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LAW/RWH

P.L.2011, CHAPTER 80, *approved June 29, 2011*
Senate Substitute (*First Reprint*) for
Senate, No. 2175

1 AN ACT concerning the forfeiture of certain contraband tobacco
2 products and cigarettes, supplementing P.L.1990, c.39
3 (C.54:40B-1 et seq.), and amending P.L.1948, c.65 and
4 N.J.S.2C:64-1.

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

8
9 1. (New section) a. All tobacco products subject to the tax
10 imposed under P.L.1990, c.39 (C.54:40B-1 et seq.), on which the
11 tax has not been paid as required by section 4 or section 5 of
12 P.L.1990, c.39 (C.54:40B-4 and 54:40B-5), found in any place in
13 this State are declared to be prima facie contraband goods and may
14 be seized by the director, the director's agents or employees, or by
15 any peace officer of this State, when so ordered by the director,
16 without a warrant.

17 b. The director may order the return of any seized tobacco
18 product when the director shall have reason to believe, upon the
19 presentation of satisfactory proof, that the owner has not willfully
20 or intentionally evaded any tax imposed by P.L.1990, c.39
21 (C.54:40B-1 et seq.). Any tobacco product seized under the
22 provisions of this section shall be disposed of according to law.

23 c. (1) Except as otherwise provided in this section, the director
24 shall destroy any seized untaxed tobacco product not subject to
25 other disposition pursuant to P.L.1990, c.39 (C.54:40B-1 et seq.).

26 (2) As an alternative to destruction, the director may resell any
27 untaxed tobacco product to the manufacturer of that tobacco
28 product, but such tobacco product shall be resold only for export or
29 destruction.

30 (3) Notwithstanding the provisions of paragraph (1) of this
31 subsection, the director may authorize the use for law enforcement
32 purposes of any untaxed tobacco products forfeited in accordance
33 with this section ¹ []; provided, however, that this provision shall not
34 apply to a tobacco product that the director determines violates
35 federal trademark laws or has been damaged. All tobacco products
36 used for law enforcement purposes in accordance with this section
37 shall be destroyed after such use, unless such tobacco products are

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate amendments adopted in accordance with Governor's recommendations May 23, 2011.

1 rendered unavailable for such disposition as a result of the use for
2 law enforcement purposes¹.

3 d. The seizure and sale of any untaxed tobacco product under
4 the provisions of this section shall not relieve any person from a
5 fine, imprisonment or other penalty for violation of any of the
6 provisions of P.L.1990, c.39 (C.54:40B-1 et seq.). The director,
7 the director's agents or employees, and any peace officer of this
8 State, when so ordered, shall not in any way be responsible in any
9 court for the seizure or the confiscation of any untaxed tobacco
10 product.

11

12 2. Section 607 of P.L.1948, c.65 (C.54:40A-30) is amended to
13 read as follows:

14 607. Unstamped cigarettes subject to confiscation.

15 a. All cigarettes, subject to the tax imposed by this act, to
16 which stamps have not been affixed, as required by this act, and all
17 cigarettes stamped in violation of subsection b. of section 405 of
18 P.L.1948, c.65 (C.54:40A-15) found in any place in this State are
19 declared to be prima facie contraband goods and may be seized by
20 the director, the director's agents or employees, or by any peace
21 officer of this State, when directed by the director so to do, without
22 a warrant.

23 b. The director may upon satisfactory proof direct the return of
24 any unstamped confiscated cigarettes when the director shall have
25 reason to believe that the owner thereof has not willfully or
26 intentionally evaded any tax imposed by this act. **【Any unstamped**
27 **cigarettes seized under the provisions of this act shall be disposed**
28 **of according to law.】** Any purchaser of such cigarettes shall be
29 required to affix stamps as required by this act.

30 c. **【The】** (1) Except as otherwise provided in this section, the
31 director shall destroy any seized unstamped cigarettes or cigarettes
32 that have been stamped in violation of subsection b. of section 405
33 of P.L.1948, c.65 (C.54:40A-15)【; provided however that as】. The
34 director may, prior to the destruction of such cigarettes, permit the
35 true holder of the trademark rights in the cigarette brand to inspect
36 the cigarettes, in order to assist the director in any investigation
37 regarding such cigarettes.

