

SENATE, No. 4223

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Revises licensure and operational requirements for vapor businesses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/15/2019)

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

16 "Director" means the Director of the Division of Taxation in the
17 Department of the Treasury.

18 "Distributor" means:

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

22 a person who makes or manufactures vapor products in this State
23 for sale in the State;

24 a person engaged in the business of selling vapor products
25 without this State who ships or transports vapor products to a
26 person in this State to be sold to a vapor business, or

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

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

39 "Liquid nicotine cartridge" means a prefilled cartridge or other
40 container where the cartridge or container contains a vaping liquid
41 containing nicotine, is marketed, sold, or intended for use as, or as a
42 part of, an electronic smoking device, is prefilled and sealed by the
43 manufacturer, with the seal remaining permanently intact through
44 retail purchase and use, is only disposable and is not refillable, and
45 is not intended to be opened by the consumer.

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

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

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

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

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

28 "Treasurer" means the State Treasurer.

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

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

35 "Vapor business" means a retail business where more than 50
36 percent of its retail sales are derived from electronic smoking
37 devices, related accessories, and vaping liquid.

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

45 "Wholesaler" means a person, wherever resident or located, other
46 than a distributor as defined herein, who: purchases vapor products
47 from any other person who purchases from the manufacturer and
48 who acquires vapor products solely for the purpose of bona fide

1 resale to vapor businesses or to other persons for the purposes of
2 resale only; or services retail outlets by the maintenance of an
3 established place of business for the purchase of vapor products
4 including, but not limited to, the maintenance of warehousing
5 facilities for the storage and distribution of vapor products.

6
7 3. (New section) a. After the effective date of
8 P.L. , c. (C.) (pending before the Legislature as this bill),
9 vapor products shall not be sold at retail in the State except by a
10 licensed vapor business.

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

19 c. If a vapor business sells or intends to sell vapor products at
20 two or more places of business, whether established or temporary,
21 or whether in the same building or not, a separate license shall be
22 required for each place of business. Each license, or certificate
23 thereof, and such other evidence of license shall be exhibited in the
24 place of business for which it is issued and in such manner as may
25 be prescribed by the director.

26 d. No license shall be issued to any person except upon the
27 payment of a \$50 fee. No license shall be assignable or transferable,
28 but in the case of death, bankruptcy, receivership, or incompetency
29 of the licensee, or if, for any other reason whatsoever, the business
30 of the licensee shall devolve upon another by operation of law, the
31 director may, in the director's discretion, extend said license for a
32 limited time to the executor, administrator, trustee, receiver, or
33 person upon whom the same has devolved.

34 e. The director shall require an applicant for a vapor business
35 license to include on the application the address of the place of
36 business where vapor products will be sold. If the place of business
37 is moved to a different address than that provided on the license
38 application, the licensee shall notify the director within 30 days of
39 the change of address.

40 f. The director may, upon notice and after hearing, suspend or
41 revoke a license issued under this section to any person who
42 violates any of the provisions of P.L. , c. (C.) (pending
43 before the Legislature as this bill), or who, after being issued a
44 license becomes disqualified for licensure pursuant to P.L. , c.
45 (C.) (pending before the Legislature as this bill) or of any rule
46 or regulation of the director made pursuant thereto or if the licensee
47 has ceased to act in the capacity for which the license was issued or
48 for other good cause. No person whose license has been suspended

1 or revoked shall sell any vapor product or permit any vapor product
2 to be sold during the period of such suspension or revocation on the
3 premises occupied by that person or upon other premises controlled
4 by that person or others, or in any other manner or form whatever.
5 No disciplinary proceeding or action shall be barred or abated by
6 the expiration, transfer, surrender, continuance, renewal, or
7 extension of a license issued under the provisions of
8 P.L. , c. (C.) (pending before the Legislature as this bill).

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

12
13 4. (New section) a. The director is authorized to administer
14 and enforce the provisions of P.L. , c. (C.) (pending before
15 the Legislature as this bill) and in accordance with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
17 1 et seq.), to adopt rules and regulations as the director deems
18 necessary.

