

# 54:40A-7.1 & 54:40A-29.1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2013                    **CHAPTER:** 145

**NJSA:** 54:8-40A-7.1 & 54:40A-29.1 (Increases civil and criminal penalties involving unstamped and counterfeit cigarettes and cigarette smuggling and establishes crime involving transfers of counterfeit cigarettes)

**BILL NO:** S2516                    (Substituted for A3278)

**SPONSOR(S)** Norcross and others

**DATE INTRODUCED:** February 4, 2013

**COMMITTEE:**                    **ASSEMBLY:** ---

**SENATE:** Law and Public Safety  
   Budget and Appropriations

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** June 20, 2013

**SENATE:** June 20, 2013

**DATE OF APPROVAL:** August 19, 2013

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Second reprint enacted)

Yes

S2516

**SPONSOR'S STATEMENT** (Begins on page 13 of introduced bill):

Yes

**COMMITTEE STATEMENT:**

**ASSEMBLY:**

No

**SENATE:**

Yes

Law and Public  
Budget

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:**

No

**LEGISLATIVE FISCAL ESTIMATE:**

Yes

A3278

**SPONSOR'S STATEMENT:** (Begins on page 7 introduced bill):

Yes

**COMMITTEE STATEMENT:**

**ASSEMBLY:**

Yes

Judiciary  
Appropriations

**SENATE:**

No

(continued)

<b>FLOOR AMENDMENT STATEMENT:</b>	No
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	Yes
<b>VETO MESSAGE:</b>	No
<b>GOVERNOR'S PRESS RELEASE ON SIGNING:</b>	No

**FOLLOWING WERE PRINTED:**

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<b>REPORTS:</b>	No
<b>HEARINGS:</b>	No
<b>NEWSPAPER ARTICLES:</b>	No

LAW/KR

P.L.2013, CHAPTER 145, *approved August 19, 2013*  
Senate, No. 2516 (*Second Reprint*)

1 AN ACT concerning civil and criminal penalties for offenses  
2 involving unstamped and counterfeit cigarettes and cigarette  
3 smuggling, amending various parts of statutory law and  
4 supplementing P.L.1948, c.65 (C.54:40A-1 et seq.).  
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:  
8

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

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

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

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

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

24 (3) Joint venturers in a joint venture.

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

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

34 (6) Other persons who the director establishes have the ability to  
35 control the applicant entity through any means including but not  
36 limited to, contracts, loans, mortgages or pledges of securities  
37 where such control is inimical to the policies of this act because  
38 such person is a career offender or a member of a career offender

**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:

<sup>1</sup>Senate SLP committee amendments adopted February 21, 2013.

<sup>2</sup>Senate SBA committee amendments adopted June 13, 2013.

1 cartel as defined in paragraph (2) of subsection e. of this section.  
2 Individuals licensed pursuant to the "Casino Control Act,"  
3 P.L.1977, c.110 (C.5:12-1 et seq.) shall only be required to produce  
4 evidence of said licensure in satisfaction of the foregoing.

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

17 c. (1) The director shall not issue any license under this act  
18 where he has reasonable cause to believe that anyone required to  
19 submit information under this act has willfully withheld information  
20 requested of him for the purpose of determining the eligibility of  
21 the applicant to receive a license or where the director has  
22 reasonable cause to believe that information submitted in the  
23 application is false and misleading and is not made in good faith.

24 (2) The director shall not issue a license under this act to a  
25 person that is a manufacturer or importer of cigarettes, tobacco  
26 products or processed tobacco if the manufacturer or importer does  
27 not possess a valid federal permit issued pursuant to section 5713 of  
28 the federal Internal Revenue Code of 1986, 26 U.S.C. s.5713, that is  
29 not suspended or revoked.

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

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

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

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

8 As used in this subsection:

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

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

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

26 h. For each license issued to a distributor there shall be paid to  
27 the director a fee of \$350.00. If a distributor sells or intends to sell  
28 cigarettes at two or more places of business, whether established or  
29 temporary, a separate license shall be required for each place of  
30 business. Each license, or certificate, thereof, and such other  
31 evidence of license shall be exhibited in the place of business for  
32 which it is issued and in such manner as may be prescribed by the  
33 director. The director shall require each licensed distributor to file  
34 with him a bond in an amount not less than <sup>2</sup>[\$6,000.00] the  
35 average monthly value of the cigarette stamps used by the licensed  
36 distributor<sup>2</sup> to guarantee the proper performance of his duties and  
37 the discharge of his liabilities under this act. The bond shall be  
38 executed by such licensed distributor as principal, and by a  
39 corporation approved by the director and duly authorized to engage  
40 in business as a surety company in the State of New Jersey, as  
41 surety. The bond shall run concurrently with the distributor's  
42 license.

43 For each license issued to a manufacturer, and for each  
44 continuance thereof, there shall be paid to the director a fee of  
45 \$10.00.

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

1 For each license issued to a wholesale dealer there shall be paid  
2 to the director a fee of \$250.00. If a wholesale dealer sells or  
3 intends to sell cigarettes at <sup>2</sup>[two] 10<sup>2</sup> or more places of business,  
4 whether established or temporary, a separate license shall be  
5 required for each place of business. Each license, or certificate  
6 thereof, and such other evidence of license shall be exhibited in the  
7 place of business for which it is issued and in such manner as may  
8 be prescribed by the director.

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

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

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

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

1 No license shall be issued to any person except upon the  
2 payment of the full fee therefor, any statute or exemption to the  
3 contrary notwithstanding. No license shall be assignable or  
4 transferable, except as hereinafter provided, but in the case of death,  
5 bankruptcy, receivership, or incompetency of the licensee, or if for  
6 any other reason whatsoever the business of the licensee shall  
7 devolve upon another by operation of law, the director may, in his  
8 discretion, extend said license for a limited time to the executor,  
9 administrator, trustee, receiver, or person upon whom the same has  
10 devolved. A purchaser or assignee of a licensed wholesaler or  
11 licensed distributor, or any other person upon whom the business of  
12 a licensed wholesaler or licensed distributor shall devolve by  
13 operation of law, shall upon application to the director, be entitled  
14 to an assignment or transfer of the wholesale or distributor license  
15 for the balance of the existing license period upon payment of a  
16 transfer fee of \$5.00 and subject to his qualification to be a licensed  
17 wholesaler or licensed distributor under the provisions of this act.  
18 The license issued for each vending machine for the sale of  
19 cigarettes may be transferred from machine to machine in the same  
20 ownership. No refund of the license fee shall be paid to any person  
21 upon the surrender or revocation of any license except a license fee  
22 paid or collected in error. But, upon payment of a \$1.00 fee, there  
23 may be obtained (1) a duplicate license, or certificate thereof, in the  
24 event the original is lost, destroyed or defaced, and (2) an amended  
25 license, or certificate thereof, upon a change in the location of the  
26 place of business of any distributor or dealer.

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

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

36 (cf: P.L.1997, c.373, s.1)

37

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

40 205. Every licensed distributor shall file with the director on or  
41 before the twentieth day of each month, a report in such form as the  
42 director shall prescribe, which report shall disclose the number of  
43 cigarettes on hand by brand family, as defined pursuant to section 2  
44 of P.L.2003, c.25 (C.52:4D-5), on the first and last days of the  
45 calendar month immediately preceding the month in which such  
46 report is required; together with the quantity, by brand family, of  
47 cigarettes purchased or sold during the report period, and such  
48 information concerning the amount of stamps purchased, used, and

1 on hand during the report period; together with any other  
2 information for the report period that the director shall prescribe.

3 Every licensed manufacturer shall file with the director on or  
4 before the twentieth day of each month, a report in such form as the  
5 director shall prescribe, which report shall disclose the number of  
6 cigarettes sold, subject to the cigarette tax, for the calendar month  
7 immediately preceding the month in which such report is required;  
8 together with any other information for the report period that the  
9 director shall prescribe.

10 Every licensed manufacturer's representative, wholesale and  
11 retail dealer, upon notice from the director, shall file with the  
12 director a report in such form, and on such dates, as the director  
13 shall prescribe.

14 Every licensed consumer who has acquired cigarettes for use,  
15 storage or consumption subject to the tax shall, on or before the  
16 twentieth day of the month following receipt of such cigarettes,  
17 complete and file with the director, in such form as the director  
18 shall prescribe, a report showing the amount of cigarettes so  
19 received. Said report shall be accompanied by a remittance for the  
20 full amount of the tax due.

21 Any person, other than a licensed distributor, who transports  
22 unstamped cigarettes upon the public highways, roads, or streets of  
23 this State or who stores unstamped cigarettes in this State upon  
24 notice from the director, shall file with the director a report in such  
25 form, and on such dates, as the director shall prescribe.

26 Any person who shall fail to file any report on the day when it  
27 shall be due, shall forfeit as a penalty, an amount as provided in the  
28 State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the  
29 Revised Statutes. The director, if satisfied that the failure to  
30 comply with any provision of this section was excusable, may remit  
31 the whole or any part of said penalty.

32 (P.L.1975, c.177, s.34)

33

34 3. (New section) The director shall produce a monthly report  
35 listing the quantity of cigarettes sold in this State by distributors,  
36 aggregated by manufacturer and by brand family as defined  
37 pursuant to section 2 of P.L.2003, c.25 (C.52:4D-5), during the  
38 month immediately preceding the monthly report, which shall be  
39 published on the website of the Division of Taxation in the  
40 Department of the Treasury on or before the 15th day of each  
41 month.

42

43 4. Section 601 of P.L.1948, c.65 (C.54:40A-24) is amended to  
44 read as follows:

45 601. a. Penalties. Any person who shall engage in any business  
46 or activity for which a license is required under the provisions of  
47 this act, without first having obtained a license to do so, or who,  
48 having had such a license, shall continue to engage in or conduct



1 such business after any such license shall have been revoked, or  
2 during a suspension thereof, shall be liable to a penalty of not more  
3 than ~~[\$250.00]~~ <sup>1</sup>~~[\$500]~~ \$1,000<sup>1</sup>, which penalty shall be sued for,  
4 and shall be recoverable in the name of the director; and each day  
5 that any such business is so engaged in or conducted shall be  
6 deemed a separate offense.

7 b. Jurisdiction of court; proceedings. The Superior Court and  
8 every municipal court within their respective jurisdictions, and with  
9 respect to offenses occurring within the territorial jurisdiction of the  
10 court, shall have jurisdiction over proceedings to enforce and  
11 collect the penalty. The proceedings shall be brought by and in the  
12 name of the director. They shall be summary and in accordance  
13 with <sup>2</sup>~~["the penalty enforcement law" (N.J.S.2A:58-1 et seq.)]~~ the  
14 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10  
15 et seq.)<sup>2</sup>. Process shall be either in the nature of a summons or  
16 warrant.

17 If judgment be rendered for the plaintiff, the court shall cause  
18 any defendant who refuses or fails to pay forthwith the amount of  
19 the judgment rendered against him and all the costs and charges  
20 incident thereto, to be committed to the county jail for such period  
21 as the court shall determine, not exceeding ~~[30]~~ 60 days.

22 c. Penalty for further violations; recovery; proceedings in court.  
23 In case a person shall, after conviction of any violation of this act,  
24 be again convicted of violating the same provision thereof, he may  
25 be liable to a penalty for such further violation, in double the  
26 maximum penalty which might have been imposed on the first  
27 conviction, to be sued for and recovered in the manner above set  
28 forth. In case any defendant against whom judgment has been  
29 rendered for a money penalty under this subsection, shall fail or  
30 neglect to pay forthwith the amount of said penalty, the court shall  
31 commit him to jail for such number of days not exceeding ~~[90]~~ 180  
32 days, as the court shall determine.

33 d. Disposition of penalties. All penalties recovered for  
34 violations of this act shall be paid to the director and by him  
35 accounted for and paid to the State Treasurer as in the case of State  
36 taxes.

37 e. Costs; expenses. The costs recoverable in any such  
38 proceeding shall be recovered by the director in the event of  
39 judgment in his favor. If the judgment be for the defendant it shall  
40 be without costs against the director. All expenses incident to the  
41 recovery of any penalty pursuant to the provisions of this section  
42 shall be paid for as any other expense incident to the administration  
43 of this act.