38 (2) As an alternative to destruction, the director may resell such
39 cigarettes to the manufacturer of those cigarettes, but such
40 cigarettes shall be resold only for export or destruction.

41 (3) Notwithstanding the provisions of paragraph (1) of this
42 subsection, the director may authorize the use for law enforcement
43 purposes of cigarettes forfeited in accordance with this section ¹【;
44 provided, however, that this provision shall not apply to cigarettes
45 which the director determines violate federal trademark laws or
46 have been damaged. All cigarettes used for law enforcement
47 purposes in accordance with this section shall be destroyed after

1 such use, unless such cigarettes are rendered unavailable for such
2 disposition as a result of the use for law enforcement purposes]¹.

3 d. The seizure and sale of any unstamped or illegally stamped
4 cigarettes or any other contraband cigarettes under the provisions of
5 this section shall not relieve any person from a fine, imprisonment
6 or other penalty for violation of any of the provisions of this act.
7 The director, the director's agents, employees, and any peace officer
8 of this State, when directed so to do, shall not in any way be
9 responsible in any court for the seizure or the confiscation of any
10 unstamped or illegally stamped packages of cigarettes or any other
11 contraband cigarettes.

12 (cf: P.L.1999, c.328, s.6)

13

14 ¹3. Section 602 of P.L.1948, c.65 (C.54:40A-25) is amended to
15 read as follows:

16 602. Possessing cigarettes not bearing required revenue stamps.

17 Any wholesale dealer or retail dealer who violates the provisions
18 of section four hundred six of this act, and any consumer who fails
19 to report and remit the tax due as provided by section two hundred
20 five of this act, shall be liable to a penalty of not more than
21 **【twenty-five dollars (\$25)】** two-hundred and fifty dollars (\$250) for
22 each individual carton of unstamped or illegally stamped cigarettes
23 in the dealer's possession, which penalty shall be sued for and
24 recovered in the same manner as provided for the penalties imposed
25 by section six hundred one of this act.¹

26 (cf: P.L.1999, c.328, s.3)

27

28 ¹**【3.】** 4.¹ N.J.S.2C:64-1 is amended to read as follows:

29 2C:64-1. Property Subject to Forfeiture.

30 a. Any interest in the following shall be subject to forfeiture
31 and no property right shall exist in them:

32 (1) Controlled dangerous substances, firearms which are
33 unlawfully possessed, carried, acquired or used, illegally possessed
34 gambling devices, untaxed or otherwise contraband cigarettes or
35 tobacco products, untaxed special fuel, unlawful sound recordings
36 and audiovisual works and items bearing a counterfeit mark. These
37 shall be designated prima facie contraband.

38 (2) All property which has been, or is intended to be, utilized in
39 furtherance of an unlawful activity, including, but not limited to,
40 conveyances intended to facilitate the perpetration of illegal acts, or
41 buildings or premises maintained for the purpose of committing
42 offenses against the State.

43 (3) Property which has become or is intended to become an
44 integral part of illegal activity, including, but not limited to, money
45 which is earmarked for use as financing for an illegal gambling
46 enterprise.

1 (4) Proceeds of illegal activities, including, but not limited to,
2 property or money obtained as a result of the sale of prima facie
3 contraband as defined by subsection a. (1), proceeds of illegal
4 gambling, prostitution, bribery and extortion.

5 b. Any article subject to forfeiture under this chapter may be
6 seized by the State or any law enforcement officer as evidence
7 pending a criminal prosecution pursuant to section 2C:64-4 or,
8 when no criminal proceeding is instituted, upon process issued by
9 any court of competent jurisdiction over the property, except that
10 seizure without such process may be made when not inconsistent
11 with the Constitution of this State or the United States, and when

12 (1) The article is prima facie contraband; or

13 (2) The property subject to seizure poses an immediate threat to
14 the public health, safety or welfare.

15 c. For the purposes of this section:

16 "Items bearing a counterfeit mark" means items bearing a
17 counterfeit mark as defined in N.J.S.2C:21-32.