19 b. Every vapor business shall keep complete and accurate
20 records of all sales. The kind and form of such records may be
21 prescribed by the director and all records shall be so kept as to be
22 adequate to enable the director to determine the tax required to be
23 collected. The director or any authorized assistant may, during
24 reasonable business hours and without prior notice, make or cause
25 to be made physical inventories and examinations of all vapor
26 products and records in the possession of a vapor business. All
27 such records shall be safely preserved for a period of four years in
28 such a manner to ensure their security and accessibility for
29 inspection by the director, supervisor, or any authorized assistant
30 engaged in the administration of P.L. , c. (C.) (pending
31 before the Legislature as this bill). The director may consent to the
32 destruction of any such records at any time within the four-year
33 period.

34 c. Notwithstanding any other provision of law to the contrary,
35 a person to whom a license is issued pursuant to section 3 of
36 P.L. , c. (C.) (pending before the Legislature as this bill)
37 shall, as a condition of the license, conspicuously post a legible sign
38 at the point of display of vapor products and at the point of sale.
39 The sign shall be at least six inches by three inches in bold letters at
40 least one-quarter inch high and shall read as follows:

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

44 Proof of age is required for purchase."

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

1 5. (New section) a. There is imposed on the sale or use of
2 non-cartridge vaping liquid sold within the State a tax at the rate of
3 10 percent of the listed retail sale price.

4 b. The tax imposed pursuant to this section shall be collected
5 by the seller.

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

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

13
14 6. (New section) a. Every vapor business required to collect
15 tax under section 5 of P.L. , c. (C.) (pending before the
16 Legislature as this bill) shall on or before the 20th day of each
17 month, make and file a return for the preceding month with the
18 director. The return shall show the total receipts from sales of
19 electronic smoking devices and non-cartridge vaping liquid, and the
20 amount of tax required to be collected and paid with respect to such
21 amount.

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

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

37
38 7. (New section) a. There is imposed a tax upon the sale, use,
39 or distribution of liquid nicotine cartridges within this State by a
40 distributor or wholesaler to a vapor business or consumer at the rate
41 of \$0.10 per fluid milliliter on the volume of the liquid nicotine as
42 listed by the manufacturer, and a proportionate rate on all fractional
43 parts of a fluid milliliter of volume of liquid nicotine as listed by
44 the manufacturer.

45 b. Unless a liquid nicotine cartridge has already been or will be
46 subject to the tax imposed in subsection a. of this section, if a
47 distributor or wholesaler uses the liquid nicotine cartridge within
48 the State, there is imposed upon the distributor or wholesaler a

1 compensating use tax of \$0.10 per fluid milliliter of the volume of
2 liquid nicotine as listed by the manufacturer, and a proportionate
3 rate on all fractional parts of a fluid milliliter of the volume of
4 liquid nicotine as listed by the manufacturer.

5 c. Unless a tax is due pursuant to subsection b. of this section,
6 if a distributor or wholesaler has not paid the tax imposed in
7 subsection a. of this section upon a sale that is subject to the tax
8 imposed in that subsection a., there is imposed upon the vapor
9 business or consumer chargeable for the sale a compensating use
10 tax of \$0.10 per fluid milliliter on the volume of the liquid nicotine
11 as listed by the manufacturer, and a proportionate rate on all
12 fractional parts of a fluid milliliter of the volume of liquid nicotine
13 as listed by the manufacturer, which shall be collected in the
14 manner provided in subsection d. of this section.

15 d. If a distributor or wholesaler fails to pay the tax imposed by
16 this section when required to pay the same, then in addition to all
17 other rights, obligations and remedies provided, the compensating
18 use tax imposed in this section shall be payable by the vapor
19 business or consumer directly to the director, and it shall be the
20 duty of the vapor business or consumer to file a return, on a form
21 prescribed by the director, with the director and to pay the tax to the
22 director within 20 days of the date the tax was required to be paid or
23 at other times as specified by the director.

