

S3471

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT:

ASSEMBLY: No

SENATE: Yes Health, Human
Services &
Senior Citizens

Budget &
Appropriations

(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)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 10/30/2019
12/18/2019

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

Rwh/cl

§§1,3 -
C.2C:35-11.1 &
2C:35-11.2
§2 - C.45:1-53.1
§4 - Note

P.L. 2019, CHAPTER 339, *approved January 13, 2020*
Assembly, No. 5037 (*Second Reprint*)

1 AN ACT concerning counterfeit drugs, and supplementing Title 2C
2 of the New Jersey Statutes and Title 45 of the Revised Statutes.

3

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

6

7 1. a. ²[As used in this section, "counterfeit drug" means a drug
8 or the container or labeling of a drug, that, without authorization,
9 bears the trademark, trade name, or other identifying mark, imprint,
10 or device or any likeness thereof of a drug manufacturer, processor,
11 packer, or distributor other than the person who in fact
12 manufactured, processed, packed, or distributed the drug and that
13 falsely purports or is represented to be the product of, or to have
14 been packed or distributed by, the drug manufacturer, processor,
15 packer, or distributor whose trademark, trade name, or other
16 identifying mark, imprint, or device or likeness thereof appears on
17 the drug or its container or labeling.

18 b. Notwithstanding any provision of law to the contrary, it is
19 unlawful for any ²A² person ²[to] who² knowingly ²[possess, sell,
20 dispense, give, receive, or administer a] creates, distributes,
21 dispenses administers, installs, implants, possesses, or has under the
22 person's control with intent to distribute a² counterfeit drug ²or
23 medical device², ²[an]² adulterated drug ²or medical device², or
24 ²[a]² misbranded drug ²[.

25 c. A violation of this section shall be ²[or medical device:

26 (1) in an amount of four or fewer dosage units; one container or
27 labeling of a counterfeit drug, adulterated drug, or misbranded drug
28 is guilty of a crime of the fourth degree;

29 (2) in an amount of at least five but fewer than 100 dosage units;
30 at least two but fewer than five containers or labelings of a
31 counterfeit drug, adulterated drug, or misbranded drug; or one
32 counterfeit medical device, adulterated medical device, or
33 misbranded medical device is guilty of a crime of the third degree;
34 and

35 (3) in an amount of 100 or more dosage units; five or more
36 containers or labelings of a counterfeit drug, adulterated drug, or

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:

¹Assembly ALP committee amendments adopted March 7, 2019.

²Assembly AAP committee amendments adopted June 18, 2019.

1 misbranded drug; or two or more counterfeit medical devices,
2 adulterated medical devices, or misbranded medical devices is
3 guilty of² a crime of the second degree.

4 ²~~[d.] b.~~² In addition to penalties that may be imposed under
5 subsection ²~~[c.] a.~~² of this section ²~~or N.J.S.2C:35-15~~², a violation
6 of this section shall be punishable by a ²~~[civil fine] penalty~~² of not
7 less than ¹~~[one thousand dollars] \$1,000~~¹ and not more than ¹~~[ten~~
8 ~~thousand dollars] \$10,000~~¹ for each violation. ²~~[Fines imposed~~
9 ~~and paid pursuant to this subsection shall be deposited in the~~
10 ~~General Fund.~~

11 e. Any person convicted of an offense under this section shall
12 be ineligible, either directly or indirectly, to submit a bid, enter into
13 any contract, or ¹~~[to]~~¹ conduct ¹~~[any]~~¹ business with any board,
14 agency, authority, department, commission, public corporation, or
15 other body of this State, of this or one or more other states, or of
16 one or more political subdivisions of this State. It is the purpose of
17 this subsection to ¹~~[bar] prohibit~~¹ any individual convicted ¹~~[of~~
18 ~~any of the above enumerated offenses] pursuant to this section~~¹ and
19 any business, including any corporation, partnership, association or
20 proprietorship in which ¹~~[such] the~~¹ individual is a principal, or
21 with respect to which ¹~~[such] the~~¹ individual owns, directly or
22 indirectly, or controls five percent or more of the stock or other
23 equity interest of ¹~~[such] the~~¹ business, from conducting business
24 with public entities in this State.

25 f. The Department of Law and Public Safety shall publish on
26 its Internet website a list of individuals convicted pursuant to this
27 section.]

28 c. Notwithstanding the definitions set forth in N.J.S.2C:35-2,
29 as used in this section:

30 “Adulterated” means a drug or medical device that is adulterated
31 pursuant to R.S.24:5-10.

32 “Container” means vial, bottle, can, jar, tube, package, or any
33 other receptacle.

34 “Counterfeit” means a drug or medical device or the container or
35 labeling of a drug or medical device that, without authorization,
36 bears the trademark, trade name, or other identifying mark, imprint,
37 or device or any likeness thereof of a drug or medical device
38 manufacturer, processor, packer, or distributor other than the person
39 who in fact manufactured, processed, packed, or distributed the
40 medical device and that falsely purports or is represented to be the
41 product of, or to have been packed or distributed by, the drug or
42 medical device manufacturer, processor, packer, or distributor
43 whose trademark, trade name, or other identifying mark, imprint, or
44 device or likeness thereof appears on the drug or medical device or
45 its container or labeling.

46 “Drug” means any medication approved by the federal Food and
47 Drug Administration.

1 “Label” means a display of written, printed, or graphic matter
2 upon the immediate container of any drug.

3 “Labeling” means all labels and other written, printed or graphic
4 matter (1) upon a drug or any of its containers or wrappers, or (2)
5 accompanying such drug or container.

6 “Medical device” means any device approved by the federal
7 Food and Drug Administration.

8 “Misbranded” means a drug or medical device with respect to
9 which the label is: false or misleading in any particular; does not
10 bear the name and address of the manufacturer, packer, or
11 distributor and does not have an accurate statement of the quantities
12 of the active ingredients; or does not show an accurate monograph
13 for legend drugs; or is misbranded based upon other considerations
14 as provided in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.
15 s.301 et seq.²

16
17 2. a. ²[An individual who received ¹[his or her] a¹
18 professional certification or license pursuant to Title 45 of the
19 Revised Statutes shall have that] Any pharmacist or other health
20 care professional who is charged with an offense in violation of
21 section 1 of P.L. , c. (C.) (pending before the Legislature
22 as this bill) shall promptly notify the applicable licensing board of
23 the pending charge. Failure to provide the prompt notice required
24 by this subsection shall be deemed grounds for disciplinary action
25 by the applicable licensing board.