18 "Unlawful sound recordings and audiovisual works" means
19 sound recordings and audiovisual works as those terms are defined
20 in N.J.S.2C:21-21 which were produced in violation of
21 N.J.S.2C:21-21.

22 "Untaxed special fuel" means diesel fuel, No. 2 fuel oil and
23 kerosene on which the motor fuel tax imposed pursuant to
24 R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or
25 transferred in this State in a manner not authorized pursuant to
26 R.S.54:39-1 et seq. or P.L.1938, c.163 (C.56:6-1 et seq.).

27 (cf: P.L.2004, c.150, s.3)

28

29 '[4.] 5.' This act shall take effect immediately.

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33

34 Establishes procedure for destroying certain contraband tobacco
35 products and cigarettes.

SENATE, No. 2175

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JULY 1, 2010

Sponsored by:

Senator JIM WHELAN

District 2 (Atlantic)

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

SYNOPSIS

Establishes procedure for destroying certain contraband tobacco products and cigarettes.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the forfeiture of certain contraband tobacco
2 products and cigarettes, supplementing P.L.1990, c.39
3 (C.54:40B-1 et seq.), and amending P.L.1948, c.65 and
4 N.J.S.2C:64-1.

5

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

8

9 1. (New section) a. Notwithstanding any other provision of
10 law, the possession for sale of untaxed tobacco products, unstamped
11 or illegally stamped cigarettes, or other contraband tobacco
12 products or cigarettes by a manufacturer, importer, distributor,
13 wholesale dealer, retail dealer, or any other person shall, after
14 notice and hearing, result in the forfeiture to this State of the
15 product and related machinery and equipment used to falsely mark
16 tobacco products or cigarettes to reflect the payment of excise
17 taxes, or in the production of such tobacco products or cigarettes.

18 b. The knowing sale or possession for sale of untaxed tobacco
19 products, unstamped or illegally stamped cigarettes, or other
20 contraband tobacco products shall, after notice and a hearing, result
21 in the seizure of all tobacco products and cigarettes, related
22 machinery, and equipment.

23 c. All tobacco products and cigarettes forfeited to this State
24 under this section shall be destroyed. The director, prior to the
25 destruction of any tobacco products or cigarettes, may permit the
26 true holder of the trademark rights in the tobacco product or
27 cigarette brand to inspect such contraband tobacco products or
28 cigarettes, in order to assist the director in any investigation
29 regarding such tobacco product or cigarettes.

30 d. The seizure of any untaxed tobacco products, unstamped or
31 illegally stamped cigarettes, or other contraband tobacco products
32 under the provisions of this section shall not relieve any person
33 from a fine, imprisonment, or other penalty for a violation of any
34 provision of this act. The director, the director's agents, employees,
35 or any law enforcement officer of this State, when directed to do so,
36 shall not in any way be responsible in any court for the seizure or
37 the confiscation of any untaxed tobacco products, unstamped or
38 illegally stamped cigarettes, or other contraband tobacco products.

39

40 2. Section 607 of P.L.1948, c.65 (C.54:40A-30) is amended to
41 read as follows:

42 607. **[Unstamped cigarettes subject to confiscation]** Forfeiture of
43 unstamped or illegally stamped cigarettes or other contraband
44 cigarettes.

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 underlined thus is new matter.

1 a. [All cigarettes, subject to the tax imposed by this act, to
2 which stamps have not been affixed, as required by this act, and all
3 cigarettes stamped in violation of subsection b. of section 405 of
4 P.L.1948, c.65 (C.54:40A-15) found in any place in this State are
5 declared to be prima facie contraband goods and may be seized by
6 the director, the director's agents or employees, or by any peace
7 officer of this State, when directed by the director so to do, without
8 a warrant] Notwithstanding any other section of law, the possession
9 for sale of unstamped or illegally stamped cigarettes or other
10 contraband cigarettes by a manufacturer, importer, distributor,
11 wholesale dealers or retail dealer shall, after notice and hearing,
12 result in the forfeiture to this State of the product and related
13 machinery and equipment used to falsely mark cigarettes to reflect
14 the payment of excise taxes, or in the production of contraband
15 cigarettes.

