

5440A-4



LEGISLATIVE HISTORY CHECKLIST

NJSA: 54:40A-4

(Cigarettes taxes-- various amendments)

CHAPTER 37

Laws Of: 1987

Bill No: A2070

Sponsor(s): Franks

Date Introduced: February 20, 1986

Committee: Assembly: Appropriations

Senate: Revenue, Finance and Appropriations

Amended during passage: Yes according to Governor's recommendations

Amendments denoted by asterisks

Date of Passage: Assembly:

September 8, 1986 Re-enacted 12-18-87

Senate:

October 9, 1986 Re-enacted 2-2-87

Date of Approval: February 10, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: ~~Yes~~ No

Following were printed:

Reports: No

Hearings: No

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2070

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1986

By Assemblyman FRANKS

AN ACT concerning the sale and distribution of cigarettes, amend-
ing and supplementing P. L. 1948, c. 65 and amending P. L. 1952,
c. 247.

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

1 1. Section 2-2 of P. L. 1948, c. 65 (C. 54:40A-4) is amended to
2 read as follows:

3 202. Issuance of license; fee.

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

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

14 (1) Individuals having any interest whatsoever in a proprietor-
15 ship or company.

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

17 (3) Joint venturers in a joint venture.

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

21 (5) Employees receiving in excess of \$30,000.00 per annum com-

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly amendment adopted in accordance with Governor's recommen-
dation December 8, 1986.

22 pension whether as salary, commission, bonus or otherwise and
23 persons who, in the judgment of the director are employed in a
24 supervisory capacity or have the power to make or substantially
25 affect discretionary business judgments of the applicant entity
26 with regard to the cigarette business.

27 (6) Other persons who the director establishes have the ability
28 to control the applicant entity through any means including but not
29 limited to, contracts, loans, mortgages or pledges of securities
30 where such control is inimical to the policies of this act because
31 such person is a career offender or a member of a career offender
32 cartel as defined in *paragraph (2) of subsection c. of this section*
33 **[2(e) hereof]**. Individuals licensed pursuant to the **[Casino Con-**
34 **trol Act]** "*Casino Control Act,*" P. L. 1977, c. 110 (C. 5:12-1 et
35 seq.) shall only be required to produce evidence of said licensure
36 in satisfaction of the foregoing.

37 The provisions in this **[paragraph b.] subsection** as to wholesale
38 dealers, retail dealers operating more than **[five] nine** cigarette
39 vending machines, and retail dealers who sell cigarettes at retail
40 at more than **[five] nine** premises do not apply to retail grocery
41 stores and supermarkets primarily engaged in the self-service sale
42 of foods and household supplies for off-premises consumption or
43 to restaurants, hotels and motels operated by national corporations
44 with such premises in six or more states and primarily engaged
45 in the sale of foods for retail consumption or in the rental of rooms
46 for lodging.

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

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

59 It is further provided that any applicant or person required to
60 submit information who has a charge pending pursuant to any of
61 the foregoing shall disclose that fact to the director. The director
62 may then withhold action on new applications or, in the case of an
63 application for the removal of a license, issue a temporary license
64 until there has been a disposition of the charge. The director shall

65 have the discretion to waive the prohibition against licensure herein
66 provided upon the presentation of proof that a period of not less
67 than five years has elapsed since the last conviction or the expira-
68 tion of any period of incarceration imposed with respect thereto.

69 e. The director shall not issue any license where the applicant
70 or anyone required to submit information has been identified as a
71 career offender or a member of a career offender cartel in such a
72 manner as to create a reasonable belief that the association is of
73 such a nature as to be inimical to the policies of this act or to the
74 taxation, distribution, and sale of cigarettes within the State. The
75 director may request the Attorney General for advice respecting
76 whether a person is a "career offender" within the meaning of this
77 subsection, or is a "contumacious defiant" within the meaning of
78 subsection f. of this section.

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

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

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

96 h. For each license issued to a distributor there shall be paid
97 to the director a fee of \$350.00. If a distributor sells or in-
98 tends to sell cigarettes at two or more places of business, whether
99 established or temporary, a separate license shall be required for
100 each place of business. Each license, or certificate, thereof, and such
101 other evidence of license shall be exhibited in the place of business
102 for which it is issued and in such manner as may be prescribed by
103 the director. The director shall require each licensed distributor to
104 file with him a bond in an amount not less than \$6,000.00 to guar-
105 antee the proper performance of his duties and the discharge of
106 his liabilities under this act. The bond shall be executed by such
107 licensed distributor as principal, and by a corporation approved

108 by the director and duly authorized to engage in business as a
109 surety company in the State of New Jersey, as surety. The bond
110 shall run concurrently with the distributor's license.

