

SENATE, No. 2175

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JULY 1, 2010

Sponsored by:

Senator JIM WHELAN

District 2 (Atlantic)

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

SYNOPSIS

Establishes procedure for destroying certain contraband tobacco products and cigarettes.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the forfeiture of certain contraband tobacco
2 products and cigarettes, supplementing P.L.1990, c.39
3 (C.54:40B-1 et seq.), and amending P.L.1948, c.65 and
4 N.J.S.2C:64-1.

5

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

8

9 1. (New section) a. Notwithstanding any other provision of
10 law, the possession for sale of untaxed tobacco products, unstamped
11 or illegally stamped cigarettes, or other contraband tobacco
12 products or cigarettes by a manufacturer, importer, distributor,
13 wholesale dealer, retail dealer, or any other person shall, after
14 notice and hearing, result in the forfeiture to this State of the
15 product and related machinery and equipment used to falsely mark
16 tobacco products or cigarettes to reflect the payment of excise
17 taxes, or in the production of such tobacco products or cigarettes.

18 b. The knowing sale or possession for sale of untaxed tobacco
19 products, unstamped or illegally stamped cigarettes, or other
20 contraband tobacco products shall, after notice and a hearing, result
21 in the seizure of all tobacco products and cigarettes, related
22 machinery, and equipment.

23 c. All tobacco products and cigarettes forfeited to this State
24 under this section shall be destroyed. The director, prior to the
25 destruction of any tobacco products or cigarettes, may permit the
26 true holder of the trademark rights in the tobacco product or
27 cigarette brand to inspect such contraband tobacco products or
28 cigarettes, in order to assist the director in any investigation
29 regarding such tobacco product or cigarettes.

30 d. The seizure of any untaxed tobacco products, unstamped or
31 illegally stamped cigarettes, or other contraband tobacco products
32 under the provisions of this section shall not relieve any person
33 from a fine, imprisonment, or other penalty for a violation of any
34 provision of this act. The director, the director's agents, employees,
35 or any law enforcement officer of this State, when directed to do so,
36 shall not in any way be responsible in any court for the seizure or
37 the confiscation of any untaxed tobacco products, unstamped or
38 illegally stamped cigarettes, or other contraband tobacco products.

39

40 2. Section 607 of P.L.1948, c.65 (C.54:40A-30) is amended to
41 read as follows:

42 607. **[Unstamped cigarettes subject to confiscation]** Forfeiture of
43 unstamped or illegally stamped cigarettes or other contraband
44 cigarettes.

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 a. [All cigarettes, subject to the tax imposed by this act, to
2 which stamps have not been affixed, as required by this act, and all
3 cigarettes stamped in violation of subsection b. of section 405 of
4 P.L.1948, c.65 (C.54:40A-15) found in any place in this State are
5 declared to be prima facie contraband goods and may be seized by
6 the director, the director's agents or employees, or by any peace
7 officer of this State, when directed by the director so to do, without
8 a warrant] Notwithstanding any other section of law, the possession
9 for sale of unstamped or illegally stamped cigarettes or other
10 contraband cigarettes by a manufacturer, importer, distributor,
11 wholesale dealers or retail dealer shall, after notice and hearing,
12 result in the forfeiture to this State of the product and related
13 machinery and equipment used to falsely mark cigarettes to reflect
14 the payment of excise taxes, or in the production of contraband
15 cigarettes.

16 b. [The director may upon satisfactory proof direct the return
17 of any unstamped confiscated cigarettes when the director shall
18 have reason to believe that the owner thereof has not willfully or
19 intentionally evaded any tax imposed by this act. Any unstamped
20 cigarettes seized under the provisions of this act shall be disposed
21 of according to law. Any purchaser of such cigarettes shall be
22 required to affix stamps as required by this act] The knowing sale
23 or possession for sale of unstamped or illegally stamped cigarettes
24 or other contraband shall, after notice and hearing, result in the
25 seizure of all related machinery and equipment.

26 c. [The director shall destroy any seized cigarettes that have
27 been stamped in violation of subsection b. of section 405 of
28 P.L.1948, c.65 (C.54:40A-15); provided however that as an
29 alternative the director may resell such cigarettes to the
30 manufacturer, but such cigarettes shall be resold only for export or
31 destruction] All cigarettes forfeited to this State under this section
32 shall be destroyed. The director may, prior to the destruction of
33 cigarettes, permit the true holder of the trademark rights in the
34 cigarette brand to inspect such cigarettes, in order to assist the
35 director in any investigation regarding such cigarettes.

36 d. The seizure [and sale] of any unstamped or illegally
37 stamped cigarettes or any other contraband cigarettes under the
38 provisions of this section shall not relieve any person from a fine,
39 imprisonment or other penalty for violation of any of the provisions
40 of this act. The director, the director's agents, employees, and any
41 peace officer of this State, when directed so to do, shall not in any
42 way be responsible in any court for the seizure or the confiscation
43 of any unstamped or illegally stamped packages of cigarettes.
44 (cf: P.L.1999, c.328, s.6)

45

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

47 2C:64-1. Property Subject to Forfeiture.

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

3 (1) Controlled dangerous substances, firearms which are
4 unlawfully possessed, carried, acquired or used, illegally possessed
5 gambling devices, untaxed or otherwise contraband cigarettes or
6 tobacco products, untaxed special fuel, unlawful sound recordings
7 and audiovisual works and items bearing a counterfeit mark. These
8 shall be designated prima facie contraband.

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

14 (3) Property which has become or is intended to become an
15 integral part of illegal activity, including, but not limited to, money
16 which is earmarked for use as financing for an illegal gambling
17 enterprise.

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

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

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

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

32 c. For the purposes of this section:

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

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

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

44 (cf: P.L.2004, c.150, s.3)

45

46 4. This act shall take effect immediately.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

This bill supplements the "Tobacco Products Wholesale Sales and Use Tax Act" to require that untaxed tobacco products, unstamped or illegally stamped cigarettes, or other contraband tobacco products or cigarettes that are sold or possessed by a manufacturer, importer, distributor, wholesale dealer, retail dealer any other person, following notice and a hearing, be forfeited to the State. The bill further requires that any machinery or equipment used to produce the tobacco products or cigarettes, or falsely mark the tobacco products or cigarettes to reflect the payment of excise taxes, are also subject to forfeiture.

Following the forfeiture of the untaxed or otherwise contraband tobacco products or cigarettes, all such products are to be destroyed. The bill provides that the seizure of any contraband tobacco products or cigarettes not relieve any person from a fine, imprisonment, or other penalty under the law.

In addition, this bill amends part of the "Cigarette Tax Act" to mirror the changes that the bill makes to the "Tobacco Products Wholesale Sales and Use Tax Act."

Finally, untaxed or otherwise contraband tobacco products are added to the list of items that are considered to be prima facie contraband under the criminal code and, as such, are subject to forfeiture and for which there are no property rights.