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

26
27 8. (New section) Every distributor or wholesaler shall be liable
28 to pay the tax required pursuant to section 7 of
29 P.L. , c. (C.) (pending before the Legislature as this bill)
30 when it has sold or otherwise disposed of the liquid nicotine
31 cartridge to the vapor business or consumer. The vapor business or
32 consumer shall be given an invoice, receipt or other statement or
33 memorandum stating that the tax has been paid or will be paid by
34 the distributor or wholesaler.

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

39
40 9. (New section) a. Every distributor or wholesaler required to
41 pay the tax imposed by section 7 of P.L. , c. (C.) (pending
42 before the Legislature as this bill) shall be personally liable for such
43 tax.

44 b. If a distributor or wholesaler fails to pay the tax imposed by
45 section 7 of P.L. , c. (C.) (pending before the Legislature
46 as this bill) when required to pay the same, then in addition to all
47 other rights, obligations and remedies provided, the compensating
48 use tax imposed in subsection d. of section 7 of

1 P.L. , c. (C.) (pending before the Legislature as this bill)
2 shall be payable by the vapor business or consumer directly to the
3 director, and it shall be the duty of the vapor business or consumer
4 to file a return, on a form prescribed by the director, with the
5 director and to pay the tax to the director within 20 days of the date
6 the tax was required to be paid or at other times as specified by the
7 director.

8
9 10. (New section) Within 15 days from the effective date of
10 P.L. , c. (C.) (pending before the Legislature as this bill),
11 or in the case of distributors or wholesalers commencing business
12 or opening new places of business after that date, within three days
13 after the commencement or opening, every distributor or wholesaler
14 required to pay the taxes imposed by section 7 of
15 P.L. , c. (C.) (pending before the Legislature as this bill)
16 shall file with the director a certificate of registration in a form
17 prescribed by the director unless a certificate of authority has been
18 previously issued to any distributor or wholesaler. The director shall
19 issue, without charge, to each registrant a certificate of authority
20 requiring the registrant to pay the tax and a duplicate thereof for
21 each additional place of business of the registrant. Each certificate
22 or duplicate shall state the place of business to which it is
23 applicable. The certificate of authority shall be prominently
24 displayed in the place of business of the registrant. Certificates
25 shall be nonassignable and nontransferable and shall be surrendered
26 to the director immediately upon the registrant's ceasing to do
27 business at the place named.

28
29 11. (New section) Every distributor or wholesaler required to
30 pay a tax imposed by section 7 of P.L. , c. (C.) (pending
31 before the Legislature as this bill) shall keep records of the volume
32 of liquid nicotine contained in cartridges sold, and of the tax
33 payable thereon, in such form as the director may require. Records
34 shall include a true copy of each invoice, receipt, statement or
35 memorandum upon which the provisions of section 8 of P.L. , c.
36 (C.) (pending before the Legislature as this bill) require that
37 the tax paid be stated. Records shall be available for inspection and
38 examination at any time upon demand by the director or duly
39 authorized agent or employee and shall be preserved for a period of
40 three years, except that the director may consent to their destruction
41 within that period or may require that they be kept longer.

42
43 12. (New section) a. Every distributor or wholesaler required
44 to pay tax under section 7 of P.L. , c. (C.) (pending before
45 the Legislature as this bill) shall, on or before August 20, 2020, and
46 on or before the 20th day of each month thereafter, make and file a
47 return for the preceding month with the director. The return shall
48 show the total volume of liquid nicotine contained in cartridges sold

1 during the period and the amount of taxes required to be paid with
2 respect to such volume. The return shall also reflect any use tax
3 due.

4 b. The director may permit or require returns to be made
5 covering other periods and upon such dates as the director may
6 specify. In addition, the director may require payments of tax
7 liability at such intervals and based upon such classifications as the
8 director may designate. In prescribing other periods to be covered
9 by the return or intervals or classifications for payment of tax
10 liability, the director may take into account the dollar volume of tax
11 involved as well as the need for ensuring the prompt and orderly
12 collection of the taxes imposed.

