

House Copy

OLS Copy
For Official House Use

Public Copy

BILL NO. _____
Date of Intro. _____
Ref. _____

NOTE TO SPONSOR	Notify OLS if you require changes in this document. A revised copy for introduction will be prepared on the legislative computer system. Handwritten changes will not appear in the printed bill.
-----------------	---

D

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

Revises licensure and operational requirements for vapor businesses.

R

PRIME Sponsor _____ / _____

<u>CO-Sponsor</u>	<u>District</u>	<u>CO-Sponsor</u>	<u>District</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

A

F

T

Same as _____ 16/17 Same as _____ 18/19

Suggested allocation: ss.1-21: (New chapter) C.54:40C-1 et seq.;
s.27: Repealer to 2019/266

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

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

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

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

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

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

"Distributor" means:

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

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

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

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

"Electronic smoking device" 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. Electronic smoking device includes any component, part, or accessory of the device. "Electronic smoking device" does not include any device that is a liquid nicotine cartridge as defined in this section or 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. ss.301 et seq.

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

"Manufacturer" means a person, wherever resident or located, who manufactures or produces, or causes to be manufactured or produced, a vapor product and sells, uses, stores, or distributes the product

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.

D

R

A

F

T

regardless of whether it is intended for sale, use, or distribution within or without this State.

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

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

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

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

"Treasurer" means the State Treasurer.

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

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

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

“Vapor product” means any electronic smoking device, any component part thereof, and any product designed for use with an electronic smoking device, including, but not limited to, vaping liquid. "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. ss.301 et seq.

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

D

R

A

F

T

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

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

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

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

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

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

D

R

A

F

T

issued under the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

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

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

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

Proof of age is required for purchase."

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

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

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

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

D

R

A

F

T

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

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

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

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

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

b. Unless the liquid nicotine cartridge has already been or will be subject to the tax imposed in subsection a. of this section, if a distributor or wholesaler uses the liquid nicotine cartridge within the State, there is imposed upon the distributor or wholesaler a compensating use tax of \$0.10 per fluid milliliter of the volume of liquid nicotine as listed by the manufacturer, and a proportionate rate on all fractional parts of a fluid milliliter of the volume of liquid nicotine as listed by the manufacturer.

c. Unless a tax is due pursuant to subsection b. of this section, if a distributor or wholesaler has not paid the tax imposed in subsection a. of this section upon a sale that is subject to the tax imposed in that subsection a., there is imposed upon the vapor business or consumer chargeable for the sale a compensating use tax of \$0.10 per fluid

D

R

A

F

T

milliliter on the volume of the liquid nicotine as listed by the manufacturer, and a proportionate rate on all fractional parts of a fluid milliliter of the volume of liquid nicotine as listed by the manufacturer, which shall be collected in the manner provided in subsection d. of this section.

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

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

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

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

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

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

10. (New section) Within 15 days from the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), or in the case of distributors or wholesalers commencing business or

D

R

A

F

T

opening new places of business after that date, within three days after the commencement or opening, every distributor or wholesaler required to pay the taxes imposed by section 7 of P.L. , c. (C.) (pending before the Legislature as this bill) shall file with the director a certificate of registration in a form prescribed by the director unless a certificate of authority has been previously issued to any distributor or wholesaler. The director shall issue, without charge, to each registrant a certificate of authority requiring the registrant to pay the tax and a duplicate thereof for each additional place of business of the registrant. Each certificate or duplicate shall state the place of business to which it is applicable. The certificate of authority shall be prominently displayed in the place of business of the registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered to the director immediately upon the registrant's ceasing to do business at the place named.

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

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

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

c. The form of returns shall be prescribed by the director and shall contain such information as the director may deem necessary

D

R

A

F

T

for the proper administration of P.L. , c. (C.) (pending before the Legislature as this bill). The director may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

13. (New section) Every distributor or wholesaler required to file a return under P.L. , c. (C.) (pending before the Legislature as this bill) shall, at the time of filing the return, pay to the director the taxes imposed by section 7 of P.L. , c. (C.) (pending before the Legislature as this bill). Taxes for the period for which a return is required to be filed or for a lesser interval as shall have been designated by the director, shall be due and payable to the director on the date limited for the filing of the return for the period, or on the date limited for such lesser interval as the director has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the total volume of liquid nicotine contained in cartridges that is taxable during the period or the taxes due thereon. If the director deems it necessary to protect the revenues to be obtained under section 7 of P.L. , c. (C.) (pending before the Legislature as this bill), the director may require a distributor or wholesaler required to pay the tax imposed by section 7 of P.L. , c. (C.) (pending before the Legislature as this bill) to file with the director a bond, issued by a surety company authorized to transact business in this State as to solvency and responsibility, in an amount as the director may fix, to secure the payment of any tax or penalties or interest due or which may become due from the distributor or wholesaler under section 7 of P.L. , c. (C.) (pending before the Legislature as this bill). If the director determines that a distributor or wholesaler is to file a bond, the director shall give notice to the distributor or wholesaler to that effect specifying the amount of the bond required. The distributor or wholesaler shall file the bond within five days after the giving of notice unless within the five days the distributor or wholesaler requests in writing a hearing before the director at which the necessity, propriety and amount of the bond shall be determined by the director. The determination shall be final and shall be complied with within 15 days after the giving of notice thereof. In lieu of bond, securities approved by the director or cash in an amount as the director may prescribe, may be deposited, which shall be kept in the custody of the director who may at any time without notice to the depositor apply them to any tax or interest or penalties due, and for that purpose the securities may be sold by the director at public or private sale without notice to the depositor thereof.