16 b. [The director may upon satisfactory proof direct the return
17 of any unstamped confiscated cigarettes when the director shall
18 have reason to believe that the owner thereof has not willfully or
19 intentionally evaded any tax imposed by this act. Any unstamped
20 cigarettes seized under the provisions of this act shall be disposed
21 of according to law. Any purchaser of such cigarettes shall be
22 required to affix stamps as required by this act] The knowing sale
23 or possession for sale of unstamped or illegally stamped cigarettes
24 or other contraband shall, after notice and hearing, result in the
25 seizure of all related machinery and equipment.

26 c. [The director shall destroy any seized cigarettes that have
27 been stamped in violation of subsection b. of section 405 of
28 P.L.1948, c.65 (C.54:40A-15); provided however that as an
29 alternative the director may resell such cigarettes to the
30 manufacturer, but such cigarettes shall be resold only for export or
31 destruction] All cigarettes forfeited to this State under this section
32 shall be destroyed. The director may, prior to the destruction of
33 cigarettes, permit the true holder of the trademark rights in the
34 cigarette brand to inspect such cigarettes, in order to assist the
35 director in any investigation regarding such cigarettes.

36 d. The seizure [and sale] of any unstamped or illegally
37 stamped cigarettes or any other contraband cigarettes under the
38 provisions of this section shall not relieve any person from a fine,
39 imprisonment or other penalty for violation of any of the provisions
40 of this act. The director, the director's agents, employees, and any
41 peace officer of this State, when directed so to do, shall not in any
42 way be responsible in any court for the seizure or the confiscation
43 of any unstamped or illegally stamped packages of cigarettes.
44 (cf: P.L.1999, c.328, s.6)

45

46 3. N.J.S.2C:64-1 is amended to read as follows:

47 2C:64-1. Property Subject to Forfeiture.

1 a. Any interest in the following shall be subject to forfeiture
2 and no property right shall exist in them:

3 (1) Controlled dangerous substances, firearms which are
4 unlawfully possessed, carried, acquired or used, illegally possessed
5 gambling devices, untaxed or otherwise contraband cigarettes or
6 tobacco products, untaxed special fuel, unlawful sound recordings
7 and audiovisual works and items bearing a counterfeit mark. These
8 shall be designated prima facie contraband.

9 (2) All property which has been, or is intended to be, utilized in
10 furtherance of an unlawful activity, including, but not limited to,
11 conveyances intended to facilitate the perpetration of illegal acts, or
12 buildings or premises maintained for the purpose of committing
13 offenses against the State.

14 (3) Property which has become or is intended to become an
15 integral part of illegal activity, including, but not limited to, money
16 which is earmarked for use as financing for an illegal gambling
17 enterprise.

18 (4) Proceeds of illegal activities, including, but not limited to,
19 property or money obtained as a result of the sale of prima facie
20 contraband as defined by subsection a. (1), proceeds of illegal
21 gambling, prostitution, bribery and extortion.

22 b. Any article subject to forfeiture under this chapter may be
23 seized by the State or any law enforcement officer as evidence
24 pending a criminal prosecution pursuant to section 2C:64-4 or,
25 when no criminal proceeding is instituted, upon process issued by
26 any court of competent jurisdiction over the property, except that
27 seizure without such process may be made when not inconsistent
28 with the Constitution of this State or the United States, and when

29 (1) The article is prima facie contraband; or

30 (2) The property subject to seizure poses an immediate threat to
31 the public health, safety or welfare.

32 c. For the purposes of this section:

33 "Items bearing a counterfeit mark" means items bearing a
34 counterfeit mark as defined in N.J.S.2C:21-32.

35 "Unlawful sound recordings and audiovisual works" means
36 sound recordings and audiovisual works as those terms are defined
37 in N.J.S.2C:21-21 which were produced in violation of
38 N.J.S.2C:21-21.

39 "Untaxed special fuel" means diesel fuel, No. 2 fuel oil and
40 kerosene on which the motor fuel tax imposed pursuant to
41 R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or
42 transferred in this State in a manner not authorized pursuant to
43 R.S.54:39-1 et seq. or P.L.1938, c.163 (C.56:6-1 et seq.).