111 For each license issued to a manufacturer, and for each con-
112 tinuance thereof, there shall be paid to the director a fee of \$10.00.

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

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

124 For each license issued to a retail dealer and for each continuance
125 thereof, excepting a retail dealer operating a cigarette vending
126 machine, there shall be paid to the director a fee of \$5.00. For
127 each license issued to a retail dealer operating a vending machine
128 for the sale of cigarettes and for each continuance thereof, there
129 shall be paid to the director a fee of \$5.00. If a retail dealer sells
130 or intends to sell cigarettes at two or more places of business,
131 whether established or temporary, or whether in the same building
132 or not, a separate license shall be required for each place of
133 business. Each vending machine for the sale of cigarettes shall be
134 separately licensed and be deemed a separate place of business.
135 Each license, or certificate thereof, and such other evidence of
136 license shall be exhibited in the place of business for which it is
137 issued and in such manner as may be prescribed by the director.

138 Any person licensed only as a distributor or as a manufacturer
139 or as a manufacturer's representative or as a [wholesaler] whole-
140 sale dealer or as a retail dealer shall not operate in any other ca-
141 pacity except under that for which he is licensed herein, unless
142 the appropriate license or licenses therefor are first secured.

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

148 No license shall be issued to any person except upon the pay-
149 ment of the full fee therefor, any statute or exemption to the
150 contrary notwithstanding. No license shall be assignable or trans-

151 ferable, except as hereinafter provided, but in the case of death,
152 bankruptcy, receivership, or incompetency of the licensee, or if
153 for any other reason whatsoever the business of the licensee shall
154 devolve upon another by operation of law, the director may, in
155 his discretion, extend said license for a limited time to the executor,
156 administrator, trustee, receiver, or person upon whom the same
157 has devolved. A purchaser or assignee of a licensed wholesaler or
158 licensed distributor, or any other person upon whom the business
159 of a licensed wholesaler or licensed distributor shall devolve by
160 operation of law, shall upon application to the director, be entitled
161 to an assignment or transfer of the wholesale or distributor license
162 for the balance of the existing license period upon payment of a
163 transfer fee of \$5.00 and subject to his qualification to be a licensed
164 wholesaler or licensed distributor under the provisions of this act.
165 The license issued for each vending machine for the sale of ciga-
166 rettes may be transferred from machine to machine in the same
167 ownership. No refund of the license fee shall be paid to any person
168 upon the surrender or revocation of any license except a license fee
169 paid or collected in error. But, upon payment of \$1.00 fee, there
170 may be obtained (1) a duplicate license, or certificate thereof, in
171 the event the original is lost, destroyed or defaced, and (2) an
172 amended license, or certificate thereof, upon a change in the location
173 of the place of business of any distributor or dealer.

1 2. Section 401 of P. L. 1948, c. 65 (C. 54:40A-11) is amended
2 to read as follows:

3 401. Director to provide revenue stamps. The taxes imposed
4 and levied by this act shall be paid through the use of stamps, except
5 as provided in section 205 (Consumers) of this act. The director
6 shall secure stamps of such designs and denominations as he shall
7 prescribe, suitable to be affixed to packages, and provide for the
8 sale thereof to licensed distributors. Only licensed distributors
9 shall affix and cancel stamps and no distributor shall affix or cancel
10 any stamp except at the tax rate in effect on the date of such affix-
11 ing or cancellation; except that on the effective date of a tax rate
12 increase or of a surtax or of an increase in a surtax, imposed under
13 this act, licensed distributors and wholesale dealers must take a
14 physical inventory of cigarettes on hand at the close of business
15 prior to the date of the tax increase or surtax or surtax increase
16 imposed under this act and must pay any additional tax for all
17 cigarettes bearing stamps at the rate in effect prior to the tax in-
18 crease. The director shall prescribe the method of collecting the
19 additional tax. The director shall not authorize any person to sell
20 revenue stamps except his duly constituted agents and assistants.

