Sponsored by Assemblyman CONAWAY and Assemblywomen VAINIERI HUTTLE, LOPEZ, and PINKIN

AN ACT concerning tobacco and vapor products, amending various parts of the statutory law, and supplementing Title 2A of the New Jersey Statutes, P.L.2003, c.280 (C.45:14-40 et seq.), and P.L.1990, c.39 (C.54:40B-1 et seq.).

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

1. Section 3 of P.L.1995, c.305 (C.2A:170-51.1) is amended to read as follows:

3. A person 21 years of age or older who purchases a tobacco product, including an electronic smoking device or vapor product, for a person who is under 21 years of age is a petty disorderly person.

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

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

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

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

(2) any electronic smoking device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo,

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.
or pipe, or any cartridge or other component of the device or related product any tobacco product.

Unless a retailer restricts access to the retailer’s establishment to persons who are 21 years of age and older, all tobacco products shall be maintained in a manner that restricts direct public access to the products, which manner may include maintaining the products in a locked cabinet, behind the sales counter, or in an area of the establishment where access is restricted to employees only. Commencing 90 days after the effective date of P.L. , c. (pending before the Legislature as this bill), no tobacco product may be sold or distributed unless the person conducting the sale or distribution verifies the purchaser’s age using an electronic age verification system.

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

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

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

(3) that the sale or distribution of the tobacco product or electronic smoking device was made in good faith, relying upon the production and, commencing 90 days after the effective date of P.L. , c. (pending before the Legislature as this bill), verification of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the reasonable belief that the purchaser or recipient was of legal age to make the purchase or receive the sample.

c. A person who retailer that violates the provisions of subsection a. of this section , including an employee of a retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a tobacco product to a person under 21 years of age shall be liable to a civil penalty of not less than $250 $500 for the first violation, not less than $500
$1,000 for the second violation, and [$1,000] not less than $2,000 for the third and each subsequent violation. The civil penalty shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. An official authorized by statute or ordinance to enforce the State or local health codes or a law enforcement officer having enforcement authority in that municipality may issue a summons for a violation of the provisions of subsection a. of this section, and may serve and execute all process with respect to the enforcement of this section consistent with the Rules of Court. A penalty recovered under the provisions of this subsection shall be recovered by and in the name of the State by the local health agency. The penalty shall be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

d. In addition to the provisions of subsection c. of this section, [upon the recommendation of the municipality, following a hearing by the municipality,] the Division of Taxation in the Department of the Treasury [may]:

(1) shall, upon a third and each subsequent violation of the provisions of subsection a. of this section, following a hearing by the municipality, suspend [or, after a second or subsequent violation of the provisions of subsection a. of this section, revoke], for a period of not less than three years, the license issued under section 202 of P.L.1948, c.65 (C.54:40A-4) of a retail dealer or the license issued under section 4 of P.L.2019, c.147 (C.54:40B-3.3) of a vapor business, as applicable; and

(2) notwithstanding the provisions of paragraph (1) of this subsection, upon a fourth or subsequent violation of the provisions of subsection a. of this section, may, upon recommendation by the municipality and following a hearing by the municipality, revoke the license issued under section 202 of P.L.1948, c.65 (C.54:40A-4) of a retail dealer or the license issued under section 4 of P.L.2019, c.147 (C.54:40B-3.3) of a vapor business, as applicable.

The licensee shall additionally be subject to administrative charges, based on a schedule issued by the Director of the Division of Taxation [which may provide for a monetary penalty in lieu of a suspension].

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

f. The provisions of this section shall not apply to any medical cannabis, medical cannabis product, paraphernalia, or related supplies dispensed to or on behalf of a registered qualifying patient pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:61-1 et al.).

g. As used in this section:
“Tobacco product” means: any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, or snus; any vapor product; and any component, part, or accessory of a product containing, made of, or derived from tobacco or nicotine or a vapor product, regardless of whether the component, part, or accessory contains tobacco or nicotine. “Tobacco product” includes, but is not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. “Tobacco 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.

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

(cf: P.L.2017, c.118, s.2)

3. Section 1 of P.L.2015, c.294 (C.2A:170-51.9) is amended to read as follows:

1. a. No [person] retailer, either directly or indirectly by an agent or employee, or by a vending machine owned by the [person] retailer or located in the [person's] retailer's establishment, shall sell, offer for sale, give, furnish, or distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, to any other person [ ] , liquid nicotine in a liquid nicotine container, which is intended for use in a vapor product.]

