

ASSEMBLY, No. 1332

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman DeCROCE

1 AN ACT concerning the sale and distribution of cigarettes and the use
2 of license fees to support the regulation of the sale of and taxation
3 of cigarettes, amending and supplementing P.L.1948, c.65 and
4 amending P.L.1952, c.247.

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 read
10 as follows:

11 202. Issuance of license; fee.

12 a. All licenses shall be issued by the director, who shall make rules
13 and regulations respecting applications therefor and issuance thereof.
14 All costs associated with an application shall be paid by the applicant.

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

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

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

25 (3) Joint venturers in a joint venture.

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

29 (5) **[Employees]** All distributor's sales representatives, all
30 wholesale dealer's sales representatives, any employees receiving in
31 excess of ~~[\$30,000.00]~~ \$40,000 per annum compensation whether as
32 salary, commission, bonus or otherwise and persons who, in the

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

Matter underlined thus is new matter.

1 judgment of the director are employed in a supervisory capacity or
2 have the power to make or substantially affect discretionary business
3 judgments of the applicant entity with regard to the cigarette business.

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

13 The provisions in this subsection as to wholesale dealers, retail
14 dealers operating more than nine cigarette vending machines, and retail
15 dealers who sell cigarettes at retail at more than nine premises do not
16 apply to retail grocery stores and supermarkets primarily engaged in
17 the self-service sale of foods and household supplies for off-premises
18 consumption or to restaurants, hotels and motels operated by national
19 corporations with such premises in six or more states and primarily
20 engaged in the sale of foods for retail consumption or in the rental of
21 rooms for lodging.

22 c. The director shall not issue any license under this act where he
23 has reasonable cause to believe that anyone required to submit
24 information under this act has willfully withheld information requested
25 of him for the purpose of determining the eligibility of the applicant to
26 receive a license or where the director has reasonable cause to believe
27 that information submitted in the application is false and misleading
28 and is not made in good faith.

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

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

44 e. The director shall not issue any license where the applicant or
45 anyone required to submit information has been identified as a career
46 offender or a member of a career offender cartel in such a manner as

1 to create a reasonable belief that the association is of such a nature as
2 to be inimical to the policies of this act or to the taxation, distribution,
3 and sale of cigarettes within the State. The director may request the
4 Attorney General for advice respecting whether a person is a "career
5 offender" within the meaning of this subsection, or is a "contumacious
6 defiant" within the meaning of subsection f. of this section.

7 (1) As used in this subsection: "career offender" means any person
8 whose behavior is pursued in an occupational manner or context for
9 the purpose of economic gain, utilizing such methods as are deemed
10 criminal violations of the public policy of this State; and (2) "career
11 offender cartel" means any group of persons who operate together as
12 career offenders.

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

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

24 h. For each license issued to a distributor there shall be paid to the
25 director a fee of [~~\$350.00~~] \$1,000. If a distributor sells or intends to
26 sell cigarettes at two or more places of business, whether established
27 or temporary, a separate license shall be required for each place of
28 business. Each license, or certificate, thereof, and such other evidence
29 of license shall be exhibited in the place of business for which it is
30 issued and in such manner as may be prescribed by the director. The
31 director shall require each licensed distributor to file with him a bond
32 in an amount not less than \$6,000.00 to guarantee the proper
33 performance of his duties and the discharge of his liabilities under this
34 act. The bond shall be executed by such licensed distributor as
35 principal, and by a corporation approved by the director and duly
36 authorized to engage in business as a surety company in the State of
37 New Jersey, as surety. The bond shall run concurrently with the
38 distributor's license.

39 For each license issued to a manufacturer, and for each continuance
40 thereof, there shall be paid to the director a fee of [~~\$10.00~~] \$1,000.

41 For each license issued to a manufacturer's representative, a
42 distributor's sales representative, or a wholesale dealer's sales
43 representative, and for each continuance thereof, there shall be paid to
44 the director a fee of [~~\$5.00~~] \$50.