26 b. Upon conviction of an offense in violation of section 1 of
27 P.L. , c. (C.) (pending before the Legislature as this bill),
28 the CDS registration of the pharmacist or other health care
29 professional shall be revoked for a period of not less than five years
30 and that professional’s² certification or license ²shall be² revoked
31 by the ²[corresponding] applicable licensing² board²], specified in
32 section 2 of P.L.1978, c.73 (C.45:1-15), following a] based solely
33 upon the fact of the² conviction ²[pursuant to section 1 of ¹[this
34 act] P.L. , c. (C.) (pending before the Legislature as this
35 bill)¹]², for a period of time to be determined by that board.

36 ²[b. The State Board of Pharmacy, in consultation with the
37 Department of Law and Public Safety, shall publish on its Internet
38 website a list of individuals licensed by the board who have been
39 convicted pursuant to section 1 of ¹[this act] P.L. , c. (C.)
40 (pending before the Legislature as this bill)¹, and adopt regulations,
41 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
42 (C.52:14B-1 et seq.), listing the individuals licensed by the board
43 who have been convicted pursuant to section 1 of ¹[this act]
44 P.L. , c. (C.) (pending before the Legislature as this
45 bill)¹.]²

1 c. Pursuant to the "Administrative Procedure Act," P.L.1968,
2 c.410 (C.52:14B-1 et seq.), a ²licensing or certifying² board,
3 specified in section 2 of P.L.1978, c.73 (C.45:1-15), ²or other
4 licensing or certifying authority that has jurisdiction over health
5 care professionals pursuant to Title 45 of the Revised Statutes,²
6 may adopt rules and regulations to effectuate the provisions of
7 ¹【this act】 P.L. , c. (C.) (pending before the Legislature as
8 this bill)¹.

9 ²d. As used in this section:

10 “CDS registration” means registration with the Division of
11 Consumer Affairs to manufacture, distribute, dispense, or conduct
12 research with controlled dangerous substances issued pursuant to
13 section 11 of P.L.1970, c.226 (C.24:21-11).

14 “Health care professional” means a professional licensed
15 pursuant to Title 45 of the Revised Statutes to provide a health care
16 service to a patient including, but not limited to: a licensed
17 physician, advanced practice nurse, nurse, pharmacist, psychologist,
18 psychiatrist, psychoanalyst, clinical social worker, physician
19 assistant, professional counselor, dentist, orthotist, prosthetist,
20 respiratory therapist, speech pathologist, audiologist, optometrist,
21 veterinarian, or any other health care professional acting within the
22 scope of a valid license or certification issued pursuant to Title 45
23 of the Revised Statutes.

24 “Pharmacist” means a pharmacist licensed pursuant to P.L.2003,
25 c.280 (C.45:14-40 et seq.).²

26
27 ²3. a. Any person convicted of an offense in violation of section
28 1 of P.L. , c. (C.) (pending before the Legislature as this bill)
29 shall be ineligible, either directly or indirectly, to submit a bid,
30 enter into any contract, or conduct business with any board, agency,
31 authority, department, commission, public corporation, or other
32 body of this State, of this and one or more other states, or of any
33 political subdivision of this State, for a period of not more than 10
34 years from the date of conviction for a crime of the second degree,
35 five years from the date of conviction for a crime of the third
36 degree, and two years from the date of conviction for a crime of the
37 fourth degree. It is the purpose of this subsection to prohibit any
38 individual convicted of an offense in violation of section 1 of
39 P.L. , c. (C.) (pending before the Legislature as this bill) and
40 any business, including any corporation, partnership, association or
41 proprietorship in which the individual is a principal, or with respect
42 to which the individual owns, directly or indirectly, or controls five
43 percent or more of the stock or other equity interest of the business,
44 from conducting business with public entities in this State.

45 b. The State Treasurer shall establish and maintain a current
46 list of all persons and entities that are subject to the restrictions set
47 forth in subsection a. of this section based on a conviction of an

1 offense in violation of section 1 of P.L. , c. (C.) (pending
2 before the Legislature as this bill).²

3

4 ²~~[3.]~~ 4.² This act shall take effect on the 180th day after the
5 date of enactment.

6

7

8

9

10 Enhances penalties related to counterfeit drugs.

ASSEMBLY, No. 5037

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 14, 2019

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Enhances penalties related to counterfeit drugs.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/15/2019)

1 AN ACT concerning counterfeit drugs, and supplementing Title 2C
2 of the New Jersey Statutes and Title 45 of the Revised Statutes.

3

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

6

7 1. a. As used in this section, "counterfeit drug" means a drug
8 or the container or labeling of a drug, that, without authorization,
9 bears the trademark, trade name, or other identifying mark, imprint,
10 or device or any likeness thereof of a drug manufacturer, processor,
11 packer, or distributor other than the person who in fact
12 manufactured, processed, packed, or distributed the drug and that
13 falsely purports or is represented to be the product of, or to have
14 been packed or distributed by, the drug manufacturer, processor,
15 packer, or distributor whose trademark, trade name, or other
16 identifying mark, imprint, or device or likeness thereof appears on
17 the drug or its container or labeling.

18 b. Notwithstanding any provision of law to the contrary, it is
19 unlawful for any person to knowingly possess, sell, dispense, give,
20 receive, or administer a counterfeit drug, an adulterated drug, or a
21 misbranded drug.

22 c. A violation of this section shall be a crime of the second
23 degree.

24 d. In addition to penalties that may be imposed under
25 subsection c. of this section, a violation of this section shall be
26 punishable by a civil fine of not less than one thousand dollars and
27 not more than ten thousand dollars for each violation. Fines
28 imposed and paid pursuant to this subsection shall be deposited in
29 the General Fund.

30 e. Any person convicted of an offense under this section shall
31 be ineligible, either directly or indirectly, to submit a bid, enter into
32 any contract, or to conduct any business with any board, agency,
33 authority, department, commission, public corporation, or other
34 body of this State, of this or one or more other states, or of one or
35 more political subdivisions of this State. It is the purpose of this
36 subsection to bar any individual convicted of any of the above
37 enumerated offenses and any business, including any corporation,
38 partnership, association or proprietorship in which such individual
39 is a principal, or with respect to which such individual owns,
40 directly or indirectly, or controls five percent or more of the stock
41 or other equity interest of such business, from conducting business
42 with public entities in this State.

43 f. The Department of Law and Public Safety shall publish on
44 its Internet website a list of individuals convicted pursuant to this
45 section.

46

47 2. a. An individual who received his or her professional
48 certification or license pursuant to Title 45 of the Revised Statutes

1 shall have that certification or license revoked by the corresponding
2 board, specified in section 2 of P.L.1978, c.73 (C.45:1-15),
3 following a conviction pursuant to section 1 of this act, for a period
4 of time to be determined by that board.

5 b. The State Board of Pharmacy, in consultation with the
6 Department of Law and Public Safety, shall publish on its Internet
7 website a list of individuals licensed by the board who have been
8 convicted pursuant to section 1 of this act, and adopt regulations,
9 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
10 (C.52:14B-1 et seq.), listing the individuals licensed by the board
11 who have been convicted pursuant to section 1 of this act.