14. (New section) If a return required by P.L. , c. (C.) (pending before the Legislature as this bill) is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the director from such information as may be available. If necessary, the tax may be estimated on the basis of

D

R

A

F

T

external indices, such as purchases, location, scale of charges, comparable charges, number of employees or other factors. Notice of the determination shall be given to the distributor, wholesaler, vapor business, or consumer liable for the payment of the tax. The determination shall finally and irrevocably fix the tax unless the wholesaler, distributor, vapor business, or consumer against whom it is assessed, within 30 days after the notice date of the determination, shall apply to the director for a hearing, or unless the director on the director's motion shall redetermine the same. After the hearing the director shall give notice of the determination to the wholesaler, distributor, vapor business, or consumer against whom the tax is assessed.

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

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

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

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

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

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

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

f. Enter into agreements with other states and the District of Columbia, providing for the reciprocal enforcement of similar tax laws imposed by the states entering into such an agreement. The

D

R

A

F

T

agreement may empower the duly authorized officer of any contracting state, which extends like authority to officers or employees of this State, to sue for the collection of that state's taxes in the courts of this State.

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

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

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

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

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

D

R

A

F

T

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

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

19. (New section) a. The director shall establish a database that may be used to track all vapor products sold in New Jersey. Information in the database shall be made available upon request to the Division of Taxation in the Department of the Treasury, the Department of Health, and the Division of Consumer Affairs in the Department of Law and Public Safety. At a minimum, the tracking database shall enable entities having regulatory authority over the sale of vapor products in the State to use the tracking feature developed by the director pursuant to subsection b. of this section to verify that the product meets the requirements to be sold in New Jersey. Manufacturers of vapor products shall be required to upload to the database product information for each vapor product intended for sale in New Jersey, which product information shall, at a minimum, identify the product manufacturer, include the batch, lot, and serial numbers for the product, and include any other information as the director may specify by regulation. Manufacturers shall additionally report to the database, and update as needed, any consumer safety alerts for the product.

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

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

20. (New section) a. All electronic vapor products possessed for retail sale by a person that is not licensed as a vapor business pursuant

D

R

A

F

T

to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), are declared to be prima facie contraband goods and may be seized by the director, the director's agents or employees, or by any peace officer of this State, when so ordered by the director, without a warrant.

b. The director may direct the return of any unlawfully possessed electronic smoking device or vaping liquid upon reasonable belief that the owner has not willfully or intentionally evaded any licensing requirement imposed by P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

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

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

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

a. Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

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

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

(3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money

D

R

A

F

T

which is earmarked for use as financing for an illegal gambling enterprise.

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

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

(1) The article is prima facie contraband; or

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

c. For the purposes of this section:

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

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

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

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

(cf: P.L.2019, c.147, s.10)

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

2. a. The Commissioner of Health is authorized to enforce the provisions of section 1 of P.L.2000, c.87 (C.2A:170-51.4) with respect to the prohibition on the sale and commercial distribution of tobacco and vapor products to persons under 21 years of age. The commissioner may delegate the enforcement authority provided in this section to local health agencies, subject to the availability of sufficient funding. The commissioner shall report quarterly to the Legislature on the enforcement program's progress, use of grants

D

R

A

F

T

awarded pursuant to section 7 of P.L.1966, c.36 (C.26:2F-7), results of enforcement efforts and other matters the commissioner deems appropriate. The commissioner shall establish standards for compliance inspections, including undercover compliance purchases, conducted by the Department of Health and local health agencies, which standards shall include annual reporting by any entity conducting a compliance inspection concerning the number of inspections conducted, the number of violations cited, the amounts of any penalties collected, and any adverse actions taken against a retailer's tobacco retail dealer license or vapor business license.

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

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

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

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

(cf: P.L.2019, c.147, s.1)

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

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

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

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

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

"Distributor" means:

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

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

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

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

D

R

A

F

T

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

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

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

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

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

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

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

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

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

"Tobacco product" means any product containing 【, made, or derived from】 any tobacco 【, nicotine, or other chemicals or substances】 for consumption by a person, including, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and their substitutes, and dry and moist snuff 【, and liquid nicotine】, but does not include cigarette as defined in section 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) or any vapor product as defined in section 2 of the "Vapor Products

D

R

A

F

T

Tax Act,” P.L. , c. (C.) (pending before the Legislature as this bill);

"Treasurer" means the State Treasurer;

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

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

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

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

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

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

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

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

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

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

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

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

c. Unless a wholesale use tax is due pursuant to subsection b. of this section, if a distributor or wholesaler has not paid the wholesale sales tax imposed in subsection a. of this section upon a sale that is subject to the wholesale sales tax imposed in that subsection a., there is imposed upon the retail dealer or consumer chargeable for the sale a compensating use tax of 30% of the price paid or charged for the tobacco product, except that if the product is moist snuff 【or liquid

D

R

A

F

T

nicotine】, the tax shall be imposed as provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1) 【or section 5 of P.L.2018, c.50 (C.54:40B-3.2), respectively】, which shall be collected in the manner provided in subsection b. of section 5 of P.L.1990, c.39 (C.54:40B-5).

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

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

28. This act shall take effect the first day of the fifth month 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.

D

R

A

F

T

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.XXXX.

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

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

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

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

Revises licensure and operational requirements for vapor businesses.

D

R

A

F

T