44 (cf: P.L.1991, c.91, s.515)

45

46 5. Section 10 of P.L.1968, c.351 (C.54:40A-24.1) is amended to  
47 read as follows:

1       10. Any manufacturer's representative, as defined in this act,  
2 who sells or exchanges cigarettes other than those of his employer's  
3 manufacture shall be liable to a penalty of not more than **[\$250.00]**  
4 **^[\$500] \$1,000^** for each separate offense.  
5 (cf: P.L.1968, c.351, s.10)

6  
7       6. Section 602 of P.L.1948, c.65 (C.54:40A-25) is amended to  
8 read as follows:

9       602. Possessing cigarettes not bearing required revenue stamps.  
10 Any wholesale dealer or retail dealer who violates the provisions  
11 of section four hundred six of this act, and any consumer who fails  
12 to report and remit the tax due as provided by section two hundred  
13 five of this act, shall be liable to a penalty of not more than **[two-**  
14 **hundred and fifty dollars (\$250)] ^[\$500] \$1,000^** for each  
15 individual carton of unstamped or illegally stamped cigarettes in the  
16 dealer's possession, which penalty shall be sued for and recovered  
17 in the same manner as provided for the penalties imposed by section  
18 six hundred one of this act.  
19 (cf: P.L.2011, c.80, s.3)

20  
21       7. Section 603 of P.L.1948, c.65 (C.54:40A-26) is amended to  
22 read as follows:

23       603. Any person engaged in the business of manufacturing,  
24 purchasing, selling, consigning, shipping, distributing, or  
25 transporting cigarettes, who shall refuse or fail to produce, on  
26 demand by the director ^or any designated assistant^, invoices of all  
27 cigarettes purchased or received by him within three years prior to  
28 such demand, unless his inability to do so for reasons beyond his  
29 control shall be shown by satisfactory proof, shall be **^****[liable to a**  
30 **penalty of not more than [two hundred fifty dollars (\$250.00)]**  
31 **\$500 for each separate offense]** guilty of a disorderly persons  
32 offense and shall be fined \$1,000^.  
33 (cf: P.L.1951, c.281, s.3)

34  
35       8. Section 604 of P.L.1948, c. 65 (C.54:40A-27) is amended to  
36 read as follows:

37       604. Any person who prevents or hinders the director or any  
38 designated assistant from making a cigarette inventory, examination  
39 and full inspection of any place where cigarettes are sold or stored,  
40 or prevents or hinders the inspection of invoices, books, records, or  
41 papers required to be kept, shall be **^****[liable to a penalty of not more**  
42 **than [\$250.00] \$500 for each individual offense]** guilty of a  
43 disorderly persons offense and shall be fined \$1,000^.  
44 (cf: P.L.1968, c.351, s.6)

45  
46       9. Section 605 of P.L.1948, c.65 (C.54:40A-28) is amended to  
47 read as follows:

1       605. Any person who sells cigarettes without the stamp or  
2 stamps required by this act being affixed thereto or cigarettes  
3 stamped in violation of subsection b. of section 405 of P.L.1948,  
4 c.65 (C.54:40A-15) shall be guilty of a **【misdemeanor and, upon**  
5 **conviction thereof, shall be fined not more than \$1,000, or**  
6 **imprisoned for not more than one year, or both, at the discretion of**  
7 **the court】 crime of the third degree.**

8 (cf: P.L.1999, c.328, s.4)

9

10       10. Section 2 of P. L.1977, c.188 (C.54:40A-28.1) is amended to  
11 read as follows:

12       2. Any person, other than a licensee permitted under this act to  
13 possess any unstamped cigarettes, who possesses 2,000 but fewer  
14 than 20,000 cigarettes without the stamp or stamps required by this  
15 act being affixed thereto or stamped in violation of subsection b. of  
16 section 405 shall be **【a disorderly person, and upon conviction**  
17 **thereof, shall be fined not more than \$500 or imprisoned for not**  
18 **more than six months, or both, at the discretion of the court】 guilty**  
19 **of a crime of the fourth degree;** and any such person who possesses  
20 20,000 or more cigarettes without the stamp or stamps required by  
21 this act being affixed thereto or stamped in violation of subsection  
22 b. of section 405 of P.L.1948, c.65 (C.54:40A-15) shall be guilty of  
23 a **【misdemeanor, and upon conviction thereof, shall be fined not**  
24 **more than \$1,000 or imprisoned for not more than one year, or both,**  
25 **at the discretion of the court】 crime of the third degree.**

26 (P.L.1999, c.328, s.5)

27

28       11. Section 609 of P.L.1948, c.65 (C.54:40A-32) is amended to  
29 read as follows:

30       609. Records; possession and transportation of unstamped  
31 cigarettes; seizure and confiscation of vessel or vehicles. Every  
32 person who shall transport cigarettes not stamped as required by  
33 this act or stamped in violation of subsection b. of section 405 of  
34 P.L.1948, c.65 (C.54:40A-15) upon the public highways,  
35 waterways, roads or streets of this State shall have in his actual  
36 possession invoices or delivery tickets for such cigarettes which  
37 shall show the true name and complete and exact address of the  
38 consignor or seller, the true name and complete and exact address  
39 of the consignee or purchaser, the quantity and brands of the  
40 cigarettes transported and in addition shall show separately the true  
41 name and complete and exact address of the person who has or shall  
42 assume the payment of the New Jersey State tax or the tax, if any,  
43 of the State or foreign country at the point of ultimate destination,  
44 provided that any common carrier which has issued a bill of lading  
45 for a shipment of cigarettes and is without notice to itself or to any  
46 of its agents or employees that said cigarettes are not stamped as  
47 required by this act shall be deemed to have complied with this act

1 and the vehicle or vessel in which said cigarettes are being  
2 transported shall not be subject to confiscation hereunder. In the  
3 absence of such invoices, delivery tickets or bills of lading, as the  
4 case may be, the cigarettes so transported, the vehicle, or vessel in  
5 which the cigarettes are being transported and any paraphernalia or  
6 devices used in connection with the unstamped cigarettes or  
7 cigarettes stamped in violation of subsection b. of section 405 of  
8 P.L.1948, c.65 (C.54:40A-15), are declared to be contraband goods  
9 and may be seized by the director, his agents or employees or by  
10 any peace officer of the State when directed by the director, his  
11 agents or employees so to do, without a warrant. The director shall  
12 immediately thereafter institute a proceeding for the confiscation  
13 thereof in the Superior Court or the municipal court within the  
14 jurisdiction of which the seizure is made. The owner or any person  
15 having a security interest in any such vehicle may secure release of  
16 the same by depositing with the clerk of the court, in which such  
17 proceeding is pending, a bond with good and sufficient sureties in  
18 an amount to be fixed by the court, conditioned upon the return of  
19 said vehicle to the director upon demand after completion of said  
20 proceeding. The court may proceed in a summary manner and may  
21 direct confiscation to the director; provided, however, anything to  
22 the contrary notwithstanding, that the owner or any person claiming  
23 to be the holder of a mortgage, conditional sales contract or other  
24 security interest in any vehicle or vessel, the disposition of which is  
25 provided for above, may present his petition so alleging and be  
26 heard, and in the event it appears to the court that the property was  
27 unlawfully used by a person other than the owner or such claimant,  
28 and if such owner or claimant acquired ownership or his security  
29 interest in good faith and without knowledge that the vehicle or  
30 vessel was going to be so used, the court shall either waive  
31 forfeiture in favor of such owner or claimant and order the vehicle  
32 or vessel returned or delivered to such owner or claimant, or if it is  
33 found that the value thereof exceeds the amount of the claim, the  
34 court shall order payment of the amount of the claim out of the  
35 proceeds of the sale. Every transporter who violates the provisions  
36 of this act **[is a disorderly person]** shall be guilty of a crime of the  
37 fourth degree, and shall, in addition to such penalties as **[attached**  
38 **thereto]** may be imposed therefore, be liable to a penalty equal to  
39 double the amount of tax due on any unstamped cigarettes  
40 transported by him, which penalty shall be sued for and recovered  
41 in the same manner as provided for the penalties imposed by section  
42 601 of the act to which this act is amendatory (C.54:40A-24).  
43 (cf: P.L.1999, c.328, s.9)

44

45 12. Section 9 of P.L.1968, c.351 (C.54:40A-32.1) is amended to  
46 read as follows:

47 9. Any cigarette vending machine not bearing a proper license or  
48 identification, or which is found to contain unstamped packages of

1 cigarettes, or cigarettes bearing counterfeit impressions, or  
2 cigarettes stamped in violation of subsection b. of section 405 of  
3 P.L.1948, c.65 (C.54:40A-15), may be seized or sealed by the  
4 director, the director's agents or employees or by any peace officer  
5 of this State, when directed by the director so to do. If the owner or  
6 the owner's agent destroys or removes said seal, that individual  
7 may, upon conviction, be subject to a penalty of not more than  
8 **[\$250]** <sup>1</sup>**[\$500]** \$1,000<sup>1</sup>. Any vending machine containing  
9 unstamped or counterfeit stamped cigarettes may be declared  
10 forfeited to the director.

11 (cf: P.L.1999, c.328, s.7)

12

13 13. Section 6 of P.L.1950, c.134 (C.54:40A-44) is amended to  
14 read as follows:

15 6. No radio or television broadcast originating in this State, or  
16 newspaper, or other publication published in this State, shall accept  
17 an advertisement from any out-of-State cigarette dealer for the sale  
18 of cigarettes by mail or express, unless there is included in said  
19 advertisement the following words: "Before any person may receive  
20 cigarettes in New Jersey by mail or express, a license for that  
21 purpose must be obtained from the Division of Taxation, New  
22 Jersey Department of the Treasury."

23 Any person who violates these provisions, upon conviction  
24 thereof, shall be fined not more than **[five hundred dollars**  
25 **(\$500.00)]** \$1,000 for each individual offense.

26 (cf: P.L.1950, c.134, s.6)

27

28 14. Section 5 of P.L.2005, c.85 (C.54:40A-50) is amended to  
29 read as follows:

30 5. In addition to any other remedies provided by law, the  
31 Director of the Division of Taxation in the Department of the  
32 Treasury shall assess penalties for violations of this act in  
33 accordance with the following schedule:

34 a. a penalty of not less than **[\$1,000]** \$2,000 and not more than  
35 **[\$2,000]** \$4,000 for the first violation;

36 b. a penalty of not less than **[\$2,500]** \$5,000 and not more than  
37 **[\$3,500]** \$7,000 for the second violation within a five-year period;

38 c. a penalty of not less than **[\$4,000]** \$8,000 and not more than  
39 **[\$5,000]** \$10,000 for the third violation within a five-year period;

40 d. a penalty of not less than **[\$5,500]** \$11,000 and not more  
41 than **[\$6,500]** \$13,000 for a fourth violation within a five-year  
42 period; and

43 e. a penalty of **[\$10,000]** \$20,000 for a fifth or subsequent  
44 violation within a five-year period.

45 (cf: P.L.2005, c.85, s.5)

1       15. (New section) a. Any person who imports into this State,  
2 directly or indirectly, or offers for sale, sells, distributes, transports  
3 or possesses with intent to sell a counterfeit cigarette, knowing that  
4 the cigarette is a counterfeit cigarette, shall be guilty of a crime of  
5 the third degree. As used in this section, "counterfeit cigarette"  
6 means a cigarette or a pack or other container of cigarettes that  
7 bears any reproduction or copy of a trademark, service mark, trade  
8 name, label, term, design, or work adopted by or used by a licensed  
9 manufacturer to identify its own cigarettes but is not manufactured  
10 by the owner or holder of that trademark, service mark, trade name,  
11 label, term, design, or work, or by any authorized licensee of that  
12 person.

13       b. Notwithstanding N.J.S.2C:1-8 or any other provision of law, a  
14 conviction of an offense defined in this section shall not merge with  
15 a conviction for any other offense constituting the criminal activity  
16 defined in section 1 of the "New Jersey Trademark Counterfeiting  
17 Act," P.L.1997, c.57 (C.2C:21-32), and the sentence imposed upon  
18 a conviction of an offense defined in this section shall be ordered to  
19 be served consecutively to that imposed for a conviction of any  
20 offense under section 1 of P.L.1997, c.57 (C.2C:21-32) constituting  
21 the criminal activity involving the counterfeit cigarettes. Nothing  
22 in section 1 of P.L.1997, c.57 (C.2C:21-32) shall be construed to  
23 preclude or limit a prosecution or conviction for any other offense  
24 defined in P.L.1948, c.65 (C.54:40A-1 et seq.) or any other statute.

25       c. <sup>1</sup>【Possession of more than 2,000 counterfeit cigarettes shall  
26 be deemed sufficient evidence to authorize conviction under this  
27 section, unless the defendant shall demonstrate to the satisfaction of  
28 the court (1) that when the defendant obtained the cigarettes the  
29 accused knew or made inquiries sufficient to satisfy a reasonable  
30 person, that the transferor was in a regular and established business  
31 for dealing in cigarettes and was so licensed and (2) that the amount  
32 represented by the transferor as the price for the cigarettes  
33 represented its fair and reasonable value and that the defendant  
34 received an invoice or other record of the price.】 (1) Proof that a  
35 person possessed a quantity of 2,000 or more counterfeit cigarettes  
36 shall give rise to an inference that the person intended to sell those  
37 cigarettes.

38       (2) Proof that a person who sold or distributed 2,000 or more  
39 counterfeit cigarettes did not provide or retain an invoice or other  
40 business record documenting the transfer of the cigarettes to the  
41 recipient shall give rise to an inference that the person knew that the  
42 cigarettes were counterfeit cigarettes, and proof that a person who  
43 obtained 2,000 or more counterfeit cigarettes did not receive or  
44 retain an invoice or other record of the price from the source of the  
45 cigarettes shall give rise to an inference that the person knew that  
46 the cigarettes were counterfeit cigarettes.

47       (3) Proof that a person who imported or possessed any quantity  
48 of counterfeit cigarettes obtained them at a price substantially

1 below their fair and reasonable value shall give rise to an inference  
2 that the person knew that the cigarettes were counterfeit cigarettes,  
3 and proof that a person who offered for sale, sold or distributed any  
4 quantity of counterfeit cigarettes at a price substantially below their  
5 fair and reasonable value shall give rise to an inference that the  
6 person knew that the cigarettes were counterfeit cigarettes.<sup>1</sup>

7

8 16. This act shall take effect immediately.

9

10

11

12

13 \_\_\_\_\_  
14 Increases civil and criminal penalties involving unstamped and  
15 counterfeit cigarettes and cigarette smuggling and establishes crime  
involving transfers of counterfeit cigarettes.