12 c. Pursuant to the "Administrative Procedure Act," P.L.1968,
13 c.410 (C.52:14B-1 et seq.), a board, specified in section 2 of
14 P.L.1978, c.73 (C.45:1-15), may adopt rules and regulations to
15 effectuate the provisions of this act.

16

17 3. This act shall take effect on the 180th day after the date of
18 enactment.

19

20

21

STATEMENT

22

23 This bill enhances penalties related to counterfeit drugs. The bill
24 provides that it is unlawful for any person to knowingly possess,
25 sell, dispense, give, receive, or administer a counterfeit drug, an
26 adulterated drug, or a misbranded drug. A violation of the bill's
27 provisions is to be a crime of the second degree and is to be
28 punishable by a civil fine of not less than one thousand dollars and
29 not more than ten thousand dollars for each violation. Fines
30 imposed and paid pursuant to this bill are to be deposited in the
31 General Fund.

32 Additionally, the Department of Law and Public Safety
33 (department) is to publish on its Internet website a list of
34 individuals convicted under this bill for a period of time to be
35 determined by the department.

36 Under the bill, any person convicted of an offense under this bill
37 is to be ineligible, either directly or indirectly, to submit a bid, enter
38 into any contract, or to conduct any business with any board,
39 agency, authority, department, commission, public corporation, or
40 other body of this State, of this or one or more other states, or of
41 one or more political subdivisions of this State. It is the purpose of
42 this bill to bar any individual convicted of any of the above
43 enumerated offenses and any business, including any corporation,
44 partnership, association or proprietorship in which such individual
45 is a principal, or with respect to which such individual owns,
46 directly or indirectly, or controls five percent or more of the stock
47 or other equity interest of such business, from conducting business
48 with public entities in this State.

A5037 PINTOR MARIN, SPEIGHT

1 The bill provides that an individual who received his or her
2 professional certification or license pursuant to Title 45 of the
3 Revised Statutes is to have that certification or license revoked by
4 the corresponding board, specified in section 2 of P.L.1978, c.73
5 (C.45:1-15), following a conviction under this bill, for a period of
6 time to be determined by that board.

7 Under the bill, the State Board of Pharmacy, in consultation with
8 the Department of Law and Public Safety, is to publish on its
9 Internet website a list of individuals licensed by the board who have
10 been convicted pursuant to section 1 of this act, and adopt
11 regulations, pursuant to the "Administrative Procedure Act,"
12 P.L.1968, c.410 (C.52:14B-1 et seq.), listing the individuals
13 licensed by the board who have been convicted pursuant to section
14 1 of this act.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5037

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 7, 2019

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 5037.

As amended and reported by the committee, Assembly Bill No. 5037 enhances penalties related to counterfeit drugs. This amended bill makes it a crime of the second degree for a person to knowingly possess, sell, dispense, give, receive, or administer a counterfeit drug, an adulterated drug, or a misbranded drug. A person who violates the amended bill's provisions also is subject to a civil fine of not less than \$1,000 or more than \$10,000 for each violation. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both. The civil fines imposed and paid pursuant to this amended bill are to be deposited in the General Fund.

Additionally, the Department of Law and Public Safety is to publish on its Internet website a list of individuals convicted under the amended bill for a period of time to be determined by the department.

Any person convicted of an offense under this amended bill is to be ineligible, either directly or indirectly, to submit a bid, enter into any contract, or to conduct business with any board, agency, authority, department, commission, public corporation, or other body of this State, of this or one or more other states, or of one or more political subdivisions of this State. The amended bill prohibits a person convicted of violating the amended bill's provisions and any business, including any corporation, partnership, association or proprietorship in which the person is a principal, or with respect to which the individual owns, directly or indirectly, or controls five percent or more of the stock or other equity interest of such business, from conducting business with public entities in this State.

The amended bill provides that a person who received his or her professional certification or license pursuant to Title 45 of the Revised Statutes is to have that certification or license revoked by the corresponding board, specified in section 2 of P.L.1978, c.73 (C.45:1-15), following a conviction under the amended bill, for a period of time to be determined by that board.

Under the amended bill, the State Board of Pharmacy, in consultation with the Department of Law and Public Safety, is to publish on its Internet website a list of persons licensed by the board

who have been convicted of a crime under the amended bill, and adopt regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), listing those who have been convicted.

COMMITTEE AMENDMENTS:

The committee made technical amendments to the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5037

STATE OF NEW JERSEY

DATED: JUNE 13, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5037 (1R).

This bill enhances penalties related to counterfeit drugs. This amended bill makes it a crime of the second degree for a person to knowingly possess, sell, dispense, give, receive, or administer a counterfeit drug, an adulterated drug, or a misbranded drug. A person who violates the amended bill's provisions also is subject to a civil fine of not less than \$1,000 or more than \$10,000 for each violation. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both. The civil fines imposed and paid pursuant to this amended bill are to be deposited in the General Fund.

Additionally, the Department of Law and Public Safety is to publish on its Internet website a list of individuals convicted under the amended bill for a period of time to be determined by the department.

Any person convicted of an offense under this amended bill is to be ineligible, either directly or indirectly, to submit a bid, enter into any contract, or to conduct business with any board, agency, authority, department, commission, public corporation, or other body of this State, of this or one or more other states, or of one or more political subdivisions of this State. The amended bill prohibits a person convicted of violating the amended bill's provisions and any business, including any corporation, partnership, association or proprietorship in which the person is a principal, or with respect to which the individual owns, directly or indirectly, or controls five percent or more of the stock or other equity interest of such business, from conducting business with public entities in this State.

The amended bill provides that a person who received his or her professional certification or license pursuant to Title 45 of the Revised Statutes is to have that certification or license revoked by the corresponding board, specified in section 2 of P.L.1978, c.73 (C.45:1-15), following a conviction under the amended bill, for a period of time to be determined by that board.

Under the amended bill, the State Board of Pharmacy, in consultation with the Department of Law and Public Safety, is to publish on its Internet website a list of persons licensed by the board

who have been convicted of a crime under the amended bill, and adopt regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), listing those who have been convicted.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill will result in indeterminate annual State expenditure increases by creating a new offense and making it a crime of the second degree to knowingly possess, sell, dispense, give, receive, or administer a counterfeit, adulterated, or misbranded drug. Currently, a person who commits a similar offense would be guilty of a crime of the third degree. The new offense would result in higher costs for the Department of Corrections (DOC) because a crime of the second degree comes with the presumption of incarceration. There could also be increased costs to the Department of Law and Public Safety (LPS) and the Judiciary for prosecuting and trying additional cases.