44 (cf: P.L.2004, c.150, s.3)

45

46 4. This act shall take effect immediately.

STATEMENT

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This bill supplements the "Tobacco Products Wholesale Sales and Use Tax Act" to require that untaxed tobacco products, unstamped or illegally stamped cigarettes, or other contraband tobacco products or cigarettes that are sold or possessed by a manufacturer, importer, distributor, wholesale dealer, retail dealer any other person, following notice and a hearing, be forfeited to the State. The bill further requires that any machinery or equipment used to produce the tobacco products or cigarettes, or falsely mark the tobacco products or cigarettes to reflect the payment of excise taxes, are also subject to forfeiture.

Following the forfeiture of the untaxed or otherwise contraband tobacco products or cigarettes, all such products are to be destroyed. The bill provides that the seizure of any contraband tobacco products or cigarettes not relieve any person from a fine, imprisonment, or other penalty under the law.

In addition, this bill amends part of the "Cigarette Tax Act" to mirror the changes that the bill makes to the "Tobacco Products Wholesale Sales and Use Tax Act."

Finally, untaxed or otherwise contraband tobacco products are added to the list of items that are considered to be prima facie contraband under the criminal code and, as such, are subject to forfeiture and for which there are no property rights.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 2175

STATE OF NEW JERSEY

DATED: SEPTEMBER 13, 2010

The Senate Law and Public Safety Committee reports favorably Senate Bill No. 2175.

This bill supplements the "Tobacco Products Wholesale Sales and Use Tax Act" to require that untaxed tobacco products, unstamped or illegally stamped cigarettes, or other contraband tobacco products or cigarettes that are sold or possessed by a manufacturer, importer, distributor, wholesale dealer, retail dealer or any other person, following notice and a hearing, be forfeited to the State. The bill further requires that any machinery or equipment used to produce the tobacco products or cigarettes, or falsely mark the tobacco products or cigarettes to reflect the payment of excise taxes, are also subject to forfeiture.

Following the forfeiture of the untaxed or otherwise contraband tobacco products or cigarettes, all such products are to be destroyed. The bill provides that the seizure of any contraband tobacco products or cigarettes does not relieve any person from a fine, imprisonment, or other penalty under the law.

In addition, this bill amends part of the "Cigarette Tax Act" to mirror the changes that the bill makes to the "Tobacco Products Wholesale Sales and Use Tax Act."

Finally, untaxed or otherwise contraband tobacco products are added to the list of items that are considered to be prima facie contraband under the criminal code and, as such, are subject to forfeiture and for which there are no property rights.

ASSEMBLY, No. 3102

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JULY 1, 2010

Sponsored by:

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Establishes procedure for destroying certain contraband tobacco products and cigarettes.

CURRENT VERSION OF TEXT

As introduced.



A3102 STENDER

2

1 AN ACT concerning the forfeiture of certain contraband tobacco
2 products and cigarettes, supplementing P.L.1990, c.39
3 (C.54:40B-1 et seq.), and amending P.L.1948, c.65 and
4 N.J.S.2C:64-1.

5

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

8

9 1. (New section) a. Notwithstanding any other provision of
10 law, the possession for sale of untaxed tobacco products, unstamped
11 or illegally stamped cigarettes, or other contraband tobacco
12 products or cigarettes by a manufacturer, importer, distributor,
13 wholesale dealer, retail dealer, or any other person shall, after
14 notice and hearing, result in the forfeiture to this State of the
15 product and related machinery and equipment used to falsely mark
16 tobacco products or cigarettes to reflect the payment of excise
17 taxes, or in the production of such tobacco products or cigarettes.

18 b. The knowing sale or possession for sale of untaxed tobacco
19 products, unstamped or illegally stamped cigarettes, or other
20 contraband tobacco products shall, after notice and a hearing, result
21 in the seizure of all tobacco products and cigarettes, related
22 machinery, and equipment.

23 c. All tobacco products and cigarettes forfeited to this State
24 under this section shall be destroyed. The director, prior to the
25 destruction of any tobacco products or cigarettes, may permit the
26 true holder of the trademark rights in the tobacco product or
27 cigarette brand to inspect such contraband tobacco products or
28 cigarettes, in order to assist the director in any investigation
29 regarding such tobacco product or cigarettes.