# SENATE, No. 2516

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 4, 2013

**Sponsored by:**

**Senator DONALD NORCROSS**

**District 5 (Camden and Gloucester)**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**Co-Sponsored by:**

**Senators A.R.Bucco and Holzapfel**

**SYNOPSIS**

Increases civil and criminal penalties involving unstamped and counterfeit cigarettes and cigarette smuggling and establishes crime involving transfers of counterfeit cigarettes.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/22/2013)**



S2516 NORCROSS, OROHO

2

1 AN ACT concerning civil and criminal penalties for offenses  
2 involving unstamped and counterfeit cigarettes and cigarette  
3 smuggling, amending various parts of statutory law and  
4 supplementing P.L.1948, c.65 (C.54:40A-1 et seq.).  
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:  
8

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

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

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

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

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

24 (3) Joint venturers in a joint venture.

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

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

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

43 The provisions in this subsection as to wholesale dealers, retail  
44 dealers operating more than nine cigarette vending machines, and  
45 retail dealers who sell cigarettes at retail at more than nine premises

**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 do not apply to retail grocery stores and supermarkets primarily  
2 engaged in the self-service sale of foods and household supplies for  
3 off-premises consumption, to drug stores and pharmacies engaged  
4 in the retail sale of prescription drugs and patent medicines and  
5 which may carry a number of lines of related merchandise, or to  
6 restaurants, hotels and motels operated by national corporations  
7 with such premises in six or more states and primarily engaged in  
8 the sale of foods for retail consumption or in the rental of rooms for  
9 lodging.

10 c. (1) The director shall not issue any license under this act  
11 where he has reasonable cause to believe that anyone required to  
12 submit information under this act has willfully withheld information  
13 requested of him for the purpose of determining the eligibility of  
14 the applicant to receive a license or where the director has  
15 reasonable cause to believe that information submitted in the  
16 application is false and misleading and is not made in good faith.

17 (2) The director shall not issue a license under this act to a  
18 person that is a manufacturer or importer of cigarettes, tobacco  
19 products or processed tobacco if the manufacturer or importer does  
20 not possess a valid federal permit issued pursuant to section 5713 of  
21 the federal Internal Revenue Code of 1986, 26 U.S.C. s.5713, that is  
22 not suspended or revoked.

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

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

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

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1 As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (cf: P.L.1997, c.373, s.1)

28

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

31 205. Every licensed distributor shall file with the director on or  
32 before the twentieth day of each month, a report in such form as the  
33 director shall prescribe, which report shall disclose the number of  
34 cigarettes on hand by brand family, as defined pursuant to section 2  
35 of P.L.2003, c.25 (C.52:4D-5), on the first and last days of the  
36 calendar month immediately preceding the month in which such  
37 report is required; together with the quantity, by brand family, of  
38 cigarettes purchased or sold during the report period, and such  
39 information concerning the amount of stamps purchased, used, and  
40 on hand during the report period; together with any other  
41 information for the report period that the director shall prescribe.

42 Every licensed manufacturer shall file with the director on or  
43 before the twentieth day of each month, a report in such form as the  
44 director shall prescribe, which report shall disclose the number of  
45 cigarettes sold, subject to the cigarette tax, for the calendar month  
46 immediately preceding the month in which such report is required;  
47 together with any other information for the report period that the  
48 director shall prescribe.

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7

1 Every licensed manufacturer's representative, wholesale and  
2 retail dealer, upon notice from the director, shall file with the  
3 director a report in such form, and on such dates, as the director  
4 shall prescribe.

5 Every licensed consumer who has acquired cigarettes for use,  
6 storage or consumption subject to the tax shall, on or before the  
7 twentieth day of the month following receipt of such cigarettes,  
8 complete and file with the director, in such form as the director  
9 shall prescribe, a report showing the amount of cigarettes so  
10 received. Said report shall be accompanied by a remittance for the  
11 full amount of the tax due.

12 Any person, other than a licensed distributor, who transports  
13 unstamped cigarettes upon the public highways, roads, or streets of  
14 this State or who stores unstamped cigarettes in this State upon  
15 notice from the director, shall file with the director a report in such  
16 form, and on such dates, as the director shall prescribe.

17 Any person who shall fail to file any report on the day when it  
18 shall be due, shall forfeit as a penalty, an amount as provided in the  
19 State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the  
20 Revised Statutes. The director, if satisfied that the failure to  
21 comply with any provision of this section was excusable, may remit  
22 the whole or any part of said penalty.

23 (P.L.1975, c.177, s.34)

24

25 3. (New section) The director shall produce a monthly report  
26 listing the quantity of cigarettes sold in this State by distributors,  
27 aggregated by manufacturer and by brand family as defined  
28 pursuant to section 2 of P.L.2003, c.25 (C.52:4D-5), during the  
29 month immediately preceding the monthly report, which shall be  
30 published on the website of the Division of Taxation in the  
31 Department of the Treasury on or before the 15th day of each  
32 month.

33

34 4. Section 601 of P.L.1948, c.65 (C.54:40A-24) is amended to  
35 read as follows:

36 601. a. Penalties. Any person who shall engage in any business  
37 or activity for which a license is required under the provisions of  
38 this act, without first having obtained a license to do so, or who,  
39 having had such a license, shall continue to engage in or conduct  
40 such business after any such license shall have been revoked, or  
41 during a suspension thereof, shall be liable to a penalty of not more  
42 than ~~[\$250.00]~~ \$500, which penalty shall be sued for, and shall be  
43 recoverable in the name of the director; and each day that any such  
44 business is so engaged in or conducted shall be deemed a separate  
45 offense.

46 b. Jurisdiction of court; proceedings. The Superior Court and  
47 every municipal court within their respective jurisdictions, and with  
48 respect to offenses occurring within the territorial jurisdiction of the

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1 court, shall have jurisdiction over proceedings to enforce and  
2 collect the penalty. The proceedings shall be brought by and in the  
3 name of the director. They shall be summary and in accordance  
4 with "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).  
5 Process shall be either in the nature of a summons or warrant.

6 If judgment be rendered for the plaintiff, the court shall cause  
7 any defendant who refuses or fails to pay forthwith the amount of  
8 the judgment rendered against him and all the costs and charges  
9 incident thereto, to be committed to the county jail for such period  
10 as the court shall determine, not exceeding ~~[30]~~ 60 days.

11 c. Penalty for further violations; recovery; proceedings in  
12 court. In case a person shall, after conviction of any violation of this  
13 act, be again convicted of violating the same provision thereof, he  
14 may be liable to a penalty for such further violation, in double the  
15 maximum penalty which might have been imposed on the first  
16 conviction, to be sued for and recovered in the manner above set  
17 forth. In case any defendant against whom judgment has been  
18 rendered for a money penalty under this subsection, shall fail or  
19 neglect to pay forthwith the amount of said penalty, the court shall  
20 commit him to jail for such number of days not exceeding ~~[90]~~ 180  
21 days, as the court shall determine.

22 d. Disposition of penalties. All penalties recovered for  
23 violations of this act shall be paid to the director and by him  
24 accounted for and paid to the State Treasurer as in the case of State  
25 taxes.

26 e. Costs; expenses. The costs recoverable in any such  
27 proceeding shall be recovered by the director in the event of  
28 judgment in his favor. If the judgment be for the defendant it shall  
29 be without costs against the director. All expenses incident to the  
30 recovery of any penalty pursuant to the provisions of this section  
31 shall be paid for as any other expense incident to the administration  
32 of this act.

33 (cf: P.L.1991, c.91, s.515)

34

35 5. Section 10 of P.L.1968, c.351 (C.54:40A-24.1) is amended  
36 to read as follows:

37 10. Any manufacturer's representative, as defined in this act,  
38 who sells or exchanges cigarettes other than those of his employer's  
39 manufacture shall be liable to a penalty of not more than ~~[\$250.00]~~  
40 \$500 for each separate offense.

41 (cf: P.L.1968, c.351, s.10).

42

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

45 602. Possessing cigarettes not bearing required revenue stamps.

46 Any wholesale dealer or retail dealer who violates the provisions  
47 of section four hundred six of this act, and any consumer who fails  
48 to report and remit the tax due as provided by section two hundred

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1 five of this act, shall be liable to a penalty of not more than [two-  
2 hundred and fifty dollars (\$250)] \$500 for each individual carton of  
3 unstamped or illegally stamped cigarettes in the dealer's possession,  
4 which penalty shall be sued for and recovered in the same manner  
5 as provided for the penalties imposed by section six hundred one of  
6 this act.

7 (cf: P.L. 2011, c.80, s.3)

8

9 7. Section 603 of P.L.1948, c.65 (C.54:40A-26) is amended to  
10 read as follows:

11 603. Any person engaged in the business of manufacturing,  
12 purchasing, selling, consigning, shipping, distributing, or  
13 transporting cigarettes, who shall refuse or fail to produce, on  
14 demand by the director, invoices of all cigarettes purchased or  
15 received by him within three years prior to such demand, unless his  
16 inability to do so for reasons beyond his control shall be shown by  
17 satisfactory proof, shall be liable to a penalty of not more than [two  
18 hundred fifty dollars (\$250.00)] \$500 for each separate offense.

19 (cf: P.L.1951, c.281, s.3)

20

21 8. Section 604 of P.L.1948, c. 65 (C.54:40A-27) is amended to  
22 read as follows:

23 604. Any person who prevents or hinders the director or any  
24 designated assistant from making a cigarette inventory, examination  
25 and full inspection of any place where cigarettes are sold or stored,  
26 or prevents or hinders the inspection of invoices, books, records, or  
27 papers required to be kept, shall be liable to a penalty of not more  
28 than [250.00] \$500 for each individual offense.

29 (cf: P.L.1968, c.351, s.6)

30

31 9. Section 605 of P.L.1948, c.65 (C.54:40A-28) is amended to  
32 read as follows:

33 605. Any person who sells cigarettes without the stamp or  
34 stamps required by this act being affixed thereto or cigarettes  
35 stamped in violation of subsection b. of section 405 of P.L.1948,  
36 c.65 (C.54:40A-15) shall be guilty of a [misdemeanor and, upon  
37 conviction thereof, shall be fined not more than \$1,000, or  
38 imprisoned for not more than one year, or both, at the discretion of  
39 the court] crime of the third degree.

40 (cf: P.L.1999, c.328, s.4)

41

42 10. Section 2 of P. L.1977, c.188 (C.54:40A-28.1) is amended to  
43 read as follows:

44 2. Any person, other than a licensee permitted under this act to  
45 possess any unstamped cigarettes, who possesses 2,000 but fewer  
46 than 20,000 cigarettes without the stamp or stamps required by this  
47 act being affixed thereto or stamped in violation of subsection b. of



S2516 NORCROSS, OROHO

10

1 section 405 shall be [a disorderly person, and upon conviction  
2 thereof, shall be fined not more than \$500 or imprisoned for not  
3 more than six months, or both, at the discretion of the court] guilty  
4 of a crime of the fourth degree; and any such person who possesses  
5 20,000 or more cigarettes without the stamp or stamps required by  
6 this act being affixed thereto or stamped in violation of subsection  
7 b. of section 405 of P.L.1948, c.65 (C.54:40A-15) shall be guilty of  
8 a [misdemeanor, and upon conviction thereof, shall be fined not  
9 more than \$1,000 or imprisoned for not more than one year, or both,  
10 at the discretion of the court] crime of the third degree.  
11 (P.L.1999, c.328, s.5)

12

13 11. Section 609 of P.L.1948, c.65 (C.54:40A-32) is amended to  
14 read as follows:

15 609. Records; possession and transportation of unstamped  
16 cigarettes; seizure and confiscation of vessel or vehicles. Every  
17 person who shall transport cigarettes not stamped as required by  
18 this act or stamped in violation of subsection b. of section 405 of  
19 P.L.1948, c.65 (C.54:40A-15) upon the public highways,  
20 waterways, roads or streets of this State shall have in his actual  
21 possession invoices or delivery tickets for such cigarettes which  
22 shall show the true name and complete and exact address of the  
23 consignor or seller, the true name and complete and exact address  
24 of the consignee or purchaser, the quantity and brands of the  
25 cigarettes transported and in addition shall show separately the true  
26 name and complete and exact address of the person who has or shall  
27 assume the payment of the New Jersey State tax or the tax, if any,  
28 of the State or foreign country at the point of ultimate destination,  
29 provided that any common carrier which has issued a bill of lading  
30 for a shipment of cigarettes and is without notice to itself or to any  
31 of its agents or employees that said cigarettes are not stamped as  
32 required by this act shall be deemed to have complied with this act  
33 and the vehicle or vessel in which said cigarettes are being  
34 transported shall not be subject to confiscation hereunder. In the  
35 absence of such invoices, delivery tickets or bills of lading, as the  
36 case may be, the cigarettes so transported, the vehicle, or vessel in  
37 which the cigarettes are being transported and any paraphernalia or  
38 devices used in connection with the unstamped cigarettes or  
39 cigarettes stamped in violation of subsection b. of section 405 of  
40 P.L.1948, c.65 (C.54:40A-15), are declared to be contraband goods  
41 and may be seized by the director, his agents or employees or by  
42 any peace officer of the State when directed by the director, his  
43 agents or employees so to do, without a warrant. The director shall  
44 immediately thereafter institute a proceeding for the confiscation  
45 thereof in the Superior Court or the municipal court within the  
46 jurisdiction of which the seizure is made. The owner or any person  
47 having a security interest in any such vehicle may secure release of  
48 the same by depositing with the clerk of the court, in which such