The OLS estimates that the bill will also increase annual State revenue collections by an indeterminate amount from the imposition of increased criminal fines by the courts as well as the mandatory civil fines found under this bill. A crime of the second degree is punishable by a term of imprisonment of 5 to 10 years, a fine of up to \$150,000, or both. This compares to a term of imprisonment of 3 to 5 years, a fine of up to \$15,000, or both for a third degree offense. The bill also requires that the courts impose additional penalties of not less than \$1,000 or more than \$10,000 for each violation and requires that the penalties are to be deposited in the General Fund. The OLS notes that these fines often go unpaid because of the financial constraints of those convicted.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5037

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 18, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5037 (1R), with committee amendments.

As amended and reported by the committee, this bill enhances penalties related to counterfeit drugs. Specifically, the amended bill establishes penalties for knowingly creating, distributing, dispensing, administering, installing, implanting, possessing, or having under one's control with intent to distribute a counterfeit drug or medical device, adulterated drug or medical device, or misbranded drug or medical device. The bill provides definitions for these terms.

A person who violates the provisions of the amended bill: (1) in an amount of four or fewer dosage units; or one container or labeling of a counterfeit drug, adulterated drug, or misbranded drug is guilty of a crime of the fourth degree; (2) in an amount of at least five but fewer than 100 dosage units; at least two but fewer than five containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or one counterfeit medical device, adulterated medical device, or misbranded medical device is guilty of a crime of the third degree; or (3) in an amount of 100 or more dosage units; five or more containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or two or more counterfeit medical devices, adulterated medical devices, or misbranded medical devices is guilty of a crime of the second degree. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

In addition to other penalties that may be imposed under the bill and any drug enforcement and demand reduction penalties imposed pursuant to N.J.S.2C:35-15, a violation of the bill is punishable by a penalty of between \$1,000 and \$10,000 for each violation.

Any pharmacist or other health care professional who is charged with violating the bill's provisions is required to promptly notify the applicable licensing board of the pending charge. The failure of a professional to provide the required notice will be grounds for

disciplinary action by the applicable licensing board. Upon conviction for a violation of the bill, the CDS registration of the pharmacist or other health care professional is to be revoked for a period of not less than five years and the person's certification or license is to be revoked, based solely on the conviction, for a period of time to be determined by the board.

The amended bill also prohibits a person convicted of violating the substitute bill's provisions and any business, including any corporation, partnership, association or proprietorship in which the person is a principal, or with respect to which the individual owns, directly or indirectly, or controls five percent or more of the stock or other equity interest of such business, from conducting business with public entities in this State.

Finally, the State Treasurer is required to establish and maintain a current list of all persons and entities that are subject to the restrictions based on a conviction of an offense in violation of the provisions of the bill.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- (1) provide that a person violates the provisions of the bill if the person knowingly creates, distributes, dispenses administers, installs, implants, possesses, or has under one's control with intent to distribute a counterfeit medical device, counterfeit drug, adulterated drug, misbranded drug, or counterfeit medical device.
- (2) modify the penalty provisions to provide that a person who violates the bill in an amount of four or fewer dosage units; or one container or labeling of a counterfeit drug, adulterated drug, or misbranded drug is guilty of a crime of the fourth degree; in an amount of at least five but fewer than 100 dosage units; at least two but fewer than five containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or one counterfeit medical device is guilty of a crime of the third degree; or in an amount of 100 or more dosage units; five or more containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or two or more counterfeit medical devices is guilty of a crime of the second degree;
- (3) provide definitions for the terms included in the amendments; and
- (4) make other clarifying and technical amendments to the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill will result in indeterminate annual State expenditure increases by creating a new offense and making it a crime of the second degree to knowingly possess, sell, dispense, give, receive, or administer a counterfeit,

adulterated, or misbranded drug. Currently, a person who commits a similar offense would be guilty of a crime of the third degree. The new offense would result in higher costs for the Department of Corrections (DOC) because a crime of the second degree comes with the presumption of incarceration. There could also be increased costs to the Department of Law and Public Safety (LPS) and the Judiciary for prosecuting and trying additional cases.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 5037

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2019

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 5037 (2R).

This bill enhances penalties related to counterfeit drugs. Specifically, the bill establishes penalties for knowingly creating, distributing, dispensing administering, installing, implanting, possessing, or having under one's control with intent to distribute a counterfeit drug or medical device, adulterated drug or medical device, or misbranded drug or medical device. The bill provides definitions for these terms.

A person who violates the provisions of the bill: (1) in an amount of four or fewer dosage units; or one container or labeling of a counterfeit drug, adulterated drug, or misbranded drug is guilty of a crime of the fourth degree; (2) in an amount of at least five but fewer than 100 dosage units; at least two but fewer than five containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or one counterfeit medical device, adulterated medical device, or misbranded medical device is guilty of a crime of the third degree; or (3) in an amount of 100 or more dosage units; five or more containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or two or more counterfeit medical devices, adulterated medical devices, or misbranded medical devices is guilty of a crime of the second degree. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

In addition to other penalties that may be imposed under the bill and any drug enforcement and demand reduction penalties imposed pursuant to N.J.S.2C:35-15, a violation of the bill is punishable by a penalty of between \$1,000 and \$10,000 for each violation.

Any pharmacist or other health care professional who is charged with violating the bill's provisions is required to promptly notify the applicable licensing board of the pending charge. The failure of a professional to provide the required notice will be grounds for disciplinary action by the applicable licensing board. Upon conviction for a violation of the bill, the CDS registration of the pharmacist or

other health care professional is to be revoked for a period of not less than five years and the person's certification or license is to be revoked, based solely on the conviction, for a period of time to be determined by the board.

The bill also prohibits a person convicted of violating the substitute bill's provisions and any business, including any corporation, partnership, association or proprietorship in which the person is a principal, or with respect to which the individual owns, directly or indirectly, or controls five percent or more of the stock or other equity interest of such business, from conducting business with public entities in this State.

Finally, the State Treasurer is required to establish and maintain a current list of all persons and entities that are subject to the restrictions based on a conviction of an offense in violation of the provisions of the bill.