   (1) any vapor product, unless the product includes any tracking feature required by, and is included in any database developed and maintained pursuant to, the provisions of section 15 of P.L. , c. (C. ) (pending before the Legislature as this bill);

   (2) vaping liquid with a nicotine content of more than two percent;

   (3) container e-liquid unless the [ ] container e-liquid is sold, offered for sale, given, furnished, or distributed for commercial purpose in a child-resistant container; or

   (4) vaping liquid that has been mixed with any other substance by any entity other than the manufacturer of the vaping liquid.
As used in this section:

(1) "Child-resistant container" means a container which is designed and constructed in a manner that meets the federal effectiveness specifications set forth in 16 C.F.R. 1700.15 and the special packaging testing requirements set forth in 16 CFR 1700.20, so that it is significantly difficult for a child five years of age or younger to open the package or otherwise risk exposure to liquid nicotine.

(2) "Liquid nicotine" means any solution containing nicotine which is designed or sold for use with an electronic smoking device.

(3) "Liquid nicotine container" means a bottle or other container of a liquid, wax, gel, or other substance containing nicotine, where the liquid or other contained substance is sold, marketed, or intended for use in a vapor product. "Liquid nicotine container" does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in a vapor product, provided that such cartridge 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.

(4) "Vapor product" means any non-combustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to produce vapor from nicotine in a solution or any form. "Vapor product" includes, but is not limited to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with, or in, any such device. "Vapor product" does not include any product that is approved, and that is regulated as a prescription drug delivery service, by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

b. A person who violatesthe provisions of subsection a. of this section shall be liable to a civil penalty of not less than $250 for the first violation, not less than $500 for the second violation, and not less than $1,000 for the third and each subsequent violation. The civil penalty shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. An official authorized by statute or ordinance to enforce the State or local health codes, or a law enforcement officer having enforcement authority in that municipality, may issue a summons for a violation of the provisions of subsection a. of this section, and may serve and execute all process with respect to the enforcement of this section.
consistent with the Rules of Court. A penalty recovered under the provisions of this subsection shall be recovered by and in the name of the State by the local health agency. The penalty shall be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

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

(1) shall, upon a third and each subsequent violation of the provisions of subsection a. of this section, following a hearing by the municipality, suspend or, after a second or subsequent violation of the provisions of subsection a. of this section, revoke the license issued under section 202 of P.L.1948, c.65 (C.54:40A-4) of a vapor business; and

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

The licensee shall additionally be subject to administrative charges, based on a schedule issued by the Director of the Division of Taxation, which may provide for a monetary penalty in lieu of a suspension.

d. The provisions of this section shall not apply to any medical cannabis, medical cannabis product, paraphernalia, or related supplies dispensed to or on behalf of a registered qualifying patient pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.).

e. As used in this section:

“Child-resistant container” means a container which is designed and constructed in a manner that meets the federal effectiveness specifications set forth in 16 C.F.R. 1700.15 and the special packaging testing requirements set forth in 16 CFR 1700.20, so that it is significantly difficult for a child five years of age or younger to open the package or otherwise risk exposure to vaping liquid.

“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.

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

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

(cf: P.L.2015, c.294, s.1)

4. Section 3 of P.L.1999, c.90 (C.2C:33-13.1) is amended to read as follows:

3. a. A [person who] retailer that sells or gives to a person under 21 years of age any [cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, or any electronic smoking device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any cartridge or other component of the device or related product, including an employee of a retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a] tobacco product [or electronic smoking device to a person under 21 years of age.] shall be punished by a fine as provided for a [petty] disorderly persons offense. A [person who] retailer that has been previously punished under this section and [who] that commits another offense under it may be [punishable] punished by a fine of twice that provided for a [petty] disorderly persons offense.