1 proceeding is pending, a bond with good and sufficient sureties in  
2 an amount to be fixed by the court, conditioned upon the return of  
3 said vehicle to the director upon demand after completion of said  
4 proceeding. The court may proceed in a summary manner and may  
5 direct confiscation to the director; provided, however, anything to  
6 the contrary notwithstanding, that the owner or any person claiming  
7 to be the holder of a mortgage, conditional sales contract or other  
8 security interest in any vehicle or vessel, the disposition of which is  
9 provided for above, may present his petition so alleging and be  
10 heard, and in the event it appears to the court that the property was  
11 unlawfully used by a person other than the owner or such claimant,  
12 and if such owner or claimant acquired ownership or his security  
13 interest in good faith and without knowledge that the vehicle or  
14 vessel was going to be so used, the court shall either waive  
15 forfeiture in favor of such owner or claimant and order the vehicle  
16 or vessel returned or delivered to such owner or claimant, or if it is  
17 found that the value thereof exceeds the amount of the claim, the  
18 court shall order payment of the amount of the claim out of the  
19 proceeds of the sale. Every transporter who violates the provisions  
20 of this act **[is a disorderly person]** shall be guilty of a crime of the  
21 fourth degree, and shall, in addition to such penalties as **[attached**  
22 **thereto]** may be imposed therefore, be liable to a penalty equal to  
23 double the amount of tax due on any unstamped cigarettes  
24 transported by him, which penalty shall be sued for and recovered  
25 in the same manner as provided for the penalties imposed by section  
26 601 of the act to which this act is amendatory (C.54:40A-24).  
27 (cf: P.L.1999, c.328, s.9)

28  
29 12. Section 9 of P.L.1968, c.351 (C.54:40A-32.1) is amended to  
30 read as follows:

31 9. Any cigarette vending machine not bearing a proper license  
32 or identification, or which is found to contain unstamped packages  
33 of cigarettes, or cigarettes bearing counterfeit impressions, or  
34 cigarettes stamped in violation of subsection b. of section 405 of  
35 P.L.1948, c.65 (C.54:40A-15), may be seized or sealed by the  
36 director, the director's agents or employees or by any peace officer  
37 of this State, when directed by the director so to do. If the owner or  
38 the owner's agent destroys or removes said seal, that individual  
39 may, upon conviction, be subject to a penalty of not more than  
40 **[\$250]** \$500. Any vending machine containing unstamped or  
41 counterfeit stamped cigarettes may be declared forfeited to the  
42 director.

43 (cf: P.L.1999, c.328, s.7)

44  
45 13. Section 6 of P.L.1950, c.134 (C.54:40A-44) is amended to  
46 read as follows:

47 6. No radio or television broadcast originating in this State, or  
48 newspaper, or other publication published in this State, shall accept

1 an advertisement from any out-of-State cigarette dealer for the sale  
2 of cigarettes by mail or express, unless there is included in said  
3 advertisement the following words: "Before any person may receive  
4 cigarettes in New Jersey by mail or express, a license for that  
5 purpose must be obtained from the Division of Taxation, New  
6 Jersey Department of the Treasury."

7 Any person who violates these provisions, upon conviction  
8 thereof, shall be fined not more than ~~five hundred dollars~~  
9 ~~(\$500.00)]~~ \$1,000 for each individual offense.

10 (cf: P.L.1950, c.134, s.6)

11

12 14. Section 5 of P.L.2005, c.85 (C.54:40A-50) is amended to  
13 read as follows:

14 5. In addition to any other remedies provided by law, the  
15 Director of the Division of Taxation in the Department of the  
16 Treasury shall assess penalties for violations of this act in  
17 accordance with the following schedule:

18 a. a penalty of not less than ~~[\$1,000]~~ \$2,000 and not more than  
19 ~~[\$2,000]~~ \$4,000 for the first violation;

20 b. a penalty of not less than ~~[\$2,500]~~ \$5,000 and not more than  
21 ~~[\$3,500]~~ \$7,000 for the second violation within a five-year period;

22 c. a penalty of not less than ~~[\$4,000]~~ \$8,000 and not more than  
23 ~~[\$5,000]~~ \$10,000 for the third violation within a five-year period;

24 d. a penalty of not less than ~~[\$5,500]~~ \$11,000 and not more  
25 than ~~[\$6,500]~~ \$13,000 for a fourth violation within a five-year  
26 period; and

27 e. a penalty of ~~[\$10,000]~~ \$20,000 for a fifth or subsequent  
28 violation within a five-year period.

29 (cf: P.L.2005, c.85, s.5)

30

31 15. (New section) a. Any person who imports into this State,  
32 directly or indirectly, or offers for sale, sells, distributes, transports  
33 or possesses with intent to sell a counterfeit cigarette, knowing that  
34 the cigarette is a counterfeit cigarette, shall be guilty of a crime of  
35 the third degree. As used in this section, "counterfeit cigarette"  
36 means a cigarette or a pack or other container of cigarettes that  
37 bears any reproduction or copy of a trademark, service mark, trade  
38 name, label, term, design, or work adopted by or used by a licensed  
39 manufacturer to identify its own cigarettes but is not manufactured  
40 by the owner or holder of that trademark, service mark, trade name,  
41 label, term, design, or work, or by any authorized licensee of that  
42 person.

43 b. Notwithstanding N.J.S.2C:1-8 or any other provision of law,  
44 a conviction of an offense defined in this section shall not merge  
45 with a conviction for any other offense constituting the criminal  
46 activity defined in section 1 of the "New Jersey Trademark  
47 Counterfeiting Act," P.L.1997, c.57 (C.2C:21-32), and the sentence

1 imposed upon a conviction of an offense defined in this section  
2 shall be ordered to be served consecutively to that imposed for a  
3 conviction of any offense under section 1 of P.L.1997, c.57  
4 (C.2C:21-32) constituting the criminal activity involving the  
5 counterfeit cigarettes. Nothing in section 1 of P.L.1997, c.57  
6 (C.2C:21-32) shall be construed to preclude or limit a prosecution  
7 or conviction for any other offense defined in P.L.1948, c.65  
8 (C.54:40A-1 et seq.) or any other statute.

9 c. Possession of more than 2,000 counterfeit cigarettes shall be  
10 deemed sufficient evidence to authorize conviction under this  
11 section, unless the defendant shall demonstrate to the satisfaction of  
12 the court (1) that when the defendant obtained the cigarettes the  
13 accused knew or made inquiries sufficient to satisfy a reasonable  
14 person, that the transferor was in a regular and established business  
15 for dealing in cigarettes and was so licensed and (2) that the amount  
16 represented by the transferor as the price for the cigarettes  
17 represented its fair and reasonable value and that the defendant  
18 received an invoice or other record of the price.

19

20 16. This act shall take effect immediately.

21

22

23 STATEMENT

24

25 This bill increases civil and criminal penalties involving  
26 unstamped and counterfeit cigarettes and cigarette smuggling and  
27 establishes a third degree crime of importing, selling or distributing,  
28 transporting or possessing with intent to sell, counterfeit cigarettes.  
29 The bill increases certain fines, county jail maximum sentences and  
30 the grading of certain criminal offenses that can currently be  
31 imposed under the Cigarette Tax Act for illegal cigarette smuggling  
32 and various schemes to evade the cigarette tax.

33 State cigarette tax payments are demonstrated by appropriate  
34 New Jersey stamped cigarettes packs. New Jersey residents are not  
35 permitted to possess or consume untaxed, improperly stamped or  
36 unstamped cigarettes. Criminal and civil statutes apply in both  
37 circumstances, and unstamped and improperly stamped cigarettes  
38 are prima facie contraband under the New Jersey Criminal Code.

39 The bill also requires persons that are manufacturers or importers  
40 of cigarettes, tobacco products or processed tobacco, that are  
41 required under the New Jersey cigarette tax act to have a State  
42 license, to also have a valid federal permit issued by the Alcohol  
43 and Tobacco Tax and Trade Bureau of the U.S. Department of the  
44 Treasury.

45 The bill also requires that licensed distributors include in their  
46 monthly tax reports the number of cigarettes on hand, and  
47 purchased and sold, by brand family. The Director of the Division  
48 of Taxation in the State Department of Treasury will publish

1 monthly reports on the State Treasury Department's website that  
2 indicate the quantity of cigarettes sold in this State by distributors,  
3 aggregated by manufacturer and brand family. This information  
4 from licensed distributors will assist in identifying brands of  
5 cigarettes that are appearing in the market, that are being sold as  
6 nearly identical to a previously known brand of cigarettes made by  
7 a licensed manufacturer, while part of a scheme of avoiding  
8 cigarette tax payments.

9 New Jersey has had a long history of cigarette smuggling  
10 problems and has experienced challenges enforcing the cigarette tax  
11 law against both casual smuggling by individual smokers for their  
12 own use, and against larger scale commercial smuggling that tends  
13 to involve organized criminal organizations.

14 The enhancement of civil and criminal penalties is intended to  
15 establish a stronger deterrent effect against the commission of  
16 certain offenses that are typically violated in cigarette smuggling  
17 efforts. These offenses may include: conducting certain licensed  
18 activities without a license, transfers of off-brand cigarettes by  
19 manufacturers representatives, possessing unstamped cigarettes,  
20 refusal to produce business records by those engaging in any stage  
21 of commerce in cigarettes, hindering or preventing the  
22 administration of the Cigarette Tax Act, sale of cigarettes without  
23 required tax stamps, possession of large quantities of unstamped  
24 cigarettes, transportation of unstamped cigarettes, maintaining  
25 unlicensed vending machines and vending machines containing  
26 unstamped or counterfeit stamped cigarettes, advertising in this  
27 State by out-of-state cigarette dealers of the sale of cigarettes by  
28 mail or express, and violations of the Cigarette Sales Act regulating  
29 the collection of taxes on retail sales of cigarettes shipped from  
30 outside this State. Several civil penalties for these offenses are  
31 doubled, certain maximum county jail terms are doubled, and  
32 certain criminal offenses under the Cigarette Tax Act are increased  
33 in degree which will result in longer sentences of incarceration and  
34 higher fines being imposed.

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### **SENATE, No. 2516**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 21, 2013

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 2516.

As amended and reported by the committee, this bill increases civil and criminal penalties for offenses involving unstamped and counterfeit cigarettes and cigarette smuggling. The bill also establishes as a crime of the third degree importing, selling, distributing, transporting, or possessing with intent to sell, counterfeit cigarettes. The bill amends and supplements the Cigarette Tax Act, P.L.1948, c.65 (C.54:40A-1 et seq.) and enhances penalties in the "Cigarette Sales Act," P.L.2005, c.85 (C.54:40A-46 et seq.).

State cigarette tax payments are demonstrated by appropriate New Jersey stamped cigarettes packs. Any person who consumes or is in possession of untaxed, improperly stamped, or unstamped cigarettes is subject to criminal and civil penalties. Unstamped or improperly stamped cigarettes are prima facie contraband under the New Jersey Criminal Code.

This bill amends State licensing requirements to prohibit the issuance of a license to any manufacturer or importer of cigarettes, tobacco products, or processed tobacco who does not possess a valid federal permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

In addition, the bill expands the current monthly reporting requirements imposed on licensed distributors by requiring their reports to disclose the number of cigarettes on hand, by brand family, together with the quantity of cigarettes purchased or sold during the report period.

The bill also requires the Director of the Division of Taxation in the State Department of the Treasury to publish a monthly report on the State Treasury Department's website that indicates the quantity of cigarettes sold in this State by distributors, aggregated by manufacturer and brand family.

According to the sponsor, New Jersey has an extensive history of cigarette smuggling and has experienced challenges enforcing the cigarette tax law against both casual smuggling by individual smokers

for their own use, and against larger scale commercial smuggling that tends to involve organized criminal organizations.

The enhancement of civil and criminal penalties is intended to establish a stronger deterrent effect against the commission of certain offenses that are typically violated in cigarette smuggling efforts. These offenses include: conducting certain licensed activities without a license, transfers of off-brand cigarettes by manufacturers' representatives, possessing unstamped cigarettes, refusal to produce business records by those engaging in any stage of commerce in cigarettes, hindering or preventing the administration of the Cigarette Tax Act, sale of cigarettes without required tax stamps, possession of large quantities of unstamped cigarettes, transportation of unstamped cigarettes, maintaining unlicensed vending machines and vending machines containing unstamped or counterfeit stamped cigarettes, advertising in this State by out-of-state cigarette dealers of the sale of cigarettes by mail or express, and violations of the Cigarette Sales Act regulating the collection of taxes on retail sales of cigarettes shipped from outside this State.

The committee amended the bill to increase the following monetary penalties from \$500 to \$1,000: 1) the penalty for engaging in business activity without a license, 2) the penalty imposed upon any manufacturer's representative who sells or exchanges cigarettes other than those of his employer's manufacture, 3) the penalty imposed upon any wholesale dealer or retailer in possession of cigarettes without the requisite revenue stamp, and 4) the penalty imposed upon any person who removes or destroys a seal which has been placed upon a cigarette vending machine containing unstamped cigarettes designated by the director as not bearing a proper license or identification.

The committee also amended the bill to upgrade to a disorderly persons offense and a fine of \$1,000 the penalty imposed upon any person engaged in manufacturing, selling, distributing, shipping or transporting cigarettes who fails to produce, on demand, invoices of all cigarettes purchased or received by him within three years prior to the demand. In addition, the amended bill upgrades to a disorderly persons offense and a fine of \$1,000 the penalty imposed upon any person who prevents or hinders the director or any other designated person from making a cigarette inventory or full inspection or prevents inspection or inventory of invoices or books.