As reported, this bill is identical to the Senate Committee Substitute for Senate Bill No. 3471, as amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill will result in indeterminate annual State expenditure increases by creating a new offense and making it a crime of the second degree to knowingly possess, sell, dispense, give, receive, or administer a counterfeit, adulterated, or misbranded drug. Currently, a person who commits a similar offense would be guilty of a crime of the third degree. The new offense would result in higher costs for the Department of Corrections (DOC) because a crime of the second degree comes with the presumption of incarceration. There could also be increased costs to the Department of Law and Public Safety (LPS) and the Judiciary for prosecuting and trying additional cases.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 5037

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JUNE 25, 2019

SUMMARY

- Synopsis:** Enhances penalties related to counterfeit drugs.
- Type of Impact:** Annual State expenditure and revenue increases; General Fund.
- Agencies Affected:** Department of Corrections; Department of Law and Public Safety; the Judiciary; Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditure Increase		Indeterminate	
State Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) finds that the bill will result in indeterminate annual State expenditure increases by creating new offenses and making it a crime of the second, third, or fourth degree, depending on quantity, to knowingly possess, sell, dispense, give, receive, or administer counterfeit, adulterated, or misbranded drugs or medical equipment. The new offenses would result in higher costs for the Department of Corrections (DOC) because a crime of the second degree comes with the presumption of incarceration. There could also be increased costs to the Department of Law and Public Safety (LPS) and the Judiciary for prosecuting and trying additional cases.
- The OLS estimates that the bill will also increase annual State revenue collections by an indeterminate amount from the imposition of increased criminal fines by the courts as well as the mandatory civil fines imposed under this bill. The OLS notes that these fines often go unpaid because of the financial constraints of those convicted.
- The Department of the Treasury is required to establish and maintain a current list of all persons and entities that are subject to the restrictions established by the bill based on a conviction of an offense in violation of the provisions of the bill.

BILL DESCRIPTION

This bill enhances penalties related to counterfeit drugs. Specifically, the bill establishes penalties for knowingly creating, distributing, dispensing, administering, installing, implanting, possessing, or having under one's control with intent to distribute a counterfeit drug or medical device, adulterated drug or medical device, or misbranded drug or medical device.

A person who violates the provisions of the bill: (1) in an amount of four or fewer dosage units; or one container or labeling of a counterfeit drug, adulterated drug, or misbranded drug is guilty of a crime of the fourth degree; (2) in an amount of at least five but fewer than 100 dosage units; at least two but fewer than five containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or one counterfeit medical device, adulterated medical device, or misbranded medical device is guilty of a crime of the third degree; and (3) in an amount of 100 or more dosage units; five or more containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or two or more counterfeit medical devices, adulterated medical devices, or misbranded medical devices is guilty of a crime of the second degree.

Upon conviction for a violation of the bill, the CDS registration of the pharmacist or other health care professional is to be revoked for a period of not less than five years and the person's certification or license is to be revoked, based solely on the conviction, for a period of time to be determined by the applicable licensing board.

Finally, the State Treasurer is required to establish and maintain a current list of all persons and entities that are subject to the bill's restrictions based on a conviction of an offense in violation of the provisions of the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that the bill will result in indeterminate annual State expenditure and revenue increases by creating new offenses and making it a crime of the second, third, or fourth degree, depending on quantity, to knowingly possess, sell, dispense, give, receive, or administer counterfeit, adulterated or misbranded drugs or medical equipment. The new offenses would result in higher costs for the DOC because a crime of the second degree comes with the presumption of incarceration. There could also be increased costs to the LPS and the Judiciary for prosecuting and trying additional cases. However, The OLS has insufficient data to serve as a basis for projecting the frequency of violations subject to sanctions under the bill.

Expenditure Increases: The OLS estimates that the bill's provisions will produce indeterminate annual expenditure increases to the DOC to incarcerate violators of the new offenses and possibly to the LPS and the Judiciary from the additional workload created, specifically, when persons are charged with crimes of the second degree.

This bill creates new offenses which are crimes of either the second, third, or fourth degree. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both. This penalty upgrade will increase the workload of the DOC as there

is a presumption of incarceration for persons convicted of a crime of the second degree which does not apply to persons convicted of a crime of the third or fourth degree.

The OLS cannot project the number of future prosecutions, trials, and incarcerations related to the crimes established by the bill. According to information obtained from the DOC, the average annual per capita cost to house an inmate in a State prison facility during FY 2019 totals \$50,191. However, the OLS notes that because the DOC is currently experiencing a reduction in the State sentenced prison population, the department should be able to house these additional inmates within its current institutional facilities, incurring a much lower marginal cost of \$8.60 per day or \$3,139 annually per inmate, for food, wages, and clothing.

Finally, the bill requires the Department of the Treasury to maintain a list of all persons and entities which may be subject to the restrictions in the bill. The OLS estimates that there may be an additional, albeit marginal, workload created by the new provision.

Revenue Increases: Additional indeterminate annual State revenue may accrue from fines and penalty payments from convicted violators of the new statutory provisions. The civil fines imposed under this bill of not less than \$1,000 or more than \$10,000 for each violation is required to be deposited in the General Fund. These fines would be in addition to the penalty already imposed under the Drug Enforcement and Demand Reduction Act. The OLS cannot determine the number of convictions of the bill's newly created crime and, by extension, the total of any subsequent fines or penalty assessment collections. The OLS additionally notes that due to financial constraints, many fines and penalties go unpaid by those persons convicted of crimes.

Section: Law and Public Safety

*Analyst: Kristin Brunner Santos
Senior Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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

SENATE, No. 3471

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 14, 2019

Sponsored by:

Senator BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Senators Lagana and A.R.Bucco

SYNOPSIS

Enhances penalties related to counterfeit drugs.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/22/2019)

1 AN ACT concerning counterfeit drugs, amending P.L.1987, c.106,
2 and supplementing Title 45 of the Revised Statutes.

3

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

6

7 1. N.J.S.2C:35-11 is amended to read as follows

8 2C:35-11. Imitation controlled dangerous substances and
9 imitation pharmaceutical substances; distribution, possession,
10 manufacture, etc.; penalties.

11 a. It is unlawful for any person to distribute or to possess or
12 have under his control with intent to distribute any substance which
13 is not a controlled dangerous substance **[or]**, controlled substance
14 analog, or pharmaceutical substance:

15 (1) Upon the express or implied representation to the recipient
16 that the substance is a controlled dangerous substance **[or]**,
17 controlled substance analog, or pharmaceutical substance; or

18 (2) Upon the express or implied representation to the recipient
19 that the substance is of such nature, appearance, or effect that the
20 recipient will be able to distribute or use the substance as a
21 controlled dangerous substance **[or]**, controlled substance analog,
22 or pharmaceutical substance; or

23 (3) Under circumstances which would lead a reasonable person
24 to believe that the substance is a controlled dangerous substance
25 **[or]**, controlled substance analog, or pharmaceutical substance.

26 Any of the following shall constitute prima facie evidence of
27 such circumstances:

28 (a) The substance was packaged in a manner normally used for
29 the unlawful distribution of controlled dangerous substances **[or]**,
30 controlled substance analog, or pharmaceutical substance.

31 (b) The distribution or attempted distribution of the substance
32 was accompanied by an exchange of or demand for money or other
33 thing as consideration for the substance, and the value of the
34 consideration exceeded the reasonable value of the substance.

35 (c) The physical appearance of the substance is substantially the
36 same as that of a specific controlled dangerous substance **[or]**,
37 controlled substance analog, or pharmaceutical substance.

