requirements for
39 licensure of vapor businesses in Chapter 40B of Title 54 of the
40 Revised Statutes, which generally concerns the regulation of
41 tobacco products other than cigarettes, such as cigars, pipe tobacco,
42 and cigarillos. This bill would remove the vapor product provisions
43 from Chapter 40B and recodify them as a new Chapter 40C in Title
44 54. The bill would further revise certain requirements for the
45 licensure and operation of vapor businesses.

46 Current law requires any entity that sells “container e-liquid” to
47 be licensed as a vapor business. To be licensed, at least 50 percent

1 of the entity's retail sales must be derived from electronic smoking
2 devices, related accessories, and liquid nicotine. Container e-liquid
3 is defined to mean any liquid nicotine that is not sold in a sealed
4 cartridge or self-contained disposable electronic smoking device.

5 The bill revises these licensure requirements to require licensure
6 as a condition of selling electronic smoking devices and liquid
7 nicotine cartridges as well. The bill changes the term "container e-
8 liquid" to "non-cartridge vaping liquid" and adds a new definition
9 of "liquid nicotine cartridge" to provide that the term means any
10 sealed container or self-contained disposable electronic smoking
11 device that contains vaping liquid containing nicotine, is not
12 refillable, and is not intended to be opened by the consumer.

13 The bill creates two types of vapor business licenses: basic vapor
14 licenses for entities seeking to sell electronic smoking devices and
15 liquid nicotine containers, and plenary vapor business licenses for
16 entities seeking to sell non-cartridge vaping liquid. An entity will
17 be required to hold a basic vapor business license as a condition of
18 licensure as a plenary vapor business, and will additionally be
19 required to derive at least 50 percent of its retail sales from vapor
20 products. The current fee for a vapor business license is \$50 per
21 year; the bill provides that the fee for a basic vapor business will be
22 \$500 per year, and the fee for a plenary vaping retailer license will
23 be an additional \$500 per year. The bill further authorizes
24 municipalities to assess an additional permit fee against vapor
25 businesses, provided that the full amount of any permit fees
26 collected, less administrative costs, are to be used to fund
27 compliance inspections, including undercover compliance
28 purchases, made by the local health agency.

29 The bill requires the Division of Taxation in the Department of
30 the Treasury to provide a list of current vapor business licensees on
31 its Internet website.

32 The bill increases the tax on liquid nicotine cartridges from
33 \$0.10 per fluid milliliter to \$0.20 per fluid milliliter, and the tax on
34 non-cartridge vaping liquid from 10 percent of the retail sale price
35 to 20 percent of the retail sale price. The bill also assesses a new 20
36 percent tax on the retail sale price of electronic smoking devices,
37 except that electronic smoking devices that fall within the definition
38 of "liquid nicotine cartridge," such as pre-filled, disposable devices,
39 are subject to the \$0.20 per fluid milliliter tax.

40 Current law requires cigarette retail dealers to post signs
41 advising that underage tobacco sales are prohibited, and that
42 violators are subject to a fine of up to \$1,000. The bill makes this
43 signage requirement applicable to vapor businesses as well and
44 updates the statutory language to reflect the increased penalties for
45 selling tobacco and vapor products to persons under age 21 as will
46 be established by companion legislation, which is currently pending
47 as Assembly Bill No.5922.

1 The Director of the Division of Taxation in the Department of
2 the Treasury will be required to establish a database that may be
3 used to track all vapor products sold in New Jersey. Information in
4 the database will be made available upon request to the Division of
5 Taxation in the Department of the Treasury, the Department of
6 Health, and the Division of Consumer Affairs in the Department of
7 Law and Public Safety. At a minimum, the tracking database is to
8 enable entities having regulatory authority over the sale of vapor
9 products to verify that the product meets the requirements to be sold
10 in New Jersey. Vapor product manufacturers will be required to
11 upload to the database product certain information for each vapor
12 product intended for sale in New Jersey.

13 The director will also be required to develop a standardized
14 tracking feature to be included on all vapor products sold in the
15 State. The tracking feature may be a stamp issued by the division, a
16 barcode imprinted on the vapor product by the manufacturer, or any
17 other feature the director deems appropriate, provided that the
18 feature is scannable and, when scanned, provides access to the
19 product information for the vapor product included in the tracking
20 database. Commencing 60 days after the date the feature is
21 developed, manufacturers will be required to include the tracking
22 feature on all vapor products sold in the State, and after that date no
23 vapor product may be sold in New Jersey unless it includes the
24 tracking feature.

25 Current law provides that unlawfully possessed non-cartridge
26 vaping liquid is prima facie contraband, subject to criminal
27 forfeiture. The bill provides that unlawfully possessed electronic
28 smoking devices and liquid nicotine cartridges are also prima facie
29 contraband.

30 The Commissioner of Health will be required to establish
31 standards for compliance inspections, including undercover
32 compliance purchases, conducted by the DOH and local health
33 agencies. These requirements will include annual reporting on any
34 compliance inspections conducted by the entity.