45 For each license issued to a wholesale dealer there shall be paid to
46 the director a fee of [~~\$250.00~~] \$1,000. If a wholesale dealer sells or

1 intends to sell cigarettes at two or more places of business, whether
2 established or temporary, a separate license shall be required for each
3 place of business. Each license, or certificate thereof, and such other
4 evidence of license shall be exhibited in the place of business for which
5 it is issued and in such manner as may be prescribed by the director.

6 For each license issued to a retail dealer and for each continuance
7 thereof, excepting a retail dealer operating a cigarette vending
8 machine, there shall be paid to the director a fee of~~[\$5.00]~~ \$75. For
9 each license issued to a retail dealer operating a vending machine for
10 the sale of cigarettes and for each continuance thereof, there shall be
11 paid to the director a fee of~~[\$5.00]~~ \$10. If a retail dealer sells or
12 intends to sell cigarettes at two or more places of business, whether
13 established or temporary, or whether in the same building or not, a
14 separate license shall be required for each place of business. Each
15 vending machine for the sale of cigarettes shall be separately licensed
16 and be deemed a separate place of business. Each license, or
17 certificate thereof, and such other evidence of license shall be
18 exhibited in the place of business for which it is issued and in such
19 manner as may be prescribed by the director.

20 Any person licensed only as a distributor or as a distributor's sales
21 representative or as a manufacturer or as a manufacturer's
22 representative or as a wholesale dealer or as a wholesale dealer's sales
23 representative or as a retail dealer shall not operate in any other
24 capacity except under that for which he is licensed herein, unless the
25 appropriate license or licenses therefor are first secured.

26 For each license issued to a consumer and for each continuance
27 thereof there shall be paid to the director a fee of \$1.00. Each license,
28 or certificate thereof, or such other evidence of license as may be
29 prescribed by the director, shall be so kept by the consumer as to be
30 readily available for inspection.

31 No license shall be issued to any person except upon the payment
32 of the full fee therefor, any statute or exemption to the contrary
33 notwithstanding. No license shall be assignable or transferable, except
34 as hereinafter provided, but in the case of death, bankruptcy,
35 receivership, or incompetency of the licensee, or if for any other
36 reason whatsoever the business of the licensee shall devolve upon
37 another by operation of law, the director may, in his discretion, extend
38 said license for a limited time to the executor, administrator, trustee,
39 receiver, or person upon whom the same has devolved. A purchaser
40 or assignee of a licensed wholesaler or licensed distributor, or any
41 other person upon whom the business of a licensed wholesaler or
42 licensed distributor shall devolve by operation of law, shall upon
43 application to the director, be entitled to an assignment or transfer of
44 the wholesale or distributor license for the balance of the existing
45 license period upon payment of a transfer fee of \$5.00 and subject to
46 his qualification to be a licensed wholesaler or licensed distributor

1 under the provisions of this act. The license issued for each vending
2 machine for the sale of cigarettes may be transferred from machine to
3 machine in the same ownership. No refund of the license fee shall be
4 paid to any person upon the surrender or revocation of any license
5 except a license fee paid or collected in error. But, upon payment of
6 \$1.00 fee, there may be obtained (1) a duplicate license, or certificate
7 thereof, in the event the original is lost, destroyed or defaced, and (2)
8 an amended license, or certificate thereof, upon a change in the
9 location of the place of business of any distributor or dealer.

10 (cf: P.L.1987, c.37, s.1)

11

12 2. Section 102 of P.L.1948, c.65 (C.54:40A-2) is amended to read
13 as follows:

14 102. For the purposes of this act and unless otherwise required by
15 the context:

16 a. "Cigarette" means any roll for smoking made wholly or in part
17 of tobacco, or any other substance or substances other than tobacco,
18 irrespective of size, shape or flavoring, the wrapper or cover of which
19 is made of paper or any other substance or material, excepting
20 tobacco.

21 b. "Director" means the Director of the Division of Taxation, in the
22 Department of the Treasury.

23 c. "Distributor" means and includes any person, wherever resident
24 or located, who brings or causes to be brought into this State
25 unstamped cigarettes purchased directly from the manufacturers
26 thereof and stores, sells or otherwise disposes of the same after they
27 shall reach this State.

