

54:40A-28 + 54:40A-28.1

LEGISLATIVE HISTORY CHECKLIST

NJSA 54:40A-28 & 54:40A-28.1

Laws of 1977 Chapter 188 (Unstamped Cigarettes--possession--penalty.)

Bill No. A535

Sponsor(s) Paterno and others

Date Introduced Pre-filed

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Revenue, Finance & Appropriations

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

Date of passage: Assembly April 25, 1977

Senate May 23, 1977

Date of approval August 24, 1977

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly ~~Yes~~ No

Senate Yes ~~No~~

Fiscal Note Yes No

Veto message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

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ASSEMBLY, No. 535

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Assemblymen PATERO, HAMILTON, BORNHEIMER, DEVERIN, GREGORIO, GORMAN, SCHUCK, HERMAN, KARCHER, VAN WAGNER, HOLLENBECK, LEFANTE and WEIDEL

AN ACT to amend and supplement the "Cigarette Tax Act," approved April 29, 1948 (P. L. 1948, c. 65).

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

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

3 605. Any person who sells cigarettes without the stamp or stamps
4 required by this act being affixed thereto shall be guilty of a misde-
5 meanor and, upon conviction thereof, shall be fined not more than
6 **[\$1,000.00]** ***[\$2,500.00]*** *\$1,000.00*, or imprisoned for not more
7 than 1 year, or both, at the discretion of the court. **[Possession of**
8 **2,000 or more unstamped cigarettes by any person other than a**
9 **licensed distributor shall be prima facie evidence that the possessor**
10 **thereof has engaged in the sale of cigarettes without the stamp or**
11 **stamps required by this act having been affixed thereto and such**
12 **person shall be subject to the penalty provided by this section.]**

1 2. (New section) Any person, other than a licensee permitted
2 under this act to possess any unstamped cigarettes, who possesses
3 2,000 but less than 20,000 cigarettes without the stamp or stamps
4 required by this act being affixed thereto shall be a disorderly
5 person, and upon conviction thereof, shall be fined not more than
6 ***[\$2,500.00]*** *\$500.00* or imprisoned for not more than 6 months,
7 or both, at the discretion of the court; and any such person who
8 possesses 20,000 or more cigarettes without the stamp or stamps
9 required by this act being affixed thereto shall be guilty of a
10 misdemeanor, and upon conviction thereof, shall be fined not more
11 than ***[\$5,000.00]*** *\$1,000.00* or imprisoned for not more than
12 1 year, or both, at the discretion of the court.

1 3. This act shall take effect immediately.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

STATEMENT

This bill makes unlawful the possession of 2,000 or more cigarettes which do not bear New Jersey cigarette tax stamps.

The Appellate Division of the Superior Court affirmed an acquittal of a possessor of 44,000 unstamped cigarettes on the grounds that the law did not make possession alone under such circumstances a crime. *State of New Jersey v. Oates*, 122 N. J. Super. 473 (App. Div. 1973), petition for certification denied, 63 N. J. 499 (1973). The court strongly implied that the statutory language being deleted by this bill is unconstitutional, holding that mere possession could not be evidence of sale.

This bill is intended to close this defect in the Cigarette Tax Act and to make cigarette tax enforcement more effective by making possession alone a crime. The increase in penalties takes account of the economic realities of cigarette tax violations, whereby profits far in excess of the \$1,000.00 fine in the existing statute are often realized by violators of the statute. The fines provided by this bill will have greater deterrent value.

SENATE REVENUE, FINANCE AND
APPROPRIATIONS COMMITTEE

STATEMENT TO
ASSEMBLY, No. 535

STATE OF NEW JERSEY

DATED: MAY 5, 1977

This bill proposes to amend and supplement the "Cigarette Tax Act" with regard to fines and penalties.

Currently any person who sells cigarettes without the required tax stamps is guilty of a misdemeanor and subject to a fine of up to \$1,000.00 or imprisonment for up to 1 year, or both. Possession of 2,000 or more unstamped cigarettes is *prima facie* evidence that the possessor is engaged in the sale of unstamped cigarettes.

As amended by the bill the *prima facie* evidence clause is deleted from the law.

The supplemental provisions of the bill establish that any person who possesses between 2,000 and 20,000 unstamped cigarettes is a disorderly person and subject to a fine of up to \$500.00 or imprisonment for up to 6 months, or both. Any person who possesses 20,000 or more unstamped cigarettes is guilty of a misdemeanor and subject to a fine of up to \$1,000.00 or imprisonment for up to 1 year, or both.

The Appellate Division of the Superior Court affirmed an acquittal of a possessor of 44,000 unstamped cigarettes on the grounds that the law did not make possession alone under such circumstances a crime. *State of New Jersey v. Oates*, 122 N. J. Super. 473 (App. Div. 1973), petition for certification denied, 63 N. J. 499 (1973). The court strongly implied that the statutory language being deleted by this bill is unconstitutional, holding that mere possession could not be evidence of sale.

This bill is intended to close this defect in the Cigarette Tax Act and to make cigarette tax enforcement more effective by making possession alone a crime.