13 c. The form of returns shall be prescribed by the director and
14 shall contain such information as the director may deem necessary
15 for the proper administration of P.L. , c. (C.) (pending
16 before the Legislature as this bill). The director may require
17 amended returns to be filed within 20 days after notice and to
18 contain the information specified in the notice.

19
20 13. (New section) Every distributor or wholesaler required to
21 file a return under P.L. , c. (C.) (pending before the
22 Legislature as this bill) shall, at the time of filing the return, pay to
23 the director the taxes imposed by section 7 of P.L. , c. (C.)
24 (pending before the Legislature as this bill). Taxes for the period
25 for which a return is required to be filed or for a lesser interval as
26 shall have been designated by the director, shall be due and payable
27 to the director on the date limited for the filing of the return for the
28 period, or on the date limited for such lesser interval as the director
29 has designated, without regard to whether a return is filed or
30 whether the return which is filed correctly shows the total volume
31 of liquid nicotine contained in cartridges that is taxable during the
32 period or the taxes due thereon. If the director deems it necessary
33 to protect the revenues to be obtained under section 7 of P.L. , c.
34 (C.) (pending before the Legislature as this bill), the director
35 may require a distributor or wholesaler required to pay the tax
36 imposed by section 7 of P.L. , c. (C.) (pending before the
37 Legislature as this bill) to file with the director a bond, issued by a
38 surety company authorized to transact business in this State as to
39 solvency and responsibility, in an amount as the director may fix, to
40 secure the payment of any tax or penalties or interest due or which
41 may become due from the distributor or wholesaler under section 7
42 of P.L. , c. (C.) (pending before the Legislature as this
43 bill). If the director determines that a distributor or wholesaler is to
44 file a bond, the director shall give notice to the distributor or
45 wholesaler to that effect specifying the amount of the bond
46 required. The distributor or wholesaler shall file the bond within
47 five days after the giving of notice unless within the five days the
48 distributor or wholesaler requests in writing a hearing before the

1 director at which the necessity, propriety and amount of the bond
2 shall be determined by the director. The determination shall be
3 final and shall be complied with within 15 days after the giving of
4 notice thereof. In lieu of bond, securities approved by the director
5 or cash in an amount as the director may prescribe, may be
6 deposited, which shall be kept in the custody of the director who
7 may at any time without notice to the depositor apply them to any
8 tax or interest or penalties due, and for that purpose the securities
9 may be sold by the director at public or private sale without notice
10 to the depositor thereof.

11

12 14. (New section) If a return required by P.L. , c. (C.)
13 (pending before the Legislature as this bill) is not filed, or if a
14 return when filed is incorrect or insufficient, the amount of tax due
15 shall be determined by the director from such information as may
16 be available. If necessary, the tax may be estimated on the basis of
17 external indices, such as purchases, location, scale of charges,
18 comparable charges, number of employees or other factors. Notice
19 of the determination shall be given to the distributor, wholesaler,
20 vapor business, or consumer liable for the payment of the tax. The
21 determination shall finally and irrevocably fix the tax unless the
22 wholesaler, distributor, vapor business, or consumer against whom
23 it is assessed, within 30 days after the notice date of the
24 determination, shall apply to the director for a hearing, or unless the
25 director on the director's motion shall redetermine the same. After
26 the hearing the director shall give notice of the determination to the
27 wholesaler, distributor, vapor business, or consumer against whom
28 the tax is assessed.

29

30 15. (New section) The taxes imposed by P.L. , c. (C.)
31 (pending before the Legislature as this bill) shall be governed in all
32 respects by the provisions of the State Tax Uniform Procedure Law,
33 R.S.54:48-1 et seq., except only to the extent that a specific
34 provision of P.L. , c. (C.) (pending before the Legislature
35 as this bill) may be in conflict therewith.

