

SENATE, No. 2516

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 4, 2013

Sponsored by:

Senator DONALD NORCROSS

District 5 (Camden and Gloucester)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senators A.R.Bucco and Holzapfel

SYNOPSIS

Increases civil and criminal penalties involving unstamped and counterfeit cigarettes and cigarette smuggling and establishes crime involving transfers of counterfeit cigarettes.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/22/2013)

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2

1 AN ACT concerning civil and criminal penalties for offenses
2 involving unstamped and counterfeit cigarettes and cigarette
3 smuggling, amending various parts of statutory law and
4 supplementing P.L.1948, c.65 (C.54:40A-1 et seq.).

5

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

8

9 1. Section 202 of P.L.1948, c.65 (C.54:40A-4) is amended to
10 read as follows:

11 202. a. All licenses shall be issued by the director, who shall
12 make rules and regulations respecting applications therefor and
13 issuance thereof.

14 b. The following individuals related to distributors, wholesale
15 dealers, retail dealers operating more than nine cigarette vending
16 machines, and retail dealers who sell cigarettes at retail at more
17 than nine premises shall submit with applications for a license,
18 fingerprints, which shall be processed through the Federal Bureau
19 of Investigation and the New Jersey State Police, and such other
20 information as the director may require:

21 (1) Individuals having any interest whatsoever in a
22 proprietorship or company.

23 (2) Partners of a partnership, regardless of percentage.

24 (3) Joint venturers in a joint venture.

25 (4) Officers, directors, and all stockholders holding directly or
26 indirectly a beneficial interest in more than 5% of the outstanding
27 shares of a corporation.

28 (5) Employees receiving in excess of \$30,000.00 per annum
29 compensation whether as salary, commission, bonus or otherwise
30 and persons who, in the judgment of the director are employed in a
31 supervisory capacity or have the power to make or substantially
32 affect discretionary business judgments of the applicant entity with
33 regard to the cigarette business.

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

43 The provisions in this subsection as to wholesale dealers, retail
44 dealers operating more than nine cigarette vending machines, and
45 retail dealers who sell cigarettes at retail at more than nine premises

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 do not apply to retail grocery stores and supermarkets primarily
2 engaged in the self-service sale of foods and household supplies for
3 off-premises consumption, to drug stores and pharmacies engaged
4 in the retail sale of prescription drugs and patent medicines and
5 which may carry a number of lines of related merchandise, or to
6 restaurants, hotels and motels operated by national corporations
7 with such premises in six or more states and primarily engaged in
8 the sale of foods for retail consumption or in the rental of rooms for
9 lodging.

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

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

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

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

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

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1 As used in this subsection:

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

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

14 g. Each such license shall lapse on March 31 of the period for
15 which it is issued, and each such license shall be continued annually
16 upon the conditions that the licensee shall have paid the required
17 fee and complied with all the provisions of this act and the rules and
18 regulations of the director made pursuant thereto.

19 h. For each license issued to a distributor there shall be paid to
20 the director a fee of \$350.00. If a distributor sells or intends to sell
21 cigarettes at two or more places of business, whether established or
22 temporary, a separate license shall be required for each place of
23 business. Each license, or certificate, thereof, and such other
24 evidence of license shall be exhibited in the place of business for
25 which it is issued and in such manner as may be prescribed by the
26 director. The director shall require each licensed distributor to file
27 with him a bond in an amount not less than \$6,000.00 to guarantee
28 the proper performance of his duties and the discharge of his
29 liabilities under this act. The bond shall be executed by such
30 licensed distributor as principal, and by a corporation approved by
31 the director and duly authorized to engage in business as a surety
32 company in the State of New Jersey, as surety. The bond shall run
33 concurrently with the distributor's license.

34 For each license issued to a manufacturer, and for each
35 continuance thereof, there shall be paid to the director a fee of
36 \$10.00.

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

40 For each license issued to a wholesale dealer there shall be paid
41 to the director a fee of \$250.00. If a wholesale dealer sells or
42 intends to sell cigarettes at two or more places of business, whether
43 established or temporary, a separate license shall be required for
44 each place of business. Each license, or certificate thereof, and such
45 other evidence of license shall be exhibited in the place of business
46 for which it is issued and in such manner as may be prescribed by
47 the director.