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

(1) that the purchaser or recipient of the tobacco product [or electronic smoking device] falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, or a photographic identification card issued by a county clerk, that the purchaser or recipient was of legal age to purchase or receive the tobacco product [or electronic smoking device] and, commencing 90 days after the effective date of P.L. , c.
(pending before the Legislature as this bill), the person making the sale or distribution verifies the purchaser’s age using an electronic age verification system:

(2) that the appearance of the purchaser or recipient of the tobacco product [or electronic smoking device] was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to purchase or receive the tobacco product [or electronic smoking device]; and

(3) that the sale or distribution of the tobacco product [or electronic smoking device] was made in good faith, relying upon the production and, commencing 90 days after the effective date of P.L. , c. (pending before the Legislature as this bill), verification of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the reasonable belief that the purchaser or recipient was of legal age to purchase or receive the tobacco product [or electronic smoking device].

c. A penalty imposed pursuant to this section shall be in addition to any penalty that may be imposed pursuant to section 1 of P.L.2000, c.87 (C.2A:170-51.4).

d. The provisions of this section shall not apply to any medical cannabis, medical cannabis product, paraphernalia, or related supplies dispensed or sold to or on behalf of a registered qualifying patient pursuant to the provisions of the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.).

e. As used in this section:

“Tobacco product” means: any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, or snus; any vapor product; and any component, part, or accessory of a product containing, made of, or derived from tobacco or nicotine or a vapor product, regardless of whether the component, part, or accessory contains tobacco or nicotine. “Tobacco product” includes, but is not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. “Tobacco 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.

“Vapor product” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. “Vapor product” includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, regardless of whether the substance contains nicotine. “Vapor
product” does not include any drug, device, or combination product approved by the federal Food and Drug Administration pursuant to the “Federal Food, Drug, and Cosmetic Act,” 21 U.S.C. ss.301 et seq. (cf: P.L.2017, c.118, s.3)

5. Section 7 of P.L.1966, c.36 (C.26:2F-7) is amended to read as follows:

7. (a) There is hereby established a special projects and development fund which shall consist of all funds appropriated or otherwise made available for the purposes set forth in this section. The commissioner, with the approval of the Public Health Council, may make grants from the special projects and development fund to local health agencies, to hospitals, and to voluntary health agencies to provide State health assistance for new health services and for special health projects in order to stimulate continued development of health services and to assure the citizens of New Jersey the benefits of the most advanced health protection techniques.

(b) Except as provided in subsection (c) of this section, grants from the special projects and development fund for specific purposes shall be made on an annual basis for a period not in excess of 5 years and such grants shall be in diminishing amounts during this period. The commissioner shall determine the conditions applicable to each such grant including the extent of local financial participation to be required. Grants from the special projects and development fund to voluntary health agencies shall not exceed 40% of said fund.

(c) (1) Grants from the special projects and development fund shall be made on an annual basis to local health agencies for local enforcement efforts concerning the sale and commercial distribution of tobacco and vapor products to persons under the age of 21 years, in an amount determined by the commissioner. The grants shall be distributed based on the number of cigarette retail dealer, vapor business, and cigarette vending machine licenses issued within a local health agency’s jurisdictional authority in order to ensure Statewide coverage and Statewide consistency of enforcement efforts; except that the commissioner may designate up to 5% of available funds, annually, for incentive grants to local health agencies to enhance enforcement efforts.

Each grant recipient shall report quarterly to the commissioner on the number of compliance check inspections it has completed and the results of those compliance checks. The commissioner shall determine any other conditions applicable to the grants.

(2) Beginning in 1999, notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the commissioner may make grants from the special projects and development fund to public and private local agencies to reduce teenage use of addictive substances.
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(cf: P.L.2017, c.118, s.4)

6. 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 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 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 may include annual reporting by local health agencies 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 business licenses necessary to carry out the purpose of this section.
   (cf: P.L.2017, c.118, s.5)

7. Section 202 of P.L.1948, c.65 (C.54:40A-4) is amended to read as follows:
   202. a. All licenses shall be issued by the director, who shall make rules and regulations respecting applications therefor and issuance thereof.
   b. The following individuals related to distributors, wholesale dealers, retail dealers operating more than nine cigarette vending machines, and retail dealers who sell cigarettes at retail at more than nine premises shall submit with applications for a license, fingerprints, which shall be processed through the Federal Bureau of Investigation and the New Jersey State Police, and such other information as the director may require:
      (1) Individuals having any interest whatsoever in a proprietorship or company.
      (2) Partners of a partnership, regardless of percentage.
      (3) Joint venturers in a joint venture.
      (4) Officers, directors, and all stockholders holding directly or indirectly a beneficial interest in more than 5% of the outstanding shares of a corporation.
(5) Employees receiving in excess of $30,000.00 per annum compensation whether as salary, commission, bonus or otherwise and persons who, in the judgment of the director are employed in a supervisory capacity or have the power to make or substantially affect discretionary business judgments of the applicant entity with regard to the cigarette business.