36

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

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

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

1 c. Delegate functions and powers to any officer or employee of
2 the division, and such of the director's powers as the director may
3 deem necessary to carry out efficiently the provisions of P.L. , c.
4 (C.) (pending before the Legislature as this bill), and the
5 person or persons to whom such power has been delegated shall
6 possess and may exercise all of the power and perform all of the
7 duties as delegated.

8 d. Require any distributor or wholesaler required to pay tax to
9 keep detailed records of all volumes of liquid nicotine on which
10 taxes are payable, and names and addresses of wholesalers,
11 distributors, vapor businesses, and consumers, and other facts
12 relevant in determining the amount of tax due and to furnish such
13 information upon request to the director.

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

16 f. Enter into agreements with other states and the District of
17 Columbia, providing for the reciprocal enforcement of similar tax
18 laws imposed by the states entering into such an agreement. The
19 agreement may empower the duly authorized officer of any
20 contracting state, which extends like authority to officers or
21 employees of this State, to sue for the collection of that state's taxes
22 in the courts of this State.

23
24 17. (New section) Any person failing to file a return or to pay
25 or pay over any tax imposed under P.L. , c. (C.) (pending
26 before the Legislature as this bill) to the director within the time
27 required by P.L. , c. (C.) (pending before the Legislature as
28 this bill) shall be subject to such penalties and interest as are
29 provided in the State Tax Uniform Procedure Law, R.S.54:48-
30 1 et seq. Unpaid penalties and interest may be determined,
31 assessed, collected and enforced in the same manner as the taxes
32 imposed by P.L. , c. (C.) (pending before the Legislature as
33 this bill).

34
35 18. (New section) a. Any person who engages in any business
36 or activity for which a license is required under the provisions of
37 P.L. , c. (C.) (pending before the Legislature as this bill),
38 without first having obtained a license to do so, or who, having had
39 such a license, shall continue to engage in or conduct such business
40 after any such license shall have been revoked, or during a
41 suspension thereof, shall be liable to a penalty of not more than
42 \$1,000, which penalty shall be sued for, and shall be recoverable in
43 the name of the director; and each day that any such business is so
44 engaged in or conducted shall be deemed a separate offense.

45 b. The Superior Court and every municipal court within their
46 respective jurisdictions, and with respect to offenses occurring
47 within the territorial jurisdiction of the court, shall have jurisdiction
48 over proceedings to enforce and collect the penalty. The

1 proceedings shall be brought by and in the name of the director.
2 They shall be summary and in accordance with the "Penalty
3 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
4 Process shall be either in the nature of a summons or warrant.

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

10 c. In case a person shall, after conviction of any violation of
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 be again convicted of violating the same provision thereof, the
13 person may be liable to a penalty for such further violation, in
14 double the maximum penalty which might have been imposed on
15 the first conviction, to be sued for and recovered in the manner
16 above set forth. In case any defendant against whom judgment has
17 been rendered for a money penalty under this subsection, shall fail
18 or neglect to pay forthwith the amount of said penalty, the court
19 shall commit him to jail for such number of days not exceeding 180
20 days, as the court shall determine.

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

25 e. The costs recoverable in any such proceeding shall be
26 recovered by the director in the event of judgment in the director's
27 favor. If the judgment be for the defendant it shall be without costs
28 against the director. All expenses incident to the recovery of any
29 penalty pursuant to the provisions of this section shall be paid for as
30 any other expense incident to the administration of
31 P.L. , c. (C.) (pending before the Legislature as this bill).

32

33 19. (New section) a. The director shall establish a database
34 that may be used to track all vapor products sold in New Jersey.
35 Information in the database shall be made available upon request to
36 the Division of Taxation in the Department of the Treasury, the
37 Department of Health, and the Division of Consumer Affairs in the
38 Department of Law and Public Safety. At a minimum, the tracking
39 database shall enable entities having regulatory authority over the
40 sale of vapor products in the State to use the tracking feature
41 developed by the director pursuant to subsection b. of this section to
42 verify that the product meets the requirements to be sold in New
43 Jersey. Manufacturers of vapor products shall be required to upload
44 to the database product information for each vapor product intended
45 for sale in New Jersey, which product information shall, at a
46 minimum, identify the product manufacturer, include the batch, lot,
47 and serial numbers for the product, and include any other
48 information as the director may specify by regulation.