38 b. It is unlawful for any person to manufacture, compound,
39 encapsulate, package, or imprint any substance which is not a
40 controlled dangerous substance, controlled substance analog,
41 pharmaceutical substance, or any combination of such substances**[**,
42 other than a prescription drug,**]** with the purpose that it resemble or
43 duplicate the physical appearance of the finished form, package,
44 label, or imprint of a controlled dangerous substance **[or]**,
45 controlled substance analog, or pharmaceutical substance..

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 c. In any prosecution under this section, it shall not be a
2 defense that the defendant mistakenly believed a substance to be a
3 controlled dangerous substance **【or】**, controlled substance analog,
4 or pharmaceutical substance.

5 d. A violation of this section is a crime of the **【third】** second
6 degree, except that, notwithstanding the provisions of subsection b.
7 of N.J.S.2C:43-3, a fine of up to **【\$200,000.00】** \$250,000.00 may
8 be imposed.

9 e. The provisions of this section shall not be applicable to (1)
10 practitioners or agents, servants, and employees of practitioners
11 dispensing or administering **【noncontrolled】** pharmaceutical
12 substances to patients on behalf of practitioners in the normal
13 course of their business or professional practice; and (2) persons
14 who manufacture, process, package, distribute or sell
15 **【noncontrolled】** pharmaceutical substances to practitioners for use
16 as placebos in the normal course of their business, professional
17 practice or research or for use in Federal Food and Drug
18 Administration investigational new drug trials.

19 f. The Department of Law and Public Safety shall publish on
20 its Internet website a list of individuals convicted pursuant to this
21 section.

22 (cf: P.L.1997, c.181, s.7)

23

24 2. (New section) a. An individual who received his or her
25 professional certification or license pursuant to Title 45 of the
26 Revised Statutes shall have that certification or license revoked by
27 the corresponding board, specified in section 2 of P.L.1978, c.73
28 (C.45:1-15), following a conviction pursuant to N.J.S.2C:35-11, for
29 a period of time to be determined by that board.

30 b. Pursuant to the "Administrative Procedure Act," P.L.1968,
31 c.410 (C.52:14B-1 et seq.), a board, specified in section 2 of
32 P.L.1978, c.73 (C.45:1-15), may adopt rules and regulations to
33 effectuate the provisions of this act.

34

35 3. This act shall take effect on the 180th day after the date of
36 enactment.

37

38

39

STATEMENT

40

41 This bill enhances penalties related to counterfeit drugs. The bill
42 amends existing law, N.J.S.2C:35-11, which criminalizes the
43 distribution, possession, or manufacture of imitation controlled
44 dangerous substances by reclassifying the act as a crime in the
45 second degree resulting in a fine up to \$250,000.00 and providing
46 the same criminal penalties for the distribution, possession, or
47 manufacture of imitation pharmaceutical substances. Currently, this

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4

1 offense is classified as a crime in the third degree resulting in a fine
2 up to \$200,000.00 and applies only to controlled dangerous
3 substances. Additionally, the Department of Law and Public Safety
4 (department) is to publish on its Internet website a list of
5 individuals convicted under N.J.S.2C:35-11 for a period of time to
6 be determined by the department.

7 The bill provides that an individual who received his or her
8 professional certification or license pursuant to Title 45 of the
9 Revised Statutes is to have that certification or license revoked by
10 the corresponding board, specified in section 2 of P.L.1978, c.73
11 (C.45:1-15), following a conviction under N.J.S.2C:35-11, for a
12 period of time to be determined by that board.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 3471

STATE OF NEW JERSEY

DATED: JUNE 17, 2019

The Senate Health, Human Services and Senior Citizens Committee reports favorably a Senate committee substitute to Senate Bill No. 3471.

This substitute bill enhances penalties related to counterfeit drugs to make it a crime of the second degree for a person to knowingly possess, sell, dispense, give, receive, or administer a counterfeit drug, an adulterated drug, or a misbranded drug. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both. A person who violates the provisions of the substitute bill will also be subject to a civil fine of not less than \$1,000 or more than \$10,000 for each violation. The civil fines imposed and paid pursuant to this amended bill are to be deposited in the General Fund.

Additionally, the Department of Law and Public Safety is to publish on its Internet website a list of individuals convicted under the amended bill for a period of time to be determined by the department.

Any person convicted of an offense under the substitute bill will be ineligible, either directly or indirectly, to submit a bid, enter into any contract, or to conduct business with any board, agency, authority, department, commission, public corporation, or other body of this State, of this or one or more other states, or of one or more political subdivisions of this State. The substitute bill prohibits a person convicted of violating the provisions of the bill and any business, including any corporation, partnership, association or proprietorship in which the person is a principal, or with respect to which the individual owns, directly or indirectly, or controls five percent or more of the stock or other equity interest of such business, from conducting business with public entities in this State.

The substitute bill further provides that a person who received a professional certification or license pursuant to Title 45 of the Revised Statutes is to have that certification or license revoked by the corresponding board, specified in section 2 of P.L.1978, c.73 (C.45:1-15), following a conviction under the substitute bill, for a period of time to be determined by that board.

Under the substitute bill, the State Board of Pharmacy, in consultation with the Department of Law and Public Safety, is to publish on its Internet website a list of persons licensed by the board who have been convicted of a crime under the substitute bill, and adopt regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), listing those who have been convicted.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 3471**

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2019

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3471 (SCS), with committee amendments.

The substitute bill, as amended, enhances penalties related to counterfeit drugs. Specifically, the bill establishes penalties for knowingly creating, distributing, dispensing administering, installing, implanting, possessing, or having under one's control with intent to distribute a counterfeit drug or medical device, adulterated drug or medical device, or misbranded drug or medical device. The bill provides definitions for these terms.

A person who violates the provisions of the bill: (1) in an amount of four or fewer dosage units; or one container or labeling of a counterfeit drug, adulterated drug, or misbranded drug is guilty of a crime of the fourth degree; (2) in an amount of at least five but fewer than 100 dosage units; at least two but fewer than five containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or one counterfeit medical device, adulterated medical device, or misbranded medical device is guilty of a crime of the third degree; or (3) in an amount of 100 or more dosage units; five or more containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or two or more counterfeit medical devices, adulterated medical devices, or misbranded medical devices is guilty of a crime of the second degree. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

In addition to other penalties that may be imposed under the bill and any drug enforcement and demand reduction penalties imposed pursuant to N.J.S.2C:35-15, a violation of the bill is punishable by a penalty of between \$1,000 and \$10,000 for each violation.

Any pharmacist or other health care professional who is charged with violating the bill's provisions is required to promptly notify the applicable licensing board of the pending charge. The failure of a professional to provide the required notice will be grounds for

disciplinary action by the applicable licensing board. Upon conviction for a violation of the bill, the CDS registration of the pharmacist or other health care professional is to be revoked for a period of not less than five years and the person's certification or license is to be revoked, based solely on the conviction, for a period of time to be determined by the board.

