

# 2A:170-51.4

## LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

**LAWS OF:** 2009                    **CHAPTER:** 182  
**NJSA:** 2A:170-51.4 (Prohibits use of electronic smoking devices in indoor public places and sale to minors)  
**BILL NO:** A4227 (Substituted for S3053)  
**SPONSOR(S)** Wagner and Others  
**DATE INTRODUCED:** November 23, 2009  
**COMMITTEE:**                 **ASSEMBLY:** Health and Senior Services  
    **SENATE:** ---  
**AMENDED DURING PASSAGE:** No  
**DATE OF PASSAGE:**                 **ASSEMBLY:** December 7, 2009  
    **SENATE:** December 10, 2009  
**DATE OF APPROVAL:** January 11, 2010  
**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Assembly Committee Substitute enacted)

**A4227/4228**

**SPONSOR'S STATEMENT A4227:** (Begins on page 4 of original bill) Yes  
**SPONSOR'S STATEMENT A4228:** (Begins on page 4 of original bill) Yes

<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b>	Yes
	<b>SENATE:</b>	No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

<b>FLOOR AMENDMENT STATEMENT:</b>	No
<b>LEGISLATIVE FISCAL NOTE:</b>	No

**S3053/3054**

**SPONSOR'S STATEMENT S3053:** (Begins on page 4 of original bill) Yes  
**SPONSOR'S STATEMENT S3054:** (Begins on page 4 of original bill) Yes

<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b>	No
	<b>SENATE:</b>	Yes

<b>FLOOR AMENDMENT STATEMENT:</b>	No
-----------------------------------	----

**LEGISLATIVE FISCAL NOTE:**

No

**VETO MESSAGE:**

No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

No

**FOLLOWING WERE PRINTED:**

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

Yes

"Use of electronic devices restricted," Burlington County Times, 1-13-10.

"N.J. restricts use of electronic smoking devices," Home News Tribune, 1-13-10.

"E-Smoking restricted," The Trentonian, 1-13-10, p. 10.

"Corzine restricts electronic cigarettes," The Press of Atlantic City, 1-13-10, p. C7.

LAW/RWH

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 4227 and 4228**

---

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

---

ADOPTED NOVEMBER 23, 2009

**Sponsored by:**

**Assemblywoman CONNIE WAGNER**

**District 38 (Bergen)**

**Assemblywoman NANCY F. MUNOZ**

**District 21 (Essex, Morris, Somerset and Union)**

**Assemblywoman JOAN M. VOSS**

**District 38 (Bergen)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblywoman MARY PAT ANGELINI**

**District 11 (Monmouth)**

**Assemblywoman LINDA STENDER**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Assemblywomen Greenstein, Evans, Senators Gordon, Vitale, Codey,  
Sarlo and Whelan**

**SYNOPSIS**

Prohibits use of electronic smoking devices in indoor public places and sale to minors.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Health and Senior Services Committee.

**(Sponsorship Updated As Of: 12/11/2009)**

1 AN ACT concerning electronic smoking devices and amending  
2 P.L.2005, c.383, P.L.2000, c.87, and P.L.1999, c.90.

3

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

6

7 1. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to  
8 read as follows:

9 2. The Legislature finds and declares that: **[tobacco]**

10 a. Tobacco is the leading cause of preventable disease and  
11 death in the State and the nation**[, and tobacco]**;

12 b. Tobacco smoke constitutes a substantial health hazard to the  
13 nonsmoking majority of the public; **[the]**

14 c. Electronic smoking devices have not been approved as to  
15 safety and efficacy by the federal Food and Drug Administration,  
16 and their use may pose a health risk to persons exposed to their  
17 smoke or vapor because of a known irritant contained therein and  
18 other substances that may, upon evaluation by that agency, be  
19 identified as potentially toxic to those inhaling the smoke or vapor;

20 d. The separation of smoking and nonsmoking areas in indoor  
21 public places and workplaces does not eliminate the hazard to  
22 nonsmokers if these areas share a common ventilation system; and  
23 **[, therefore]**

24 e. Therefore, subject to certain specified exceptions, it is  
25 clearly in the public interest to prohibit the smoking of tobacco  
26 products and the use of electronic smoking devices in all enclosed  
27 indoor places of public access and workplaces.

28 (cf: P.L.2005, c.383, s.2)

29

30 2. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to  
31 read as follows:

32 3. As used in this act:

33 "Bar" means a business establishment or any portion of a  
34 nonprofit entity, which is devoted to the selling and serving of  
35 alcoholic beverages for consumption by the public, guests, patrons  
36 or members on the premises and in which the serving of food, if  
37 served at all, is only incidental to the sale or consumption of such  
38 beverages.

39 "Cigar bar" means any bar, or area within a bar, designated  
40 specifically for the smoking of tobacco products, purchased on the  
41 premises or elsewhere; except that a cigar bar that is in an area  
42 within a bar shall be an area enclosed by solid walls or windows, a  
43 ceiling and a solid door and equipped with a ventilation system  
44 which is separately exhausted from the nonsmoking areas of the bar

**EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 so that air from the smoking area is not recirculated to the  
2 nonsmoking areas and smoke is not backstreamed into the  
3 nonsmoking areas.

4 "Cigar lounge" means any establishment, or area within an  
5 establishment, designated specifically for the smoking of tobacco  
6 products, purchased on the premises or elsewhere; except that a  
7 cigar lounge that is in an area within an establishment shall be an  
8 area enclosed by solid walls or windows, a ceiling and a solid door  
9 and equipped with a ventilation system which is separately  
10 exhausted from the nonsmoking areas of the establishment so that  
11 air from the smoking area is not recirculated to the nonsmoking  
12 areas and smoke is not backstreamed into the nonsmoking areas.

13 "Electronic smoking device" means an electronic device that can  
14 be used to deliver nicotine or other substances to the person  
15 inhaling from the device, including, but not limited to, an electronic  
16 cigarette, cigar, cigarillo, or pipe.