1 Manufacturers shall additionally report to the database, and update
2 as needed, any consumer safety alerts for the product.

3 b. The director shall develop a standardized tracking feature to
4 be included on all vapor products sold in the State. The tracking
5 feature may be a stamp issued by the division, a barcode imprinted
6 on the vapor product by the manufacturer, or any other feature the
7 director deems appropriate, provided that the feature is scannable
8 and, when scanned, provides access to the product information for
9 the vapor product included in the tracking database established
10 pursuant to subsection a. of this section and verify that the vapor
11 product meets the requirements to be sold in New Jersey.

12 c. Commencing 60 days after the date the director develops the
13 standardized tracking feature as provided in subsection b. of this
14 section, manufacturers shall be required to include the tracking
15 feature on each vapor product made available for sale in New
16 Jersey, and no vapor product may be sold or offered for sale in the
17 State, including to a wholesaler or distributor, unless the product
18 includes the tracking feature.

19

20 20. (New section) a. All vapor products possessed for retail
21 sale by a person that is not licensed as a vapor business pursuant to
22 section 3 of P.L. , c. (C.) (pending before the Legislature
23 as this bill), are declared to be prima facie contraband goods and
24 may be seized by the director, the director's agents or employees, or
25 by any peace officer of this State, when so ordered by the director,
26 without a warrant.

27 b. The director may direct the return of any unlawfully
28 possessed vapor product upon reasonable belief that the owner has
29 not willfully or intentionally evaded any licensing requirement
30 imposed by P.L. , c. (C.) (pending before the Legislature as
31 this bill).

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

34 d. The seizure of any unlawfully possessed vapor product shall
35 not relieve any person from a fine, imprisonment or other penalty
36 for violation of any of the provisions of P.L. , c. (C.)
37 (pending before the Legislature as this bill). The director, the
38 director's agents, employees, and any peace officer of this State,
39 when directed so to do, shall not in any way be responsible in any
40 court for the seizure or the confiscation of any unlawfully possessed
41 vapor product.

42

43 21. (New section) a. In addition to the license required by
44 section 3 of P.L. , c. (C.) (pending before the Legislature
45 as this bill), a municipality may adopt an ordinance concerning the
46 licensure and regulation of a vapor business.

47 b. Nothing in P.L. , c. (C.) (pending before the
48 Legislature as this bill) shall be construed to preempt the provisions

1 of any municipal ordinance concerning the licensure and regulation
2 of a vapor business that is in effect on the effective date of
3 P.L. , c. (C.) (pending before the Legislature as this bill) or
4 that is enacted subsequent to that effective date.

5
6 22. N.J.S.2C:64-1 is amended to read as follows;

7 2C:64-1 a. Any interest in the following shall be subject to
8 forfeiture and no property right shall exist in them:

9 (1) Controlled dangerous substances, firearms which are
10 unlawfully possessed, carried, acquired or used, illegally possessed
11 gambling devices, untaxed or otherwise contraband cigarettes or
12 tobacco products, unlawfully possessed **【container e-liquid】** vapor
13 products, untaxed special fuel, unlawful sound recordings and
14 audiovisual works and items bearing a counterfeit mark. These
15 shall be designated prima facie contraband.

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

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

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

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

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

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

40 c. For the purposes of this section:

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

43 "Unlawful sound recordings and audiovisual works" means
44 sound recordings and audiovisual works as those terms are defined
45 in N.J.S.2C:21-21 which were produced in violation of
46 N.J.S.2C:21-21.

1 "Unlawfully possessed **【container e-liquid】** vapor product"
2 means **【container e-liquid】** an electronic smoking device, liquid
3 nicotine cartridge, or non-cartridge vaping liquid, as those terms are
4 defined in section 2 of **【P.L.1990, c.39 (C.54:40B-2)】** P.L. , c.
5 (C.) (pending before the Legislature as this bill), that is
6 possessed for retail sale by a person that is not licensed as a vapor
7 business pursuant to section **【4 of P.L.2019, c.147 (C.54:40B-3.3)】**
8 3 of P.L. , c. (C.) (pending before the Legislature as this
9 bill).