Lastly, the committee amended the bill to create the following permissive inferences: 1) proof that a person who possessed 2,000 or more counterfeit cigarettes intended to sell those cigarettes; 2) proof that a person who sold or distributed 2,000 or more counterfeit cigarettes and did not provide or retain an invoice or record documenting the transfer, knew that the cigarettes were counterfeit; 3) proof that a person who obtained 2,000 or more counterfeit cigarettes and did not receive or retain an invoice or record of the price of the cigarettes, knew that the cigarettes were counterfeit; 4) proof that a

person who imported or possessed any quantity of counterfeit cigarettes obtained them at a price substantially below their fair market value, knew the cigarettes were counterfeit; and 5) proof that a person who offered for sale, sold or distributed any quantity of counterfeit cigarettes at a price substantially below the fair and reasonable value, knew that the cigarettes were counterfeit.



# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 2516**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 13, 2013

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2516 (1R), with committee amendments.

As amended, the bill increases civil and criminal penalties for offenses involving unstamped and counterfeit cigarettes and cigarette smuggling. The bill also establishes as a crime of the third degree the importing, selling, distributing, transporting, or possessing with intent to sell, counterfeit cigarettes. The bill amends and supplements the Cigarette Tax Act, P.L.1948, c.65 (C.54:40A-1 et seq.) and enhances penalties in the "Cigarette Sales Act," P.L.2005, c.85 (C.54:40A-46 et seq.).

State cigarette tax payments are demonstrated by appropriate New Jersey stamped cigarettes packs. Any person who consumes or is in possession of untaxed, improperly stamped, or unstamped cigarettes is subject to criminal and civil penalties. Unstamped or improperly stamped cigarettes are prima facie contraband under the New Jersey Criminal Code.

- The initial portion of the bill concerns licensing and reporting requirements.

Section 1 of the bill amends State licensing requirements to prohibit the issuance of a license to any manufacturer or importer of cigarettes, tobacco products, or processed tobacco who does not possess a valid federal permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

Section 2 of the bill expands the current monthly reporting requirements imposed on licensed distributors by requiring their reports to disclose the number of cigarettes on hand, by brand family, together with the quantity of cigarettes purchased or sold during the report period.

Section 3 of the bill requires the Director of the Division of Taxation in the State Department of the Treasury to publish a monthly report on the State Treasury Department's website that indicates the quantity of cigarettes sold in this State by distributors, aggregated by manufacturer and brand family.

- The next portion of the bill increases monetary penalties, and upgrades criminal acts. The enhancement of civil and criminal penalties is intended to establish a stronger deterrent effect against the commission of certain offenses that are typically violated in cigarette smuggling efforts.

Section 4 of the bill increases the penalty for engaging in business activity without a license from \$250 to \$1,000.

Section 5 of the bill increases the penalty imposed upon any manufacturer's representative who sells or exchanges cigarettes other than those of his employer's manufacture from \$250 to \$1,000.

Section 6 of the bill increases the penalty imposed upon any wholesale dealer or retailer in possession of cigarettes without the requisite revenue stamp from \$250 to \$1,000.

Section 7 of the bill upgrades to a disorderly persons offense any person engaged in manufacturing, selling, distributing, shipping or transporting cigarettes who fails to produce, on demand, invoices of all cigarettes purchased or received by him within three years prior to the demand and increases the fine from a maximum of \$250 to the amount of \$1,000.

Section 8 of the bill upgrades to a disorderly persons offense any person who prevents or hinders the director or any other designated person from making a cigarette inventory or full inspection or prevents inspection or inventory of invoices or books and increases the fine from a maximum of \$250 to the amount of \$1,000.

Section 9 of the bill upgrades the offense of a person who sells cigarettes without the requisite revenue stamp from a "misdemeanor," punishable under that section by a fine of up to \$1,000, a term of imprisonment of not more than one year, or both to a crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to \$15,000 or both.

Section 10 of the bill upgrades the offense of an unlicensed person who possesses 2,000 but fewer than 20,000 unstamped cigarettes from a disorderly persons offense punishable by a fine of not more than \$500 or a term of imprisonment not to exceed six months to a crime of the fourth degree, punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000 or both; and upgrades the offense of an unlicensed person who possesses 20,000 or more unstamped cigarettes from a "misdemeanor" to a crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

Section 11 of the bill upgrades unlawful possession and transportation of unstamped cigarettes from a disorderly persons offense to a crime of the fourth degree.

Section 12 of the bill increases the penalty imposed upon any person who removes or destroys a seal which has been placed upon a cigarette vending machine containing unstamped cigarettes designated

by the director as not bearing a proper license or identification from \$250 to \$1,000.

Section 13 of the bill increases the penalty imposed for a radio or television broadcast originating in the State, or a newspaper or other publication published in the State, that does not include a notice in advertisements for cigarettes by mail or express that a license is required to receive such cigarettes, from \$500 to \$1,000.

Section 14 of the bill concerns the "Cigarette Sales Act," N.J.S.A.54:40A-46 et seq., which concerns retail sales of cigarettes and facilitates the collection of sales and use taxes on cigarettes sold to residents of the State and shipped from outside the State. This section provides increased civil penalties for violation of the act as follows: (a) a penalty of not less than \$2,000 and not more than \$4,000 for the first violation; (b) a penalty of not less than \$5,000 and not more than \$7,000 for the second violation within a five-year period; (c) a penalty of not less than \$8,000 and not more than \$10,000 for the third violation within a five-year period; (d) a penalty of not less than \$11,000 and not more than \$13,000 for a fourth violation within a five-year period; and (e) a penalty of \$20,000 for a fifth or subsequent violation within a five-year period.

Section 15 of the bill makes it a crime of the third degree to import into this State or offer for sale, distribute, transport, or possess with intent to sell a counterfeit cigarette. The bill defines "counterfeit cigarette" as a cigarette or a pack or other container of cigarettes that bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted by or used by a licensed manufacturer to identify its own cigarettes but is not manufactured by the owner or holder of that trademark, service mark, trade name, label, term, design, or work, or by any authorized licensee of that person. The bill provides that a conviction under this new third degree crime will not merge with conviction for any other offense under the "New Jersey Trademark Counterfeiting Act," P.L.1997, c.57 (C.2C:21-32).

This section creates the following permissive inferences: 1) proof that a person who possessed 2,000 or more counterfeit cigarettes intended to sell those cigarettes; 2) proof that a person who sold or distributed 2,000 or more counterfeit cigarettes and did not provide or retain an invoice or record documenting the transfer, knew that the cigarettes were counterfeit; 3) proof that a person who obtained 2,000 or more counterfeit cigarettes and did not receive or retain an invoice or record of the price of the cigarettes, knew that the cigarettes were counterfeit; 4) proof that a person who imported or possessed any quantity of counterfeit cigarettes obtained by them at a price substantially below their fair market value, knew the cigarettes were counterfeit; and 5) proof that a person who offered for sale, sold or distributed any quantity of counterfeit cigarettes at a price substantially below the fair and reasonable value, knew that the cigarettes were counterfeit.

As amended and reported, this bill is identical to Assembly Bill No. 3278 (2R).

COMMITTEE AMENDMENTS:

The committee amendments adjust the performance bonding requirements for licensed distributors and also require that wholesale dealers must have more than ten places of business, instead of two places of business, before they are required to have a separate license for each place of business. Other committee amendments make technical corrections.

FISCAL IMPACT:

The Office of Legislative Services cannot determine the bill's recurring net impact on State revenues and expenditures. While the bill could potentially augment annual State revenue collections by an indeterminate amount if the bill results in increased payments of civil and criminal fines, any revenue gain may be offset, and potentially exceeded, by indeterminate added State costs for additional prosecutorial activities, longer trial periods, and increased inmate occupancy at penal institutions. A revenue loss may occur from permitting wholesale cigarette dealers who sell cigarettes at no more than nine places of businesses to obtain only one wholesale license at an annual cost of \$250 for all establishments combined instead of having to obtain a separate license and pay \$250 annually for each place of business, as current law requires.

The OLS makes no assumption about the manner in which the law might change the behavior of consumers and persons engaged in contraband cigarette commerce. In theory, the bill's stiffer penalties should produce a deterrent effect that should curb the supply of contraband cigarettes and push up their market prices. But the deterrent effect may be difficult to discern, considering that the contraband cigarette trade already occurs in violation of State and federal law.

# ASSEMBLY, No. 3278

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED SEPTEMBER 27, 2012

**Sponsored by:**

**Assemblywoman AMY H. HANDLIN**

**District 13 (Monmouth)**

**Assemblyman PETER J. BARNES, III**

**District 18 (Middlesex)**

**Assemblyman ANTHONY M. BUCCO**

**District 25 (Morris and Somerset)**

**SYNOPSIS**

Increases civil and criminal penalties concerning activities involving untaxed cigarettes and cigarette smuggling.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/29/2013)**

1 AN ACT increasing civil and criminal penalties concerning activities  
2 involving untaxed cigarettes and cigarette smuggling, amending  
3 various parts of statutory law.

4

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

7

8 1. Section 601 of P.L.1948, c.65 (C.54:40A-24) is amended to  
9 read as follows:

10 601. a. Penalties. Any person who shall engage in any business  
11 or activity for which a license is required under the provisions of  
12 this act, without first having obtained a license to do so, or who,  
13 having had such a license, shall continue to engage in or conduct  
14 such business after any such license shall have been revoked, or  
15 during a suspension thereof, shall be liable to a penalty of not more  
16 than ~~[\$250.00]~~ \$500, which penalty shall be sued for, and shall be  
17 recoverable in the name of the director; and each day that any such  
18 business is so engaged in or conducted shall be deemed a separate  
19 offense.

20 b. Jurisdiction of court; proceedings. The Superior Court and  
21 every municipal court within their respective jurisdictions, and with  
22 respect to offenses occurring within the territorial jurisdiction of the  
23 court, shall have jurisdiction over proceedings to enforce and  
24 collect the penalty. The proceedings shall be brought by and in the  
25 name of the director. They shall be summary and in accordance  
26 with "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).  
27 Process shall be either in the nature of a summons or warrant.

28 If judgment be rendered for the plaintiff, the court shall cause  
29 any defendant who refuses or fails to pay forthwith the amount of  
30 the judgment rendered against him and all the costs and charges  
31 incident thereto, to be committed to the county jail for such period  
32 as the court shall determine, not exceeding ~~[30]~~ 60 days.

33 c. Penalty for further violations; recovery; proceedings in  
34 court. In case a person shall, after conviction of any violation of this  
35 act, be again convicted of violating the same provision thereof, he  
36 may be liable to a penalty for such further violation, in double the  
37 maximum penalty which might have been imposed on the first  
38 conviction, to be sued for and recovered in the manner above set  
39 forth. In case any defendant against whom judgment has been  
40 rendered for a money penalty under this subsection, shall fail or  
41 neglect to pay forthwith the amount of said penalty, the court shall  
42 commit him to jail for such number of days not exceeding ~~[90]~~ 180  
43 days, as the court shall determine.

44 d. Disposition of penalties. All penalties recovered for  
45 violations of this act shall be paid to the director and by him

**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 accounted for and paid to the State Treasurer as in the case of State  
2 taxes.

3 e. Costs; expenses. The costs recoverable in any such  
4 proceeding shall be recovered by the director in the event of  
5 judgment in his favor. If the judgment be for the defendant it shall  
6 be without costs against the director. All expenses incident to the  
7 recovery of any penalty pursuant to the provisions of this section  
8 shall be paid for as any other expense incident to the administration  
9 of this act.  
10 (cf: P.L.1991, c.91, s.515)

11  
12 2. Section 10 of P.L.1968, c.351 (C.54:40A-24.1) is amended  
13 to read as follows:

14 10. Any manufacturer's representative, as defined in this act,  
15 who sells or exchanges cigarettes other than those of his employer's  
16 manufacture shall be liable to a penalty of not more than **【\$250.00】**  
17 \$500 for each separate offense.  
18 (cf: P.L.1968, c.351, s.10).