17 "Indoor public place" means a structurally enclosed place of  
18 business, commerce or other service-related activity, whether  
19 publicly or privately owned or operated on a for-profit or nonprofit  
20 basis, which is generally accessible to the public, including, but not  
21 limited to: a commercial or other office building; office or building  
22 owned, leased or rented by the State or by a county or municipal  
23 government; public and nonpublic elementary or secondary school  
24 building; board of education building; theater or concert hall; public  
25 library; museum or art gallery; bar; restaurant or other  
26 establishment where the principal business is the sale of food for  
27 consumption on the premises, including the bar area of the  
28 establishment; garage or parking facility; any public conveyance  
29 operated on land or water, or in the air, and passenger waiting  
30 rooms and platform areas in any stations or terminals thereof; health  
31 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et  
32 seq.); patient waiting room of the office of a health care provider  
33 licensed pursuant to Title 45 of the Revised Statutes; child care  
34 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);  
35 race track facility; facility used for the holding of sporting events;  
36 ambulatory recreational facility; shopping mall or retail store; hotel,  
37 motel or other lodging establishment; apartment building lobby or  
38 other public area in an otherwise private building; or a passenger  
39 elevator in a building other than a single-family dwelling.

40 "Person having control of an indoor public place or workplace"  
41 means the owner or operator of a commercial or other office  
42 building or other indoor public place from whom a workplace or  
43 space within the building or indoor public place is leased.

44 "Smoking" means the burning of, inhaling from, exhaling the  
45 smoke from, or the possession of a lighted cigar, cigarette, pipe or  
46 any other matter or substance which contains tobacco or any other

1 matter that can be smoked, or the inhaling or exhaling of smoke or  
2 vapor from an electronic smoking device.

3 "Tobacco retail establishment" means an establishment in which  
4 at least 51% of retail business is the sale of tobacco products and  
5 accessories, and in which the sale of other products is merely  
6 incidental.

7 "Workplace" means a structurally enclosed location or portion  
8 thereof at which a person performs any type of service or labor.

9 (cf: P.L.2005, c.383, s.3)

10

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

13 1. a. No person, either directly or indirectly by an agent or  
14 employee, or by a vending machine owned by the person or located  
15 in the person's establishment, shall sell, offer for sale, distribute for  
16 commercial purpose at no cost or minimal cost or with coupons or  
17 rebate offers, give or furnish, to a person under 19 years of age~~], ]~~:

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

21 (2) any electronic smoking device that can be used to deliver  
22 nicotine or other substances to the person inhaling from the device,  
23 including, but not limited to, an electronic cigarette, cigar, cigarillo,  
24 or pipe, or any cartridge or other component of the device or related  
25 product.

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

29 (1) that the purchaser of the tobacco product or electronic  
30 smoking device or the recipient of the promotional sample falsely  
31 represented, by producing either a driver's license or non-driver  
32 identification card issued by the New Jersey Motor Vehicle  
33 Commission, a similar card issued pursuant to the laws of another  
34 state or the federal government of Canada, or a photographic  
35 identification card issued by a county clerk, that the purchaser or  
36 recipient was of legal age to make the purchase or receive the  
37 sample;

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

43 (3) that the sale or distribution of the tobacco product or  
44 electronic smoking device was made in good faith, relying upon the  
45 production of the identification set forth in paragraph (1) of this  
46 subsection, the appearance of the purchaser or recipient, and in the

1 reasonable belief that the purchaser or recipient was of legal age to  
2 make the purchase or receive the sample.

3 c. A person who violates the provisions of subsection a. of this  
4 section, including an employee of a retail dealer licensee under  
5 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise  
6 provides a tobacco product to a person under 19 years of age, shall  
7 be liable to a civil penalty of not less than \$250 for the first  
8 violation, not less than \$500 for the second violation, and \$1,000  
9 for the third and each subsequent violation. The civil penalty shall  
10 be collected pursuant to the "Penalty Enforcement Law of 1999,"  
11 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding  
12 before the municipal court having jurisdiction. An official  
13 authorized by statute or ordinance to enforce the State or local  
14 health codes or a law enforcement officer having enforcement  
15 authority in that municipality may issue a summons for a violation  
16 of the provisions of subsection a. of this section, and may serve and  
17 execute all process with respect to the enforcement of this section  
18 consistent with the Rules of Court. A penalty recovered under the  
19 provisions of this subsection shall be recovered by and in the name  
20 of the State by the local health agency. The penalty shall be paid  
21 into the treasury of the municipality in which the violation occurred  
22 for the general uses of the municipality.

23 d. In addition to the provisions of subsection c. of this section,  
24 upon the recommendation of the municipality, following a hearing  
25 by the municipality, the Division of Taxation in the Department of  
26 the Treasury may suspend or, after a second or subsequent violation  
27 of the provisions of subsection a. of this section, revoke the license  
28 issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail  
29 dealer. The licensee shall be subject to administrative charges,  
30 based on a schedule issued by the Director of the Division of  
31 Taxation, which may provide for a monetary penalty in lieu of a  
32 suspension.

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

36 (cf: P.L.2005, c.384, s.1)

37

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

40 3. a. A person who sells or gives to a person under 19 years of  
41 age any cigarettes made of tobacco or of any other matter or  
42 substance which can be smoked, or any cigarette paper or tobacco  
43 in any form, including smokeless tobacco, or any electronic  
44 smoking device that can be used to deliver nicotine or other  
45 substances to the person inhaling from the device, including, but not  
46 limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any  
47 cartridge or other component of the device or related product,

1 including an employee of a retail dealer licensee under P.L.1948,  
2 c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a  
3 tobacco product or electronic smoking device to a person under 19  
4 years of age, shall be punished by a fine as provided for a petty  
5 disorderly persons offense. A person who has been previously  
6 punished under this section and who commits another offense under  
7 it may be punishable by a fine of twice that provided for a petty  
8 disorderly persons offense.

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

12 (1) that the purchaser or recipient of the tobacco product or  
13 electronic smoking device falsely represented, by producing either a  
14 driver's license or non-driver identification card issued by the New  
15 Jersey Motor Vehicle Commission, a similar card issued pursuant to  
16 the laws of another state or the federal government of Canada, or a  
17 photographic identification card issued by a county clerk, that the  
18 purchaser or recipient was of legal age to purchase or receive the  
19 tobacco product or electronic smoking device;

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

25 (3) that the sale or distribution of the tobacco product or  
26 electronic smoking device was made in good faith, relying upon the  
27 production of the identification set forth in paragraph (1) of this  
28 subsection, the appearance of the purchaser or recipient, and in the  
29 reasonable belief that the purchaser or recipient was of legal age to  
30 purchase or receive the tobacco product or electronic smoking  
31 device.