The bill also prohibits a person convicted of violating the substitute bill's provisions and any business, including any corporation, partnership, association or proprietorship in which the person is a principal, or with respect to which the individual owns, directly or indirectly, or controls five percent or more of the stock or other equity interest of such business, from conducting business with public entities in this State.

Finally, the State Treasurer is required to establish and maintain a current list of all persons and entities that are subject to the restrictions based on a conviction of an offense in violation of the provisions of the bill.

As amended and reported, this bill is identical to Assembly Bill No. 5037 (2R), as also reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) provide that a person violates the provisions of the bill if the person knowingly creates, distributes, dispenses administers, installs, implants, possesses, or has under one's control with intent to distribute a counterfeit medical device, counterfeit drug, adulterated drug, misbranded drug, or counterfeit medical device.

(2) modify the penalty provisions to provide that a person who violates the bill in an amount of four or fewer dosage units; or one container or labeling of a counterfeit drug, adulterated drug, or misbranded drug is guilty of a crime of the fourth degree; in an amount of at least five but fewer than 100 dosage units; at least two but fewer than five containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or one counterfeit medical device is guilty of a crime of the third degree; or in an amount of 100 or more dosage units; five or more containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or two or more counterfeit medical devices is guilty of a crime of the second degree;

(3) provide definitions for the terms included in the amendments; and

(4) make other clarifying and technical amendments to the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill will result in indeterminate annual State expenditure increases by creating a new offense and making it a crime of the second degree to knowingly possess, sell, dispense, give, receive, or administer a counterfeit, adulterated, or misbranded drug. Currently, a person who commits a similar offense would be guilty of a crime of the third degree. The new

offense would result in higher costs for the Department of Corrections (DOC) because a crime of the second degree comes with the presumption of incarceration. There could also be increased costs to the Department of Law and Public Safety (LPS) and the Judiciary for prosecuting and trying additional cases.

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 3471
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: OCTOBER 30, 2019

SUMMARY

Synopsis: Enhances penalties related to counterfeit drugs.

Type of Impact: Annual State expenditure and revenue increases; General Fund.

Agencies Affected: Department of Corrections; Department of Law and Public Safety; the Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditure Increase		Indeterminate	
State Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) finds that the bill will result in indeterminate annual State expenditure increases by creating a new offense and making it a crime of the second degree to knowingly possess, sell, dispense, give, receive, or administer a counterfeit, adulterated, or misbranded drug. Currently, a person who commits a similar offense would be guilty of a crime of the third degree. The new offense would result in higher costs for the Department of Corrections (DOC) because a crime of the second degree comes with the presumption of incarceration. There could also be increased costs to the Department of Law and Public Safety (LPS) and the Judiciary for prosecuting and trying additional cases.
- The OLS estimates that the bill will also increase annual State revenue collections by an indeterminate amount from the imposition of increased criminal fines by the courts as well as the mandatory civil fines found under this bill. A crime of the second degree is punishable by a term of imprisonment of 5 to 10 years, a fine of up to \$150,000, or both. This compares to a term of imprisonment of 3 to 5 years, a fine of up to \$15,000, or both for a third degree offense. The bill also requires that the courts impose additional penalties of not less than \$1,000 or more than \$10,000 for each violation and requires that the penalties are to be deposited in the General Fund. The OLS notes that these fines often go unpaid because of the financial constraints of those convicted.

BILL DESCRIPTION

This bill enhances penalties related to counterfeit drugs, making it a crime of the second degree for a person to knowingly possess, sell, dispense, give, receive, or administer a counterfeit drug, an adulterated drug, or a misbranded drug. A crime of the second degree is punishable by a term of imprisonment of 5 to 10 years, a fine of up to \$150,000, or both. A person who violates the bill's provisions is also subject to a civil fine of not less than \$1,000 or more than \$10,000 for each violation. The civil fines imposed and paid pursuant to this bill are to be deposited in the General Fund.

Additionally, the LPS is to publish on its Internet website a list of individuals convicted under the bill for a period of time to be determined by the LPS. The bill also prohibits any individual convicted under this bill from conducting business with public entities in this State. The bill also provides that a person who received his or her professional certification or license pursuant to Title 45 of the Revised Statutes is to have that certification or license revoked following a conviction under the bill for a period of time to be determined by that board. The State Board of Pharmacy, in consultation with the LPS, is to publish on its Internet website a list of persons licensed by the board who have been convicted of a crime under the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services finds that the bill will result in indeterminate annual State expenditure and revenue increases by making it a crime of the second degree to knowingly possess, sell, dispense, give, receive, or administer a counterfeit, adulterated, or misbranded drug. However, The OLS has insufficient data to serve as a basis for projecting the frequency of violations subject to sanctions under the bill.

Expenditure Increases: The OLS estimates that the bill's provisions will produce indeterminate annual expenditure increases to the DOC to incarcerate violators of the new offense and to the LPS and the Judiciary from the additional workload created when persons are charged with crimes of the second degree compared to crimes of the third degree.

Currently, persons who commit a similar offense would be guilty of a crime of the third degree. This bill creates a new offense of knowingly possessing, selling, dispensing, giving, receiving, or administering a counterfeit drug, an adulterated drug, or a misbranded drug, which is a crime of the second degree. A crime of the second degree is punishable by a term of imprisonment of 5 to 10 years, a fine of up to \$150,000, or both. This penalty upgrade will increase the workload of the DOC as there is a presumption of incarceration for persons convicted of a crime of the second degree which does not apply to persons convicted of a crime of the third degree.

The OLS cannot project the number of future prosecutions, trials, and incarcerations related to the crime established by the bill. According to information obtained from the DOC, the average annual per capita cost to house an inmate in a State prison facility during FY 2019 totals \$50,191. However, the OLS notes that because the DOC is currently experiencing a reduction in the State sentenced prison population, the department should be able to house these additional inmates

within its current institutional facilities, incurring a much lower marginal cost of \$8.60 per day or \$3,139 annually per inmate, for food, wages, and clothing.

Finally, the bill requires both the LPS and the State Board of Pharmacy in the Division of Consumer Affairs to publish on their Internet websites a list of persons licensed by the board who have been convicted of violating the provisions of this bill. The OLS estimates that there may be additional, albeit marginal, workload created by the new provision.

Revenue Increases: Additional indeterminate annual State revenue may accrue from fines and penalty payments from convicted violators of the new statutory provisions. The civil fines imposed under this bill of not less than \$1,000 or more than \$10,000 for each violation is required to be deposited in the General Fund. These fines would be in addition to the penalty already imposed under the Drug Enforcement and Demand Reduction Act. The OLS cannot determine the number of convictions under the bill's newly created crime and, by extension, the total of any subsequent fine or penalty assessment collections. The OLS additionally notes that due to financial constraints, many fines and penalties go unpaid by those persons convicted of crimes.