28 d. "Wholesale dealer" shall include any person, wherever resident
29 or located, other than a distributor, as defined herein, who:

30 (1) Purchases cigarettes from any other person who purchases
31 from the manufacturer and who acquires such cigarettes solely for the
32 purpose of bona fide resale to retail dealers or to other persons for the
33 purposes of resale only; or

34 (2) Services retail outlets by the maintenance of an established
35 place of business for the purchase of cigarettes, including, but not
36 limited to, the maintenance of warehousing facilities for the storage
37 and distribution of cigarettes.

38 e. "Retail dealer" means any person who is engaged in this State in
39 the business of selling cigarettes at retail. Any person placing a
40 cigarette vending machine at, on or in any premises shall be deemed to
41 be a retail dealer for each such vending machine.

42 f. "Consumer" means any person except a distributor or a
43 manufacturer who acquires for consumption, storage or use in this
44 State cigarettes to which New Jersey revenue stamps have not been
45 attached.

46 g. "Place of business" means and includes any place where

- 1 cigarettes are sold or where cigarettes are brought or kept for the
2 purpose of sale or consumption, including so far as applicable any
3 vessel, vehicle, airplane, train or cigarette vending machine.
- 4 h. "Licensed distributor" means any distributor, as defined in this
5 act, licensed under the provisions of this act.
- 6 i. "Licensed wholesale dealer" means any wholesale dealer, as
7 defined in this act, licensed under the provisions of this act.
- 8 j. "Licensed retail dealer" means any retail dealer, as defined in this
9 act, licensed under the provisions of this act.
- 10 k. "Licensed consumer" means any consumer, as defined in this act,
11 licensed under the provisions of this act.
- 12 l. "Person" means any individual, firm, corporation, copartnership,
13 joint venture, association, receiver, trustee, guardian, executor,
14 administrator, or any other person acting in a fiduciary capacity, or any
15 estate, trust or group or combination acting as a unit, the State
16 Government and any political subdivision thereof, and the plural as
17 well as the singular, unless the intention to give a more limited
18 meaning is disclosed by the context.
- 19 m. "Rules and regulations" means those made and promulgated by
20 the director in the administration of this act.
- 21 n. "Sale" means any sale, transfer, exchange, theft, barter, gift, or
22 offer for sale and distribution, in any manner or by any means
23 whatsoever.
- 24 o. "Stamp" means any impression, device, stamp, label or print
25 manufactured, printed or made as prescribed by the director.
- 26 p. "Taxpayer" means any person subject to a tax imposed by this
27 act, or any person required to be licensed under this act.
- 28 q. "Treasurer" means the State Treasurer.
- 29 r. "Use" means the exercise of any right or power incidental to the
30 ownership of cigarettes.
- 31 s. "Manufacturer" means and includes any person, wherever
32 resident or located, who manufactures or produces, or causes to be
33 manufactured or produced, cigarettes and sells, uses, stores or
34 distributes the same regardless of whether they are intended for sale,
35 use or distribution within or without this State.
- 36 t. "Manufacturer's representative" means and includes any person,
37 employed by a manufacturer, who, for promotional purposes, sells,
38 stores, handles or distributes cigarettes, within this State, limited
39 exclusively to cigarettes manufactured by the employing manufacturer.
- 40 u. "Licensed manufacturer" means any manufacturer, as defined in
41 this act, licensed under the provisions of this act.
- 42 v. "Licensed manufacturer's representative" means any
43 manufacturer's representative, as defined in this act, licensed under the
44 provisions of this act.
- 45 w. "Distributor's sales representative" means an individual
46 employed by a distributor who regularly spends at least four hours per

1 week away from the individual's employer's place of business engaged
2 in the sale of or solicitation of the sale of cigarettes.

3 x. "Wholesale dealer's sales representative" means an individual
4 employed by a wholesale dealer who regularly spends at least four
5 hours per week away from the individual's employer's place of business
6 engaged in the sale of or solicitation of the sale of cigarettes.

7 y. "Licensed distributor's sales representative" means a distributor's
8 sales representative as defined in this act, licensed under the provisions
9 of this act.

10 z. "Licensed wholesale dealer's sales representative" means a
11 wholesale dealer's sales representative as defined in this act, licensed
12 under the provisions of this act.

