The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2516 (1R), with committee amendments.

As amended, the bill increases civil and criminal penalties for offenses involving unstamped and counterfeit cigarettes and cigarette smuggling. The bill also establishes as a crime of the third degree the importing, selling, distributing, transporting, or possessing with intent to sell, counterfeit cigarettes. The bill amends and supplements the Cigarette Tax Act, P.L.1948, c.65 (C.54:40A-1 et seq.) and enhances penalties in the "Cigarette Sales Act," P.L.2005, c.85 (C.54:40A-46 et seq.).

State cigarette tax payments are demonstrated by appropriate New Jersey stamped cigarettes packs. Any person who consumes or is in possession of untaxed, improperly stamped, or unstamped cigarettes is subject to criminal and civil penalties. Unstamped or improperly stamped cigarettes are prima facie contraband under the New Jersey Criminal Code.

- The initial portion of the bill concerns licensing and reporting requirements.

Section 1 of the bill amends State licensing requirements to prohibit the issuance of a license to any manufacturer or importer of cigarettes, tobacco products, or processed tobacco who does not possess a valid federal permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

Section 2 of the bill expands the current monthly reporting requirements imposed on licensed distributors by requiring their reports to disclose the number of cigarettes on hand, by brand family, together with the quantity of cigarettes purchased or sold during the report period.

Section 3 of the bill requires the Director of the Division of Taxation in the State Department of the Treasury to publish a monthly report on the State Treasury Department's website that indicates the quantity of cigarettes sold in this State by distributors, aggregated by manufacturer and brand family.
The next portion of the bill increases monetary penalties, and upgrades criminal acts. The enhancement of civil and criminal penalties is intended to establish a stronger deterrent effect against the commission of certain offenses that are typically violated in cigarette smuggling efforts.

Section 4 of the bill increases the penalty for engaging in business activity without a license from $250 to $1,000.

Section 5 of the bill increases the penalty imposed upon any manufacturer’s representative who sells or exchanges cigarettes other than those of his employer’s manufacture from $250 to $1,000.

Section 6 of the bill increases the penalty imposed upon any wholesale dealer or retailer in possession of cigarettes without the requisite revenue stamp from $250 to $1,000.

Section 7 of the bill upgrades to a disorderly persons offense any person engaged in manufacturing, selling, distributing, shipping or transporting cigarettes who fails to produce, on demand, invoices of all cigarettes purchased or received by him within three years prior to the demand and increases the fine from a maximum of $250 to the amount of $1,000.

Section 8 of the bill upgrades to a disorderly persons offense any person who prevents or hinders the director or any other designated person from making a cigarette inventory or full inspection or prevents inspection or inventory of invoices or books and increases the fine from a maximum of $250 to the amount of $1,000.

Section 9 of the bill upgrades the offense of a person who sells cigarettes without the requisite revenue stamp from a “misdemeanor,” punishable under that section by a fine of up to $1,000, a term of imprisonment of not more than one year, or both to a crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to $15,000 or both.

Section 10 of the bill upgrades the offense of an unlicensed person who possesses 2,000 but fewer than 20,000 unstamped cigarettes from a disorderly persons offense punishable by a fine of not more than $500 or a term of imprisonment not to exceed six months to a crime of the fourth degree, punishable by a term of imprisonment of up to 18 months, a fine of up to $10,000 or both; and upgrades the offense of an unlicensed person who possesses 20,000 or more unstamped cigarettes from a “misdemeanor” to a crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to $15,000, or both.

Section 11 of the bill upgrades unlawful possession and transportation of unstamped cigarettes from a disorderly persons offense to a crime of the fourth degree.

Section 12 of the bill increases the penalty imposed upon any person who removes or destroys a seal which has been placed upon a cigarette vending machine containing unstamped cigarettes designated
by the director as not bearing a proper license or identification from $250 to $1,000.

Section 13 of the bill increases the penalty imposed for a radio or television broadcast originating in the State, or a newspaper or other publication published in the State, that does not include a notice in advertisements for cigarettes by mail or express that a license is required to receive such cigarettes, from $500 to $1,000.

Section 14 of the bill concerns the “Cigarette Sales Act,” N.J.S.A.54:40A-46 et seq., which concerns retail sales of cigarettes and facilitates the collection of sales and use taxes on cigarettes sold to residents of the State and shipped from outside the State. This section provides increased civil penalties for violation of the act as follows: (a) a penalty of not less than $2,000 and not more than $4,000 for the first violation; (b) a penalty of not less than $5,000 and not more than $7,000 for the second violation within a five-year period; (c) a penalty of not less than $8,000 and not more than $10,000 for the third violation within a five-year period; (d) a penalty of not less than $11,000 and not more than $13,000 for a fourth violation within a five-year period; and (e) a penalty of $20,000 for a fifth or subsequent violation within a five-year period.

Section 15 of the bill makes it a crime of the third degree to import into this State or offer for sale, distribute, transport, or possess with intent to sell a counterfeit cigarette. The bill defines “counterfeit cigarette” as a cigarette or a pack or other container of cigarettes that bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted by or used by a licensed manufacturer to identify its own cigarettes but is not manufactured by the owner or holder of that trademark, service mark, trade name, label, term, design, or work, or by any authorized licensee of that person. The bill provides that a conviction under this new third degree crime will not merge with conviction for any other offense under the “New Jersey Trademark Counterfeiting Act,” P.L.1997, c.57 (C.2C:21-32).

This section creates the following permissive inferences: 1) proof that a person who possessed 2,000 or more counterfeit cigarettes intended to sell those cigarettes; 2) proof that a person who sold or distributed 2,000 or more counterfeit cigarettes and did not provide or retain an invoice or record documenting the transfer, knew that the cigarettes were counterfeit; 3) proof that a person who obtained 2,000 or more counterfeit cigarettes and did not receive or retain an invoice or record of the price of the cigarettes, knew that the cigarettes were counterfeit; 4) proof that a person who imported or possessed any quantity of counterfeit cigarettes obtained by them at a price substantially below their fair market value, knew the cigarettes were counterfeit; and 5) proof that a person who offered for sale, sold or distributed any quantity of counterfeit cigarettes at a price substantially below the fair and reasonable value, knew that the cigarettes were counterfeit.
As amended and reported, this bill is identical to Assembly Bill No. 3278 (2R).

COMMITTEE AMENDMENTS:
The committee amendments adjust the performance bonding requirements for licensed distributors and also require that wholesale dealers must have more than ten places of business, instead of two places of business, before they are required to have a separate license for each place of business. Other committee amendments make technical corrections.

FISCAL IMPACT:
The Office of Legislative Services cannot determine the bill’s recurring net impact on State revenues and expenditures. While the bill could potentially augment annual State revenue collections by an indeterminate amount if the bill results in increased payments of civil and criminal fines, any revenue gain may be offset, and potentially exceeded, by indeterminate added State costs for additional prosecutorial activities, longer trial periods, and increased inmate occupancy at penal institutions. A revenue loss may occur from permitting wholesale cigarette dealers who sell cigarettes at no more than nine places of businesses to obtain only one wholesale license at an annual cost of $250 for all establishments combined instead of having to obtain a separate license and pay $250 annually for each place of business, as current law requires.

The OLS makes no assumption about the manner in which the law might change the behavior of consumers and persons engaged in contraband cigarette commerce. In theory, the bill’s stiffer penalties should produce a deterrent effect that should curb the supply of contraband cigarettes and push up their market prices. But the deterrent effect may be difficult to discern, considering that the contraband cigarette trade already occurs in violation of State and federal law.