

SENATE, No. 2399

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Senator DAWN MARIE ADDIEGO

District 8 (Atlantic, Burlington and Camden)

Senator DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

Co-Sponsored by:

Senators Cryan and Gopal

SYNOPSIS

Establishes certain regulations regarding vapor products.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/28/2020)

1 AN ACT concerning the regulation of vapor products and amending
2 and supplementing 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. Section 3 of P.L.1995, c.305 (C.2A:170-51.1) is amended to
8 read as follows:

9 3. A person 21 years of age or older who purchases a tobacco
10 product, an electronic smoking device, or a vapor product for a
11 person who is under 21 years of age is guilty of a petty disorderly
12 **person** persons offense. Nothing in this section shall be
13 construed to apply to medical cannabis, medical cannabis products,
14 paraphernalia, or related supplies dispensed to or on behalf of a
15 registered qualifying patient pursuant to the "Jake Honig
16 Compassionate Use Medical Cannabis Act," P.L.2009, c.307
17 (C.24:6I-1 et al.).

18 (cf: P.L.2017, c.118, s.1)

19
20 2. Section 4 of P.L.2019, c.147 (C.54:40B-3.3) is amended to
21 read as follows:

22 4. a. After the effective date of **P.L.2019, c.147 (C.54:40B-**
23 **3.3 et al.)** P.L. , c. (C.) (pending before the Legislature as
24 this bill, container e-liquid shall not be sold at retail in the State
25 except by a licensed vapor business. Only licensed vapor
26 businesses shall be permitted to sell container e-liquid with a
27 characterizing flavor including, but not limited to, tobacco.

28 No licensed vapor business, either directly or indirectly by an
29 agent or employee, or by a vending machine owned by the licensed
30 vapor business or located in the licensed vapor business, shall sell,
31 offer for sale, distribute for commercial purpose at no cost or
32 minimal cost or with coupons or rebate offers, give or furnish, any
33 container e-liquid with a characterizing flavor including, but not
34 limited to, tobacco:

35 (1) to any person under 21 years of age;

36 (2) unless such items utilize any tracking feature required by
37 subsection b. of section 7 of P.L. , c. (C.) (pending before
38 the Legislature as this bill);

39 (3) unless such items are registered or included in the database
40 developed and maintained pursuant to subsection a. of section 7 of
41 P.L. , c. (C.) (pending before the Legislature as this bill);

42 (4) unless the licensed vapor business refers to the database
43 developed and maintained pursuant to subsection a. of section 7 of
44 P.L. , c. (C.) (pending before the Legislature as this bill)
45 and determines that the potential purchaser has not exceeded the 30-

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 day maximum purchase quantity set by the Director of the Division
2 of Taxation pursuant to subsection c. of section 7 of P.L. _____,
3 c. (C. _____) (pending before the Legislature as this bill);

4 (5) unless access to the interior retail space of the establishment
5 is physically restricted to persons 21 years of age or older pursuant
6 to subsection d. of section 7 of P.L. _____, c. (C. _____) (pending
7 before the Legislature as this bill);

8 (6) unless the licensed vapor business also sells zero percent
9 container e-liquid pursuant to subsection f. of section 7 of P.L. _____,
10 c. (C. _____) (pending before the Legislature as this bill);

11 (7) unless the container e-liquid is sold, offered for sale, given,
12 furnished, or distributed for commercial purposes in a child
13 resistant container;

14 (8) unless such items are placed in a sealed bag, with the
15 appropriate warnings printed thereon, at the point of sale by the
16 licensed vapor business pursuant to subsection h. of section 7 of
17 P.L. _____, c. (C. _____) (pending before the Legislature as this bill);

18 (9) unless all customers are required to sign, including by
19 electronic means, a document promulgated by the director pursuant
20 to subsection i. of section 7 of P.L. _____, c. (C. _____) (pending
21 before the Legislature as this bill), acknowledging the dangers of
22 vaping generally and the dangers of adulterating any vapor product;

23 (10) unless such items have a nicotine content of no more than
24 two percent; and

25 (11) that has been mixed with any other substance by any entity
26 other than the manufacturer of the items.

