SENATE, No. 1074

STATE OF NEW JERSEY

INTRODUCED MAY 9, 1996

By Senator SINAGRA

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

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

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

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

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

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

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

(3) Joint venturers in a joint venture.

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

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

(6) Other persons who the director establishes have the ability to control the applicant entity through any means including but not 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 <u>thus</u> is new matter.

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

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

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

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

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

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

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

As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(cf: P.L.1995, c.320, s.3)

2. This act shall take effect immediately.

STATEMENT

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

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

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

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