(6) Other persons who the director establishes have the ability to control the applicant entity through any means including but not limited to, contracts, loans, mortgages or pledges of securities where such control is inimical to the policies of this act because such person is a career offender or a member of a career offender cartel as defined in paragraph (2) of subsection e. of this section. Individuals licensed pursuant to the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.) shall only be required to produce evidence of said licensure in satisfaction of the foregoing.

The provisions in this subsection as to wholesale dealers, retail dealers operating more than nine cigarette vending machines, and retail dealers who sell cigarettes at retail at more than nine premises do not apply to retail grocery stores and supermarkets primarily engaged in the self-service sale of foods and household supplies for off-premises consumption, to drug stores and pharmacies engaged in the retail sale of prescription drugs and patent medicines and which may carry a number of lines of related merchandise, or to restaurants, hotels and motels operated by national corporations with such premises in six or more states and primarily engaged in the sale of foods for retail consumption or in the rental of rooms for lodging.

c. (1) The director shall not issue any license under this act where he has reasonable cause to believe that anyone required to submit information under this act has willfully withheld information requested of him for the purpose of determining the eligibility of the applicant to receive a license or where the director has reasonable cause to believe that information submitted in the application is false and misleading and is not made in good faith.

(2) The director shall not issue a license under this act to a person that is a manufacturer or importer of cigarettes, tobacco products or processed tobacco if the manufacturer or importer does not possess a valid federal permit issued pursuant to section 5713 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.5713, that is not suspended or revoked.

d. The director shall not issue any license under this act where he has reasonable cause to believe that anyone required to be licensed or anyone required to submit information under this act, has been convicted of any offense in any jurisdiction which would be at the time of conviction a crime involving moral turpitude.

It is further provided that any applicant or person required to submit information who has a charge pending pursuant to any of the foregoing shall disclose that fact to the director. The director may
then withhold action on new applications or, in the case of an application for the renewal of a license, issue a temporary license until there has been a disposition of the charge. The director shall have the discretion to waive the prohibition against licensure herein provided upon the presentation of proof that a period of not less than five years has elapsed since the last conviction or the expiration of any period of incarceration imposed with respect thereto.

e. The director shall not issue any license where the applicant or anyone required to submit information has been identified as a career offender or a member of a career offender cartel in such a manner as to create a reasonable belief that the association is of such a nature as to be inimical to the policies of this act or to the taxation, distribution, and sale of cigarettes within the State. The director may request the Attorney General for advice respecting whether a person is a "career offender" within the meaning of this subsection, or is a "contumacious defiant" within the meaning of subsection f. of this section.

As used in this subsection:

(1) "career offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State; and (2) "career offender cartel" means any group of persons who operate together as career offenders.

f. The director shall not issue any license where the applicant or anyone required to submit information has been found to be contumaciously defiant before any legislative investigative body or other official investigative body of this State or of the United States when such body is engaged in the investigation of organized crime, official corruption or the cigarette industry itself.

g. 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 all the provisions of this act and the rules and regulations of the director made pursuant thereto.

h. For each license issued to a distributor there shall be paid to the director a fee of $350.00. If a distributor sells or intends to sell cigarettes at two or more places of business, whether established or temporary, 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. The director shall require each licensed distributor to file with him a bond in an amount not less than the average monthly value of the cigarette stamps used by the licensed distributor to guarantee the proper performance of his duties and the discharge of his liabilities under this act. The bond shall be executed by such
licensed distributor as principal, and by a corporation approved by
the director and duly authorized to engage in business as a surety
company in the State of New Jersey, as surety. The bond shall run
concurrently with the distributor's license.

For each license issued to a manufacturer, and for each
continuance thereof, there shall be paid to the director a fee of
$10.00.

For each license issued to a manufacturer's representative, and
for each continuance thereof, there shall be paid to the director a fee
of $5.00.