30 d. The seizure of any untaxed tobacco products, unstamped or
31 illegally stamped cigarettes, or other contraband tobacco products
32 under the provisions of this section shall not relieve any person
33 from a fine, imprisonment, or other penalty for a violation of any
34 provision of this act. The director, the director's agents, employees,
35 or any law enforcement officer of this State, when directed to do so,
36 shall not in any way be responsible in any court for the seizure or
37 the confiscation of any untaxed tobacco products, unstamped or
38 illegally stamped cigarettes, or other contraband tobacco products.

39

40 2. Section 607 of P.L.1948, c.65 (C.54:40A-30) is amended to
41 read as follows:

42 607. **【Unstamped cigarettes subject to confiscation】** Forfeiture
43 of unstamped or illegally stamped cigarettes or other contraband
44 cigarettes.

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 underlined thus is new matter.

A3102 STENDER

3

1 a. [All cigarettes, subject to the tax imposed by this act, to
2 which stamps have not been affixed, as required by this act, and all
3 cigarettes stamped in violation of subsection b. of section 405 of
4 P.L.1948, c.65 (C.54:40A-15) found in any place in this State are
5 declared to be prima facie contraband goods and may be seized by
6 the director, the director's agents or employees, or by any peace
7 officer of this State, when directed by the director so to do, without
8 a warrant] Notwithstanding any other section of law, the possession
9 for sale of unstamped or illegally stamped cigarettes or other
10 contraband cigarettes by a manufacturer, importer, distributor,
11 wholesale dealers or retail dealer shall, after notice and hearing,
12 result in the forfeiture to this State of the product and related
13 machinery and equipment used to falsely mark cigarettes to reflect
14 the payment of excise taxes, or in the production of contraband
15 cigarettes.

16 b. [The director may upon satisfactory proof direct the return
17 of any unstamped confiscated cigarettes when the director shall
18 have reason to believe that the owner thereof has not willfully or
19 intentionally evaded any tax imposed by this act. Any unstamped
20 cigarettes seized under the provisions of this act shall be disposed
21 of according to law. Any purchaser of such cigarettes shall be
22 required to affix stamps as required by this act] The knowing sale
23 or possession for sale of unstamped or illegally stamped cigarettes
24 or other contraband shall, after notice and hearing, result in the
25 seizure of all related machinery and equipment.

26 c. [The director shall destroy any seized cigarettes that have
27 been stamped in violation of subsection b. of section 405 of
28 P.L.1948, c.65 (C.54:40A-15); provided however that as an
29 alternative the director may resell such cigarettes to the
30 manufacturer, but such cigarettes shall be resold only for export or
31 destruction] All cigarettes forfeited to this State under this section
32 shall be destroyed. The director may, prior to the destruction of
33 cigarettes, permit the true holder of the trademark rights in the
34 cigarette brand to inspect such cigarettes, in order to assist the
35 director in any investigation regarding such cigarettes.

36 d. The seizure [and sale] of any unstamped or illegally
37 stamped cigarettes or any other contraband cigarettes under the
38 provisions of this section shall not relieve any person from a fine,
39 imprisonment or other penalty for violation of any of the provisions
40 of this act. The director, the director's agents, employees, and any
41 peace officer of this State, when directed so to do, shall not in any
42 way be responsible in any court for the seizure or the confiscation
43 of any unstamped or illegally stamped packages of cigarettes.
44 (cf: P.L.1999, c.328, s.6)

45

46 3. N.J.S.2C:64-1 is amended to read as follows:

47 2C:64-1. Property Subject to Forfeiture.

A3102 STENDER

1 a. Any interest in the following shall be subject to forfeiture
2 and no property right shall exist in them:

3 (1) Controlled dangerous substances, firearms which are
4 unlawfully possessed, carried, acquired or used, illegally possessed
5 gambling devices, untaxed or otherwise contraband cigarettes or
6 tobacco products, untaxed special fuel, unlawful sound recordings
7 and audiovisual works and items bearing a counterfeit mark. These
8 shall be designated prima facie contraband.