21 On sales of revenue stamps the director shall allow, as compensa-
 22 tion for the services and expenses of the distributor in affixing and
 23 handling of such stamps, a discount of ~~1.156%~~ 1.50% of the face
 24 amount of any sale of 1,000 stamps or more; provided, that the
 25 distributor has complied with all the provisions of this act, and
 26 provided, however, that the director shall be empowered to adjust
 27 such discount whenever an increase in the surtax is required under
 28 section 4 of P. L. 1982, c. 40 (C. 54:40A-8.2); and, provided, fur-
 29 ther, however, that the director shall be empowered to adjust such
 30 discount to provide equivalent compensation with respect to the
 31 face value of each 1,000 stamps or more required for packages of
 32 cigarettes which contain 25 cigarettes. No discount shall be allowed
 33 on any sale of less than 1,000 stamps and stamps shall not be sold in
 34 blocks of less than 100 stamps.

1 3. (New section) Within six months following the effective date
 2 of this 1986 amendatory and supplementary act and not less than
 3 every two years thereafter, the director shall conduct a study of
 4 the cost of stamping cigarettes in New Jersey. The results of each
 5 study shall be transmitted to the Governor and to the Legislature
 6 and may serve as the basis for any further modifications of the
 7 stamping discount, except insofar as the director is empowered to
 8 administratively adjust the discount pursuant to section 401 of
 9 P. L. 1948, c. 65 (C. 54:40A-11). Except for adjustments made by
 10 the director, no further modification of the stamping discount shall
 11 be permitted until the first cost study required by this section is
 12 completed.

13 In conducting this study, the licensed cigarette distributors of
 14 the State of New Jersey shall provide the director access to their
 15 books and records so that the director has all information neces-
 16 sary to accurately calculate the distributors' cost of stamping a
 17 unit of cigarettes. The distributors' projected cost shall also be
 18 considered for the purposes of this study.

1 4. Section 3 of P. L. 1952, c. 247 (C. 56:7-20) is amended to read
 2 as follows:

3 3. It shall be unlawful and a violation of this act:

4 a. For any retailer or wholesaler with intent to injure competi-
 5 tors or destroy or substantially lessen competition—

6 (1) to advertise, offer to sell, or sell, at retail or wholesale,
 7 cigarettes at less than cost to such retailer or wholesaler, as
 8 the case may be,

9 (2) to offer a rebate in price, to give a rebate in price, to
 10 offer a concession of any kind, or to give a concession of any
 11 kind or nature whatsoever in connection with the sale of cig-
 12 arettes;

13 b. For any retailer—

14 (1) to induce or attempt to induce or to procure or attempt
15 to procure the purchase of cigarettes at a price less than “cost
16 to wholesaler” as defined in this act.

17 (2) to induce or attempt to induce or to procure or attempt
18 to procure any rebate or concession of any kind or nature
19 whatsoever in connection with the purchase of cigarettes.

20 c. Any retailer or wholesaler who violates the provisions of this
21 section is a disorderly person and shall be prosecuted and punished
22 by a fine of not more than ~~[\$100.00]~~ \$1,000.00 for each offense, in
23 accordance with the provisions of ~~[subtitle 12 of]~~ Title ~~[2A]~~ 2C
24 of the New Jersey Statutes.

25 d. Evidence of advertisement, offering to sell or sale of cigar-
26 ettes by any retailer, or wholesalers at less than cost to him, or
27 evidence of any offer of a rebate in price or the giving of a rebate
28 in price or an offer of a concession or the giving of a concession
29 of any kind or nature whatsoever in connection with the sale of
30 cigarettes or the inducing or attempt to induce or the procuring
31 or the attempt to procure the purchase of cigarettes at a price less
32 than cost to the wholesaler or the retailer shall be prima facie
33 evidence of intent to injure competitors and to destroy or substan-
34 tially lessen competition.

1 5. Section 16 of P. L. 1952, c. 247 (C. 56:7-33) is amended to read
2 as follows:

3 16. a. In addition to the provisions of section 3 and section 15
4 of this act, the director is empowered to suspend or revoke the
5 license or any licenses of any person, licensed under the provisions
6 of the “Cigarette Tax Act~~[.]~~,” P. L. 1948, c. 65 (C. 54:40A-1 et
7 seq.). No such license or licenses shall be suspended or revoked
8 except upon notice to the licensee and after a hearing as prescribed
9 by said director. The said director, upon a finding by him that the
10 licensee has failed to comply with any provision of this act or any
11 rule or regulation promulgated thereunder, shall, in the case of
12 the first offender, suspend the license or licenses of the said li-
13 censee for a period of not less than ~~[five]~~ 10 nor more than 20
14 consecutive business days, ~~[and,]~~ in the case of a second ~~[or~~
15 plural] offender, shall suspend ~~[said]~~ the license or licenses ~~[for a~~
16 period of not less than 20 consecutive business days nor more than
17 12 months, and, in the event said] for a period of not less than 30
18 consecutive business days nor more than 12 months, and in the case
19 of a third offender, shall suspend the license or licenses for a period
20 of 12 months. If the director finds ~~[the]~~ that an offender has been

21 guilty of willful and persistent violations, he may revoke said per-
22 son's license or licenses.

23 b. Any person whose license or licenses have been so revoked
24 may apply to the director at the expiration of one year for a rein-
25 statement of his license or licenses. Such license or licenses may
26 be reinstated by the director if it shall appear to the satisfaction
27 of said director that the licensee will comply with the provisions
28 of this act and the rules and regulations promulgated thereunder.

1 6. This act shall take effect ***[immediately]*** *July 1, 1987* and
2 the amendment to section 401 of P. L. 1948, c. 65 (C. 54:40A-11)
3 with respect to the discount rate permitted on the sale of revenue
4 stamps shall apply to stamps sold on or after that date.

TAXATION — BUSINESS AND UTILITIES

Increases cigarette revenue stamp discount for distributors, in-
creases certain licensing thresholds and increases penalties under
the "Unfair Cigarette Sales Tax Act of 1952."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 4, 1986

ASSEMBLY BILL NO. 2070

To the General Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 2070 with my objections for reconsideration.

The bill makes a variety of amendments to the Cigarette Tax Act, including changes in license requirements, increased fines and license suspension periods, and an increase in the discount given to cigarette distributors. I agree with the purpose of this bill.

The amendments I am recommending will change the effective date of the bill in order to provide the Division of Taxation with a sufficient period of time in which to implement the changes that this bill makes to the current discount rate.

Therefore, I herewith return Assembly Bill No. 2070 and recommend that it be amended as follows:

Page 8, Section 6, Line 1: Delete "immediately" insert "July 1, 1987"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2070

STATE OF NEW JERSEY

DATED: OCTOBER 2, 1986

The Senate Revenue, Finance and Appropriations Committee reported this bill favorably.

Assembly Bill No. 2070 amends and supplements the "Cigarette Tax Act," P. L. 1948, c. 65 (C. 54:40A-1 et seq.) and amends the "Unfair Cigarette Sales Tax Act of 1952," P. L. 1952, c. 247 (C. 56:7-18 et seq.) in the following manner:

(1) To increase, from five to nine, the number of retail vending machines or premises selling cigarettes that one may operate before licensure as a retailer is required under the "Cigarette Tax Act." The licensing provisions for distributors and wholesalers remain unchanged.

(2) To increase the statutory discount allowed as compensation for the services and expenses of the distributor in affixing and handling revenue stamps, from 1.156% to 1.80% of the face value on the sale of 1,000 or more stamps. The Director of the Division of Taxation is directed to conduct periodic studies of the actual costs to distributors of stamping cigarettes, with such studies to serve as the basis for any future substantive changes in the discount rate.

(3) To increase fines for violations of the "Unfair Cigarette Sales Tax Act of 1952," in order to parallel the provisions of Title 26 (Criminal Code) of the New Jersey Statutes. Specifically, the fines are raised from \$100.00 to \$1,000.00.

(4) To revise the provisions governing license suspension by increasing the minimum suspension period for first and second offenders, and providing a longer suspension for third and subsequent offenders. The director retains his current authority to revoke a person's license for "willful and persistent" violations.

This bill is identical to Senate Bill No. 951 of 1986.

FISCAL IMPACT:

Currently, the dollar value of the distributor stamp discount is \$2.77 per 1,000 stamps. This dollar value is the amount which the 1.156% statutory rate was intended to produce when that rate was established in 1982. Pursuant to statutory authority, the director adjusted the

effective rate downward when the surtax was increased in 1983, and also adjusted the effective rate to provide parallel treatment between packages of 20 and 25 cigarettes. Thus, the dollar value of the discount has remained \$2.77 per 1,000 stamps, or the equivalent.