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

16
17 23. Section 2 of P.L.1995, c.320 (C.26:3A2-20.1) is amended
18 to read as follows:

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

38 b. The Department of the Treasury shall provide the
39 commissioner with information about retail tobacco dealer licensees
40 and vapor business licenses necessary to carry out the purpose of
41 this section.

42 (cf: P.L.2017, c.118, s.5)

43
44 24. Section 1 of P.L.1990, c.39 (C.54:40B-1) is amended to
45 read as follows:

1 1. Sections 1 through 14 of P.L.1990, c.39 (C.54:40B-1 et seq.)
2 shall be known and may be cited as the "Tobacco **【and Vapor】**
3 Products Tax Act."
4 (cf: P.L.2019, c.147, s.1)
5

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

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

10 "Consumer" means a person except a distributor, manufacturer,
11 or wholesaler who acquires a tobacco product for consumption,
12 storage, or use in this State;

13 **【**"Container e-liquid" means a container of liquid nicotine or
14 other liquid where the liquid is marketed, sold, or intended for use
15 in an electronic smoking device, but does not include a prefilled
16 cartridge or other container where the cartridge or container is
17 marketed, sold, or intended for use as, or as a part of, an electronic
18 smoking device;**】**

19 "Director" means the Director of the Division of Taxation in the
20 Department of the Treasury;

21 "Distributor" means:

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

25 a person who makes or manufactures tobacco products in this
26 State for sale in the State,

27 a person engaged in the business of selling tobacco products
28 without this State who ships or transports tobacco products to a
29 person in this State to be sold to a retail dealer, or

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

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

35 **【**"Electronic smoking device" means a nonlighted,
36 noncombustible device that may be used to simulate smoking and
37 that employs a mechanical heating element, battery, or circuit,
38 regardless of shape or size, to produce aerosolized or vaporized
39 nicotine or other substance for inhalation into the body of a person,
40 including but not limited to a device that is manufactured,
41 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-
42 hookah, vape pen, or any other similar product with any other
43 product name or descriptor;

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

46 "Manufacturer" means a person, wherever resident or located,
47 who manufactures or produces, or causes to be manufactured or

1 produced, a tobacco product and sells, uses, stores, or distributes
2 the product regardless of whether it is intended for sale, use, or
3 distribution within or without this State;

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

7 "Person" means an individual, firm, corporation, copartnership,
8 joint venture, association, receiver, trustee, guardian, executor,
9 administrator, or any other person acting in a fiduciary capacity, or
10 an estate, trust, or group or combination acting as a unit, the State
11 Government and any political subdivision thereof, and the plural as
12 well as the singular, unless the intention to give a more limited
13 meaning is disclosed by the context;

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

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

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

24 "Tobacco product" means any product containing **■**, made, or
25 derived from **■** any tobacco **■**, nicotine, or other chemicals or
26 substances **■** for consumption by a person, including, but not limited
27 to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco,
28 smoking tobacco and their substitutes, and dry and moist snuff **■**,
29 and liquid nicotine **■**, but does not include cigarette as defined in
30 section 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1
31 et seq.) or any vapor product as defined in section 2 of the "Vapor
32 Products Tax Act," P.L. , c. (C.) (pending before the
33 Legislature as this bill);

34 "Treasurer" means the State Treasurer;

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

37 **■**"Vapor business" means a retail business where more than 50
38 percent of its retail sales are derived from electronic smoking
39 devices, related accessories, and liquid nicotine, but does not
40 include a retail business that does not sell container e-liquid;**■**

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

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

45 a. purchases tobacco products from any other person who
46 purchases from the manufacturer and who acquires tobacco

1 products solely for the purpose of bona fide resale to retail dealers
2 or to other persons for the purposes of resale only; or

3 b. services retail outlets by the maintenance of an established
4 place of business for the purchase of tobacco products including,
5 but not limited to, the maintenance of warehousing facilities for the
6 storage and distribution of tobacco products.