19  
20 3. Section 602 of P.L.1948, c.65 (C.54:40A-25) is amended to  
21 read as follows:

22 602. Possessing cigarettes not bearing required revenue stamps.  
23 Any wholesale dealer or retail dealer who violates the provisions  
24 of section four hundred six of this act, and any consumer who fails  
25 to report and remit the tax due as provided by section two hundred  
26 five of this act, shall be liable to a penalty of not more than **【two-**  
27 **hundred and fifty dollars (\$250)】** \$500 for each individual carton of  
28 unstamped or illegally stamped cigarettes in the dealer's possession,  
29 which penalty shall be sued for and recovered in the same manner  
30 as provided for the penalties imposed by section six hundred one of  
31 this act.  
32 (cf: P.L. 2011, c.80, s.3)

33  
34 4. Section 603 of P.L.1948, c.65 (C.54:40A-26) is amended to  
35 read as follows:

36 603. Any person engaged in the business of manufacturing,  
37 purchasing, selling, consigning, shipping, distributing, or  
38 transporting cigarettes, who shall refuse or fail to produce, on  
39 demand by the director, invoices of all cigarettes purchased or  
40 received by him within three years prior to such demand, unless his  
41 inability to do so for reasons beyond his control shall be shown by  
42 satisfactory proof, shall be liable to a penalty of not more than **【two**  
43 **hundred fifty dollars (\$250.00)】** \$500 for each separate offense.  
44 (cf: P.L.1951, c.281, s.3)

45  
46 5. Section 604 of P.L.1948, c. 65 (C.54:40A-27) is amended to  
47 read as follows:

1       604. Any person who prevents or hinders the director or any  
2 designated assistant from making a cigarette inventory, examination  
3 and full inspection of any place where cigarettes are sold or stored,  
4 or prevents or hinders the inspection of invoices, books, records, or  
5 papers required to be kept, shall be liable to a penalty of not more  
6 than ~~[\$250.00]~~ \$500 for each individual offense.  
7 (cf: P.L.1968, c.351, s.6)

8  
9       6. Section 605 of P.L.1948, c.65 (C.54:40A-28) is amended to  
10 read as follows:

11       605. Any person who sells cigarettes without the stamp or  
12 stamps required by this act being affixed thereto or cigarettes  
13 stamped in violation of subsection b. of section 405 of P.L.1948,  
14 c.65 (C.54:40A-15) shall be guilty of a ~~[misdemeanor and, upon~~  
15 ~~conviction thereof, shall be fined not more than \$1,000, or~~  
16 ~~imprisoned for not more than one year, or both, at the discretion of~~  
17 ~~the court]~~ crime of the third degree.  
18 (cf: P.L.1999, c.328, s.4)

19  
20       7. Section 2 of P. L.1977, c.188 (C.54:40A-28.1) is amended to  
21 read as follows:

22       2. Any person, other than a licensee permitted under this act to  
23 possess any unstamped cigarettes, who possesses 2,000 but fewer  
24 than 20,000 cigarettes without the stamp or stamps required by this  
25 act being affixed thereto or stamped in violation of subsection b. of  
26 section 405 shall be ~~[a disorderly person, and upon conviction~~  
27 ~~thereof, shall be fined not more than \$500 or imprisoned for not~~  
28 ~~more than six months, or both, at the discretion of the court]~~ guilty  
29 of a crime of the fourth degree; and any such person who possesses  
30 20,000 or more cigarettes without the stamp or stamps required by  
31 this act being affixed thereto or stamped in violation of subsection  
32 b. of section 405 of P.L.1948, c.65 (C.54:40A-15) shall be guilty of  
33 a ~~[misdemeanor, and upon conviction thereof, shall be fined not~~  
34 ~~more than \$1,000 or imprisoned for not more than one year, or both,~~  
35 ~~at the discretion of the court]~~ crime of the third degree.  
36 (P.L.1999, c.328, s.5)

37  
38       8. Section 609 of P.L.1948, c.65 (C.54:40A-32) is amended to  
39 read as follows:

40       609. Records; possession and transportation of unstamped  
41 cigarettes; seizure and confiscation of vessel or vehicles. Every  
42 person who shall transport cigarettes not stamped as required by  
43 this act or stamped in violation of subsection b. of section 405 of  
44 P.L.1948, c.65 (C.54:40A-15) upon the public highways,  
45 waterways, roads or streets of this State shall have in his actual  
46 possession invoices or delivery tickets for such cigarettes which  
47 shall show the true name and complete and exact address of the  
48 consignor or seller, the true name and complete and exact address



1 of the consignee or purchaser, the quantity and brands of the  
2 cigarettes transported and in addition shall show separately the true  
3 name and complete and exact address of the person who has or shall  
4 assume the payment of the New Jersey State tax or the tax, if any,  
5 of the State or foreign country at the point of ultimate destination,  
6 provided that any common carrier which has issued a bill of lading  
7 for a shipment of cigarettes and is without notice to itself or to any  
8 of its agents or employees that said cigarettes are not stamped as  
9 required by this act shall be deemed to have complied with this act  
10 and the vehicle or vessel in which said cigarettes are being  
11 transported shall not be subject to confiscation hereunder. In the  
12 absence of such invoices, delivery tickets or bills of lading, as the  
13 case may be, the cigarettes so transported, the vehicle, or vessel in  
14 which the cigarettes are being transported and any paraphernalia or  
15 devices used in connection with the unstamped cigarettes or  
16 cigarettes stamped in violation of subsection b. of section 405 of  
17 P.L.1948, c.65 (C.54:40A-15), are declared to be contraband goods  
18 and may be seized by the director, his agents or employees or by  
19 any peace officer of the State when directed by the director, his  
20 agents or employees so to do, without a warrant. The director shall  
21 immediately thereafter institute a proceeding for the confiscation  
22 thereof in the Superior Court or the municipal court within the  
23 jurisdiction of which the seizure is made. The owner or any person  
24 having a security interest in any such vehicle may secure release of  
25 the same by depositing with the clerk of the court, in which such  
26 proceeding is pending, a bond with good and sufficient sureties in  
27 an amount to be fixed by the court, conditioned upon the return of  
28 said vehicle to the director upon demand after completion of said  
29 proceeding. The court may proceed in a summary manner and may  
30 direct confiscation to the director; provided, however, anything to  
31 the contrary notwithstanding, that the owner or any person claiming  
32 to be the holder of a mortgage, conditional sales contract or other  
33 security interest in any vehicle or vessel, the disposition of which is  
34 provided for above, may present his petition so alleging and be  
35 heard, and in the event it appears to the court that the property was  
36 unlawfully used by a person other than the owner or such claimant,  
37 and if such owner or claimant acquired ownership or his security  
38 interest in good faith and without knowledge that the vehicle or  
39 vessel was going to be so used, the court shall either waive  
40 forfeiture in favor of such owner or claimant and order the vehicle  
41 or vessel returned or delivered to such owner or claimant, or if it is  
42 found that the value thereof exceeds the amount of the claim, the  
43 court shall order payment of the amount of the claim out of the  
44 proceeds of the sale. Every transporter who violates the provisions  
45 of this act **【is a disorderly person】** shall be guilty of a crime of the  
46 fourth degree, and shall, in addition to such penalties as **【attached**  
47 **thereto】** may be imposed therefore, be liable to a penalty equal to  
48 double the amount of tax due on any unstamped cigarettes  
49 transported by him, which penalty shall be sued for and recovered

1 in the same manner as provided for the penalties imposed by section  
2 601 of the act to which this act is amendatory (C.54:40A-24).  
3 (cf: P.L.1999, c.328, s.9)

4  
5 9. Section 9 of P.L.1968, c.351 (C.54:40A-32.1) is amended to  
6 read as follows:

7 9. Any cigarette vending machine not bearing a proper license  
8 or identification, or which is found to contain unstamped packages  
9 of cigarettes, or cigarettes bearing counterfeit impressions, or  
10 cigarettes stamped in violation of subsection b. of section 405 of  
11 P.L.1948, c.65 (C.54:40A-15), may be seized or sealed by the  
12 director, the director's agents or employees or by any peace officer  
13 of this State, when directed by the director so to do. If the owner or  
14 the owner's agent destroys or removes said seal, that individual  
15 may, upon conviction, be subject to a penalty of not more than  
16 **[\$250]** \$500. Any vending machine containing unstamped or  
17 counterfeit stamped cigarettes may be declared forfeited to the  
18 director.

19 (cf: P.L.1999, c.328, s.7)

20

21 10. Section 6 of P.L.1950, c.134 (C.54:40A-44) is amended to  
22 read as follows:

23 6. No radio or television broadcast originating in this State, or  
24 newspaper, or other publication published in this State, shall accept  
25 an advertisement from any out-of-State cigarette dealer for the sale  
26 of cigarettes by mail or express, unless there is included in said  
27 advertisement the following words: "Before any person may receive  
28 cigarettes in New Jersey by mail or express, a license for that  
29 purpose must be obtained from the Division of Taxation, New  
30 Jersey Department of the Treasury."

31 Any person who violates these provisions, upon conviction  
32 thereof, shall be fined not more than **[five hundred dollars**  
33 **(\$500.00)]** \$1,000 for each individual offense.

34 (cf: P.L.1950, c.134, s.6)

35

36 11. Section 5 of P.L.2005, c.85 (C.54:40A-50) is amended to  
37 read as follows:

38 5. In addition to any other remedies provided by law, the  
39 Director of the Division of Taxation in the Department of the  
40 Treasury shall assess penalties for violations of this act in  
41 accordance with the following schedule:

42 a. a penalty of not less than **[\$1,000]** \$2,000 and not more than  
43 **[\$2,000]** \$4,000 for the first violation;

44 b. a penalty of not less than **[\$2,500]** \$5,000 and not more than  
45 **[\$3,500]** \$7,000 for the second violation within a five-year period;

46 c. a penalty of not less than **[\$4,000]** \$8,000 and not more than  
47 **[\$5,000]** \$10,000 for the third violation within a five-year period;

1 d. a penalty of not less than ~~[\$5,500]~~ \$11,000 and not more  
2 than ~~[\$6,500]~~ \$13,000 for a fourth violation within a five-year  
3 period; and

4 e. a penalty of ~~[\$10,000]~~ \$20,000 for a fifth or subsequent  
5 violation within a five-year period.

6 (cf: P.L.2005, c.85, s.5)

7  
8 12. This act shall take effect immediately.

9  
10  
11 STATEMENT

12  
13 This bill increases certain fines, county jail maximum sentences  
14 and the grading of certain criminal offenses that are imposed under  
15 the Cigarette Tax Act for illegal cigarette smuggling. State  
16 cigarette tax payments are demonstrated by appropriate New Jersey  
17 stamped cigarettes packs. New Jersey residents are not permitted to  
18 possess or consume untaxed, improperly stamped or unstamped  
19 cigarettes. Criminal and civil statutes apply in both circumstances,  
20 and unstamped and improperly stamped cigarettes are prima facie  
21 contraband under the New Jersey Criminal Code.

22 New Jersey has had a long history of cigarette smuggling  
23 problems and has experienced challenges enforcing the cigarette tax  
24 law against both casual smuggling by individual smokers for their  
25 own use, and against larger scale commercial smuggling that tends  
26 to involve organized criminal organizations.

27 The enhancement of civil and criminal penalties is intended to  
28 establish a stronger deterrent effect against the commission of  
29 certain offenses that are typically violated in cigarette smuggling  
30 efforts. These offenses may include: conducting certain licensed  
31 activities without a license, transfers of off-brand cigarettes by  
32 manufacturers representatives, possessing unstamped cigarettes,  
33 refusal to produce business records by those engaging in any stage  
34 of commerce in cigarettes, hindering or preventing the  
35 administration of the Cigarette Tax Act, sale of cigarettes without  
36 required tax stamps, possession of large quantities of unstamped  
37 cigarettes, transportation of unstamped cigarettes, maintaining  
38 unlicensed vending machines and vending machines containing  
39 unstamped or counterfeit stamped cigarettes, advertising in this  
40 State by out-of-state cigarette dealers of the sale of cigarettes by  
41 mail or express, and violations of the Cigarette Sales Act regulating  
42 the collection of taxes on retail sales of cigarettes shipped from  
43 outside this State. Several civil penalties for these offenses are  
44 doubled, certain maximum county jail terms are doubled, and  
45 certain criminal offenses under the Cigarette Tax Act are increased  
46 in degree which will result in longer sentences of incarceration and  
47 higher fines being imposed.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3278**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 11, 2013

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3278.

As amended, this bill increases certain penalties involving unstamped and counterfeit cigarettes, cigarette smuggling and various schemes to evade the cigarette tax, and imposes certain reporting requirements under the Cigarette Tax Act, N.J.S.A.54:40A-1 et seq., and the Cigarette Sales Act, N.J.S.A.54:40A-46 et seq. The bill, as amended, also establishes a new third degree crime of importing, selling, distributing, transporting, or possessing with intent to sell, counterfeit cigarettes.

State cigarette tax payments are demonstrated by appropriate New Jersey stamped cigarette packs. Possession of untaxed, improperly stamped, or unstamped cigarettes is unlawful, and criminal and civil statutes apply. Untaxed or otherwise contraband cigarettes are prima facie contraband under the forfeiture laws in the New Jersey Criminal Code (N.J.S.A.2C:64-1 et seq.).

The committee amended the bill to add new sections 1 through 3 which amend the Cigarette Tax Act, N.J.S.A.54:40A-1 et seq., to provide for certain licensing and reporting requirements. Specifically, section 1 of the bill amends the licensing requirements in N.J.S.A.54:40A-4 to prohibit the issuance of any license to a person who is a manufacturer or importer of cigarettes, tobacco products or processed tobacco, if that person does not also possess a valid federal permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury.

Section 2 of the bill amends N.J.S.A.54:40A-7 to expand the current monthly reporting requirements of licensed distributors. The amendments would require the monthly report to disclose the number of cigarettes on hand by brand family together with the quantity by brand family of cigarettes purchased or sold during the report period. The current report does not require to the licensed distributor to disclose the brand family but merely the number of cigarettes on hand.

Section 3 of the bill, which was added by amendment, would supplement the current reporting requirement to require the Director of the Division of Taxation in the State Department of Treasury to also

produce a monthly report of cigarettes sold in this State by distributors, aggregated by manufacturer and by brand family. This report would be published on the department's website.

Section 4 of the bill amends N.J.S.A.54:40A-24 to increase the current penalty for engaging in business activity without a license from \$250 to \$1,000. The bill also increases the jail time for failing to pay the monetary penalties from 30 days to 60 days; and from 90 days to 180 days for failure to pay subsequent monetary penalties. In addition, the bill provides that penalties of up to \$5,000 for a second conviction and up to \$10,000 for a subsequent conviction may be imposed.