9 (2) All property which has been, or is intended to be, utilized in
10 furtherance of an unlawful activity, including, but not limited to,
11 conveyances intended to facilitate the perpetration of illegal acts, or
12 buildings or premises maintained for the purpose of committing
13 offenses against the State.

14 (3) Property which has become or is intended to become an
15 integral part of illegal activity, including, but not limited to, money
16 which is earmarked for use as financing for an illegal gambling
17 enterprise.

18 (4) Proceeds of illegal activities, including, but not limited to,
19 property or money obtained as a result of the sale of prima facie
20 contraband as defined by subsection a. (1), proceeds of illegal
21 gambling, prostitution, bribery and extortion.

22 b. Any article subject to forfeiture under this chapter may be
23 seized by the State or any law enforcement officer as evidence
24 pending a criminal prosecution pursuant to section 2C:64-4 or,
25 when no criminal proceeding is instituted, upon process issued by
26 any court of competent jurisdiction over the property, except that
27 seizure without such process may be made when not inconsistent
28 with the Constitution of this State or the United States, and when

29 (1) The article is prima facie contraband; or

30 (2) The property subject to seizure poses an immediate threat to
31 the public health, safety or welfare.

32 c. For the purposes of this section:

33 "Items bearing a counterfeit mark" means items bearing a
34 counterfeit mark as defined in N.J.S.2C:21-32.

35 "Unlawful sound recordings and audiovisual works" means
36 sound recordings and audiovisual works as those terms are defined
37 in N.J.S.2C:21-21 which were produced in violation of
38 N.J.S.2C:21-21.

39 "Untaxed special fuel" means diesel fuel, No. 2 fuel oil and
40 kerosene on which the motor fuel tax imposed pursuant to
41 R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or
42 transferred in this State in a manner not authorized pursuant to
43 R.S.54:39-1 et seq. or P.L.1938, c.163 (C.56:6-1 et seq.).

44 (cf: P.L.2004, c.150, s.3)

45

46 4. This act shall take effect immediately.

STATEMENT

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This bill supplements the "Tobacco Products Wholesale Sales and Use Tax Act" to require that untaxed tobacco products, unstamped or illegally stamped cigarettes, or other contraband tobacco products or cigarettes that are sold or possessed by a manufacturer, importer, distributor, wholesale dealer, retail dealer any other person, following notice and a hearing, be forfeited to the State. The bill further requires that any machinery or equipment used to produce the tobacco products or cigarettes, or falsely mark the tobacco products or cigarettes to reflect the payment of excise taxes, are also subject to forfeiture.

Following the forfeiture of the untaxed or otherwise contraband tobacco products or cigarettes, all such products are to be destroyed. The bill provides that the seizure of any contraband tobacco products or cigarettes not relieve any person from a fine, imprisonment, or other penalty under the law.

In addition, this bill amends part of the "Cigarette Tax Act" to mirror the changes that the bill makes to the "Tobacco Products Wholesale Sales and Use Tax Act."

Finally, untaxed or otherwise contraband tobacco products are added to the list of items that are considered to be prima facie contraband under the criminal code and, as such, are subject to forfeiture and for which there are no property rights.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3102

STATE OF NEW JERSEY

DATED: OCTOBER 14, 2010

The Assembly State Government Committee reports favorably an Assembly Committee Substitute for Assembly, No. 3102.

This bill supplements the Tobacco Products Wholesale Sales and Use Tax Act to provide that all untaxed tobacco products found in any place in this State are declared to be prima facie contraband goods that may be seized by the State. If the owner thereof has not willfully or intentionally evaded any tax imposed, the seized product may be returned. Otherwise, the seized tobacco product will be disposed of according to law. Disposal includes destruction, resale to the manufacturer of that tobacco product for export or destruction only, or authorized use for law enforcement purposes. A tobacco product which is damaged or determined to be in violation of federal trademark laws may not be used for law enforcement purposes. The bill provides that such seizure and sale of any untaxed tobacco product under its provisions does not relieve any person from a fine, imprisonment or other penalty for violation of any of the provisions of the Tobacco Products Wholesale Sales and Use Tax Act.