For each license issued to a wholesale dealer there shall be paid
to the director a fee of $250.00. If a wholesale dealer sells or
intends to sell cigarettes at 10 or more places of business, whether
established or temporary, 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.

For each license issued to a retail dealer and for each
continuance thereof, excepting a retail dealer operating a cigarette
vending machine, there shall be paid to the director a fee of [[$40 in
1996 and $50 in 1997 and each year thereafter] $500. For each
license issued to a retail dealer operating a vending machine for the
sale of cigarettes and for each continuance thereof, there shall be
paid to the director a fee of [$40 in 1996 and $50 in 1997 and each
year thereafter] $500. Of the license fee of [$40 and $50,
respectively, $30 shall be credited in 1996 and $40 shall be credited
in 1997 and each year thereafter] $500. $450 shall be annually
credited to the special projects and development fund in the
Department of Health [and Senior Services] established pursuant to
section 7 of P.L.1966, c.36 (C.26:2F-7) for the purposes specified
therein, and [[$5] $50 shall be credited each year [, beginning with
1996.], to the division for administrative costs associated with the
requirements established pursuant to subsection i. of this section
and section 2 of P.L.1995, c.320 (C.26:3A2-20.1). The director
shall determine and certify to the State Treasurer on a monthly basis
the amount of revenues collected by the director which are to be
credited to the special projects and development fund in the
Department of Health.

If a retail dealer sells or intends to sell cigarettes 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 vending machine for the sale of
cigarettes shall be separately licensed and be deemed a separate
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.

Any person licensed only as a distributor or as a manufacturer or as a manufacturer’s representative or as a wholesale dealer or as a retail dealer shall not operate in any other capacity except under that for which he is licensed herein, unless the appropriate license or licenses therefor are first secured.

For each license issued to a consumer and for each continuance thereof there shall be paid to the director a fee of $1.00. Each license, or certificate thereof, or such other evidence of license as may be prescribed by the director, shall be so kept by the consumer as to be readily available for inspection.

No license shall be issued to any person except upon the payment of the full fee therefor, any statute or exemption to the contrary notwithstanding. No license shall be assignable or transferable, except as hereinafter provided, 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 his discretion, extend said license for a limited time to the executor, administrator, trustee, receiver, or person upon whom the same has devolved. A purchaser or assignee of a licensed wholesaler or licensed distributor, or any other person upon whom the business of a licensed wholesaler or licensed distributor shall devolve by operation of law, shall upon application to the director, be entitled to an assignment or transfer of the wholesale or distributor license for the balance of the existing license period upon payment of a transfer fee of $5.00 and subject to his qualification to be a licensed wholesaler or licensed distributor under the provisions of this act. The license issued for each vending machine for the sale of cigarettes may be transferred from machine to machine in the same ownership. No refund of the license fee shall be paid to any person upon the surrender or revocation of any license except a license fee paid or collected in error. But, upon payment of a $1.00 fee, there may be obtained (1) a duplicate license, or certificate thereof, in the event the original is lost, destroyed or defaced, and (2) an amended license, or certificate thereof, upon a change in the location of the place of business of any distributor or dealer.

The director shall require an applicant for a cigarette retail dealer license, including a license to operate a vending machine for the sale of cigarettes, to include on the application the address of the place of business where the cigarettes will be sold or the address where the vending machine will be located, as the case may be.

If the place of business or the vending machine 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.

(cf: P.L.2013, c.145, s.1)
8. Section 2 of P.L.1987, c.423 (C.54:40A-4.1) is amended to read as follows:

a. Notwithstanding any other provision of law to the contrary, a person to whom a license is issued pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall, as a condition of the license, conspicuously post a legible sign at the point of display of the tobacco products and at the point of sale. The sign, which also shall be posted conspicuously on any licensed cigarette vending machine, shall be at least six inches by three inches in bold letters at least one-quarter inch high and shall read as follows:

"A [person who] retailer that sells or offers to sell a tobacco product to a person under 21 years of age shall pay a penalty of up to $1,000 and may be subject to a license suspension or revocation. Proof of age [may be] is required for purchase."

b. Each licensee shall be required, within 90 days 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 tobacco product. (cf: P.L.2017, c.118, s.6)