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1 For each license issued to a retail dealer and for each
2 continuance thereof, excepting a retail dealer operating a cigarette
3 vending machine, there shall be paid to the director a fee of \$40 in
4 1996 and \$50 in 1997 and each year thereafter. For each license
5 issued to a retail dealer operating a vending machine for the sale of
6 cigarettes and for each continuance thereof, there shall be paid to
7 the director a fee of \$40 in 1996 and \$50 in 1997 and each year
8 thereafter. Of the license fee of \$40 and \$50, respectively, \$30
9 shall be credited in 1996 and \$40 shall be credited in 1997 and each
10 year thereafter to the special projects and development fund in the
11 Department of Health and Senior Services established pursuant to
12 section 7 of P.L.1966, c.36 (C.26:2F-7) for the purposes specified
13 therein, and \$5 shall be credited each year, beginning with 1996, to
14 the division for administrative costs associated with the
15 requirements established pursuant to subsection i. of this section
16 and section 2 of P.L.1995, c.320 (C.26:3A2-20.1). The director
17 shall determine and certify to the State Treasurer on a monthly basis
18 the amount of revenues collected by the director which are to be
19 credited to the special projects and development fund in the
20 Department of Health and Senior Services.

21 If a retail dealer sells or intends to sell cigarettes at two or more
22 places of business, whether established or temporary, or whether in
23 the same building or not, a separate license shall be required for
24 each place of business. Each vending machine for the sale of
25 cigarettes shall be separately licensed and be deemed a separate
26 place of business. Each license, or certificate thereof, and such
27 other evidence of license shall be exhibited in the place of business
28 for which it is issued and in such manner as may be prescribed by
29 the director.

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

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

40 No license shall be issued to any person except upon the
41 payment of the full fee therefor, any statute or exemption to the
42 contrary notwithstanding. No license shall be assignable or
43 transferable, except as hereinafter provided, but in the case of death,
44 bankruptcy, receivership, or incompetency of the licensee, or if for
45 any other reason whatsoever the business of the licensee shall
46 devolve upon another by operation of law, the director may, in his
47 discretion, extend said license for a limited time to the executor,
48 administrator, trustee, receiver, or person upon whom the same has

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1 devolved. A purchaser or assignee of a licensed wholesaler or
2 licensed distributor, or any other person upon whom the business of
3 a licensed wholesaler or licensed distributor shall devolve by
4 operation of law, shall upon application to the director, be entitled
5 to an assignment or transfer of the wholesale or distributor license
6 for the balance of the existing license period upon payment of a
7 transfer fee of \$5.00 and subject to his qualification to be a licensed
8 wholesaler or licensed distributor under the provisions of this act.
9 The license issued for each vending machine for the sale of
10 cigarettes may be transferred from machine to machine in the same
11 ownership. No refund of the license fee shall be paid to any person
12 upon the surrender or revocation of any license except a license fee
13 paid or collected in error. But, upon payment of a \$1.00 fee, there
14 may be obtained (1) a duplicate license, or certificate thereof, in the
15 event the original is lost, destroyed or defaced, and (2) an amended
16 license, or certificate thereof, upon a change in the location of the
17 place of business of any distributor or dealer.

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

23 If the place of business or the vending machine is moved to a
24 different address than that provided on the license application, the
25 licensee shall notify the director within 30 days of the change of
26 address.

27 (cf: P.L.1997, c.373, s.1)

28

29 2. Section 205 of P.L.1948, c.65 (C.54:40A-7) is amended to
30 read as follows:

31 205. Every licensed distributor shall file with the director on or
32 before the twentieth day of each month, a report in such form as the
33 director shall prescribe, which report shall disclose the number of
34 cigarettes on hand by brand family, as defined pursuant to section 2
35 of P.L.2003, c.25 (C.52:4D-5), on the first and last days of the
36 calendar month immediately preceding the month in which such
37 report is required; together with the quantity, by brand family, of
38 cigarettes purchased or sold during the report period, and such
39 information concerning the amount of stamps purchased, used, and
40 on hand during the report period; together with any other
41 information for the report period that the director shall prescribe.

42 Every licensed manufacturer shall file with the director on or
43 before the twentieth day of each month, a report in such form as the
44 director shall prescribe, which report shall disclose the number of
45 cigarettes sold, subject to the cigarette tax, for the calendar month
46 immediately preceding the month in which such report is required;
47 together with any other information for the report period that the
48 director shall prescribe.

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1 Every licensed manufacturer's representative, wholesale and
2 retail dealer, upon notice from the director, shall file with the
3 director a report in such form, and on such dates, as the director
4 shall prescribe.

5 Every licensed consumer who has acquired cigarettes for use,
6 storage or consumption subject to the tax shall, on or before the
7 twentieth day of the month following receipt of such cigarettes,
8 complete and file with the director, in such form as the director
9 shall prescribe, a report showing the amount of cigarettes so
10 received. Said report shall be accompanied by a remittance for the
11 full amount of the tax due.

12 Any person, other than a licensed distributor, who transports
13 unstamped cigarettes upon the public highways, roads, or streets of
14 this State or who stores unstamped cigarettes in this State upon
15 notice from the director, shall file with the director a report in such
16 form, and on such dates, as the director shall prescribe.

17 Any person who shall fail to file any report on the day when it
18 shall be due, shall forfeit as a penalty, an amount as provided in the
19 State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the
20 Revised Statutes. The director, if satisfied that the failure to
21 comply with any provision of this section was excusable, may remit
22 the whole or any part of said penalty.

23 (P.L.1975, c.177, s.34)

24

25 3. (New section) The director shall produce a monthly report
26 listing the quantity of cigarettes sold in this State by distributors,
27 aggregated by manufacturer and by brand family as defined
28 pursuant to section 2 of P.L.2003, c.25 (C.52:4D-5), during the
29 month immediately preceding the monthly report, which shall be
30 published on the website of the Division of Taxation in the
31 Department of the Treasury on or before the 15th day of each
32 month.

33

34 4. Section 601 of P.L.1948, c.65 (C.54:40A-24) is amended to
35 read as follows:

36 601. a. Penalties. Any person who shall engage in any business
37 or activity for which a license is required under the provisions of
38 this act, without first having obtained a license to do so, or who,
39 having had such a license, shall continue to engage in or conduct
40 such business after any such license shall have been revoked, or
41 during a suspension thereof, shall be liable to a penalty of not more
42 than ~~[\$250.00]~~ \$500, which penalty shall be sued for, and shall be
43 recoverable in the name of the director; and each day that any such
44 business is so engaged in or conducted shall be deemed a separate
45 offense.

46 b. Jurisdiction of court; proceedings. The Superior Court and
47 every municipal court within their respective jurisdictions, and with
48 respect to offenses occurring within the territorial jurisdiction of the

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1 court, shall have jurisdiction over proceedings to enforce and
2 collect the penalty. The proceedings shall be brought by and in the
3 name of the director. They shall be summary and in accordance
4 with "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).
5 Process shall be either in the nature of a summons or warrant.

6 If judgment be rendered for the plaintiff, the court shall cause
7 any defendant who refuses or fails to pay forthwith the amount of
8 the judgment rendered against him and all the costs and charges
9 incident thereto, to be committed to the county jail for such period
10 as the court shall determine, not exceeding ~~[30]~~ 60 days.

11 c. Penalty for further violations; recovery; proceedings in
12 court. In case a person shall, after conviction of any violation of this
13 act, be again convicted of violating the same provision thereof, he
14 may be liable to a penalty for such further violation, in double the
15 maximum penalty which might have been imposed on the first
16 conviction, to be sued for and recovered in the manner above set
17 forth. In case any defendant against whom judgment has been
18 rendered for a money penalty under this subsection, shall fail or
19 neglect to pay forthwith the amount of said penalty, the court shall
20 commit him to jail for such number of days not exceeding ~~[90]~~ 180
21 days, as the court shall determine.

22 d. Disposition of penalties. All penalties recovered for
23 violations of this act shall be paid to the director and by him
24 accounted for and paid to the State Treasurer as in the case of State
25 taxes.

26 e. Costs; expenses. The costs recoverable in any such
27 proceeding shall be recovered by the director in the event of
28 judgment in his favor. If the judgment be for the defendant it shall
29 be without costs against the director. All expenses incident to the
30 recovery of any penalty pursuant to the provisions of this section
31 shall be paid for as any other expense incident to the administration
32 of this act.

33 (cf: P.L.1991, c.91, s.515)

34

35 5. Section 10 of P.L.1968, c.351 (C.54:40A-24.1) is amended
36 to read as follows:

37 10. Any manufacturer's representative, as defined in this act,
38 who sells or exchanges cigarettes other than those of his employer's
39 manufacture shall be liable to a penalty of not more than ~~[\$250.00]~~
40 \$500 for each separate offense.

41 (cf: P.L.1968, c.351, s.10).

42

43 6. Section 602 of P.L.1948, c.65 (C.54:40A-25) is amended to
44 read as follows:

45 602. Possessing cigarettes not bearing required revenue stamps.

46 Any wholesale dealer or retail dealer who violates the provisions
47 of section four hundred six of this act, and any consumer who fails
48 to report and remit the tax due as provided by section two hundred

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1 five of this act, shall be liable to a penalty of not more than [two-
2 hundred and fifty dollars (\$250)] \$500 for each individual carton of
3 unstamped or illegally stamped cigarettes in the dealer's possession,
4 which penalty shall be sued for and recovered in the same manner
5 as provided for the penalties imposed by section six hundred one of
6 this act.

7 (cf: P.L. 2011, c.80, s.3)

8

9 7. Section 603 of P.L.1948, c.65 (C.54:40A-26) is amended to
10 read as follows:

11 603. Any person engaged in the business of manufacturing,
12 purchasing, selling, consigning, shipping, distributing, or
13 transporting cigarettes, who shall refuse or fail to produce, on
14 demand by the director, invoices of all cigarettes purchased or
15 received by him within three years prior to such demand, unless his
16 inability to do so for reasons beyond his control shall be shown by
17 satisfactory proof, shall be liable to a penalty of not more than [two
18 hundred fifty dollars (\$250.00)] \$500 for each separate offense.

19 (cf: P.L.1951, c.281, s.3)

20

21 8. Section 604 of P.L.1948, c. 65 (C.54:40A-27) is amended to
22 read as follows:

23 604. Any person who prevents or hinders the director or any
24 designated assistant from making a cigarette inventory, examination
25 and full inspection of any place where cigarettes are sold or stored,
26 or prevents or hinders the inspection of invoices, books, records, or
27 papers required to be kept, shall be liable to a penalty of not more
28 than [\$250.00] \$500 for each individual offense.

29 (cf: P.L.1968, c.351, s.6)

30

31 9. Section 605 of P.L.1948, c.65 (C.54:40A-28) is amended to
32 read as follows:

33 605. Any person who sells cigarettes without the stamp or
34 stamps required by this act being affixed thereto or cigarettes
35 stamped in violation of subsection b. of section 405 of P.L.1948,
36 c.65 (C.54:40A-15) shall be guilty of a [misdemeanor and, upon
37 conviction thereof, shall be fined not more than \$1,000, or
38 imprisoned for not more than one year, or both, at the discretion of
39 the court] crime of the third degree.

40 (cf: P.L.1999, c.328, s.4)

41

42 10. Section 2 of P. L.1977, c.188 (C.54:40A-28.1) is amended to
43 read as follows:

44 2. Any person, other than a licensee permitted under this act to
45 possess any unstamped cigarettes, who possesses 2,000 but fewer
46 than 20,000 cigarettes without the stamp or stamps required by this
47 act being affixed thereto or stamped in violation of subsection b. of

1 section 405 shall be [a disorderly person, and upon conviction
2 thereof, shall be fined not more than \$500 or imprisoned for not
3 more than six months, or both, at the discretion of the court] guilty
4 of a crime of the fourth degree; and any such person who possesses
5 20,000 or more cigarettes without the stamp or stamps required by
6 this act being affixed thereto or stamped in violation of subsection
7 b. of section 405 of P.L.1948, c.65 (C.54:40A-15) shall be guilty of
8 a [misdemeanor, and upon conviction thereof, shall be fined not
9 more than \$1,000 or imprisoned for not more than one year, or both,
10 at the discretion of the court] crime of the third degree.
11 (P.L.1999, c.328, s.5)

12
13 11. Section 609 of P.L.1948, c.65 (C.54:40A-32) is amended to
14 read as follows:

15 609. Records; possession and transportation of unstamped
16 cigarettes; seizure and confiscation of vessel or vehicles. Every
17 person who shall transport cigarettes not stamped as required by
18 this act or stamped in violation of subsection b. of section 405 of
19 P.L.1948, c.65 (C.54:40A-15) upon the public highways,
20 waterways, roads or streets of this State shall have in his actual
21 possession invoices or delivery tickets for such cigarettes which
22 shall show the true name and complete and exact address of the
23 consignor or seller, the true name and complete and exact address
24 of the consignee or purchaser, the quantity and brands of the
25 cigarettes transported and in addition shall show separately the true
26 name and complete and exact address of the person who has or shall
27 assume the payment of the New Jersey State tax or the tax, if any,
28 of the State or foreign country at the point of ultimate destination,
29 provided that any common carrier which has issued a bill of lading
30 for a shipment of cigarettes and is without notice to itself or to any
31 of its agents or employees that said cigarettes are not stamped as
32 required by this act shall be deemed to have complied with this act
33 and the vehicle or vessel in which said cigarettes are being
34 transported shall not be subject to confiscation hereunder. In the
35 absence of such invoices, delivery tickets or bills of lading, as the
36 case may be, the cigarettes so transported, the vehicle, or vessel in
37 which the cigarettes are being transported and any paraphernalia or
38 devices used in connection with the unstamped cigarettes or
39 cigarettes stamped in violation of subsection b. of section 405 of
40 P.L.1948, c.65 (C.54:40A-15), are declared to be contraband goods
41 and may be seized by the director, his agents or employees or by
42 any peace officer of the State when directed by the director, his
43 agents or employees so to do, without a warrant. The director shall
44 immediately thereafter institute a proceeding for the confiscation
45 thereof in the Superior Court or the municipal court within the
46 jurisdiction of which the seizure is made. The owner or any person
47 having a security interest in any such vehicle may secure release of
48 the same by depositing with the clerk of the court, in which such

1 proceeding is pending, a bond with good and sufficient sureties in
2 an amount to be fixed by the court, conditioned upon the return of
3 said vehicle to the director upon demand after completion of said
4 proceeding. The court may proceed in a summary manner and may
5 direct confiscation to the director; provided, however, anything to
6 the contrary notwithstanding, that the owner or any person claiming
7 to be the holder of a mortgage, conditional sales contract or other
8 security interest in any vehicle or vessel, the disposition of which is
9 provided for above, may present his petition so alleging and be
10 heard, and in the event it appears to the court that the property was
11 unlawfully used by a person other than the owner or such claimant,
12 and if such owner or claimant acquired ownership or his security
13 interest in good faith and without knowledge that the vehicle or
14 vessel was going to be so used, the court shall either waive
15 forfeiture in favor of such owner or claimant and order the vehicle
16 or vessel returned or delivered to such owner or claimant, or if it is
17 found that the value thereof exceeds the amount of the claim, the
18 court shall order payment of the amount of the claim out of the
19 proceeds of the sale. Every transporter who violates the provisions
20 of this act **is a disorderly person** shall be guilty of a crime of the
21 fourth degree, and shall, in addition to such penalties as **attached**
22 **thereto** may be imposed therefore, be liable to a penalty equal to
23 double the amount of tax due on any unstamped cigarettes
24 transported by him, which penalty shall be sued for and recovered
25 in the same manner as provided for the penalties imposed by section
26 601 of the act to which this act is amendatory (C.54:40A-24).
27 (cf: P.L.1999, c.328, s.9)

28
29 12. Section 9 of P.L.1968, c.351 (C.54:40A-32.1) is amended to
30 read as follows:

31 9. Any cigarette vending machine not bearing a proper license
32 or identification, or which is found to contain unstamped packages
33 of cigarettes, or cigarettes bearing counterfeit impressions, or
34 cigarettes stamped in violation of subsection b. of section 405 of
35 P.L.1948, c.65 (C.54:40A-15), may be seized or sealed by the
36 director, the director's agents or employees or by any peace officer
37 of this State, when directed by the director so to do. If the owner or
38 the owner's agent destroys or removes said seal, that individual
39 may, upon conviction, be subject to a penalty of not more than
40 **[\$250] \$500**. Any vending machine containing unstamped or
41 counterfeit stamped cigarettes may be declared forfeited to the
42 director.

43 (cf: P.L.1999, c.328, s.7)

44
45 13. Section 6 of P.L.1950, c.134 (C.54:40A-44) is amended to
46 read as follows:

47 6. No radio or television broadcast originating in this State, or
48 newspaper, or other publication published in this State, shall accept

1 an advertisement from any out-of-State cigarette dealer for the sale
2 of cigarettes by mail or express, unless there is included in said
3 advertisement the following words: "Before any person may receive
4 cigarettes in New Jersey by mail or express, a license for that
5 purpose must be obtained from the Division of Taxation, New
6 Jersey Department of the Treasury."

7 Any person who violates these provisions, upon conviction
8 thereof, shall be fined not more than ~~five hundred dollars~~
9 ~~(\$500.00)]~~ \$1,000 for each individual offense.

10 (cf: P.L.1950, c.134, s.6)

11

12 14. Section 5 of P.L.2005, c.85 (C.54:40A-50) is amended to
13 read as follows:

14 5. In addition to any other remedies provided by law, the
15 Director of the Division of Taxation in the Department of the
16 Treasury shall assess penalties for violations of this act in
17 accordance with the following schedule:

18 a. a penalty of not less than ~~[\$1,000]~~ \$2,000 and not more than
19 ~~[\$2,000]~~ \$4,000 for the first violation;

20 b. a penalty of not less than ~~[\$2,500]~~ \$5,000 and not more than
21 ~~[\$3,500]~~ \$7,000 for the second violation within a five-year period;

22 c. a penalty of not less than ~~[\$4,000]~~ \$8,000 and not more than
23 ~~[\$5,000]~~ \$10,000 for the third violation within a five-year period;

24 d. a penalty of not less than ~~[\$5,500]~~ \$11,000 and not more
25 than ~~[\$6,500]~~ \$13,000 for a fourth violation within a five-year
26 period; and

27 e. a penalty of ~~[\$10,000]~~ \$20,000 for a fifth or subsequent
28 violation within a five-year period.

29 (cf: P.L.2005, c.85, s.5)

30

31 15. (New section) a. Any person who imports into this State,
32 directly or indirectly, or offers for sale, sells, distributes, transports
33 or possesses with intent to sell a counterfeit cigarette, knowing that
34 the cigarette is a counterfeit cigarette, shall be guilty of a crime of
35 the third degree. As used in this section, "counterfeit cigarette"
36 means a cigarette or a pack or other container of cigarettes that
37 bears any reproduction or copy of a trademark, service mark, trade
38 name, label, term, design, or work adopted by or used by a licensed
39 manufacturer to identify its own cigarettes but is not manufactured
40 by the owner or holder of that trademark, service mark, trade name,
41 label, term, design, or work, or by any authorized licensee of that
42 person.

43 b. Notwithstanding N.J.S.2C:1-8 or any other provision of law,
44 a conviction of an offense defined in this section shall not merge
45 with a conviction for any other offense constituting the criminal
46 activity defined in section 1 of the "New Jersey Trademark
47 Counterfeiting Act," P.L.1997, c.57 (C.2C:21-32), and the sentence

1 imposed upon a conviction of an offense defined in this section
2 shall be ordered to be served consecutively to that imposed for a
3 conviction of any offense under section 1 of P.L.1997, c.57
4 (C.2C:21-32) constituting the criminal activity involving the
5 counterfeit cigarettes. Nothing in section 1 of P.L.1997, c.57
6 (C.2C:21-32) shall be construed to preclude or limit a prosecution
7 or conviction for any other offense defined in P.L.1948, c.65
8 (C.54:40A-1 et seq.) or any other statute.

9 c. Possession of more than 2,000 counterfeit cigarettes shall be
10 deemed sufficient evidence to authorize conviction under this
11 section, unless the defendant shall demonstrate to the satisfaction of
12 the court (1) that when the defendant obtained the cigarettes the
13 accused knew or made inquiries sufficient to satisfy a reasonable
14 person, that the transferor was in a regular and established business
15 for dealing in cigarettes and was so licensed and (2) that the amount
16 represented by the transferor as the price for the cigarettes
17 represented its fair and reasonable value and that the defendant
18 received an invoice or other record of the price.

19

20 16. This act shall take effect immediately.

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22

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STATEMENT

24

25 This bill increases civil and criminal penalties involving
26 unstamped and counterfeit cigarettes and cigarette smuggling and
27 establishes a third degree crime of importing, selling or distributing,
28 transporting or possessing with intent to sell, counterfeit cigarettes.
29 The bill increases certain fines, county jail maximum sentences and
30 the grading of certain criminal offenses that can currently be
31 imposed under the Cigarette Tax Act for illegal cigarette smuggling
32 and various schemes to evade the cigarette tax.

33 State cigarette tax payments are demonstrated by appropriate
34 New Jersey stamped cigarettes packs. New Jersey residents are not
35 permitted to possess or consume untaxed, improperly stamped or
36 unstamped cigarettes. Criminal and civil statutes apply in both
37 circumstances, and unstamped and improperly stamped cigarettes
38 are prima facie contraband under the New Jersey Criminal Code.

39 The bill also requires persons that are manufacturers or importers
40 of cigarettes, tobacco products or processed tobacco, that are
41 required under the New Jersey cigarette tax act to have a State
42 license, to also have a valid federal permit issued by the Alcohol
43 and Tobacco Tax and Trade Bureau of the U.S. Department of the
44 Treasury.

45 The bill also requires that licensed distributors include in their
46 monthly tax reports the number of cigarettes on hand, and
47 purchased and sold, by brand family. The Director of the Division
48 of Taxation in the State Department of Treasury will publish

1 monthly reports on the State Treasury Department's website that
2 indicate the quantity of cigarettes sold in this State by distributors,
3 aggregated by manufacturer and brand family. This information
4 from licensed distributors will assist in identifying brands of
5 cigarettes that are appearing in the market, that are being sold as
6 nearly identical to a previously known brand of cigarettes made by
7 a licensed manufacturer, while part of a scheme of avoiding
8 cigarette tax payments.

9 New Jersey has had a long history of cigarette smuggling
10 problems and has experienced challenges enforcing the cigarette tax
11 law against both casual smuggling by individual smokers for their
12 own use, and against larger scale commercial smuggling that tends
13 to involve organized criminal organizations.

14 The enhancement of civil and criminal penalties is intended to
15 establish a stronger deterrent effect against the commission of
16 certain offenses that are typically violated in cigarette smuggling
17 efforts. These offenses may include: conducting certain licensed
18 activities without a license, transfers of off-brand cigarettes by
19 manufacturers representatives, possessing unstamped cigarettes,
20 refusal to produce business records by those engaging in any stage
21 of commerce in cigarettes, hindering or preventing the
22 administration of the Cigarette Tax Act, sale of cigarettes without
23 required tax stamps, possession of large quantities of unstamped
24 cigarettes, transportation of unstamped cigarettes, maintaining
25 unlicensed vending machines and vending machines containing
26 unstamped or counterfeit stamped cigarettes, advertising in this
27 State by out-of-state cigarette dealers of the sale of cigarettes by
28 mail or express, and violations of the Cigarette Sales Act regulating
29 the collection of taxes on retail sales of cigarettes shipped from
30 outside this State. Several civil penalties for these offenses are
31 doubled, certain maximum county jail terms are doubled, and
32 certain criminal offenses under the Cigarette Tax Act are increased
33 in degree which will result in longer sentences of incarceration and
34 higher fines being imposed.