13 (cf: P.L.1985, c.515, s.15)

14

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

17 205. Reports required; penalty required for not filing reports.

18 Every licensed distributor shall file with the director on or before
19 the 20th day of each month, a report in such form as the director shall
20 prescribe, which report shall disclose the number of cigarettes on hand
21 on the first and last days of the calendar month immediately preceding
22 the month in which such report is required; together with such
23 information concerning the amount of stamps purchased, used, and on
24 hand during the report period; together with any other information for
25 the report period that the director shall prescribe.

26 Every licensed manufacturer shall file with the director on or before
27 the 20th day of each month, a report in such form as the director shall
28 prescribe, which report shall disclose the number of cigarettes sold,
29 subject to the cigarette tax, for the calendar month immediately
30 preceding the month in which such report is required; together with
31 any other information for the report period that the director shall
32 prescribe.

33 Every licensed manufacturer's representative, licensed distributor's
34 and wholesale dealer's sales representative, and licensed wholesale
35 and retail dealer, upon notice from the director, shall file with the
36 director a report in such form, and on such dates, as the director shall
37 prescribe.

38 Every licensed consumer who has acquired cigarettes for use,
39 storage or consumption subject to the tax shall, on or before the 20th
40 day of the month following receipt of such cigarettes, complete and
41 file with the director, in such form as the director shall prescribe, a
42 report showing the amount of cigarettes so received. Said report shall
43 be accompanied by a remittance for the full amount of the tax due.

44 Any person, other than a licensed distributor, who transports
45 unstamped cigarettes upon the public highways, roads, or streets of
46 this State or who stores unstamped cigarettes in this State upon notice

1 from the director, shall file with the director a report in such form, and
2 on such dates, as the director shall prescribe.

3 Any person who shall fail to file any report on the day when it shall
4 be due, shall forfeit as a penalty, an amount as provided in the State
5 Tax Uniform Procedure Law, [subtitle 9 of Title 54 of the Revised
6 Statutes] R.S.54:48-1 et seq. The director, if satisfied that the failure
7 to comply with any provision of this section was excusable, may remit
8 the whole or any part of said penalty.
9 (cf: P.L.1975, c.177, s.34)

10

11 4. Section 2 of P.L.1952, c.247 (C.56:7-19) is amended to read as
12 follows:

13 2. The following words, terms and phrases, when used in this act,
14 shall have the meaning ascribed to them in this section except where
15 the context clearly indicates a different meaning;

16 a. "Person" shall mean and include any individual, firm, association,
17 company, partnership, corporation, joint stock company, club, agency,
18 syndicate, municipal corporation or other political subdivision of this
19 State, trust, receiver, trustee, fiduciary and conservator.

20 b. "Cigarettes" shall mean and include any roll for smoking, made
21 wholly or in part of tobacco, or of any other substance or substances
22 other than tobacco, irrespective of size, shape or flavoring, the
23 wrapper or cover of which is made of paper or any other substance or
24 material, excepting tobacco.

25 c. "Sale" shall mean any transfer for a consideration, exchange,
26 barter, gift, offer for sale and distribution in any manner or by any
27 means whatsoever.

28 d. "Wholesaler" shall include any person who:

29 (1) Purchases cigarettes directly from the manufacturer; or

30 (2) Purchases cigarettes from any other person who purchases
31 from the manufacturer and who acquires such cigarettes solely for the
32 purpose of bona fide resale to retail dealers or to other persons for the
33 purposes of resale only; or

34 (3) Service retail outlets by the maintenance of an established place
35 of business for the purchase of cigarettes, including, but not limited to,
36 the maintenance of warehousing facilities for the storage and
37 distribution of cigarettes.

38 Nothing contained herein shall prevent a person from qualifying in
39 different capacities as both a "wholesaler" and "retailer" under the
40 applicable provisions of this act.

41 e. "Retailer" shall mean and include any person who operates a
42 store, stand, booth, or concession for the purpose of making sales of
43 cigarettes at retail.

44 f. "Sell at retail," "sale at retail" and "retail sales" shall mean and
45 include any transfer of title to cigarettes for a valuable consideration,
46 made in the ordinary course of trade or usual conduct of the seller's

1 business, to the purchaser for consumption or use.