27 b. Vapor business licenses shall be issued by the director, who
28 shall make rules and regulations respecting application and
29 issuance. Each such license shall lapse on March 31 of the period
30 for which it is issued, and each such license shall be continued
31 annually upon the conditions that the licensee shall have paid the
32 required renewal fee of \$5,000 and complied with the provisions of
33 P.L.2019, c.147 (C.54:40B-3.3 et al.) and the rules and regulations
34 of the director made pursuant thereto.

35 If a vapor business sells or intends to sell container e-liquid at
36 two or more places of business, whether established or temporary,
37 or whether in the same building or not, a separate license shall be
38 required for each place of business. Each license, or certificate
39 thereof, and such other evidence of license shall be exhibited in the
40 place of business for which it is issued and in such manner as may
41 be prescribed by the director.

42 No license shall be issued to any person except upon the
43 payment of a **[\$50]** \$10,000 initial application fee except that
44 persons and entities that possessed a vapor business license during
45 the twelve month period prior to the effective date of P.L. _____, c.
46 (C. _____) (pending before the Legislature as this bill) shall not be
47 required to submit an initial application fee. No license shall be
48 assignable or transferable, but in the case of death, bankruptcy,

1 receivership, or incompetency of the licensee, or if, for any other
2 reason whatsoever, the business of the licensee shall devolve upon
3 another by operation of law, the director may, in the director's
4 discretion, extend said license for a limited time to the executor,
5 administrator, trustee, receiver, or person upon whom the same has
6 devolved.

7 No license shall be issued to any person except upon completion
8 and submission to the director of satisfactory criminal history
9 background checks for all owners, officers, directors, and
10 employees as required pursuant to subsection e. of section 7 of
11 P.L. , c. (C.) (pending before the Legislature as this bill).
12 An applicant shall bear the cost of the completion and submission
13 of the criminal background checks.

14 The director shall require an applicant for a vapor business
15 license, to include on the application the address of the place of
16 business where the container e-liquid will be sold. If the place of
17 business is moved to a different address than that provided on the
18 license application, the licensee shall notify the director within 30
19 days of the change of address.

20 c. The establishment of any of the following shall constitute a
21 defense to a prosecution brought pursuant to paragraph (1) of
22 subsection a. of this section:

23 (1) the purchaser or the recipient of the promotional sample
24 falsely represented, by producing either a driver's license or non-
25 driver identification card issued by the New Jersey Motor Vehicle
26 Commission, a similar card issued pursuant to the laws of another
27 state or the federal government of Canada, or a photographic
28 identification card issued by a county clerk, that the purchaser or
29 recipient was of legal age to make the purchase or receive the
30 sample and, commencing 90 days after the effective date of P.L. ,
31 c. (C.) (pending before the Legislature as this bill), the
32 person making the sale or distribution verifies the purchaser's age
33 using an electronic age verification system;

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

38 (3) that the sale or distribution was made in good faith, relying
39 upon the production and, commencing 90 days after the effective
40 date of P.L. , c. (C.) (pending before the Legislature as this
41 bill), verification of the identification set forth in paragraph (1) of
42 this subsection, the appearance of the purchaser or recipient, and a
43 reasonable belief that the purchaser or recipient was of legal age to
44 make the purchase or receive the sample.

45 d. A person or entity that violates the provisions of subsection
46 a. of this section shall be liable to a civil penalty of not less than
47 \$5,000 for the first violation, not less than \$10,000 for a second
48 violation, and not less than \$20,000 for a third and each subsequent

1 violation. The civil penalty shall be collected pursuant to the
2 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
3 et seq.), in a summary proceeding before the municipal court having
4 jurisdiction. An official authorized by statute or ordinance to
5 enforce the State or local health codes, or a law enforcement officer
6 having enforcement authority in that municipality, may issue a
7 summons for a violation of the provisions of subsection a. of this
8 section, and may serve and execute all process with respect to the
9 enforcement of this section consistent with the Rules of Court. A
10 penalty recovered under the provisions of this subsection shall be
11 recovered by and in the name of the State by the local health
12 agency. The penalty shall be paid into the treasury of the
13 municipality in which the violation occurred for the general uses of
14 the municipality.

15 e. The director may, upon notice and after hearing, suspend or
16 revoke the license or all licenses under this section issued to any
17 person who violates any of the provisions of P.L.2019, c.147
18 (C.54:40B-3.3 et al.), or who, after being issued a license becomes
19 disqualified for licensure pursuant to P.L.2019, c.147 (C.54:40B-3.3
20 et al.) or of any rule or regulation of the director made pursuant
21 thereto or if the licensee has ceased to act in the capacity for which
22 the license was issued or for other good cause. No person whose
23 license has been suspended or revoked shall sell **【container e-**
24 **liquid】** vapor products or permit **【container e-liquid】** vapor
25 products to be sold during the period of such suspension or
26 revocation on the premises occupied by that person or upon other
27 premises controlled by that person or others, or in any other manner
28 or form whatever. No disciplinary proceeding or action shall be
29 barred or abated by the expiration, transfer, surrender, continuance,
30 renewal, or extension of a license issued under the provisions of
31 P.L.2019, c.147 (C.54:40B-3.3 et al.).

32 f. Nothing in this section shall be construed to apply to
33 medical cannabis, medical cannabis products, paraphernalia, or
34 related supplies dispensed to or on behalf of a registered qualifying
35 patient pursuant to the "Jake Honig Compassionate Use Medical
36 Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.).
37 (cf: P.L.2019, c.147, s.4)
38

39 3. Section 11 of P.L.2019, c.147 (C.54:40B-3.9) is amended to
40 read as follows:

41 11. In addition to the license required by section 4 of P.L.2019,
42 c.147 (C.54:40B-3.3), a municipality may adopt an ordinance
43 concerning the licensure and regulation of a vapor business **【.**
44 Nothing in P.L.2019, c.147 (C.54:40B-3.3 et al.) shall be construed
45 to preempt the provisions of any existing or new municipal
46 ordinance concerning the licensure and regulation of a vapor
47 business**】**, which may include assessing a separate vapor business
48 permit fee, not to exceed \$500 annually, against any entity

1 operating a licensed vapor business. The full amount of any permit
2 fees collected by a municipality pursuant to this section, less
3 administrative costs, shall be used to fund compliance inspections,
4 including undercover compliance purchases, conducted by the local
5 health agency having jurisdiction consistent with the requirements
6 established by the Commissioner of Health pursuant to section 2 of
7 P.L.1995, c.320 (C.26:3A2-20.1).

8 Nothing in this section shall be construed to apply to medical
9 cannabis, medical cannabis products, paraphernalia, or related
10 supplies dispensed to or on behalf of a registered qualifying patient
11 pursuant to the "Jake Honig Compassionate Use Medical Cannabis
12 Act," P.L.2009, c.307 (C.24:6I-1 et al.).

13 (cf: P.L.2019, c.147, s.11)

14
15 4. (New section) a. It shall be unlawful for a licensed vapor
16 business, either directly or indirectly, by an agent or employee, or
17 by a vending machine owned by the licensed vapor business or
18 located in the licensed vapor business's establishment, to sell, offer
19 for sale, give, furnish, or distribute for commercial purpose at no
20 cost or minimal cost or with coupons or rebate offers, to any person
21 any electronic smoking device that is designed to mimic the
22 appearance of another object, when the appearance of the electronic
23 smoking device makes it difficult for the average person to
24 determine, based on casual observance, whether the item is the
25 object it is designed to mimic or an electronic smoking device.
26 Prohibited designs shall include, but shall not be limited to,
27 electronic smoking devices designed to resemble a pen or other
28 writing utensil, flash drive or universal serial bus drive, mobile
29 phone, clothing, jewelry, cosmetic product, eating utensil, or
30 personal hygiene product, provided that nothing in this section shall
31 be construed to prohibit the sale, offer for sale, or commercial
32 distribution of an electronic smoking device designed to resemble a
33 product traditionally used for the consumption of tobacco, including
34 a cigarette, cigarette pack, pipe, cigar, or hookah.

35 b. A licensed vapor business, that violates the provisions of
36 subsection a. of this section shall be liable to a civil penalty of not
37 less than \$5,000 for the first violation and not less than \$10,000 for
38 a second, and not less than \$20,000 for the third and each
39 subsequent violation. The civil penalty shall be collected pursuant
40 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
41 (C.2A:58-10 et seq.), in a summary proceeding before the municipal
42 court having jurisdiction. An official authorized by statute or
43 ordinance to enforce the State or local health codes, or a law
44 enforcement officer having enforcement authority in that
45 municipality, may issue a summons for a violation of the provisions
46 of subsection a. of this section, and may serve and execute all
47 process with respect to the enforcement of this section consistent
48 with the Rules of Court. A penalty recovered under the provisions

1 of this subsection shall be recovered by and in the name of the State
2 by the local health agency. The penalty shall be paid into the
3 treasury of the municipality in which the violation occurred for the
4 general uses of the municipality.

5 c. In addition to the provisions of subsection b. of this section,
6 following a hearing by the municipality, the Division of Taxation in
7 the Department of the Treasury:

8 (1) shall, upon a third and each subsequent violation of the
9 provisions of subsection a. of this section, following a hearing be
10 the municipality, suspend, for a period of not less than three years,
11 the license issued under section 4 of P.L.2019, c.147 (C.54:40B-
12 3.3) of a vapor business; and

13 (2) notwithstanding the provisions of paragraph (1) of this
14 subsection, upon a fourth or subsequent violation of the provisions
15 of subsection a. of this section, may, upon recommendation by the
16 municipality and following a hearing by the municipality, revoke
17 the license issued under section 4 of P.L.2019, c.147 (C.54:40B-
18 3.3) of a vapor business.

19 The licensee shall additionally be subject to administrative
20 charges, based on a schedule issued by the Director of the Division
21 of Taxation.

22 d. As used in this section, "electronic smoking device" means
23 any device that may be used to deliver any aerosolized or vaporized
24 substance to the person inhaling from the device, including, but not
25 limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
26 Electronic smoking device includes any component, part, or
27 accessory of the device, and also includes any substance that may
28 be aerosolized or vaporized by such device, regardless of whether
29 the substance contains nicotine. "Electronic smoking device" does
30 not include any drug, device, or combination product approved by
31 the federal Food and Drug Administration pursuant to the "Federal
32 Food, Drug, and Cosmetic Act," 21 U.S.C. s.301 et seq.

33

34 5. (New section) A person shall not engage in a retail purchase
35 of vapor products in this State unless the purchase is a direct, face-
36 to-face purchase between a retailer and a consumer; no person shall
37 purchase vapor products via the Internet while present in this
38 jurisdiction. Any person who sells, offers or exposes for sale, or
39 possesses with intent to sell vapor products via the Internet to a
40 purchaser located in this State is guilty of a crime of the fourth
41 degree. Any person present within the jurisdiction of this State who
42 purchases vapor products via the Internet is guilty of a petty
43 disorderly persons offense.

44 Nothing in this section shall be construed to apply to medical
45 cannabis, medical cannabis products, paraphernalia, or related
46 supplies dispensed to or on behalf of a registered qualifying patient
47 pursuant to the "Jake Honig Compassionate Use Medical Cannabis
48 Act," P.L.2009, c.307 (C.24:6I-1 et al.).

1 6. (New section) The Director of the Division of Taxation in
2 the Department of the Treasury, in conjunction with the
3 Commissioner of the Department of Health, shall adopt rules and
4 regulations in accordance with the Administrative Procedures Act,
5 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of
6 this act, including the following:

7 a. The establishment of an electronic database that shall be
8 used to track all container e-liquid with a characterizing flavor
9 including, but not limited to, tobacco sold by licensed vapor
10 businesses in this State for the purpose of ensuring that no person
11 purchases such items in excess of the 30-day limit provided for in
12 subsection c. of this section, and ensuring product integrity and
13 compliance with applicable State and federal laws. Information in
14 the database may include, the manufacturer of the item, the date of
15 purchase at retail, the quantity purchased in every sale, consumer
16 safety alerts for the product, and any other information as may be
17 required by the Director of the Division of Taxation.

18 b. The development of a standardized tracking feature to be
19 included on all container e-liquid with a characterizing flavor
20 including, but not limited to, tobacco sold by licensed vapor
21 businesses in the State that may be used to identify illicit,
22 counterfeit, adulterated, or otherwise illegal or unsafe items. The
23 tracking feature may be a stamp or any other feature the Director of
24 the Division of Taxation deems appropriate. The tracking feature
25 shall, in conjunction with the electronic database established in
26 subsection a. of this section and in addition to any other function
27 required by the Director of the Division of Taxation, allow the
28 director to determine the total quantity purchased by any individual
29 in a 30-day period and if any individual purchaser exceeded the 30-
30 day limit as provided for in subsection c. of this section.

31 c. A 30-day maximum purchase quantity for all container e-
32 liquid with a characterizing flavor including, but not limited to,
33 tobacco sold by licensed vapor businesses in the State to help
34 prevent the bulk purchase and resale to persons under the age of 21.
35 The 30-day maximum purchase quantity may use total milliliters of
36 liquid nicotine or other metric, as determined by the Director of the
37 Division of Taxation, in order to allow reasonable purchases
38 without enabling illegal resale to those under the age of 21.

39 d. Requirements for the installation of systems designed to
40 restrict access to the interior of a licensed vapor business to only
41 person 21 years of age or over. Such systems may include, but shall
42 not be limited to, exterior or interior doors or turnstiles that unlock
43 and allow access to a licensed vapor business's retail space using an
44 electronic age verification system. Following the effective date of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 licensed vapor businesses shall certify in writing that the licensee
47 will coordinate with the Director of the Division of Taxation to
48 develop and implement a plan to ensure no one under the age of 21

1 will be permitted access to the licensed vapor business premises and
2 failure to enforce this prohibition shall make a licensed vapor
3 business liable to a civil penalty as provided in subsection d. of
4 section 3 of P.L. , c. (C.) (pending before the Legislature
5 as this bill).

6 e. The development of procedures and criteria for screening,
7 monitoring, and performing criminal history record background
8 checks of any owner, director, officer, and employee of a licensed
9 vapor business to be performed at the expense of the vapor business
10 license applicant or license holder.

11 f. The development of regulations governing the requirement
12 that all licensed vapor businesses carry zero nicotine container e-
13 liquid and appropriate signage.

14 g. The development of signage and display restrictions and
15 requirements for all licensed vapor businesses including, but not
16 limited to, the following:

17 (1) Signage to be displayed by all licensed vapor businesses at
18 the point of sale regarding the long-term health effects of vaping
19 and the ill effects of underage vaping.

20 (2) Signage to be displayed on the exterior of a licensed vapor
21 business including what, if any, colors, illumination, and content
22 are allowed.

23 h. The development of a standardized sealable, one-time use
24 bag with warnings printed thereon explaining the dangers of vaping,
25 underaged vaping, and adulterating any vapor products after
26 purchase. The bag shall be designed to not be reusable after being
27 sealed by the licensed vapor business and subsequently opened by
28 the purchaser.

29 i. The development of a document to be signed, including by
30 electronic means, by purchasers at the point of sale, acknowledging
31 the dangers of vaping, underaged vaping, and adulterating any
32 vapor products after purchase.

33 j. Nothing in this section shall be construed to apply to
34 medical cannabis, medical cannabis products, paraphernalia, or
35 related supplies dispensed to or on behalf of a registered qualifying
36 patient pursuant to the "Jake Honig Compassionate Use Medical
37 Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.).

38
39 7. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read
40 as follows:

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

43 "Consumer" means a person except a distributor, manufacturer,
44 or wholesaler who acquires a tobacco product for consumption,
45 storage, or use in this State;

46 "Container e-liquid" means a container of liquid nicotine or other
47 liquid, including that with a characterizing flavor such as, but not
48 limited to, tobacco, where the liquid is marketed, sold, or intended

1 for use in an electronic smoking device, but does not include a
2 prefilled cartridge or other container where the cartridge or
3 container is marketed, sold, or intended for use as, or as a part of,
4 an electronic smoking device;

5 "Director" means the Director of the Division of Taxation in the
6 Department of the Treasury;

7 "Distributor" means:

8 a person engaged in the business of selling tobacco products in
9 this State who brings, or causes to be brought into this State from
10 without the State a tobacco product for sale within this State,

11 a person who makes or manufactures tobacco products in this
12 State for sale in the State,

13 a person engaged in the business of selling tobacco products
14 without this State who ships or transports tobacco products to a
15 person in this State to be sold to a retail dealer, or

16 a person who receives tobacco products without receiving proof
17 that the tax has been or will be paid by another distributor;

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

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

30 "Licensed vapor business" means a retail business which is
31 licensed by the director to sell container e-liquid with a
32 characterizing flavor including, but not limited to, tobacco, but does
33 not include a retail business that does not sell container e-liquid.

34 "Liquid nicotine" means any solution containing nicotine that is
35 designed or sold for use with an electronic smoking device;

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

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

44 "Person" means an individual, firm, corporation, copartnership,
45 joint venture, association, receiver, trustee, guardian, executor,
46 administrator, or any other person acting in a fiduciary capacity, or
47 an estate, trust, or group or combination acting as a unit, the State
48 Government and any political subdivision thereof, and the plural as

1 well as the singular, unless the intention to give a more limited
2 meaning is disclosed by the context;

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

7 "Retail dealer" means a person who is engaged in this State in
8 the business of selling any tobacco product at retail. A person
9 placing a tobacco product vending machine at, or on any premises
10 shall be deemed to be a retail dealer for each vending machine;

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

13 "Tobacco product" means any product containing, made, or
14 derived from any tobacco, nicotine, or other chemicals or
15 substances for consumption by a person, including, but not limited
16 to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco,
17 smoking tobacco and their substitutes, dry and moist snuff, and
18 liquid nicotine, but does not include cigarette as defined in section
19 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et
20 seq.);

21 "Treasurer" means the State Treasurer;

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

24 **["Vapor business" means a retail business where more than 50**
25 **percent of its retail sales are derived from electronic smoking**
26 **devices, related accessories, and liquid nicotine, but does not**
27 **include a retail business that does not sell container e-liquid;]**

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

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

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

43 a. purchases tobacco products from any other person who
44 purchases from the manufacturer and who acquires tobacco
45 products solely for the purpose of bona fide resale to retail dealers
46 or to other persons for the purposes of resale only; or

47 b. services retail outlets by the maintenance of an established
48 place of business for the purchase of tobacco products including,

1 but not limited to, the maintenance of warehousing facilities for the
2 storage and distribution of tobacco products.

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

4
5 8. Section 1 of P.L.2019, c.425 (C.2A:170-51.12) is amended
6 to read as follows:

7 1. a. No retailer, either directly or indirectly by an agent or
8 employee, or by a vending machine owned by the retailer or located
9 in the retailer's establishment, shall sell, offer for sale, distribute for
10 commercial purpose at no cost or minimal cost or with coupons or
11 rebate offers, give or furnish, to a person any vapor product that has
12 a characterizing flavor.

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

31 c. In addition to the provisions of subsection b. of this section,
32 the Division of Taxation in the Department of the Treasury:

33 (1) shall, upon a third and each subsequent violation of the
34 provisions of subsection a. of this section, following a hearing by
35 the municipality, suspend, for a period of not less than three years,
36 the license issued under section 4 of P.L.2019, c.147 (C.54:40B-
37 3.3) of a vapor business; and

38 (2) notwithstanding the provisions of paragraph (1) of this
39 subsection, upon a fourth or subsequent violation of the provisions
40 of subsection a. of this section, may, upon recommendation by the
41 municipality and following a hearing by the municipality, revoke
42 the license issued under section 4 of P.L.2019, c.147 (C.54:40B-
43 3.3) of a vapor business.

44 A licensee whose license is subject to suspension or revocation
45 shall additionally be subject to administrative charges, based on a
46 schedule issued by the Director of the Division of Taxation.

47 d. Nothing in this section shall be construed to apply to
48 medical cannabis, medical cannabis products, paraphernalia, or

1 related supplies dispensed to or on behalf of a registered qualifying
2 patient pursuant to the "Jake Honig Compassionate Use Medical
3 Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.) or vapor
4 businesses licensed by the Director of the Division of Taxation in
5 the Department of the Treasury pursuant to section 4 of P.L.2019,
6 c.147 (C.54:40B-3.3).

7 e. As used in this section:

8 "Characterizing flavor" means a distinguishable flavor, taste, or
9 aroma other than tobacco, including, but not limited to, any fruit,
10 chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage,
11 herb, mint, menthol, wintergreen, or spice flavoring, that is
12 imparted, prior to or during consumption, by a vapor product,
13 including any smoke or vapor emanating from that product. A
14 vapor product shall be deemed to have a characterizing flavor if the
15 product is advertised or marketed as having or producing any such
16 distinguishable flavor, taste, or aroma.

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

28 (cf: P.L.2019, c.425, s.1)

29
30 9. This act shall take effect immediately.

31 32 33 STATEMENT

34
35 This bill establishes certain regulations regarding vapor products.
36 Under the bill, a person 21 years of age or older who purchases an
37 electronic smoking device, or a vapor product for a person who is
38 under 21 years of age is guilty of a petty disorderly persons offense.

39 The bill's provisions do not apply to any medical cannabis,
40 medical cannabis product, paraphernalia, or related supplies
41 dispensed or sold to or on behalf of a registered qualifying patient
42 pursuant to the provisions of the "Jake Honig Compassionate Use
43 Medical Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.).

44 Under the bill, only licensed vapor businesses are to be permitted
45 to sell container e-liquid with a characterizing flavor including, but
46 not limited to, tobacco. No licensed vapor business is to sell any
47 container e-liquid with a characterizing flavor including, but not
48 limited to, tobacco: (1) to any person under 21 years of age; (2)

1 unless such items utilize a tracking feature; (3) unless such items
2 are registered; (4) unless the licensed vapor business refers to the
3 database developed and maintained pursuant to the bill's provisions
4 and determines that the potential purchaser has not exceeded the 30-
5 day maximum purchase quantity set by the Director of the Division
6 of Taxation; (5) unless access to the interior retail space of the
7 establishment is physically restricted to persons 21 years of age or
8 older; (6) unless the licensed vapor business also sells zero percent
9 container e-liquid; (7) unless the container e-liquid is sold, offered
10 for sale, given, furnished, or distributed for commercial purposes in
11 a child resistant container; (8) unless such items are placed in a
12 sealed bag, with the appropriate warnings printed thereon, at the
13 point of sale by the licensed vapor business; (9) unless all
14 customers are required to sign, including by electronic means a
15 document acknowledging the dangers of vaping generally and the
16 dangers of adulterating any vapor product; (10) unless such items
17 have a nicotine content of no more than two percent; and (11) that
18 has been mixed with any other substance by any entity other than
19 the manufacturer of the items.

20 Vapor business licenses require a \$5,000 renewal fee under the
21 bill. The bill provides that a municipality may adopt an ordinance
22 concerning the licensure and regulation of a vapor business, which
23 may include assessing a separate vapor business permit fee, not to
24 exceed \$500 annually, against any entity operating a licensed vapor
25 business.

26 Under the bill, it is unlawful for a licensed vapor business to sell
27 an electronic smoking device designed to mimic the appearance of
28 another object, when the appearance of the electronic smoking
29 device makes it difficult for the average person to determine, based
30 on casual observance, whether the item is the object it is designed
31 to mimic or an electronic smoking device. Prohibited designs
32 include electronic smoking devices designed to resemble a pen or
33 other writing utensil, flash drive or universal serial bus drive,
34 mobile phone, clothing, jewelry, cosmetic product, eating utensil, or
35 personal hygiene product, provided that nothing in this section shall
36 be construed to prohibit the sale, offer for sale, or commercial
37 distribution of an electronic smoking device designed to resemble a
38 product traditionally used for the consumption of tobacco, including
39 a cigarette, cigarette pack, pipe, cigar, or hookah.

40 The bill provides that a person is not to engage in a retail
41 purchase of vapor products in this State unless the purchase is a
42 direct, face-to-face purchase between a retailer and a consumer and
43 that no person is to purchase vapor products via the Internet while
44 present in this State. Any person who sells, offers or exposes for
45 sale, or possesses with intent to sell vapor products via the Internet
46 to a purchaser located within this State is guilty of a crime of the
47 fourth degree. Any person present within the jurisdiction of this

1 State who purchases vapor products via the Internet is guilty of a
2 petty disorderly persons offense.

3 The bill provides for the establishment of an electronic database
4 that is to track all container e-liquid with a characterizing flavor
5 including, but not limited to, tobacco sold by licensed vapor
6 businesses in this State for the purpose of ensuring that no person
7 purchases such items in excess of the 30-day limit provided for in
8 the bill, and ensuring product integrity and compliance with
9 applicable State and federal laws. Information in the database may
10 include, the manufacturer of the item, the date of purchase at retail,
11 the quantity purchased in every sale, consumer safety alerts for the
12 product, and any other information as may be required by the
13 Director of the Division of Taxation. The development of a
14 standardized tracking feature to be included on all container e-
15 liquid with a characterizing flavor including, but not limited to,
16 tobacco sold by licensed vapor businesses in the State that may be
17 used to identify illicit, counterfeit, adulterated, or otherwise illegal
18 or unsafe items. The tracking feature may be a stamp or any other
19 feature the Director of the Division of Taxation deems appropriate.

20 The bill provides for a 30-day maximum purchase quantity for
21 all container e-liquid with a characterizing flavor including, but not
22 limited to, tobacco sold by licensed vapor businesses in the State to
23 help prevent the bulk purchase and resale to persons under the age
24 of 21. The 30-day maximum purchase quantity may use total
25 milliliters of liquid nicotine or other metric, as determined by the
26 Director of the Division of Taxation, in order to allow reasonable
27 purchases without enabling illegal resale to those under the age of
28 21. The bill also provides for requirements for the installation of
29 systems designed to restrict access to the interior of a licensed
30 vapor business to only person 21 years of age or over. Such
31 systems are to include exterior or interior doors or turnstiles that
32 unlock and allow access to a licensed vapor business's retail space
33 using an electronic age verification system.

34 The bill provides for the development of procedures and criteria
35 for screening, monitoring, and performing criminal history record
36 background checks of any owner, director, officer, and employee of
37 a licensed vapor business to be performed at the expense of the
38 vapor business license applicant or license holder, the development
39 of signage and display restrictions and requirements for all licensed
40 vapor businesses, the development of a standardized sealable, one-
41 time use bag with warnings printed thereon explaining the dangers
42 of vaping, underaged vaping, and adulterating any vapor products
43 after purchase, and the development of a document to be signed,
44 including by electronic means, by purchasers at the point of sale,
45 acknowledging the dangers of vaping, underaged vaping, and
46 adulterating any vapor products after purchase.