The increased discount rate provided in this bill will increase the dollar value for distributors from \$2.77 to \$4.50 per 1,000 revenue stamps purchased. Based on the number of cigarettes sold in New Jersey, the increased distributor allowance will cost the State approximately \$1.6 million per year in lost cigarette tax revenue.

ASSEMBLY APPROPRIATIONS COMMITTEE
STATEMENT TO
ASSEMBLY, No. 2070

STATE OF NEW JERSEY

DATED: JUNE 12, 1986

The Assembly Appropriations Committee favorably reports this bill. Assembly Bill No. 2070 amends and supplements the "Cigarette Tax Act," P. L. 1948, c. 65 (C. 54:40A-1 et seq.) and amends the "Unfair Cigarette Sales Tax Act of 1952," P. L. 1952, c. 247 (C. 56:7-18 et seq.) as follows:

(1) Increases, from five to nine, the number of retail vending machines or premises selling cigarettes that one may operate before licensure is required under the "Cigarette Tax Act." The licensing provisions related to distributors or wholesalers remain unchanged.

(2) The statutory discount allowed as compensation for the services and expenses of the distributor in affixing and handling revenue stamps is increased from 1.156% to 1.80% of the face value on the sale of 1,000 or more stamps. The Director of the Division of Taxation is directed to conduct periodic studies of the actual costs to distributors of stamping cigarettes, with such studies to serve as the basis for any future substantive changes in the discount rate.

(3) Fines are increased from \$100.00 to \$1,000.00 for violations of the "Unfair Cigarette Sales Tax Act of 1952" in accordance with the provisions of Title 26 (Criminal Code) of the New Jersey Statutes.

(4) The provisions governing license suspension and revocation are amended to increase the minimum suspension period for first offenders and a longer suspension for repeat offenders. The director retains his current authority to revoke a person's license for "willful and persistent" violations.

BACKGROUND:

Prior to the enactment of the cigarette tax surtax, the tax on a pack of 20 cigarettes was \$0.19. For every 1,000 stamps purchased, the discount to the distributor was \$2.77. When the \$0.05 surtax was enacted in 1982, the discount rate was adjusted downward from 1.46% to 1.156% to keep the dollar discount constant at \$2.77 per 1,000 or more stamps. Effective July 1, 1983, the surtax was increased to \$0.06, making the total tax on a package of cigarettes \$0.25. At that time, the discount rate remained unchanged in the law but was again adjusted downward

administratively by the director under powers granted by P. L. 1982. c. 40, to maintain a constant dollar value discount. The effective discount rate is now 1.11%. Effective September 1, 1985 the director was given statutory power to adjust the discount to provide equivalent compensation, \$2.77 per 1,000 or more stamps, required for packages of cigarettes which contain 25 cigarettes.

FISCAL IMPACT:

The increase in discount rate provided in this bill will increase the dollar discount value for distributors from \$2.77 to \$4.50 per 1,000 or more revenue stamps purchased. Based on the number of cigarettes sold in New Jersey, the increased distributor allowance would cost the State approximately \$1.6 million per year in lost cigarette tax revenue.

ASSEMBLY, No. 2070
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1986

By Assemblyman FRANKS

An Act concerning the sale and distribution of cigarettes, amending and supplementing P. L. 1948, c. 65 and amending P. L. 1952, c. 247.

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

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

3 202. Issuance of license: fee.

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

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

14 (1) Individuals having any interest whatsoever in a proprietor-
15 ship or company.

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

17 (3) Joint venturers in a joint venture.

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

21 (5) Employees receiving in excess of \$30,000.00 per annum com-

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 printed in italics *thus* is new matter.

22 pensionation whether as salary, commission, bonus or otherwise and
23 persons who, in the judgment of the director are employed in a
24 supervisory capacity or have the power to make or substantially
25 affect discretionary business judgments of the applicant entity
26 with regard to the cigarette business.

27 (6) Other persons who the director establishes have the ability
28 to control the applicant entity through any means including but not
29 limited to, contracts, loans, mortgages or pledges of securities
30 where such control is inimical to the policies of this act because
31 such person is a career offender or a member of a career offender
32 cartel as defined in *paragraph (2) of subsection c. of this section*
33 **[2(c) hereof]**. Individuals licensed pursuant to the **[Casino Con-**
34 **trol Act]** "*Casino Control Act,*" P. L. 1977, c. 110 (C. 5:12-1 et
35 seq.) shall only be required to produce evidence of said licensure
36 in satisfaction of the foregoing.

37 The provisions in this **[paragraph b.] subsection** as to wholesale
38 dealers, retail dealers operating more than **[five]nine** cigarette
39 vending machines, and retail dealers who sell cigarettes at retail
40 at more than **[five] nine** premises do not apply to retail grocery
41 stores and supermarkets primarily engaged in the self-service sale
42 of foods and household supplies for off-premises consumption or
43 to restaurants, hotels and motels operated by national corporations
44 with such premises in six or more states and primarily engaged
45 in the sale of foods for retail consumption or in the rental of rooms
46 for lodging.

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

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

59 It is further provided that any applicant or person required to
60 submit information who has a charge pending pursuant to any of
61 the foregoing shall disclose that fact to the director. The director
62 may then withhold action on new applications or, in the case of an
63 application for the removal of a license, issue a temporary license
64 until there has been a disposition of the charge. The director shall

65 have the discretion to waive the prohibition against licensure herein
66 provided upon the presentation of proof that a period of not less
67 than five years has elapsed since the last conviction or the expira-
68 tion of any period of incarceration imposed with respect thereto.

69 e. The director shall not issue any license where the applicant
70 or anyone required to submit information has been identified as a
71 career offender or a member of a career offender cartel in such a
72 manner as to create a reasonable belief that the association is of
73 such a nature as to be inimical to the policies of this act or to the
74 taxation, distribution, and sale of cigarettes within the State. The
75 director may request the Attorney General for advice respecting
76 whether a person is a "career offender" within the meaning of this
77 subsection, or is a "contumacious defiant" within the meaning of
78 subsection f. of this section.

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

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

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

96 h. For each license issued to a distributor there shall be paid
97 to the director a fee of \$350.00. If a distributor sells or in-
98 tends to sell cigarettes at two or more places of business, whether
99 established or temporary, a separate license shall be required for
100 each place of business. Each license, or certificate, thereof, and such
101 other evidence of license shall be exhibited in the place of business
102 for which it is issued and in such manner as may be prescribed by
103 the director. The director shall require each licensed distributor to
104 file with him a bond in an amount not less than \$6,000.00 to guar-
105 antee the proper performance of his duties and the discharge of
106 his liabilities under this act. The bond shall be executed by such
107 licensed distributor as principal, and by a corporation approved

108 by the director and duly authorized to engage in business as a
109 surety company in the State of New Jersey, as surety. The bond
110 shall run concurrently with the distributor's license.

111 For each license issued to a manufacturer, and for each con-
112 tinuance thereof, there shall be paid to the director a fee of \$10.00.

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

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

124 For each license issued to a retail dealer and for each continuance
125 thereof, excepting a retail dealer operating a cigarette vending
126 machine, there shall be paid to the director a fee of \$5.00. For
127 each license issued to a retail dealer operating a vending machine
128 for the sale of cigarettes and for each continuance thereof, there
129 shall be paid to the director a fee of \$5.00. If a retail dealer sells
130 or intends to sell cigarettes at two or more places of business,
131 whether established or temporary, or whether in the same building
132 or not, a separate license shall be required for each place of
133 business. Each vending machine for the sale of cigarettes shall be
134 separately licensed and be deemed a separate place of business.
135 Each license, or certificate thereof, and such other evidence of
136 license shall be exhibited in the place of business for which it is
137 issued and in such manner as may be prescribed by the director.

138 Any person licensed only as a distributor or as a manufacturer
139 or as a manufacturer's representative or as a **wholesaler** *whole-*
140 *sale* dealer or as a retail dealer shall not operate in any other ca-
141 pacity except under that for which he is licensed herein, unless
142 the appropriate license or licenses therefor are first secured.

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

148 No license shall be issued to any person except upon the pay-
149 ment of the full fee therefor, any statute or exemption to the
150 contrary notwithstanding. No license shall be assignable or trans-

151 forable, except as hereinafter provided, but in the case of death,
152 bankruptcy, receivership, or incompetency of the licensee, or if
153 for any other reason whatsoever the business of the licensee shall
154 devolve upon another by operation of law, the director may, in
155 his discretion, extend said license for a limited time to the executor,
156 administrator, trustee, receiver, or person upon whom the same
157 has devolved. A purchaser or assignee of a licensed wholesaler or
158 licensed distributor, or any other person upon whom the business
159 of a licensed wholesaler or licensed distributor shall devolve by
160 operation of law, shall upon application to the director, be entitled
161 to an assignment or transfer of the wholesale or distributor license
162 for the balance of the existing license period upon payment of a
163 transfer fee of \$5.00 and subject to his qualification to be a licensed
164 wholesaler or licensed distributor under the provisions of this act.
165 The license issued for each vending machine for the sale of ciga-
166 rettes may be transferred from machine to machine in the same
167 ownership. No refund of the license fee shall be paid to any person
168 upon the surrender or revocation of any license except a license fee
169 paid or collected in error. But, upon payment of \$1.00 fee, there
170 may be obtained (1) a duplicate license, or certificate thereof, in
171 the event the original is lost, destroyed or defaced, and (2) an
172 amended license, or certificate thereof, upon a change in the location
173 of the place of business of any distributor or dealer.

1 2. Section 401 of P. L. 1948, c. 65 (C. 54:40A-11) is amended
2 to read as follows:

3 401. Director to provide revenue stamps. The taxes imposed
4 and levied by this act shall be paid through the use of stamps, except
5 as provided in section 205 (Consumers) of this act. The director
6 shall secure stamps of such designs and denominations as he shall
7 prescribe, suitable to be affixed to packages, and provide for the
8 sale thereof to licensed distributors. Only licensed distributors
9 shall affix and cancel stamps and no distributor shall affix or cancel
10 any stamp except at the tax rate in effect on the date of such affix-
11 ing or cancellation; except that on the effective date of a tax rate
12 increase or of a surtax or of an increase in a surtax, imposed under
13 this act, licensed distributors and wholesale dealers must take a
14 physical inventory of cigarettes on hand at the close of business
15 prior to the date of the tax increase or surtax or surtax increase
16 imposed under this act and must pay any additional tax for all
17 cigarettes bearing stamps at the rate in effect prior to the tax in-
18 crease. The director shall prescribe the method of collecting the
19 additional tax. The director shall not authorize any person to sell
20 revenue stamps except his duly constituted agents and assistants.

21 On sales of revenue stamps the director shall allow, as compensa-
 22 tion for the services and expenses of the distributor in affixing and
 23 handling of such stamps, a discount of ~~1.156%~~ 1.50% of the face
 24 amount of any sale of 1,000 stamps or more; provided, that the
 25 distributor has complied with all the provisions of this act, and
 26 provided, however, that the director shall be empowered to adjust
 27 such discount whenever an increase in the surtax is required under
 28 section 4 of P. L. 1982, c. 40 (C. 54:40A-8.2); and, provided, fur-
 29 ther, however, that the director shall be empowered to adjust such
 30 discount to provide equivalent compensation with respect to the
 31 face value of each 1,000 stamps or more required for packages of
 32 cigarettes which contain 25 cigarettes. No discount shall be allowed
 33 on any sale of less than 1,000 stamps and stamps shall not be sold in
 34 blocks of less than 100 stamps.

1 3. (New section) Within six months following the effective date
 2 of this 1986 amendatory and supplementary act and not less than
 3 every two years thereafter, the director shall conduct a study of
 4 the cost of stamping cigarettes in New Jersey. The results of each
 5 study shall be transmitted to the Governor and to the Legislature
 6 and may serve as the basis for any further modifications of the
 7 stamping discount, except insofar as the director is empowered to
 8 administratively adjust the discount pursuant to section 401 of
 9 P. L. 1948, c. 65 (C. 54:40A-11). Except for adjustments made by
 10 the director, no further modification of the stamping discount shall
 11 be permitted until the first cost study required by this section is
 12 completed.

13 In conducting this study, the licensed cigarette distributors of
 14 the State of New Jersey shall provide the director access to their
 15 books and records so that the director has all information neces-
 16 sary to accurately calculate the distributors' cost of stamping a
 17 unit of cigarettes. The distributors' projected cost shall also be
 18 considered for the purposes of this study.

1 4. Section 3 of P. L. 1952, c. 247 (C. 56:7-20) is amended to read
 2 as follows:

3 3. It shall be unlawful and a violation of this act:

4 a. For any retailer or wholesaler with intent to injure competi-
 5 tors or destroy or substantially lessen competition--

6 (1) to advertise, offer to sell, or sell, at retail or wholesale,
 7 cigarettes at less than cost to such retailer or wholesaler, as
 8 the case may be,

9 (2) to offer a rebate in price, to give a rebate in price, to
 10 offer a concession of any kind, or to give a concession of any
 11 kind or nature whatsoever in connection with the sale of cig-
 12 arettes;

13 b. For any retailer—

14 (1) to induce or attempt to induce or to procure or attempt
15 to procure the purchase of cigarettes at a price less than "cost
16 to wholesaler" as defined in this act.