2 g. "Sell at wholesale," "sale at wholesale" and "wholesale sales"
3 shall mean and include any bona fide transfer of title to cigarettes for
4 a valuable consideration, made in the ordinary course of trade or in the
5 usual conduct of the wholesaler's business, to a retailer for the purpose
6 of resale.

7 h. "Basic cost of cigarettes" shall mean the invoice cost of
8 cigarettes to the retailer or wholesaler, as the case may be, or the
9 replacement cost of cigarettes, to the retailer or wholesaler, as the case
10 may be, in the quantity last purchased, whichever is lower, less all
11 trade discounts and the normal discount for cash afforded for prompt
12 payment, but excluding any special, extraordinary, or anticipatory
13 discounts for payment within a shorter period of time than the prompt
14 payment date required for eligibility for the normal discount for cash,
15 to which shall be added the full face value of any stamps which may be
16 required by any cigarette tax act of this State and by ordinance of any
17 municipality thereof, now in effect or hereafter enacted, if not already
18 included by the manufacturer in his list price.

19 i. "Director" means the Director of the Division of Taxation, in the
20 Department of the Treasury.

21 j. "Business day" shall mean any day other than a Sunday or a legal
22 holiday.

23 k. "Average wholesaler" means a wholesaler who, by reason of the
24 nature of the wholesaler's business, the wholesaler's volume of
25 cigarette sales and the wholesaler's ratio of cigarette sales to total
26 sales, is representative of all wholesalers in this State.

27 l. "Subjobber" means a person who is a wholesaler to whom a
28 license qualifying such person as a "licensed distributor" pursuant to
29 the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) has not
30 been issued, and who, in the usual course of business, purchases
31 cigarettes and sells, within this State, at least 75% of all such
32 cigarettes purchased to retail dealers, other wholesalers, or other
33 persons who buy such cigarettes for the purpose of resale to the
34 ultimate consumer; provided that such person maintains a separate
35 established place of business for the receiving, storage and distribution
36 of cigarettes.

37 (cf: P.L.1983, c.441, s.1)

38

39 5. Section 4 of P.L.1952, c.247 (C.56:7-21) is amended to read as
40 follows:

41 4. a. The term "cost to the retailer" shall mean the "basic cost of
42 cigarettes" to the retailer plus the "cost of doing business by the
43 retailer," as evidenced by the standards and methods of accounting
44 regularly employed by him in his allocation of overhead costs and
45 expenses, paid or incurred, and must include, without limitation, labor
46 (including salaries of executives and officers), rent, depreciation,

1 selling costs, maintenance of equipment, delivery costs, all types of
2 licenses, taxes, insurance and advertising; provided, that any retailer
3 who, in connection with the retailer's purchase, receives not only the
4 discounts ordinarily allowed upon purchases by a retailer but also, in
5 whole or in part, discounts ordinarily allowed upon purchases by a
6 wholesaler shall, in determining "cost to the retailer," pursuant to this
7 subsection, add the "cost of doing business by the wholesaler," as
8 defined in section five of this act, to the "basic cost of cigarettes" to
9 said retailer, as well as the "cost of doing business by the retailer."

10 b. In the absence of the filing with the director of satisfactory proof
11 of a lesser or higher cost of doing business by the retailer making the
12 sale, the "cost of doing business by the retailer" shall be presumed to
13 be eight per centum (8%) of the "basic cost of cigarettes" to the
14 retailer.

15 c. In the absence of the filing with the director of satisfactory proof
16 of a lesser or higher cost of doing business, the "cost of doing business
17 by the retailer," who, in connection with the retailer's purchase,
18 receives not only the discounts ordinarily allowed upon purchases by
19 a retailer but also, in whole or in part, the discounts ordinarily allowed
20 upon purchases by a wholesaler, shall be presumed to be eight per
21 centum (8%) of the sum of the "basic cost of cigarettes" and the "cost
22 of doing business by the wholesaler."

