

P.L. 2015, c.294
Approved January 19, 2016

[First Reprint]
ASSEMBLY, No. 4098
STATE OF NEW JERSEY
216th LEGISLATURE
INTRODUCED JANUARY 15, 2015

Sponsored by:

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by: Senator Madden

SYNOPSIS

Prohibits sale or distribution of liquid nicotine except in child-resistant containers.

CURRENT VERSION OF TEXT

As reported by the Assembly Health and Senior Services Committee on December 10, 2015, with amendments.

An Act concerning liquid nicotine and supplementing Title 2A of the New Jersey Statutes.

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

1. a. No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person'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, ¹to any other person,¹ liquid nicotine ¹[to any person] in a liquid nicotine container, which is intended for use in a vapor product,¹ unless the liquid nicotine is sold, offered for sale, given, furnished, or distributed for commercial purpose in a child-resistant container.

As used in this section:

(1) ¹["child-resistant] "Child-resistant¹ container" means a container which is designed and constructed in a manner ¹that 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 1700.20,¹

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 ¹[; and] ¹

(2) ¹[“liquid] “Liquid¹ nicotine” means any solution containing nicotine which is designed or sold for use with an electronic smoking device ¹.

(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 Act¹.

b. A person who violates the 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 \$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 suspend or, after a second or subsequent violation of the provisions of subsection a. of this section, revoke the license of a retail dealer issued under section 202 of P.L.1948, c.65 (C.54:40A-4). The licensee shall 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.

2. The Commissioner of Health shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate rules and regulations to effectuate the purposes of this act. ¹[Such rules and regulations may include standards for the design and construction of child-resistant containers for liquid nicotine.]¹

3. This act shall take effect the first day of the seventh month next following the date of enactment, except that the Commissioner of Health may take any anticipatory administrative action in advance as shall be necessary to for the implementation of this act.