The committee also amended the bill to increase the following monetary penalties:

- the penalty imposed upon any manufacturer's representative who sells or exchanges cigarettes other than those of his employer's manufacture would be increased from \$250 to \$1,000 (*section 5 of the bill, amending N.J.S.A.54:40A-24.1*);
- the penalty imposed upon any wholesale dealer or retailer in possession of cigarettes without the requisite revenue stamp would be increased from \$250 to \$1,000 per carton (*section 6 of the bill, amending N.J.S.A.54:40A-25*);
- the penalty imposed upon any person engaged in manufacturing, selling, distributing, shipping or transporting cigarettes who fails to produce, on demand, invoices of all cigarettes purchased or received by him within three years prior to the demand would be increased from \$250 to \$1,000 (*section 7 of the bill, amending N.J.S.A.54:40A-26*);
- the penalty imposed upon any person who prevents or hinders the director or any other designated person from making a cigarette inventory or full inspection or prevents inspection or inventory of invoices or books would be increased from \$250 to \$1,000 (*section 8 of the bill, amending N.J.S.A.54:40A-27*);
- the penalty imposed upon any person who removes or destroys a seal which has been placed upon a cigarette vending machine containing unstamped cigarettes designated by the director as not bearing a proper license or identification would be increased from a \$250 to \$1,000 (*section 12 of the bill, amending N.J.S.A.54:40A-27*);
- the penalty imposed for a radio or television broadcast originating in the State, or a newspaper or other publication published in the State, that does not include a notice in advertisements for cigarettes by mail or express that a license is required to receive such cigarettes, is increased from \$500 to \$1,000 (*section 13 of the bill, amending N.J.S.A.54:40A-27*).

The committee amendments would not alter the following provisions of the bill which, as originally introduced, upgraded certain

offenses from monetary penalties to crimes of the third or fourth degree as follows:

- the penalty imposed upon any person who sells cigarettes without the requisite revenue stamp would be upgraded from a “misdemeanor,” punishable under that section by a term of imprisonment of not more than one year, to a crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to \$15,000 or both (*section 9 of the bill, amending N.J.S.A.54:40A-28*);
- (1) the penalty imposed upon any unlicensed person who possesses 2,000 but fewer than 20,000 unstamped cigarettes would be upgraded from a disorderly persons offense punishable by a fine of not more than \$500 to a crime of the fourth degree, punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000 or both; (2) the penalty imposed upon any unlicensed person who possess 20,000 or more unstamped cigarettes would be upgraded from a “misdemeanor” to a crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to \$15,000 or both (*section 10 of the bill, amending N.J.S.A.54:40A-28.1*).

In addition, the committee amendments do not alter the following penalties in sections 11 and 14 of the bill:

Section 11 of the bill amends N.J.S.A.54:40A-32 which prohibits the unlawful possession and transportation of unstamped cigarettes and provides for the seizure and confiscation of any vessel or vehicle that provides such transport. The bill upgrades such unlawful possession and transportation of unstamped cigarettes from a disorderly persons offense to a crime of the fourth degree.

Section 14 of the bill amends a portion of the Cigarette Sales Act, N.J.S.A.54:40A-46 et seq., concerning the regulation of retail sales of cigarettes, to increase certain civil penalties. This act facilitates the collection of sales and use taxes on cigarettes sold to residents of the State and shipped from outside the State. Under the provisions of the act, such sellers, referred to in the law as “non-face-to-face” sellers, must verify payment of and collect the applicable State taxes as well as verify the age of the buyer. The sellers are also required to report the sale to the State. Specifically, section 14 of the bill amends section 5 of the Cigarette Sales Act, N.J.S.A.54:40A-50, which authorizes the director to impose civil penalties. This bill increases the civil penalty for violation of the act as follows: (a) a penalty of not less than \$2,000 and not more than \$4,000 for the first violation; (b) a penalty of not less than \$5,000 and not more than \$7,000 for the second violation within a five-year period; (c) a penalty of not less than \$8,000 and not more than \$10,000 for the third violation within a five-year period; (d) a penalty of not less than \$11,000 and not more than \$13,000 for a

fourth violation within a five-year period; and (e) a penalty of \$20,000 for a fifth or subsequent violation within a five-year period.

The committee amendments add a new section 15 to the bill which would make it a crime of the third degree to import into this State or offer for sale, distribute, transport, or possess with intent to sell a counterfeit cigarette. The amendment defines "counterfeit cigarette" as a cigarette or a pack or other container of cigarettes that bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted by or used by a licensed manufacturer to identify its own cigarettes but is not manufactured by the owner or holder of that trademark, service mark, trade name, label, term, design, or work, or by any authorized licensee of that person. The amendment provide that a conviction under this new third degree crime will not merge with conviction for any other offense under the "New Jersey Trademark Counterfeiting Act," P.L.1997, c.57 (C.2C:21-32). The amendment also provides that possession of more than 2,000 counterfeit cigarettes is sufficient evidence to authorize a conviction under this section unless the defendant demonstrates (1) that when the cigarettes were obtained he knew or made inquiries sufficient to satisfy a reasonable person, that the transferor was in a regular and established business for dealing in cigarettes and was so licensed, and (2) that the amount represented by the transferor as the price for the cigarettes represented its fair and reasonable value and that the defendant received an invoice or other record of the price.

COMMITTEE AMENDMENTS:

1. Replace the title of the bill to more accurately reflect the sections which were added by amendment and to make other technical changes.
2. Add a new section 1 amending N.J.S.A.54:40A-4 which prohibits the director from issuing a license to a manufacturer or importer of cigarettes or tobacco products unless he possesses a valid federal permit.
3. Add a new section 2 amending N.J.S.A.54:40A-7 requiring licensed distributors to file with the director a monthly report which discloses the number of cigarettes on hand by brand family together with the quantity by brand family of cigarettes purchased or sold during the report period.
4. Add a new section 3 which requires the director to produce a monthly report to be published on the department website.
5. Upgrade the monetary penalty from \$250 or \$500 to \$1,000 in sections 4 through 8 and section 12.
6. Add a new section 15 which makes it a crime of the third degree to import into this State or offer for sale, distribute, transport or possess with intent to sell a counterfeit cigarette.
7. Replace the synopsis to reflect the amendments.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 3278

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 6, 2013

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3278 (1R), with committee amendments.

As amended, the bill increases civil and criminal penalties for offenses involving unstamped and counterfeit cigarettes and cigarette smuggling. The bill also establishes as a crime of the third degree the importing, selling, distributing, transporting, or possessing with intent to sell, counterfeit cigarettes. The bill amends and supplements the Cigarette Tax Act, P.L.1948, c.65 (C.54:40A-1 et seq.) and enhances penalties in the "Cigarette Sales Act," P.L.2005, c.85 (C.54:40A-46 et seq.).

State cigarette tax payments are demonstrated by appropriate New Jersey stamped cigarettes packs. Any person who consumes or is in possession of untaxed, improperly stamped, or unstamped cigarettes is subject to criminal and civil penalties. Unstamped or improperly stamped cigarettes are prima facie contraband under the New Jersey Criminal Code. The initial portion of the bill concerns licensing and reporting requirements.

Section 1 of the bill amends State licensing requirements to prohibit the issuance of a license to any manufacturer or importer of cigarettes, tobacco products, or processed tobacco who does not possess a valid federal permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

Section 2 of the bill expands the current monthly reporting requirements imposed on licensed distributors by requiring their reports to disclose the number of cigarettes on hand, by brand family, together with the quantity of cigarettes purchased or sold during the report period.

Section 3 of the bill requires the Director of the Division of Taxation in the State Department of the Treasury to publish a monthly report on the State Treasury Department's website that indicates the quantity of cigarettes sold in this State by distributors, aggregated by manufacturer and brand family.

The enhancement of civil and criminal penalties is intended to establish a stronger deterrent effect against the commission of certain



offenses that are typically violated in cigarette smuggling efforts.

The next portion of the bill increases monetary penalties, and upgrades criminal acts.

Section 4 of the bill increases the penalty for engaging in business activity without a license from \$250 to \$1,000.

Section 5 of the bill increases the penalty imposed upon any manufacturer's representative who sells or exchanges cigarettes other than those of his employer's manufacture from \$250 to \$1,000.

Section 6 of the bill increases the penalty imposed upon any wholesale dealer or retailer in possession of cigarettes without the requisite revenue stamp from \$250 to \$1,000.

Section 7 of the bill upgrades to a disorderly persons offense any person engaged in manufacturing, selling, distributing, shipping or transporting cigarettes who fails to produce, on demand, invoices of all cigarettes purchased or received by him within three years prior to the demand and increases the fine from a maximum of \$250 to the amount of \$1,000.

Section 8 of the bill upgrades to a disorderly persons offense any person who prevents or hinders the director or any other designated person from making a cigarette inventory or full inspection or prevents inspection or inventory of invoices or books and increases the fine from a maximum of \$250 to the amount of \$1,000.

Section 9 of the bill upgrades the offense of a person who sells cigarettes without the requisite revenue stamp from a "misdemeanor," punishable under that section by a fine of up to \$1,000, a term of imprisonment of not more than one year, or both to a crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to \$15,000 or both.

Section 10 of the bill upgrades the offense of an unlicensed person who possesses 2,000 but fewer than 20,000 unstamped cigarettes from a disorderly persons offense punishable by a fine of not more than \$500 or a term of imprisonment not to exceed six months to a crime of the fourth degree, punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000 or both; and upgrades the offense of an unlicensed person who possesses 20,000 or more unstamped cigarettes from a "misdemeanor" to a crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

Section 11 of the bill upgrades unlawful possession and transportation of unstamped cigarettes from a disorderly persons offense to a crime of the fourth degree.

Section 12 of the bill increases the penalty imposed upon any person who removes or destroys a seal which has been placed upon a cigarette vending machine containing unstamped cigarettes designated by the director as not bearing a proper license or identification from \$250 to \$1,000.

Section 13 of the bill increases the penalty imposed for a radio or television broadcast originating in the State, or a newspaper or other publication published in the State, that does not include a notice in advertisements for cigarettes by mail or express that a license is required to receive such cigarettes, from \$500 to \$1,000.

Section 14 of the bill concerns the "Cigarette Sales Act," N.J.S.A.54:40A-46 et seq., which concerns retail sales of cigarettes and facilitates the collection of sales and use taxes on cigarettes sold to residents of the State and shipped from outside the State. This section provides increased civil penalties for violation of the act as follows: (a) a penalty of not less than \$2,000 and not more than \$4,000 for the first violation; (b) a penalty of not less than \$5,000 and not more than \$7,000 for the second violation within a five-year period; (c) a penalty of not less than \$8,000 and not more than \$10,000 for the third violation within a five-year period; (d) a penalty of not less than \$11,000 and not more than \$13,000 for a fourth violation within a five-year period; and (e) a penalty of \$20,000 for a fifth or subsequent violation within a five-year period.

Section 15 of the bill makes it a crime of the third degree to import into this State or offer for sale, distribute, transport, or possess with intent to sell a counterfeit cigarette. The bill defines "counterfeit cigarette" as a cigarette or a pack or other container of cigarettes that bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted by or used by a licensed manufacturer to identify its own cigarettes but is not manufactured by the owner or holder of that trademark, service mark, trade name, label, term, design, or work, or by any authorized licensee of that person. The bill provides that a conviction under this new third degree crime will not merge with conviction for any other offense under the "New Jersey Trademark Counterfeiting Act," P.L.1997, c.57 (C.2C:21-32).

This section creates the following permissive inferences: 1) proof that a person who possessed 2,000 or more counterfeit cigarettes intended to sell those cigarettes; 2) proof that a person who sold or distributed 2,000 or more counterfeit cigarettes and did not provide or retain an invoice or record documenting the transfer, knew that the cigarettes were counterfeit; 3) proof that a person who obtained 2,000 or more counterfeit cigarettes and did not receive or retain an invoice or record of the price of the cigarettes, knew that the cigarettes were counterfeit; 4) proof that a person who imported or possessed any quantity of counterfeit cigarettes obtained by them at a price substantially below their fair market value, knew the cigarettes were counterfeit; and 5) proof that a person who offered for sale, sold or distributed any quantity of counterfeit cigarettes at a price substantially below the fair and reasonable value, knew that the cigarettes were counterfeit.

FISCAL IMPACT:

The Office of Legislative Services cannot determine the bill's recurring net impact on State revenues and expenditures. While the bill could potentially augment annual State revenue collections by an indeterminate amount if the bill results in increased payments of civil and criminal fines, any revenue gain may be offset, and potentially exceeded, by indeterminate added State costs for additional prosecutorial activities, longer trial periods, and increased inmate occupancy at penal institutions.

COMMITTEE AMENDMENTS:

The amendments:

omit language specifying maximum penalties for multiple convictions from section 4 of the bill;

upgrade to a disorderly persons offense the failure to produce invoices and the hindering of making a cigarette inventory or full inspection of invoices in sections 7 and 8 of the bill; and

add the permissive inferences provided by section 15 of the bill.