In addition, the bill amends part of the Cigarette Tax Act with regard to unstamped cigarettes to mirror the new supplemental provisions of the bill, as well as to provide that, prior to destruction, the trademark holder may be permitted to inspect the cigarettes in order to assist in any investigation. Finally, untaxed or otherwise contraband tobacco products are added to the list of items that are considered to be prima facie contraband under the criminal code and, as such, are subject to forfeiture and for which no property rights exist.

**SENATE SUBSTITUTE FOR
SENATE BILL NO. 2175**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Substitute for Senate Bill No. 2175 with my recommendations for reconsideration.

This bill would prevent State law enforcement agents from using certain forfeited tobacco products for undercover operations or other legitimate investigative purposes. Additionally, the bill requires all cigarettes used for law enforcement operations to be destroyed, rather than sold back to the manufacturers. Finally, the bill would add counterfeit tobacco products to the list of items that are considered to be "prima facie" contraband under New Jersey's criminal code, permitting immediate forfeiture and destruction.

While I commend the sponsors for addressing the issue of contraband tobacco, I believe this bill does not appropriately balance the needs of law enforcement, nor sufficiently remedy the burdens on business posed by these products. According to the Federal Bureau of Alcohol, Tobacco and Firearms, the diversion of legal tobacco products through theft, smuggling, and counterfeiting, annually results in more \$5 billion in lost tax revenue nationwide. The relative simplicity of rebranding tobacco products helps fuel the illicit trade in counterfeits, producing large illegal profits that may help finance other criminal activity.

These problems require stronger action. Accordingly, I recommend amending the bill to include higher civil penalties for the possession of contraband cigarettes. The existing fine of \$25 per carton is actually less than the amount of tax

charged for the same quantity of cigarettes, and provides far too little deterrence. Instead, I recommend that the fine be increased to \$250 per carton, an amount that meaningfully changes the calculus of criminal profitability.

In addition, I recommend amending the provision of the bill that restricts law enforcement use of damaged or trademark infringed products. While I recognize the importance of protecting manufacturers from all sources of contraband products, I fully expect that law enforcement will not allow these products to enter the stream of commerce where they could harm legitimate businesses. Finally, my proposed amendments will allow products used for law enforcement purposes to be sold back to their manufacturers where appropriate, or destroyed.

Accordingly, I herewith return Senate Substitute for Senate Bill No. 2175 and recommend that it be amended as follows:

Page 2, Section 1, Lines 33 to 39:

After "section", delete
"; provided, however,
that this provision
shall not apply to a
tobacco product that the
director determines
violates federal
trademark laws or has
been damaged. All
tobacco products used
for law enforcement
purposes in accordance
with this section shall
be destroyed after such
use, unless such tobacco
products are rendered
unavailable for such
disposition as a result
of the use for law
enforcement purposes"

Page 3, Section 2, Lines 35 to 41:

After "section", delete
"; provided, however,
that this provision
shall not apply to
cigarettes which the
director determines
violate federal
trademark laws or have
been damaged. All
cigarettes used for law
enforcement purposes in
accordance with this
section shall be
destroyed after such
use, unless such

cigarettes are rendered
unavailable for such
disposition as a result
of the use for law
enforcement purposes"

Page 4, Line 5:

Insert new section. "3.
Section 602 of P.L.
1948, c.65 (C.54:40A-25)
is amended to read as
follows:

602. Possessing
cigarettes not bearing
required revenue stamps.

Any wholesale dealer
or retail dealer who
violates the provisions
of section four hundred
six of this act, and any
consumer who fails to
report and remit the tax
due as provided by
section two hundred five
of this act, shall be
liable to a penalty of
not more than [twenty-
five dollars (\$ 25)]
two-hundred and fifty
dollars (\$250) for each
individual carton of
unstamped or illegally
stamped cigarettes in
the dealer's possession,
which penalty shall be
sued for and recovered
in the same manner as
provided for the
penalties imposed by
section six hundred one
of this act.

(cf: P.L.1999, c.328,
s.3)"

Page 4, Line 6:

Delete "3", and insert
"4"

Page 5, Line 6:

Delete "4", and insert
"5"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor