

CHAPTER 425

AN ACT concerning vapor products and supplementing Title 2A of the New Jersey Statutes.

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

C.2A:170-51.12 Sale of flavored vapor products prohibited; violations, penalties.

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

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

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

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

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

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

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

e. As used in this section:

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

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

2. This act shall take effect 90 days after the date of enactment.

Approved January 21, 2020.