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**ASSEMBLY, No. 3278**

## **STATE OF NEW JERSEY 215th LEGISLATURE**

DATED: JUNE 17, 2013

### SUMMARY

- Synopsis:** Increases civil and criminal penalties involving unstamped and counterfeit cigarettes and cigarette smuggling and establishes crime involving transfers of counterfeit cigarettes.
- Type of Impact:** Indeterminate recurring fiscal net impact on State General Fund.
- Agencies Affected:** Department of Corrections.  
Department of Law and Public Safety.  
Department of the Treasury.  
The Judiciary.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>FY 2014 and each Fiscal Year Thereafter</u></b>
<b>State Cost Increase</b>	Indeterminate — See comments below
<b>State Revenue Gain</b>	Indeterminate — See comments below

- The Office of Legislative Services (OLS) cannot determine the bill's recurring net impact on State finances.
- On the one side of the ledger, the legislation could potentially augment annual State revenue collections by an indeterminate amount if its enactment results in increased payments of civil and criminal fines. New Jersey courts imposed roughly \$160,000 in fines for Cigarette Tax Act violations in FY 2011, some \$120,000 in FY 2012, and approximately \$125,000 in FY 2013 through May 2013.
- On the other side of the ledger, the bill could potentially add an indeterminate amount to State budgetary outlays on account of additional prosecutorial activities, longer trial periods, and increased inmate occupancy at penal institutions. The average cost to house an inmate in FY 2012, for example, was \$42,531, excluding employee fringe benefits, and the marginal cost of housing one additional inmate was \$2,982. Cigarette Tax Act violations led to 16 prison sentences in FY 2011, 14 in FY 2012, and 12 in FY 2013 through May 2013.

- Any revenue gain will also be offset by lower revenue collections from issuing fewer cigarette wholesale dealer licenses. Notably, the bill permits wholesale dealers who sell cigarettes at no more than nine places of business to obtain only one wholesale license at an annual cost of \$250 for all establishments combined instead of having to obtain a separate license and pay \$250 annually for each place of business, as current law requires. The number of wholesale dealers affected by this change is uncertain but 120 wholesale dealer licenses were active in 2010, reflecting \$30,000 in 2010 State license fee receipts.
- This estimate is static in nature, meaning that the OLS makes no assumption about how the law might change the behavior of consumers and persons engaged in contraband cigarette commerce.

### BILL DESCRIPTION

Assembly Bill No. 3278 (2R) of 2012 increases certain penalties under the Cigarette Tax Act and establishes a new third degree crime of importing, selling, distributing, transporting or possessing with intent to sell counterfeit cigarettes. In addition, the bill permits cigarette wholesale dealers who sell cigarettes at no more than nine places of businesses to obtain only one wholesale license at an annual cost of \$250 for all establishments combined instead of having to obtain a separate license and pay \$250 annually for each place of business, as current law requires.

The table below lists for each offense affected by the bill the current and proposed penalties.

Offense	Current Penalty	Proposed Penalty
Engaging in cigarette commerce without proper license	First Offense: fine $\leq$ \$250 and $\leq$ 30 days imprisonment if failure to pay  Subsequent Offenses: fine $\leq$ \$500 and $\leq$ 90 days imprisonment if failure to pay	First Offense: fine $\leq$ \$1,000 and $\leq$ 60 days imprisonment if failure to pay  Subsequent Offenses: fine $\leq$ \$2,000 and $\leq$ 180 days imprisonment if failure to pay
Manufacturer's representative selling cigarettes other than those of employer's manufacture	fine $\leq$ \$250 per offense	fine $\leq$ \$1,000 per offense
Wholesale or retail dealer possessing cigarettes without cigarette tax stamp	fine $\leq$ \$250 per carton	fine $\leq$ \$1,000 per carton
Failure by licensed cigarette commerce participant to produce records of cigarettes purchased and received	fine $\leq$ \$250 per offense	Disorderly Person: \$1,000 fine and $\leq$ 6 months of imprisonment
Preventing or hindering State from establishing cigarette inventory or conducting examination or inspection	fine $\leq$ \$250 per offense	Disorderly Person: \$1,000 fine and $\leq$ 6 months of imprisonment
Selling cigarettes without cigarette tax stamp	Misdemeanor: fine $\leq$ \$1,000 and $\leq$ one year of imprisonment	Crime of the Third Degree: fine $\leq$ \$15,000 and 3 to 5 years of imprisonment
Unlicensed possession of at least	Disorderly Person:	Crime of the Fourth Degree:

2,000 but fewer than 20,000 cigarettes without cigarette tax stamp	fine $\leq$ \$500 and $\leq$ 6 months of imprisonment	fine $\leq$ \$10,000 and $\leq$ 18 months of imprisonment
Unlicensed possession of at least 20,000 cigarettes without cigarette tax stamp	Misdemeanor: fine $\leq$ \$1,000 and $\leq$ one year of imprisonment	Crime of the Third Degree: fine $\leq$ \$15,000 and 3 to 5 years of imprisonment
Transportation of cigarettes without cigarette tax stamp	a) Seizure and confiscation of transport vehicle b) Disorderly Person: fine $\leq$ \$500 and $\leq$ 6 months of imprisonment c) Payment of tax due on unstamped cigarettes	a) Seizure and confiscation of transport vehicle b) Crime of the Fourth Degree: fine $\leq$ \$10,000 and $\leq$ 18 months of imprisonment c) Double the amount of tax due on unstamped cigarettes
Removal or destruction of seal placed on cigarette vending machine that contains cigarettes without cigarette tax stamp	a) fine $\leq$ \$250 per offense b) possible confiscation of vending machine	a) fine $\leq$ \$1,000 per offense b) possible confiscation of vending machine
Broadcast media running an advertisement for cigarettes by mail or express that does not include a notice that a license is required to receive the cigarettes	fine $\leq$ \$500 per offense	fine $\leq$ \$1,000 per offense
Out-of-state sellers who sell and ship cigarettes to New Jersey customers without reporting sale to State, collecting applicable State taxes, and verifying legal age of purchaser.	First Offense: \$1,000 to \$2,000 fine Second Offense in five-year period: \$2,500 to \$3,500 fine Third Offense in five-year period: \$4,000 to \$5,000 fine Fourth Offense in five-year period: \$5,500 to \$6,500 fine Each subsequent Offense in five-year period: \$10,000 fine	First Offense: \$2,000 to \$4,000 fine Second Offense in five-year period: \$5,000 to \$7,000 fine Third Offense in five-year period: \$8,000 to \$10,000 fine Fourth Offense in five-year period: \$11,000 to \$13,000 fine Each subsequent Offense in five-year period: \$20,000 fine
Engaging in commerce of counterfeit cigarettes (in addition to "New Jersey Trademark Counterfeiting Act" penalties)	None	Crime of the Third Degree: fine $\leq$ \$15,000 and 3 to 5 years of imprisonment

## FISCAL ANALYSIS

### ***EXECUTIVE BRANCH***

The Executive Branch has not submitted an official fiscal estimate on this bill. But upon request, the Department of the Treasury has furnished the OLS with the following data on convictions under the Cigarette Tax Act and resultant fines and prison sentences.

<b>Fines, Convictions, and Prison Sentences Imposed for Cigarette Tax Act Violations FY 2011, FY 2012, and FY 2013 Through May 2013</b>			
<b>Fiscal Year</b>	<b>Convictions</b>	<b>Fines Imposed</b>	<b>Prison Sentences</b>
2011	165	\$158,774	16
2012	220	\$117,093	14
<u>2013 (thru May 2013)</u>	<u>177</u>	<u>\$125,032</u>	<u>12</u>
TOTAL	562	\$400,898	42

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS cannot determine the bill's recurring net impact on State finances. On the one side of the ledger, the legislation could potentially augment annual State revenue collections by an indeterminate amount if its enactment results in increased payments of civil and criminal fines. But any revenue gain may be offset, and potentially exceeded, by a) indeterminate added State costs for additional prosecutorial activities, longer trial periods, and increased inmate occupancy at penal institutions; and b) a revenue loss from permitting wholesale cigarette dealers who sell cigarettes at no more than nine places of business to obtain only one wholesale license at an annual cost of \$250 for all establishments combined instead of having to obtain a separate license and pay \$250 annually for each place of business, as current law requires.

On a general note, this estimate is static in nature, meaning that the OLS makes no assumption about how the law might change the behavior of consumers and persons engaged in contraband cigarette commerce. In theory, the bill's stiffer penalties should produce a deterrent effect that should curb the supply of contraband cigarettes and push up their market prices. But the deterrent effect may barely be discernable in practice, considering that the contraband cigarette trade already occurs in violation of State and federal law. This uncertainty regarding the existence of a detectable deterrent effect motivates the OLS to present a static estimate only.

In any event, if the estimate were dynamic, feedback effects would stem from contraband cigarette commerce participants ceasing or scaling back operations. Lower supply and higher market prices could increase State cigarette tax collections if smokers responded by shifting their purchases towards costlier tax-stamped cigarettes. Some smokers may even smoke less, thereby improving the state of public health. Economic output may subsequently bound and public health spending fall.

**State Revenue Gain:** The legislation could potentially augment annual State revenue collections by an indeterminate amount. Any revenue gain will occur whenever a) a judge applies the larger maximum fines permitted for certain offenses under this bill; b) a defendant is convicted of offenses for which the bill upgrades the range of criminal penalties; or c) a defendant is found guilty of the newly created offense of engaging in the commerce of counterfeit cigarettes whose criminal fine may be up to \$15,000.

The Department of the Treasury reports that New Jersey courts imposed roughly \$160,000 in fines for Cigarette Tax Act violations in FY 2011, some \$120,000 in FY 2012, and approximately \$125,000 in FY 2013 through May 2013. Nevertheless, the totals do not enable the OLS to estimate fine collections under the bill for two reasons. First, the OLS does not have information on the breakdown of total collections among sundry offenses. As the bill increases the maximum allowable fines for different offenses by different orders of magnitude (some are doubled, others quadrupled, etc.), the OLS cannot apply a uniform multiplier to total fine impositions. Second, it is unclear to what extent the courts will take advantage of the stiffer

maximum fines authorized by the bill. But, for example, if FY 2011, FY 2012, and FY 2013 fine collections had been quadrupled, the State would have realized an approximate revenue gain of \$475,000 in FY 2011, \$350,000 in FY 2012, and \$375,000 in FY 2013.

**State Revenue Loss:** Any revenue gain will be offset at least in part by lower collections from issuing fewer cigarette wholesale dealer licenses. Notably, the bill permits wholesale dealers who sell cigarettes at no more than nine places of businesses to obtain only one wholesale license at an annual cost of \$250 for all establishments combined instead of having to obtain a separate license and pay \$250 annually for each place of business, as current law requires.

The OLS knows neither the number of wholesale dealers affected by the change nor the number of establishments concerned. But the Department of the Treasury indicated to the OLS that there were 120 active wholesale dealer licenses in 2010, reflecting \$30,000 in 2010 license fee collections.

**State Cost Increase:** The bill's revenue gain could also be offset by a State cost increase, as the legislation has the potential to push up by an indeterminate amount the operating costs of the Department of Corrections, the Department of Law and Public Safety, and the Judiciary.

A) Department of Corrections: The bill raises the maximum terms of imprisonment for several offenses and creates a new offense of engaging in the commerce of counterfeit cigarettes whose term of imprisonment ranges from three to five years. Therefore, whenever a court sentences a defendant to a longer prison stay because of this bill, the prison system's occupancy rate and the Department of Corrections' operating costs will rise. It is unclear, however, to what extent courts will ultimately opt to extend convicts' periods of incarceration.

The average cost to house an inmate in FY 2012 was \$42,531, excluding employee fringe benefits, or a whisker above \$116 per day, according to the fiscal note prepared by the Department of Corrections for Senate Bill No. 2804 of 2013. But this amount represents the distribution among all inmates of the department's operating budget, including fixed costs that do not vary with occupancy, such as facility maintenance.

In light of that shortcoming the marginal cost of housing one additional inmate appears to be a more relevant measure for purposes of this estimate. The Department of Corrections pegged that number at \$8.17 per day, or \$2,982 per year, in its fiscal note to Senate Bill No. 2493 of 2013. The figure appears to be more pertinent given that the bill is highly unlikely to elicit demand for the creation of additional prison capacity. This is so because the prison system is currently not operating at full capacity and because the bill is unlikely to produce a surge in prison occupancy rates, for the Department of the Treasury reports that Cigarette Tax Act violations resulted in 16 prison sentences in FY 2011, 14 in FY 2012, and 12 in FY 2013 through May 2013.

Absent information on the length of the respective prison sentences, however, the OLS cannot determine resultant incarceration costs. If all sentences were for 12 months, for example, total incarceration costs would have been about \$48,000 in FY 2011, \$42,000 in FY 2012, and \$36,000 in FY 2013.

B) Department of Law and Public Safety: The bill affects the workload of the Department of Law and Public Safety in establishing a new third degree crime of engaging in the commerce of counterfeit cigarettes. Nevertheless, since the offense is already prosecutable under the "New Jersey Trademark Counterfeiting Act," the OLS expects the bill not to spur additional prosecutions but to merely add counts to prosecutions that will occur with or without the enactment of this bill. Therefore, the OLS anticipates the bill to only marginally increase the department's workload and operating budget.



C) The Judiciary: The bill affects the workload of the Judiciary in establishing a new third degree crime of engaging in the commerce of counterfeit cigarettes. But since the offense is already prosecutable under the “New Jersey Trademark Counterfeiting Act,” the OLS expects the bill not to spur additional trials but to merely add to the length of trials that will occur with or without the enactment of this bill. Therefore, the OLS anticipates the bill to only marginally increase the Judiciary’s workload and operating budget.

*Section: Revenue, Finance and Appropriations*  
*Analyst: Thomas Koenig*  
*Lead Fiscal Analyst*  
*Approved: David J. Rosen*  
*Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).