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

8
9 26. Section 3 of P.L.1990, c.39 (C.54:40B-3) is amended to
10 read as follows:

11 3. a. There is imposed a tax of 30% upon the wholesale price
12 upon the sale, use, or distribution of a tobacco product within this
13 State, except that if the product is **1**:

14 (1)**1** moist snuff, the tax shall be imposed as provided in section
15 3 of P.L.2006, c.37 (C.54:40B-3.1) **1**; or

16 (2) liquid nicotine, the tax shall be imposed as provided in
17 section 5 of P.L.2018, c.50 (C.54:40B-3.2)**1**.

18 b. Unless a tobacco product has already been or will be subject
19 to the wholesale sales tax imposed in subsection a. of this section, if
20 a distributor or wholesaler uses a tobacco product within this State,
21 there is imposed upon the distributor or wholesaler a compensating
22 use tax of 30% measured by the sales price of a similar tobacco
23 product to a distributor, except that if the product is moist snuff **1**or
24 liquid nicotine**1**, the tax shall be imposed as provided in section 3 of
25 P.L.2006, c.37 (C.54:40B-3.1) **1**or section 5 of P.L.2018, c.50
26 (C.54:40B-3.2), respectively**1**.

27 c. Unless a wholesale use tax is due pursuant to subsection b.
28 of this section, if a distributor or wholesaler has not paid the
29 wholesale sales tax imposed in subsection a. of this section upon a
30 sale that is subject to the wholesale sales tax imposed in that
31 subsection a., there is imposed upon the retail dealer or consumer
32 chargeable for the sale a compensating use tax of 30% of the price
33 paid or charged for the tobacco product, except that if the product is
34 moist snuff **1**or liquid nicotine**1**, the tax shall be imposed as
35 provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1) **1**or section
36 5 of P.L.2018, c.50 (C.54:40B-3.2), respectively**1**, which shall be
37 collected in the manner provided in subsection b. of section 5 of
38 P.L.1990, c.39 (C.54:40B-5).

39 (cf: P.L.2018, c.50, s.4)

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

44
45 28. This act shall take effect the first day of the fifth month
46 next following the date of enactment.

STATEMENT

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

In particular, this bill revises the requirements for the licensure and operation of vapor businesses and establishes a tracking system for vapor products made available for sale in New Jersey.

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

Current law requires any entity that sells “container e-liquid” to be licensed as a vapor business. To be licensed, at least 50 percent of the entity’s retail sales must be derived from electronic smoking devices, related accessories, and liquid nicotine. Container e-liquid is defined to mean any liquid nicotine that is not sold in a sealed cartridge or self-contained disposable electronic smoking device.

The bill revises these licensure requirements to require licensure as a condition of selling electronic smoking devices and liquid nicotine cartridges as well. Only businesses that derive 50 percent of retail sales from vapor products may be licensed as a vapor business. The bill changes the term “container e-liquid” to “non-cartridge vaping liquid” and adds a new definition of “liquid nicotine cartridge” to provide that the term means any sealed container or self-contained disposable electronic smoking device that is not refillable and is not intended to be opened by the consumer, which contains a vaping liquid that contains nicotine.

The bill allows municipalities to assess an additional permit fee on vapor businesses, in addition to the municipalities’ current authority to establish ordinances concerning vapor businesses.

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

Current law requires cigarette retail dealers to post signs advising that underage tobacco sales are prohibited, and that violators are subject to a fine of up to \$1,000. The bill makes this signage requirement applicable to vapor businesses as well and updates the statutory language to reflect the increased penalties for selling tobacco and vapor products to persons under age 21 as will be established by companion legislation, which is currently pending as Senate Bill No. 4224.

The Director of the Division of Taxation in the Department of the Treasury will be required to establish a database that may be

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

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

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

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