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

35 (cf: P.L.2005, c.384, s.5)

36

37 5. Sections 1 and 2 of this act shall take effect on the 180th day  
38 after enactment, but the Commissioner of Health and Senior  
39 Services may take such anticipatory administrative action in  
40 advance thereof as shall be necessary for the implementation of  
41 those sections. Sections 3 and 4 of this act shall take effect on the  
42 60th day after enactment.



# ASSEMBLY, No. 4227

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

**Sponsored by:**

**Assemblywoman CONNIE WAGNER**

**District 38 (Bergen)**

**Assemblywoman NANCY F. MUNOZ**

**District 21 (Essex, Morris, Somerset and Union)**

**Assemblywoman JOAN M. VOSS**

**District 38 (Bergen)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblywoman MARY PAT ANGELINI**

**District 11 (Monmouth)**

**SYNOPSIS**

Prohibits sale of electronic smoking devices to minors.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT prohibiting the sale of electronic smoking devices to  
2 minors and amending P.L.2000, c.87 and P.L.1999, c.90.

3

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

6

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

9 1. a. No person, either directly or indirectly by an agent or  
10 employee, or by a vending machine owned by the person or located  
11 in the person's establishment, shall sell, offer for sale, distribute for  
12 commercial purpose at no cost or minimal cost or with coupons or  
13 rebate offers, give or furnish, to a person under 19 years of age~~[, ]~~:

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

17 (2) any electronic smoking device that can be used to deliver  
18 nicotine or other substances to the person inhaling from the device,  
19 including, but not limited to, an electronic cigarette, cigar, cigarillo,  
20 or pipe, or any cartridge or other component of the device or related  
21 product.

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

25 (1) that the purchaser of the tobacco product or electronic  
26 smoking device or the recipient of the promotional sample falsely  
27 represented, by producing either a driver's license or non-driver  
28 identification card issued by the New Jersey Motor Vehicle  
29 Commission, a similar card issued pursuant to the laws of another  
30 state or the federal government of Canada, or a photographic  
31 identification card issued by a county clerk, that the purchaser or  
32 recipient was of legal age to make the purchase or receive the  
33 sample;

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

39 (3) that the sale or distribution of the tobacco product or  
40 electronic smoking device was made in good faith, relying upon the  
41 production of the identification set forth in paragraph (1) of this  
42 subsection, the appearance of the purchaser or recipient, and in the  
43 reasonable belief that the purchaser or recipient was of legal age to  
44 make the purchase or receive the sample.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 c. A person who violates the provisions of subsection a. of this  
2 section, including an employee of a retail dealer licensee under  
3 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise  
4 provides a tobacco product to a person under 19 years of age, shall  
5 be liable to a civil penalty of not less than \$250 for the first  
6 violation, not less than \$500 for the second violation, and \$1,000  
7 for the third and each subsequent violation. The civil penalty shall  
8 be collected pursuant to the "Penalty Enforcement Law of 1999,"  
9 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding  
10 before the municipal court having jurisdiction. An official  
11 authorized by statute or ordinance to enforce the State or local  
12 health codes or a law enforcement officer having enforcement  
13 authority in that municipality may issue a summons for a violation  
14 of the provisions of subsection a. of this section, and may serve and  
15 execute all process with respect to the enforcement of this section  
16 consistent with the Rules of Court. A penalty recovered under the  
17 provisions of this subsection shall be recovered by and in the name  
18 of the State by the local health agency. The penalty shall be paid  
19 into the treasury of the municipality in which the violation occurred  
20 for the general uses of the municipality.

21 d. In addition to the provisions of subsection c. of this section,  
22 upon the recommendation of the municipality, following a hearing  
23 by the municipality, the Division of Taxation in the Department of  
24 the Treasury may suspend or, after a second or subsequent violation  
25 of the provisions of subsection a. of this section, revoke the license  
26 issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail  
27 dealer. The licensee shall be subject to administrative charges,  
28 based on a schedule issued by the Director of the Division of  
29 Taxation, which may provide for a monetary penalty in lieu of a  
30 suspension.

31 e. A penalty imposed pursuant to this section shall be in addition  
32 to any penalty that may be imposed pursuant to section 3 of  
33 P.L.1999, c. 90 (C.2C:33-13.1).  
34 (cf: P.L.2005, c.384, s.1)  
35

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

38 3. a. A person who sells or gives to a person under 19 years of  
39 age any cigarettes made of tobacco or of any other matter or  
40 substance which can be smoked, or any cigarette paper or tobacco  
41 in any form, including smokeless tobacco, or any electronic  
42 smoking device that can be used to deliver nicotine or other  
43 substances to the person inhaling from the device, including, but not  
44 limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any  
45 cartridge or other component of the device or related product,  
46 including an employee of a retail dealer licensee under P.L.1948,  
47 c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a  
48 tobacco product or electronic smoking device to a person under 19

1 years of age, shall be punished by a fine as provided for a petty  
2 disorderly persons offense. A person who has been previously  
3 punished under this section and who commits another offense under  
4 it may be punishable by a fine of twice that provided for a petty  
5 disorderly persons offense.

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

9 (1) that the purchaser or recipient of the tobacco product or  
10 electronic smoking device falsely represented, by producing either a  
11 driver's license or non-driver identification card issued by the New  
12 Jersey Motor Vehicle Commission, a similar card issued pursuant to  
13 the laws of another state or the federal government of Canada, or a  
14 photographic identification card issued by a county clerk, that the  
15 purchaser or recipient was of legal age to purchase or receive the  
16 tobacco product or electronic smoking device;

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

21 (3) that the sale or distribution of the tobacco product or  
22 electronic smoking device was made in good faith, relying upon the  
23 production of the identification set forth in paragraph (1) of this  
24 subsection, the appearance of the purchaser or recipient, and in the  
25 reasonable belief that the purchaser or recipient was of legal age to  
26 purchase or receive the tobacco product or electronic smoking  
27 device.

28 c. A penalty imposed pursuant to this section shall be in addition  
29 to any penalty that may be imposed pursuant to section 1 of  
30 P.L.2000, c.87 (C.2A:170-51.4).  
31 (cf: P.L.2005, c.384, s.5)

32

33 3. This act shall take effect on the 60th day after enactment.

34

35

36

#### STATEMENT

37

38 This bill extends the current statutory prohibition on the sale of  
39 tobacco products to persons under 19 years of age to apply to  
40 electronic smoking devices, commonly known as e-cigarettes.

