

P.L. 1997, CHAPTER 373, *approved January 19, 1998*
Senate, No. 1074

1 **AN ACT** concerning the cigarette tax licensing requirements of officers
2 and employees of retail drugstore chains, amending P.L.1948, c.65.

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

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

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

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

19 (1) Individuals having any interest whatsoever in a proprietorship
20 or company.

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

22 (3) Joint venturers in a joint venture.

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

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

32 (6) Other persons who the director establishes have the ability to
33 control the applicant entity through any means including but not
34 limited to, contracts, loans, mortgages or pledges of securities where

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 such control is inimical to the policies of this act because such person
2 is a career offender or a member of a career offender cartel as defined
3 in paragraph (2) of subsection e. of this section. Individuals licensed
4 pursuant to the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et
5 seq.) shall only be required to produce evidence of said licensure in
6 satisfaction of the foregoing.

7 The provisions in this subsection as to wholesale dealers, retail
8 dealers operating more than nine cigarette vending machines, and retail
9 dealers who sell cigarettes at retail at more than nine premises do not
10 apply to retail grocery stores and supermarkets primarily engaged in
11 the self-service sale of foods and household supplies for off-premises
12 consumption, to drug stores and pharmacies engaged in the retail sale
13 of prescription drugs and patent medicines and which may carry a
14 number of lines of related merchandise, or to restaurants, hotels and
15 motels operated by national corporations with such premises in six or
16 more states and primarily engaged in the sale of foods for retail
17 consumption or in the rental of rooms for lodging.

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

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

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

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

1 offender" within the meaning of this subsection, or is a "contumacious
2 defiant" within the meaning of subsection f. of this section.

3 As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

18 i. The director shall require an applicant for a cigarette retail dealer
19 license, including a license to operate a vending machine for the sale
20 of cigarettes, to include on the application the address of the place of
21 business where the cigarettes will be sold or the address where the
22 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.1995, c.320, s.3)

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29 2. This act shall take effect immediately.

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STATEMENT

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34 This bill exempts the officers and employees of retail drug store
35 chains from the fingerprinting requirements of the cigarette tax
36 licensing provisions. General provisions of the cigarette tax extend
37 the fingerprinting requirements of the cigarette tax licensing
38 requirements to all officers of retail cigarette dealers who sell
39 cigarettes at retail at more than nine premises and all employees of
40 such retail dealers who receive more than \$30,000 annually in
41 compensation.

42 If this rule were enforced literally, every central office employee,
43 every professional and every managerial employee of the drugstore
44 chain would be required to submit fingerprints for processing through
45 the Federal Bureau of Investigation and the New Jersey State Police,
46 without regard to whether they ever purchased, sold or handled

1 cigarettes for their employer. The law has not been literally enforced,
2 through the power of the Director of the Division of Taxation to limit
3 the rule to persons in control of the retail cigarette business, but this
4 bill would clarify the application of the rule to drug store chain
5 employees by exempting them from the general fingerprinting
6 requirements. Such an exemption from the general provisions is
7 already provided for the employees of grocery stores and for the
8 employees of restaurants, two other industries which, as part of their
9 general business are licensed to make retail sales of cigarettes but that
10 have large numbers of employees that are not involved in cigarette
11 purchases or sales.

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16 Clarifies cigarette tax licensing requirements for officers and
17 employees of chain drug stores.