23 d. If a retailer establishes to the satisfaction of the director a lesser
24 or higher cost of doing business other than the presumed "cost of
25 doing business by the retailer" pursuant to this section, such lesser or
26 higher cost of doing business may be used to compute the "cost to the
27 retailer" for a period not longer than 12 months, at the end of which
28 period the "cost to the retailer" shall be computed using the presumed
29 cost of doing business, unless the retailer again establishes to the
30 satisfaction of the director a lesser or higher cost of doing business.
31 Any approval of a lesser or higher "cost of doing business by the
32 retailer" other than the presumed cost of doing business shall be
33 effective on the 45th day after written notification of such approval by
34 the director.

35 e. All approvals by the director of a lesser or higher "cost of doing
36 business by the retailer" other than the presumed cost of doing
37 business in effect on the effective date of P.L. , c. (Now pending
38 before the Legislature as this bill) shall be rescinded on that date.

39 (cf: P.L.1952, c.247, s.4)

40

41 6. Section 5 of P.L.1952, c.247 (C.56:7-22) is amended to read as
42 follows:

43 5. a. The term "cost to the wholesaler" shall mean the "basic cost
44 of cigarettes" to the wholesaler plus the "cost of doing business by the
45 wholesaler," as evidenced by the standards and methods of accounting
46 regularly employed [by him in his allocation of overhead costs and

1 expenses, paid or incurred, and must include, without limitation, in the
2 determination of costs for the purpose of federal income tax reporting,
3 for the total operation of the establishment for the previous 12 month
4 period, and shall include, but not be limited to, all direct costs,
5 including if applicable, inbound freight charges, labor costs to affix tax
6 indicia, cost of equipment to affix hand stamps, including glue, rental
7 and maintenance expenses for the cigarette tax machine, State and
8 local cigarette licenses, and indirect overhead costs and expenses paid
9 or incurred, such as pre-opening expenses, management fees, labor
10 costs (including salaries of executives and officers), rent, depreciation,
11 selling costs, maintenance [of equipment] expenses, interest expenses,
12 delivery costs, all types of licenses, taxes, insurance and advertising
13 and any central and regional administrative expenses. All financial
14 statements of a wholesaler required to be filed with the director shall
15 be audited by a certified public accountant at the wholesaler's expense.
16 The director may impose such fees as may be necessary to cover the
17 costs incurred in administering this subsection including review and
18 audit of a petitioning person's audited financial statements.

19 b. In the absence of the filing with the director of satisfactory proof
20 of a lesser or higher cost of doing business by the wholesaler making
21 the sale to a retailer, whether or not such wholesaler is determined by
22 the director to be an average wholesaler, and whether or not a
23 subjobber, the "cost of doing business by the wholesaler" shall be
24 presumed to be [5.25%]6.00% of the "basic cost of cigarettes" to the
25 wholesaler, [plus cartage to the retail outlet, if performed or paid for
26 by the wholesaler, which cartage cost, in the absence of the filing with
27 the director of satisfactory proof of a lesser or higher cost, shall be
28 deemed to be 3/4 of 1% of the "basic cost of cigarettes" to the
29 wholesaler] less a 0.50% discount for C.O.D. payment by the retailer.

30 c. If an average wholesaler establishes to the satisfaction of the
31 director a lesser or higher cost of doing business other than the
32 presumed "cost of doing business by the wholesaler," such lesser or
33 higher cost of doing business may be used to compute the "cost to the
34 wholesaler" for a period not to exceed 12 months, at the end of which
35 period the "cost to the wholesaler" shall be computed using the
36 presumed cost of doing business, unless the average wholesaler again
37 establishes to the satisfaction of the director a lesser or higher cost of
38 doing business. Any approval of a lesser or higher "cost of doing
39 business by the wholesaler" other than the presumed cost of doing
40 business shall be effective on the 45th day after written notification of
41 such approval by the director.