9. Section 4 of P.L.2005, c.85 (C.54:40A-49) is amended to read as follows:

4. A person shall not engage in a retail sale of cigarettes in this State unless the sale is a face-to-face sale, except that a person may engage in a non-face-to-face sale of cigarettes to a person in this State if the following conditions are met:

a. The seller has fully complied with all of the requirements of the Jenkins Act, 15 U.S.C. s.375 et seq., for shipments to this State;

b. The seller has verified payment of, paid, or collected all applicable State taxes, including the cigarette taxes imposed by the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) and the sales or use taxes imposed by the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), due on the cigarettes; and

c. The seller has, before mailing or shipping the cigarettes:

(1) obtained from the purchaser reliable confirmation that the purchaser is at least 21 years old and a statement by the purchaser under penalty of perjury certifying the purchaser's date of birth and address;

(2) made good faith effort to verify the information contained in the certification provided by the purchaser against a commercially available database or has obtained a photocopy or other image of a government-issued identification bearing the purchaser's image and stating the date of birth or age of the purchaser;
(3) received payment for the sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check; [and]

(4) verified that a credit or debit card used for payment has been issued in the purchaser's name, and the address to which the cigarettes are being shipped matches the credit or debit card company's address for the cardholder; and

(5) mailed or shipped the cigarettes using a method that requires age verification at the time of delivery.

Sellers taking an order for a non-face-to-face sale may request that prospective purchasers provide their e-mail addresses.

(cf: P.L.2017, c.118, s.7)

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

4. a. After the effective date of P.L.2019, c.147 (C.54:40B-3.3 et al.), container e-liquid 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.2019, c.147 (C.54:40B-3.3 et al.) and the rules and regulations of the director made pursuant thereto.

If a vapor business sells or intends to sell container e-liquid 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.

No license shall be issued to any person except upon the payment of a [[$50] $500] 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.

The director shall require an applicant for a vapor business license, to include on the application the address of the place of business where the container e-liquid 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.
c. The director may, upon notice and after hearing, suspend or revoke the license or all licenses under this section issued to any person who violates any of the provisions of P.L.2019, c.147 (C.54:40B-3.3 et al.), or who, after being issued a license becomes disqualified for licensure pursuant to P.L.2019, c.147 (C.54:40B-3.3 et al.) 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 container e-liquid or permit container e-liquid 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 issued under the provisions of P.L.2019, c.147 (C.54:40B-3.3 et al.).
(cf: P.L.2019, c.147, s.4)

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

11. In addition to the license required by section 4 of P.L.2019, c.147 (C.54:40B-3.3), a municipality may adopt an ordinance concerning the licensure and regulation of a vapor business, which may include assessing a separate vapor business permit fee against any entity operating a licensed vapor business. The full amount of any permit fees collected by a municipality pursuant to this section, less administrative costs, shall be used to fund compliance inspections, including undercover compliance purchases, conducted by the local health agency having jurisdiction consistent with the requirements established by the Commissioner of Health pursuant to section 2 of P.L.1995, c.320 (C.26:3A2-20.1). Nothing in P.L.2019, c.147 (C.54:40B-3.3 et al.) shall be construed to preempt the provisions of any existing or new municipal ordinance concerning the licensure and regulation of a vapor business.
(cf: P.L.2019, c.147, s.11)

12. (New section) a. It shall be unlawful for a retailer, either directly or indirectly by an agent or employee, or by a vending machine owned by the retailer or located in the retailer’s establishment, to sell, offer for sale, give, furnish, or distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, to any person any electronic smoking device that is designed to mimic the appearance of another object, when the appearance of the electronic smoking device makes it difficult for the average person to determine, based on casual observance, whether the item is the object it is designed to mimic or an electronic smoking device. Prohibited designs shall include, but shall not be limited to, electronic smoking devices designed to
resemble a pen or other writing utensil, flash drive or universal serial bus drive, mobile phone, clothing, jewelry, cosmetic product, eating utensil, or personal hygiene product, provided that nothing in this section shall be construed to prohibit the sale, offer for sale, or commercial distribution of an electronic smoking device designed to resemble a product traditionally used for the consumption of tobacco, including a cigarette, cigarette pack, pipe, cigar, or hookah.