41 The provisions of this bill would apply to the sale or distribution  
42 of electronic smoking devices that can be used to deliver nicotine or  
43 other substances to the person inhaling from the device, including,  
44 but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or  
45 any cartridge or other component of the device or related product.

46 A person who violates the provisions of this bill would be  
47 subject to the existing statutory civil and criminal penalties for the

1 sale or distribution of tobacco products to persons under 19 years of  
2 age, as follows:

3 -- The criminal penalties are a fine as provided for a petty  
4 disorderly persons offense (\$500) for a first offense and a fine of  
5 twice that amount for a subsequent offense.

6 -- The civil penalties are not less than \$250 for the first  
7 violation, not less than \$500 for the second violation, and \$1,000  
8 for the third and each subsequent violation; and possible  
9 suspension, or (after a second or subsequent violation) revocation of  
10 the license of a retail dealer issued under section 202 of P.L.1948,  
11 c.65 (C.54:40A-4).

12 -- A civil penalty imposed would be in addition to any criminal  
13 penalty that may be imposed and vice versa.

14 The bill takes effect on the 60th day after enactment.

15 It should be noted that:

- 16 • An e-cigarette is operated by a battery that warms liquid nicotine  
17 and propylene glycol from a replaceable plastic cartridge when a  
18 person inhales the device. Propylene glycol is a liquid that  
19 vaporizes when a person exhales and produces a mist that is  
20 nearly identical in appearance to tobacco smoke.
- 21 • Propylene glycol is used in antifreeze; and, according to a 2009  
22 statement by Health Canada, the Canadian federal government  
23 agency with regulatory jurisdiction over health issues, "the  
24 inhalation of propylene glycol is a known irritant."
- 25 • Health Canada issued a public advisory to not purchase or use e-  
26 cigarettes "as these products may pose health risks and have not  
27 been fully evaluated for safety, quality and efficacy by Health  
28 Canada" and ordered persons importing, advertising, or selling  
29 these products in Canada to cease doing so.
- 30 • The federal Food and Drug Administration (FDA) has refused  
31 entry to shipments of e-cigarettes coming into this country on the  
32 grounds that these are unapproved drug device products;  
33 however, enough of these devices have made their way into this  
34 country that they are sold online and in some shopping mall  
35 kiosks.
- 36 • The World Health Organization issued a statement in 2008 that it  
37 does not consider e-cigarettes "to be a legitimate therapy for  
38 smokers trying to quit."
- 39 • These devices have not been submitted to the FDA for evaluation  
40 or approval, and New Jersey's own Senator Frank Lautenberg has  
41 requested that the FDA take e-cigarettes off the market until they  
42 are proven safe for public use.

# ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 4227 and 4228

# STATE OF NEW JERSEY

DATED: NOVEMBER 23, 2009

The Assembly Health and Senior Services Committee reports favorably an Assembly Committee Substitute for Assembly Bills Nos. 4227 and 4228.

This committee substitute prohibits the use of e-cigarettes in indoor public places and workplaces, and also prohibits their sale or distribution to minors.

The substitute provides specifically as follows:

- The substitute extends the provisions of the “New Jersey Smoke Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.), which generally prohibits the smoking of a cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked in indoor public places and workplaces, to apply to the use of electronic smoking devices, commonly known as e-cigarettes, in the same places.
- The substitute defines “electronic smoking device” to mean an electronic 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.
- The penalties that currently apply to a person who smokes tobacco in an indoor public place or workplace would apply to a person who uses an e-cigarette in violation of this substitute (a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense).
- The prohibition on the use of e-cigarettes in indoor public places and workplaces takes effect on the 180th day after enactment, but the Commissioner of Health and Senior Services is authorized to take anticipatory administrative action in advance as necessary for implementation.
- In addition, the substitute extends the current statutory prohibition on the sale or distribution of tobacco products to persons under 19 years of age to apply to electronic smoking devices. A person who violates this prohibition would be subject to the existing statutory civil and criminal penalties for the sale or distribution of tobacco products to minors, as follows:

-- The criminal penalties are a fine as provided for a petty disorderly persons offense (\$500) for a first offense and a fine of twice that amount for a subsequent offense.

-- The civil penalties are 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; and possible suspension, or (after a second or subsequent violation) revocation of the license of a retail dealer issued under section 202 of P.L.1948, c.65 (C.54:40A-4).

-- A civil penalty imposed would be in addition to any criminal penalty that may be imposed and vice versa.

- The prohibition on the sale or distribution to minors takes effect on the 60th day after enactment.

# ASSEMBLY, No. 4228

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

**Sponsored by:**

**Assemblywoman CONNIE WAGNER**

**District 38 (Bergen)**

**Assemblywoman NANCY F. MUNOZ**

**District 21 (Essex, Morris, Somerset and Union)**

**Assemblywoman JOAN M. VOSS**

**District 38 (Bergen)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblywoman MARY PAT ANGELINI**

**District 11 (Monmouth)**

**SYNOPSIS**

Prohibits use of electronic smoking devices in indoor public places and workplaces.

**CURRENT VERSION OF TEXT**

As introduced.





1 AN ACT concerning the use of electronic smoking devices in indoor  
2 public places and workplaces and amending P.L.2005, c.383.

3

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

6

7 1. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to read  
8 as follows:

9 2. The Legislature finds and declares that: **[tobacco]**

10 a. Tobacco is the leading cause of preventable disease and death  
11 in the State and the nation**[, and tobacco]**;

12 b. Tobacco smoke constitutes a substantial health hazard to the  
13 nonsmoking majority of the public; **[the]**

14 c. Electronic smoking devices have not been approved as to  
15 safety and efficacy by the federal Food and Drug Administration,  
16 and their use may pose a health risk to persons exposed to their  
17 smoke or vapor because of a known irritant contained therein and  
18 other substances that may, upon evaluation by that agency, be  
19 identified as potentially toxic to those inhaling the smoke or vapor;

20 d. The separation of smoking and nonsmoking areas in indoor  
21 public places and workplaces does not eliminate the hazard to  
22 nonsmokers if these areas share a common ventilation system; and  
23 **[, therefore]**

24 e. Therefore, subject to certain specified exceptions, it is clearly  
25 in the public interest to prohibit the smoking of tobacco products  
26 and the use of electronic smoking devices in all enclosed indoor  
27 places of public access and workplaces.

28 (cf: P.L.2005, c.383, s.2)

29

30 2. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to read  
31 as follows:

32 3. As used in this act:

33 "Bar" means a business establishment or any portion of a  
34 nonprofit entity, which is devoted to the selling and serving of  
35 alcoholic beverages for consumption by the public, guests, patrons  
36 or members on the premises and in which the serving of food, if  
37 served at all, is only incidental to the sale or consumption of such  
38 beverages.

39 "Cigar bar" means any bar, or area within a bar, designated  
40 specifically for the smoking of tobacco products, purchased on the  
41 premises or elsewhere; except that a cigar bar that is in an area  
42 within a bar shall be an area enclosed by solid walls or windows, a  
43 ceiling and a solid door and equipped with a ventilation system  
44 which is separately exhausted from the nonsmoking areas of the bar  
45 so that air from the smoking area is not recirculated to the

**EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 nonsmoking areas and smoke is not backstreamed into the  
2 nonsmoking areas.

3 "Cigar lounge" means any establishment, or area within an  
4 establishment, designated specifically for the smoking of tobacco  
5 products, purchased on the premises or elsewhere; except that a  
6 cigar lounge that is in an area within an establishment shall be an  
7 area enclosed by solid walls or windows, a ceiling and a solid door  
8 and equipped with a ventilation system which is separately  
9 exhausted from the nonsmoking areas of the establishment so that  
10 air from the smoking area is not recirculated to the nonsmoking  
11 areas and smoke is not backstreamed into the nonsmoking areas.

12 "Electronic smoking device" means an electronic device that can  
13 be used to deliver nicotine or other substances to the person  
14 inhaling from the device, including, but not limited to, an electronic  
15 cigarette, cigar, cigarillo, or pipe.

16 "Indoor public place" means a structurally enclosed place of  
17 business, commerce or other service-related activity, whether  
18 publicly or privately owned or operated on a for-profit or nonprofit  
19 basis, which is generally accessible to the public, including, but not  
20 limited to: a commercial or other office building; office or building  
21 owned, leased or rented by the State or by a county or municipal  
22 government; public and nonpublic elementary or secondary school  
23 building; board of education building; theater or concert hall; public  
24 library; museum or art gallery; bar; restaurant or other  
25 establishment where the principal business is the sale of food for  
26 consumption on the premises, including the bar area of the  
27 establishment; garage or parking facility; any public conveyance  
28 operated on land or water, or in the air, and passenger waiting  
29 rooms and platform areas in any stations or terminals thereof; health  
30 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et  
31 seq.); patient waiting room of the office of a health care provider  
32 licensed pursuant to Title 45 of the Revised Statutes; child care  
33 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);  
34 race track facility; facility used for the holding of sporting events;  
35 ambulatory recreational facility; shopping mall or retail store; hotel,  
36 motel or other lodging establishment; apartment building lobby or  
37 other public area in an otherwise private building; or a passenger  
38 elevator in a building other than a single-family dwelling.

39 "Person having control of an indoor public place or workplace"  
40 means the owner or operator of a commercial or other office  
41 building or other indoor public place from whom a workplace or  
42 space within the building or indoor public place is leased.

43 "Smoking" means the burning of, inhaling from, exhaling the  
44 smoke from, or the possession of a lighted cigar, cigarette, pipe or  
45 any other matter or substance which contains tobacco or any other  
46 matter that can be smoked, or the inhaling or exhaling of smoke or  
47 vapor from an electronic smoking device.

1 "Tobacco retail establishment" means an establishment in which  
2 at least 51% of retail business is the sale of tobacco products and  
3 accessories, and in which the sale of other products is merely  
4 incidental.

5 "Workplace" means a structurally enclosed location or portion  
6 thereof at which a person performs any type of service or labor.  
7 (cf: P.L.2005, c.383, s.3)

8  
9 3. This act shall take effect on the 180th day after enactment,  
10 but the Commissioner of Health and Senior Services may take such  
11 anticipatory administrative action in advance thereof as shall be  
12 necessary for the implementation of this act.

#### 13 14 15 STATEMENT

16  
17 This bill extends the provisions of the "New Jersey Smoke Free  
18 Air Act," P.L.2005, c.383 (C.26:3D-55 et seq.), which generally  
19 prohibits the smoking of a cigar, cigarette, pipe or any other matter  
20 or substance which contains tobacco or any other matter that can be  
21 smoked in indoor public places and workplaces, to apply to the use  
22 of electronic smoking devices, commonly known as e-cigarettes, in  
23 the same places.

24 The bill defines "electronic smoking device" to mean an  
25 electronic device that can be used to deliver nicotine or other  
26 substances to the person inhaling from the device, including, but not  
27 limited to, an electronic cigarette, cigar, cigarillo, or pipe.

28 Under this bill, the penalties that currently apply to a person who  
29 smokes tobacco in an indoor public place or workplace would apply  
30 to a person who uses an e-cigarette in violation of this bill (a fine of  
31 not less than \$250 for the first offense, \$500 for the second offense  
32 and \$1,000 for each subsequent offense).

33 The bill takes effect on the 180th day after enactment, but  
34 authorizes the Commissioner of Health and Senior Services to take  
35 anticipatory administrative action in advance as necessary for its  
36 implementation.

37 It should be noted that:

- 38 • An e-cigarette is operated by a battery that warms liquid nicotine  
39 and propylene glycol from a replaceable plastic cartridge when a  
40 person inhales the device. Propylene glycol is a liquid that  
41 vaporizes when a person exhales and produces a mist that is  
42 nearly identical in appearance to tobacco smoke.
- 43 • Propylene glycol is used in antifreeze; and, according to a 2009  
44 statement by Health Canada, the Canadian federal government  
45 agency with regulatory jurisdiction over health issues, "the  
46 inhalation of propylene glycol is a known irritant."
- 47 • Health Canada issued a public advisory to not purchase or use e-  
48 cigarettes "as these products may pose health risks and have not

- 1     been fully evaluated for safety, quality and efficacy by Health  
2     Canada" and ordered persons importing, advertising, or selling  
3     these products in Canada to cease doing so.
- 4     • The federal Food and Drug Administration (FDA) has refused  
5     entry to shipments of e-cigarettes coming into this country on the  
6     grounds that these are unapproved drug device products;  
7     however, enough of these devices have made their way into this  
8     country that they are sold online and in some shopping mall  
9     kiosks.
  - 10    • The World Health Organization issued a statement in 2008 that it  
11    does not consider e-cigarettes "to be a legitimate therapy for  
12    smokers trying to quit."
  - 13    • These devices have not been submitted to the FDA for evaluation  
14    or approval, and New Jersey's own Senator Frank Lautenberg has  
15    requested that the FDA take e-cigarettes off the market until they  
16    are proven safe for public use.

# SENATE, No. 3053

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

**Sponsored by:**

**Senator ROBERT M. GORDON**

**District 38 (Bergen)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Co-Sponsored by:**

**Senator Codey**

**SYNOPSIS**

Prohibits use of electronic smoking devices in indoor public places and workplaces.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/8/2009)**

S3053 GORDON, VITALE

2

1 AN ACT concerning the use of electronic smoking devices in indoor  
2 public places and workplaces and amending P.L.2005, c.383.

3

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

6

7 1. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to  
8 read as follows:

9 2. The Legislature finds and declares that: **[tobacco]**

10 a. Tobacco is the leading cause of preventable disease and  
11 death in the State and the nation**[, and tobacco]**;

12 b. Tobacco smoke constitutes a substantial health hazard to the  
13 nonsmoking majority of the public; **[the]**

14 c. Electronic smoking devices have not been approved as to  
15 safety and efficacy by the federal Food and Drug Administration,  
16 and their use may pose a health risk to persons exposed to their  
17 smoke or vapor because of a known irritant contained therein and  
18 other substances that may, upon evaluation by that agency, be  
19 identified as potentially toxic to those inhaling the smoke or vapor;

20 d. The separation of smoking and nonsmoking areas in indoor  
21 public places and workplaces does not eliminate the hazard to  
22 nonsmokers if these areas share a common ventilation system; and  
23 **[, therefore]**

24 e. Therefore, subject to certain specified exceptions, it is  
25 clearly in the public interest to prohibit the smoking of tobacco  
26 products and the use of electronic smoking devices in all enclosed  
27 indoor places of public access and workplaces.

28 (cf: P.L.2005, c.383, s.2)

29

30 2. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to  
31 read as follows:

32 3. As used in this act:

33 "Bar" means a business establishment or any portion of a  
34 nonprofit entity, which is devoted to the selling and serving of  
35 alcoholic beverages for consumption by the public, guests, patrons  
36 or members on the premises and in which the serving of food, if  
37 served at all, is only incidental to the sale or consumption of such  
38 beverages.

39 "Cigar bar" means any bar, or area within a bar, designated  
40 specifically for the smoking of tobacco products, purchased on the  
41 premises or elsewhere; except that a cigar bar that is in an area  
42 within a bar shall be an area enclosed by solid walls or windows, a  
43 ceiling and a solid door and equipped with a ventilation system  
44 which is separately exhausted from the nonsmoking areas of the bar  
45 so that air from the smoking area is not recirculated to the

**EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 nonsmoking areas and smoke is not backstreamed into the  
2 nonsmoking areas.

3 "Cigar lounge" means any establishment, or area within an  
4 establishment, designated specifically for the smoking of tobacco  
5 products, purchased on the premises or elsewhere; except that a  
6 cigar lounge that is in an area within an establishment shall be an  
7 area enclosed by solid walls or windows, a ceiling and a solid door  
8 and equipped with a ventilation system which is separately  
9 exhausted from the nonsmoking areas of the establishment so that  
10 air from the smoking area is not recirculated to the nonsmoking  
11 areas and smoke is not backstreamed into the nonsmoking areas.

12 "Electronic smoking device" means an electronic device that can  
13 be used to deliver nicotine or other substances to the person  
14 inhaling from the device, including, but not limited to, an electronic  
15 cigarette, cigar, cigarillo, or pipe.

16 "Indoor public place" means a structurally enclosed place of  
17 business, commerce or other service-related activity, whether  
18 publicly or privately owned or operated on a for-profit or nonprofit  
19 basis, which is generally accessible to the public, including, but not  
20 limited to: a commercial or other office building; office or building  
21 owned, leased or rented by the State or by a county or municipal  
22 government; public and nonpublic elementary or secondary school  
23 building; board of education building; theater or concert hall; public  
24 library; museum or art gallery; bar; restaurant or other  
25 establishment where the principal business is the sale of food for  
26 consumption on the premises, including the bar area of the  
27 establishment; garage or parking facility; any public conveyance  
28 operated on land or water, or in the air, and passenger waiting  
29 rooms and platform areas in any stations or terminals thereof; health  
30 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et  
31 seq.); patient waiting room of the office of a health care provider  
32 licensed pursuant to Title 45 of the Revised Statutes; child care  
33 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);  
34 race track facility; facility used for the holding of sporting events;  
35 ambulatory recreational facility; shopping mall or retail store; hotel,  
36 motel or other lodging establishment; apartment building lobby or  
37 other public area in an otherwise private building; or a passenger  
38 elevator in a building other than a single-family dwelling.

39 "Person having control of an indoor public place or workplace"  
40 means the owner or operator of a commercial or other office  
41 building or other indoor public place from whom a workplace or  
42 space within the building or indoor public place is leased.

43 "Smoking" means the burning of, inhaling from, exhaling the  
44 smoke from, or the possession of a lighted cigar, cigarette, pipe or  
45 any other matter or substance which contains tobacco or any other  
46 matter that can be smoked, or the inhaling or exhaling of smoke or  
47 vapor from an electronic smoking device.

1 "Tobacco retail establishment" means an establishment in which  
2 at least 51% of retail business is the sale of tobacco products and  
3 accessories, and in which the sale of other products is merely  
4 incidental.

5 "Workplace" means a structurally enclosed location or portion  
6 thereof at which a person performs any type of service or labor.  
7 (cf: P.L.2005, c.383, s.3)

8  
9 3. This act shall take effect on the 180th day after enactment,  
10 but the Commissioner of Health and Senior Services may take such  
11 anticipatory administrative action in advance thereof as shall be  
12 necessary for the implementation of this act.

13  
14  
15 STATEMENT

16  
17 This bill extends the provisions of the "New Jersey Smoke Free  
18 Air Act," P.L.2005, c.383 (C.26:3D-55 et seq.), which generally  
19 prohibits the smoking of a cigar, cigarette, pipe or any other matter  
20 or substance which contains tobacco or any other matter that can be  
21 smoked in indoor public places and workplaces, to apply to the use  
22 of electronic smoking devices, commonly known as e-cigarettes, in  
23 the same places.

24 The bill defines "electronic smoking device" to mean an  
25 electronic device that can be used to deliver nicotine or other  
26 substances to the person inhaling from the device, including, but not  
27 limited to, an electronic cigarette, cigar, cigarillo, or pipe.

28 Under this bill, the penalties that currently apply to a person who  
29 smokes tobacco in an indoor public place or workplace would apply  
30 to a person who uses an e-cigarette in violation of this bill (a fine of  
31 not less than \$250 for the first offense, \$500 for the second offense  
32 and \$1,000 for each subsequent offense).

33 The bill takes effect on the 180th day after enactment, but  
34 authorizes the Commissioner of Health and Senior Services to take  
35 anticipatory administrative action in advance as necessary for its  
36 implementation.

37 It should be noted that:

- 38 • An e-cigarette is operated by a battery that warms liquid nicotine  
39 and propylene glycol from a replaceable plastic cartridge when a  
40 person inhales the device. Propylene glycol is a liquid that  
41 vaporizes when a person exhales and produces a mist that is  
42 nearly identical in appearance to tobacco smoke.
- 43 • Propylene glycol is used in antifreeze; and, according to a 2009  
44 statement by Health Canada, the Canadian federal government  
45 agency with regulatory jurisdiction over health issues, "the  
46 inhalation of propylene glycol is a known irritant."
- 47 • Health Canada issued a public advisory to not purchase or use e-  
48 cigarettes "as these products may pose health risks and have not



- 1     been fully evaluated for safety, quality and efficacy by Health  
2     Canada" and ordered persons importing, advertising, or selling  
3     these products in Canada to cease doing so.
- 4     • The federal Food and Drug Administration (FDA) has refused  
5     entry to shipments of e-cigarettes coming into this country on the  
6     grounds that these are unapproved drug device products;  
7     however, enough of these devices have made their way into this  
8     country that they are sold online and in some shopping mall  
9     kiosks.
  - 10    • The World Health Organization issued a statement in 2008 that it  
11    does not consider e-cigarettes "to be a legitimate therapy for  
12    smokers trying to quit."
  - 13    • These devices have not been submitted to the FDA for evaluation  
14    or approval, and New Jersey's own Senator Frank Lautenberg has  
15    requested that the FDA take e-cigarettes off the market until they  
16    are proven safe for public use.

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 3053 and 3054**

**STATE OF NEW JERSEY**

DATED: DECEMBER 7, 2009

The Senate Health, Human Services and Senior Citizens Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 3053 and 3054.

This committee substitute prohibits the use of e-cigarettes in indoor public places and workplaces, and also prohibits their sale or distribution to minors.

The substitute provides specifically as follows:

- The substitute extends the provisions of the “New Jersey Smoke Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.), which generally prohibits the smoking of a cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked in indoor public places and workplaces, to apply to the use of electronic smoking devices, commonly known as e-cigarettes, in the same places.
- The substitute defines “electronic smoking device” to mean an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device.
- The penalties that currently apply to a person who smokes tobacco in an indoor public place or workplace would apply to a person who uses an e-cigarette in violation of this substitute (not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense).
- The prohibition on the use of e-cigarettes in indoor public places and workplaces takes effect on the 180th day after enactment, but the Commissioner of Health and Senior Services is authorized to take anticipatory administrative action in advance.
- In addition, the substitute extends the current statutory prohibition on the sale or distribution of tobacco products to persons under 19 years of age to apply to electronic smoking devices. A person who violates this prohibition would be subject to the existing statutory civil and criminal penalties for the sale or distribution of tobacco products to minors, as follows:

-- The criminal penalties are a fine as provided for a petty disorderly persons offense (\$500) for a first offense and a fine of twice that amount for a subsequent offense.

-- The civil penalties are 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; and possible suspension, or (after a second or subsequent violation) revocation of the license of a retail dealer issued under section 202 of P.L.1948, c.65 (C.54:40A-4).

-- A civil penalty imposed would be in addition to any criminal penalty that may be imposed and vice versa.

- The prohibition on the sale or distribution to minors takes effect on the 60th day after enactment.

This substitute is identical to Assembly Committee Substitute for Assembly Nos. 4227 and 4228 (SCA) (Wagner/Munoz/Voss/Moriarty/Angelini/Stender), which is pending in the Assembly.

# SENATE, No. 3054

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

**Sponsored by:**

**Senator ROBERT M. GORDON**

**District 38 (Bergen)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Co-Sponsored by:**

**Senator Codey**

**SYNOPSIS**

Prohibits sale of electronic smoking devices to minors.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/8/2009)**

1 AN ACT prohibiting the sale of electronic smoking devices to  
2 minors and amending P.L.2000, c.87 and P.L.1999, c.90.

3

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

6

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

9 1. a. No person, either directly or indirectly by an agent or  
10 employee, or by a vending machine owned by the person or located  
11 in the person's establishment, shall sell, offer for sale, distribute for  
12 commercial purpose at no cost or minimal cost or with coupons or  
13 rebate offers, give or furnish, to a person under 19 years of age~~[, ]~~:

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

17 (2) any electronic smoking device that can be used to deliver  
18 nicotine or other substances to the person inhaling from the device,  
19 including, but not limited to, an electronic cigarette, cigar, cigarillo,  
20 or pipe, or any cartridge or other component of the device or related  
21 product.