17 (2) to induce or attempt to induce or to procure or attempt
18 to procure any rebate or concession of any kind or nature
19 whatsoever in connection with the purchase of cigarettes.

20 c. Any retailer or wholesaler who violates the provisions of this
21 section is a disorderly person and shall be prosecuted and punished
22 by a fine of not more than ~~[\$100.00]~~ \$1,000.00 for each offense, in
23 accordance with the provisions of ~~[subtitle 12 of]~~ Title ~~[2A]~~ 2C
24 of the New Jersey Statutes.

25 d. Evidence of advertisement, offering to sell or sale of cigar-
26 ettes by any retailer, or wholesalers at less than cost to him, or
27 evidence of any offer of a rebate in price or the giving of a rebate
28 in price or an offer of a concession or the giving of a concession
29 of any kind or nature whatsoever in connection with the sale of
30 cigarettes or the inducing or attempt to induce or the procuring
31 or the attempt to procure the purchase of cigarettes at a price less
32 than cost to the wholesaler or the retailer shall be prima facie
33 evidence of intent to injure competitors and to destroy or substan-
34 tially lessen competition.

1 5. Section 16 of P. L. 1952, c. 247 (C. 56:7-33) is amended to read
2 as follows:

3 16. a. In addition to the provisions of section 3 and section 15
4 of this act, the director is empowered to suspend or revoke the
5 license or any licenses of any person, licensed under the provisions
6 of the "Cigarette Tax Act~~[.]~~," P. L. 1948, c. 65 (C. 51:40A-1 et
7 seq.). No such license or licenses shall be suspended or revoked
8 except upon notice to the licensee and after a hearing as prescribed
9 by said director. The said director, upon a finding by him that the
10 licensee has failed to comply with any provision of this act or any
11 rule or regulation promulgated thereunder, shall, in the case of
12 the first offender, suspend the license or licenses of the said li-
13 censee for a period of not less than ~~[five]~~ 10 nor more than 20
14 consecutive business days, ~~[and.]~~ in the case of a second ~~[or~~
15 plural] offender, shall suspend ~~[said]~~ the license or licenses ~~[for a~~
16 period of not less than 20 consecutive business days nor more than
17 12 months, and, in the event ~~said]~~ for a period of not less than 30
18 consecutive business days nor more than 12 months, and in the case
19 of a third offender, shall suspend the license or licenses for a period
20 of 12 months. If the director finds ~~[the]~~ that an offender has been

21 guilty of willful and persistent violations, he may revoke said per-
 22 son's license or licenses.

23 b. Any person whose license or licenses have been so revoked
 24 may apply to the director at the expiration of one year for a rein-
 25 statement of his license or licenses. Such license or licenses may
 26 be reinstated by the director if it shall appear to the satisfaction
 27 of said director that the licensee will comply with the provisions
 28 of this act and the rules and regulations promulgated thereunder.

1 6. This act shall take effect immediately and the amendment to
 2 section 401 of P. L. 1948, c. 65 (C. 54:40A-11) with respect to the
 3 discount rate permitted on the sale of revenue stamps shall apply
 4 to stamps sold on and after that date.

Sponsor's STATEMENT

This bill increases from five to nine the number of retail vending machines or premises that must be operated before licensure is required under the "Cigarette Tax Act," P. L. 1948, c. 65 (C. 54:40A-1 et seq.). The bill also raises the discount afforded cigarette distributors for the expenses of fixing and handling revenue stamps from 1.156% to 1.80% of the face value on the sale of \$1,000.00 or more stamps. Also the Director of the Division of Taxation is directed to conduct periodic studies of the actual costs to distributors of stamping cigarettes, with the studies to serve as the basis for future changes in the discount rate.

The bill also amends the "Unfair Cigarette Sales Tax Act of 1952," P. L. 1952, c. 247 (C. 56:7-18 et seq.) to increase fines and license suspension and revocation periods under that act.

TAXATION — BUSINESS AND UTILITIES

Increases cigarette revenue stamp discount for distributors, increases certain licensing thresholds and increases penalties under the "Unfair Cigarette Sales Tax Act of 1952."
