

ASSEMBLY, No. 2130

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 38 (Bergen and Passaic)

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

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District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Co-Sponsored by:

Assemblywoman Vainieri Huttie

SYNOPSIS

Increases penalties for sale of tobacco and electronic smoking devices to persons under age 21.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the sale of tobacco and electronic smoking
2 devices and amending P.L.2000, c.87.

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

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

9 1. a. No person, either directly or indirectly by an agent or
10 employee, or by a vending machine owned by the person or located
11 in the person's establishment, shall sell, offer for sale, distribute for
12 commercial purpose at no cost or minimal cost or with coupons or
13 rebate offers, give or furnish, to a person under 21 years of age:

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

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

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

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

34 (2) that the appearance of the purchaser of the tobacco product
35 or electronic smoking device or the recipient of the promotional
36 sample was such that an ordinary prudent person would believe the
37 purchaser or recipient to be of legal age to make the purchase or
38 receive the sample; and

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

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 c. A person who violates the provisions of subsection a. of this
2 section, including an employee of a retail dealer licensee under
3 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise
4 provides a tobacco product to a person under 21 years of age, shall
5 be liable to a civil penalty of not less than **["\$250"] \$500** for the first
6 violation, not less than **["\$500"] \$1,000** for the second violation, and
7 **["\$1,000"] \$2,500** for the third and each subsequent violation, plus
8 an additional civil penalty of not less than \$500 for any violation
9 that occurs on or within 1,000 feet of any property used for school
10 purposes which is owned by or leased to any elementary or
11 secondary school or school board. The civil penalty shall be
12 collected pursuant to the "Penalty Enforcement Law of 1999,"
13 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding
14 before the municipal court having jurisdiction. An official
15 authorized by statute or ordinance to enforce the State or local
16 health codes or a law enforcement officer having enforcement
17 authority in that municipality may issue a summons for a violation
18 of the provisions of subsection a. of this section, and may serve and
19 execute all process with respect to the enforcement of this section
20 consistent with the Rules of Court. A penalty recovered under the
21 provisions of this subsection shall be recovered by and in the name
22 of the State by the local health agency. The penalty shall be paid
23 into the treasury of the municipality in which the violation occurred
24 for the general uses of the municipality, except that, in the case of a
25 civil penalty recovered for a violation of subsection a. of this
26 section that occurs on or within 1,000 feet of any property used for
27 school purposes, 95 percent of the total amount of all such penalties
28 shall be paid into the General Fund and annually appropriated to the
29 Department of Health to fund youth smoking prevention programs,
30 regional centers to promote smoking cessation, referrals to smoking
31 cessation resources, and any other smoking prevention and
32 cessation programs as may be developed or administered by the
33 department.

34 d. In addition to the provisions of subsection c. of this section,
35 upon the recommendation of the municipality, following a hearing
36 by the municipality, the Division of Taxation in the Department of
37 the Treasury may suspend or, after a second or subsequent violation
38 of the provisions of subsection a. of this section, revoke the license
39 issued under section 202 of P.L.1948, c.65 (C.54:40A-4) of a retail
40 dealer. The licensee shall be subject to administrative charges,
41 based on a schedule issued by the Director of the Division of
42 Taxation, which may provide for a monetary penalty in lieu of a
43 suspension.

44 e. A penalty imposed pursuant to this section shall be in
45 addition to any penalty that may be imposed pursuant to section 3
46 of P.L.1999, c. 90 (C.2C:33-13.1).
47 (cf: P.L.2017, c.118, s.2)

1 2. This act shall take effect immediately.

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STATEMENT

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6 This bill increases the civil penalties that may be assessed for
7 selling tobacco products and electronic smoking devices to persons
8 under the age of 21. Current law provides that the offense is
9 punishable by a civil penalty of not less than \$250 for a first
10 offense, not less than \$500 for a second offense, and \$1,000 for a
11 third or subsequent offense. The bill increases these penalties to
12 not less than \$500 for a first offense, not less than \$1,000 for a
13 second offense, and \$2,500 for a third or subsequent offense.
14 Additionally, the bill imposes a new, separate civil penalty of not
15 less than \$500 for any violation that occurs on or within 1,000 feet
16 of any property used for school purposes which is owned by or
17 leased to any elementary or secondary school or school board.

18 The bill provides that 95 percent of the penalties collected for
19 violations that occur in a school zone are to be appropriated to the
20 Department of Health to fund youth smoking prevention programs,
21 regional smoking cessation centers, referrals to smoking cessation
22 resources, and any other smoking prevention and cessation
23 programs as may be developed or administered by the department.