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

25 (1) that the purchaser of the tobacco product or electronic  
26 smoking device or the recipient of the promotional sample falsely  
27 represented, by producing either a driver's license or non-driver  
28 identification card issued by the New Jersey Motor Vehicle  
29 Commission, a similar card issued pursuant to the laws of another  
30 state or the federal government of Canada, or a photographic  
31 identification card issued by a county clerk, that the purchaser or  
32 recipient was of legal age to make the purchase or receive the  
33 sample;

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

39 (3) that the sale or distribution of the tobacco product or  
40 electronic smoking device was made in good faith, relying upon the  
41 production of the identification set forth in paragraph (1) of this  
42 subsection, the appearance of the purchaser or recipient, and in the  
43 reasonable belief that the purchaser or recipient was of legal age to  
44 make the purchase or receive the sample.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 c. A person who violates the provisions of subsection a. of this  
2 section, including an employee of a retail dealer licensee under  
3 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise  
4 provides a tobacco product to a person under 19 years of age, shall  
5 be liable to a civil penalty of not less than \$250 for the first  
6 violation, not less than \$500 for the second violation, and \$1,000  
7 for the third and each subsequent violation. The civil penalty shall  
8 be collected pursuant to the "Penalty Enforcement Law of 1999,"  
9 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding  
10 before the municipal court having jurisdiction. An official  
11 authorized by statute or ordinance to enforce the State or local  
12 health codes or a law enforcement officer having enforcement  
13 authority in that municipality may issue a summons for a violation  
14 of the provisions of subsection a. of this section, and may serve and  
15 execute all process with respect to the enforcement of this section  
16 consistent with the Rules of Court. A penalty recovered under the  
17 provisions of this subsection shall be recovered by and in the name  
18 of the State by the local health agency. The penalty shall be paid  
19 into the treasury of the municipality in which the violation occurred  
20 for the general uses of the municipality.

21 d. In addition to the provisions of subsection c. of this section,  
22 upon the recommendation of the municipality, following a hearing  
23 by the municipality, the Division of Taxation in the Department of  
24 the Treasury may suspend or, after a second or subsequent violation  
25 of the provisions of subsection a. of this section, revoke the license  
26 issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail  
27 dealer. The licensee shall be subject to administrative charges,  
28 based on a schedule issued by the Director of the Division of  
29 Taxation, which may provide for a monetary penalty in lieu of a  
30 suspension.

31 e. A penalty imposed pursuant to this section shall be in  
32 addition to any penalty that may be imposed pursuant to section 3  
33 of P.L.1999, c. 90 (C.2C:33-13.1).  
34 (cf: P.L.2005, c.384, s.1)  
35

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

38 3. a. A person who sells or gives to a person under 19 years of  
39 age any cigarettes made of tobacco or of any other matter or  
40 substance which can be smoked, or any cigarette paper or tobacco  
41 in any form, including smokeless tobacco, or any electronic  
42 smoking device that can be used to deliver nicotine or other  
43 substances to the person inhaling from the device, including, but not  
44 limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any  
45 cartridge or other component of the device or related product,  
46 including an employee of a retail dealer licensee under P.L.1948,  
47 c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a  
48 tobacco product or electronic smoking device to a person under 19

1 years of age, shall be punished by a fine as provided for a petty  
2 disorderly persons offense. A person who has been previously  
3 punished under this section and who commits another offense under  
4 it may be punishable by a fine of twice that provided for a petty  
5 disorderly persons offense.

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

9 (1) that the purchaser or recipient of the tobacco product or  
10 electronic smoking device falsely represented, by producing either a  
11 driver's license or non-driver identification card issued by the New  
12 Jersey Motor Vehicle Commission, a similar card issued pursuant to  
13 the laws of another state or the federal government of Canada, or a  
14 photographic identification card issued by a county clerk, that the  
15 purchaser or recipient was of legal age to purchase or receive the  
16 tobacco product or electronic smoking device;

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

22 (3) that the sale or distribution of the tobacco product or  
23 electronic smoking device was made in good faith, relying upon the  
24 production of the identification set forth in paragraph (1) of this  
25 subsection, the appearance of the purchaser or recipient, and in the  
26 reasonable belief that the purchaser or recipient was of legal age to  
27 purchase or receive the tobacco product or electronic smoking  
28 device.

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

32 (cf: P.L.2005, c.384, s.5)

33

34 3. This act shall take effect on the 60th day after enactment.

35

36

37

#### STATEMENT

38

39 This bill extends the current statutory prohibition on the sale of  
40 tobacco products to persons under 19 years of age to apply to  
41 electronic smoking devices, commonly known as e-cigarettes.

42 The provisions of this bill would apply to the sale or distribution  
43 of electronic smoking devices that can be used to deliver nicotine or  
44 other substances to the person inhaling from the device, including,  
45 but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or  
46 any cartridge or other component of the device or related product.

47 A person who violates the provisions of this bill would be  
48 subject to the existing statutory civil and criminal penalties for the

1 sale or distribution of tobacco products to persons under 19 years of  
2 age, as follows:

3 -- The criminal penalties are a fine as provided for a petty  
4 disorderly persons offense (\$500) for a first offense and a fine of  
5 twice that amount for a subsequent offense.

6 -- The civil penalties are not less than \$250 for the first  
7 violation, not less than \$500 for the second violation, and \$1,000  
8 for the third and each subsequent violation; and possible  
9 suspension, or (after a second or subsequent violation) revocation of  
10 the license of a retail dealer issued under section 202 of P.L.1948,  
11 c.65 (C.54:40A-4).

12 -- A civil penalty imposed would be in addition to any criminal  
13 penalty that may be imposed and vice versa.

14 The bill takes effect on the 60th day after enactment.

15 It should be noted that:

- 16 • An e-cigarette is operated by a battery that warms liquid nicotine  
17 and propylene glycol from a replaceable plastic cartridge when a  
18 person inhales the device. Propylene glycol is a liquid that  
19 vaporizes when a person exhales and produces a mist that is  
20 nearly identical in appearance to tobacco smoke.
- 21 • Propylene glycol is used in antifreeze; and, according to a 2009  
22 statement by Health Canada, the Canadian federal government  
23 agency with regulatory jurisdiction over health issues, "the  
24 inhalation of propylene glycol is a known irritant."
- 25 • Health Canada issued a public advisory to not purchase or use e-  
26 cigarettes "as these products may pose health risks and have not  
27 been fully evaluated for safety, quality and efficacy by Health  
28 Canada" and ordered persons importing, advertising, or selling  
29 these products in Canada to cease doing so.
- 30 • The federal Food and Drug Administration (FDA) has refused  
31 entry to shipments of e-cigarettes coming into this country on the  
32 grounds that these are unapproved drug device products;  
33 however, enough of these devices have made their way into this  
34 country that they are sold online and in some shopping mall  
35 kiosks.
- 36 • The World Health Organization issued a statement in 2008 that it  
37 does not consider e-cigarettes "to be a legitimate therapy for  
38 smokers trying to quit."
- 39 • These devices have not been submitted to the FDA for evaluation  
40 or approval, and New Jersey's own Senator Frank Lautenberg has  
41 requested that the FDA take e-cigarettes off the market until they  
42 are proven safe for public use.