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

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

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

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

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

d. As used in this section, “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, and also includes any substance that may
be aerosolized or vaporized by such device, regardless of whether
the substance contains nicotine. "Electronic smoking device" does
not include any drug, device, or combination product approved by
the federal Food and Drug Administration pursuant to the "Federal

13. (New section) a. No person, either directly or indirectly by
an agent or employee, or by a vending machine located on the
premises, shall sell or offer for sale at a pharmacy practice site that
has been issued a permit under P.L.2003, c.280 (C.45:14-40 et
seq.), or at a business entity that has a pharmacy practice site
located on its premises, any tobacco product.

b. Nothing in subsection a. of this section shall be construed to
prohibit a pharmacy practice site or business entity that has a
pharmacy practice site located on its premises from selling or
offering for sale smoking cessation products approved by the
federal Food and Drug Administration, and nothing in subsection a.
of this section shall be construed to prohibit a pharmacy practice
site, or a business entity that has a pharmacy practice site located on
its premises, that has been issued a medical cannabis dispensary
permit pursuant to the "Jake Honig Compassionate Use Medical
medical cannabis, paraphernalia, and related supplies to or on
behalf of a registered qualifying patient.

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

d. In addition to the provisions of subsection c. of this section,
a pharmacy practice site at which a violation of subsection a. of this
section occurs may be subject to disciplinary action by the Board of
Pharmacy, and a business entity that has a pharmacy practice site
located on its premises at which a violation of subsection a. of this
section occurs may be subject to disciplinary action by an agency, board, office, or other appropriate governmental entity having jurisdiction.

e. As used in this section:

“Tobacco product” means: any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, or snus; any vapor product; and any component, part, or accessory of a product containing, made of, or derived from tobacco or nicotine or a vapor product, regardless of whether the component, part, or accessory contains tobacco or nicotine. “Tobacco product” includes, but is not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. “Tobacco 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.

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

14. (New section) A person shall not engage in a retail sale of or vapor products in this State unless the sale is a face-to-face sale, except that a person may engage in a non-face-to-face sale of a vapor product to a person in this State if the following conditions are met:

a. The seller has verified payment of, paid, or collected all applicable State taxes, including the taxes imposed on liquid nicotine pursuant to section 5 of P.L.2018, c.50 (C.54:40B-3.2) and the taxes imposed on container e-liquid pursuant to section 5 of P.L.2019, c.147 (C.54:40B-3.4), as applicable, and the sales or use taxes imposed by the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.), due on the vapor product; and

b. The seller has, before mailing or shipping the vapor product:

(1) obtained from the purchaser reliable confirmation that the purchaser is at least 21 years old and a statement by the purchaser under penalty of perjury certifying the purchaser's date of birth and address;
(2) made good faith effort to verify the information contained in the certification provided by the purchaser against a commercially available database or has obtained a photocopy or other image of a government-issued identification bearing the purchaser's image and stating the date of birth or age of the purchaser;

(3) received payment for the sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check;

(4) verified that a credit or debit card used for payment has been issued in the purchaser's name, and the address to which the vapor product is being shipped matches the credit or debit card company's address for the cardholder; and

(5) mailed or shipped the vapor product using a method that requires age verification at the time of delivery.

Sellers taking an order for a non-face-to-face sale may request that prospective purchasers provide their e-mail addresses.

c. Nothing in this section shall relieve the seller of vapor products from any other applicable requirement of law relating to the sale of vapor products.

15. (New section) a. The director shall adopt, by regulation, requirements for the establishment of an electronic database that shall be used to track all vapor products sold in New Jersey for the purpose of ensuring product integrity and compliance with applicable State and federal laws. Information in the database shall include, but shall not limited to, the manufacturer of the product and the batch, lot, and serial numbers of the product, consumer safety alerts for the product, and any other information as may be required by the director.

b. The director shall adopt, by regulation, requirements for the development of a standardized tracking feature to be included on all vapor products sold in the State that may be used to identify illicit, counterfeit, adulterated, or otherwise illegal or unsafe vapor products in New Jersey. 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. The director shall designate the appropriate means of including the standardized tracking feature on vapor products.

16. This act shall take effect July 1, 2020.

Revises requirements for sale of tobacco and vapor products; increases penalties for prohibited sales; increases fees for cigarette and vapor business licensure.