42 d. All approvals by the director of a lesser or higher "cost of doing
43 business by the wholesaler" other than the presumed cost of doing
44 business in effect on the effective date of P.L. , c. (Now pending
45 before the Legislature as this bill) shall be rescinded on the 90th day
46 after the effective date of P.L. , c. (Now pending before the

1 Legislature as this bill).

2 (cf: P.L.1974, c.45, s.1)

3

4 7. Section 15 of P.L.1952, c.247 (C.56:7-32) is amended to read
5 as follows:

6 15. a. An action may be maintained in any court of equitable
7 jurisdiction to prevent, restrain or enjoin a violation, or threatened
8 violation, of any of the provisions of this act. Such an action may be
9 instituted by any person injured by any violation or threatened
10 violation of this act or by the Attorney-General, upon the request of
11 the director. If in such action a violation or threatened violation of
12 this act shall be established, the court shall enjoin and restrain, or
13 otherwise prohibit, such violation or threatened violation, and shall
14 award punitive damages to the plaintiff. In such action it shall not be
15 necessary that actual damages to the plaintiff be alleged or proved, but
16 where alleged and proved, the plaintiff in said action, in addition to
17 such injunctive relief and costs of suit, including reasonable attorney's
18 fees, shall be entitled to recover from the defendant the actual damages
19 sustained by such plaintiff.

20 b. In the event that no injunctive relief is sought or required, any
21 person injured by a violation of this act may maintain an action for
22 damages and costs of suit in any court of competent jurisdiction.

23 (cf: P.L.1952, c.247, s.15)

24

25 8. (New section) At least 25% of the revenue derived from license
26 fees collected by the Division of Taxation under the "Cigarette Tax
27 Act," P.L.1948, c.65 (C.54:40A-1 et seq.), shall be dedicated to the
28 enforcement of the "Unfair Cigarette Sales Act of 1952," P.L.1952,
29 c.247 (C.56:7-18 et seq.) and the balance of such revenue as may be
30 necessary to fund the enforcement and administrative activities of the
31 division under the "Cigarette Tax Act," and the "Unfair Cigarette Sales
32 Act of 1952," shall be appropriated from license fees collected by the
33 division pursuant to P.L.1948, c.65, subject to the approval of the
34 Director of the Division of Budget and Accounting.

35

36 9. This act shall take effect immediately and sections 1 and 3 shall
37 remain inoperative until the April first next following their enactment.

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STATEMENT

41

42 This bill increases certain license fees under the Cigarette Tax Act
43 and makes changes in the Unfair Cigarette Sales Act in order to
44 maintain an orderly system for the distribution of cigarettes and the
45 collection of the cigarette excise tax.

46 The bill establishes a definition of subjobber and changes the

1 presumed minimum price, determined as the cost of cigarettes plus the
2 presumed cost of doing business, at which wholesalers including
3 subjobbers can sell cigarettes to retailers from 5.25 percent to 6.0
4 percent of the cost of the cigarettes. The bill changes the requirements
5 for securing the Division of Taxation's permission to sell cigarettes at
6 a price based on a cost of doing business other than the presumed cost
7 of doing business. All approvals by the Director of the Division of
8 Taxation of a lesser or higher cost of doing business by a wholesaler
9 in effect upon enactment of this bill are rescinded on the 90th day after
10 enactment. All prior approvals by the director of a lesser or higher
11 cost of doing business by a retailer are rescinded upon enactment. The
12 bill allows a 1/2% discount when invoices are paid C.O.D.

13 The bill changes annual license fees under the Cigarette Tax Act,
14 and adds the new license categories of distributor's sales representative
15 and wholesale dealer's sales representative under the Cigarette Tax
16 Act. The bill provides that the Director of the Division of Taxation
17 may require these new licensees to comply with information reporting
18 requirements as the director may prescribe.

19 In addition, the bill increases the salary threshold at which the
20 fingerprinting of licensee's employees is required in the license
21 application process. The threshold is increased from \$30,000 to
22 \$40,000 to reflect an adjustment for inflation in wages and salaries
23 since the requirement was first established in 1980.

24 At least 25% of the revenue derived from license fees is dedicated
25 to the enforcement of the Unfair Cigarette Sales Act and so much of
26 the balance of such revenue as may be necessary is to be made
27 available to fund enforcement and administrative activities of the
28 division under the Unfair Cigarette Sales Act and the Cigarette Tax
29 Act.

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34 _____
35 Increases certain license fees under cigarette excise tax, requires
36 licensing of certain sales representatives, amends Unfair Cigarette
37 Sales Act, dedicates 25% of license fee revenue for enforcement of
sales act.