Section: Law and Public Safety
Analyst: Kristin Brunner Santos
Senior Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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

LEGISLATIVE FISCAL ESTIMATE
 [First Reprint]
 SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 3471
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: DECEMBER 18, 2019

SUMMARY

Synopsis: Enhances penalties related to counterfeit drugs.

Type of Impact: Annual State expenditure and revenue increases; General Fund.

Agencies Affected: Department of Corrections; Department of Law and Public Safety; the Judiciary; Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditure Increase		Indeterminate	
State Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) finds that the bill will result in indeterminate annual State expenditure increases by creating new offenses and making it a crime of the second, third, or fourth degree, depending on quantity, to knowingly create, distribute, dispense, install, implant, possess, or have under one’s control with intent to distribute a counterfeit or adulterated drug or medical device or misbranded drug. The new offenses would result in higher costs for the Department of Corrections (DOC) because a crime of the second degree comes with the presumption of incarceration. There could also be increased costs to the Department of Law and Public Safety (LPS) and the Judiciary for prosecuting and trying additional cases.
- The OLS estimates that the bill will also increase annual State revenue collections by an indeterminate amount from the imposition of increased criminal fines by the courts as well as the mandatory civil fines imposed under this bill. The OLS notes that these fines often go unpaid because of the financial constraints of those convicted.
- The Department of the Treasury is required to establish and maintain a current list of all persons and entities that are subject to the restrictions established by the bill based on a conviction of an offense in violation of the provisions of the bill.



BILL DESCRIPTION

This bill enhances penalties related to counterfeit drugs. Specifically, the bill establishes penalties for knowingly creating, distributing, dispensing, administering, installing, implanting, possessing, or having under one's control with intent to distribute a counterfeit drug or medical device, adulterated drug or medical device, or misbranded drug or medical device.

A person who violates the provisions of the bill: (1) in an amount of four or fewer dosage units; or one container or labeling of a counterfeit drug, adulterated drug, or misbranded drug is guilty of a crime of the fourth degree; (2) in an amount of at least five but fewer than 100 dosage units; at least two but fewer than five containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or one counterfeit medical device, adulterated medical device, or misbranded medical device is guilty of a crime of the third degree; and (3) in an amount of 100 or more dosage units; five or more containers or labelings of a counterfeit drug, adulterated drug, or misbranded drug; or two or more counterfeit medical devices, adulterated medical devices, or misbranded medical devices is guilty of a crime of the second degree.

Upon conviction for a violation of the bill, the CDS registration of the pharmacist or other health care professional is to be revoked for a period of not less than five years and the person's certification or license is to be revoked, based solely on the conviction, for a period of time to be determined by the applicable licensing board.

Finally, the State Treasurer is required to establish and maintain a current list of all persons and entities that are subject to the bill's restrictions based on a conviction of an offense in violation of the provisions of the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that the bill will result in indeterminate annual State expenditure and revenue increases by creating new offenses and making it a crime of the second, third, or fourth degree, depending on quantity, to knowingly create, distribute, dispense, install, implant, possess, or have under one's control with intent to distribute a counterfeit or adulterated drug or medical device or misbranded drug. The new offenses would result in higher costs for the DOC because a crime of the second degree comes with the presumption of incarceration. There could also be increased costs to the LPS and the Judiciary for prosecuting and trying additional cases. However, The OLS has insufficient data to serve as a basis for projecting the frequency of violations subject to sanctions under the bill.

Expenditure Increases: The OLS estimates that the bill's provisions will produce indeterminate annual expenditure increases to the DOC to incarcerate violators of the new offenses and possibly to the LPS and the Judiciary from the additional workload created, specifically, when persons are charged with crimes of the second degree.

This bill creates new offenses which are crimes of either the second, third, or fourth degree. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of

up to \$150,000, or both. This penalty upgrade will increase the workload of the DOC as there is a presumption of incarceration for persons convicted of a crime of the second degree which does not apply to persons convicted of a crime of the third or fourth degree.

The OLS cannot project the number of future prosecutions, trials, and incarcerations related to the crimes established by the bill. According to information obtained from the DOC, the average annual per capita cost to house an inmate in a State prison facility during FY 2019 totals \$50,191. However, the OLS notes that because the DOC is currently experiencing a reduction in the State sentenced prison population, the department should be able to house these additional inmates within its current institutional facilities, incurring a much lower marginal cost of \$8.60 per day or \$3,139 annually per inmate, for food, wages, and clothing.

Finally, the bill requires the Department of the Treasury to maintain a list of all persons and entities which may be subject to the restrictions in the bill. The OLS estimates that there may be an additional, albeit marginal, workload created by the new provision.

Revenue Increases: Additional indeterminate annual State revenue may accrue from fines and penalty payments from convicted violators of the new statutory provisions. The civil fines imposed under this bill of not less than \$1,000 or more than \$10,000 for each violation is required to be deposited in the General Fund. These fines would be in addition to the penalty already imposed under the Drug Enforcement and Demand Reduction Act. The OLS cannot determine the number of convictions of the bill's newly created crime and, by extension, the total of any subsequent fines or penalty assessment collections. The OLS additionally notes that due to financial constraints, many fines and penalties go unpaid by those persons convicted of crimes.

Section: Law and Public Safety
Analyst: Kristin Brunner Santos
Senior Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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

Governor Murphy Takes Action on Legislation

01/13/2020

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

A268 (Kean, Egan, Holley/Singer, Gopal) - "P.I.C.K. Awareness Act"; authorizes issuance of special support recovery license plates.

A790 (Andrzejczak, Land, Mosquera, Mukherji, Downey, Zwicker, Mazzeo/Connors, Singleton) - "Combat to College Act"; grants priority course registration to military service members and veterans attending public institutions of higher education.

A791 (Andrzejczak, Land, Mosquera, Danielsen, Mukherji, Downey, Zwicker/Van Drew, Brown) - Requires institution of higher education to award appropriate credit for student's military service.

A1212 (McKeon, Gusciora, Vainieri Huttie/Sweeney, Smith, Bateman, Greenstein) - Clarifies intent of P.L.2007, c.340 regarding NJ's required participation in Regional Greenhouse Gas Initiative.

A1305 (Greenwald/Rice) - Renames Mountainview Youth Correctional Facility as "William H. Fauver Youth Correctional Facility."

A1576 (Conaway, Giblin/Vitale) - Requires certain health care facilities to provide, and employees to receive, annual influenza vaccination.

A1582 (Conaway, Moriarty, Mosquera, Benson, Pinkin, Giblin, Quijano/Weinberg, Ruiz) - Establishes "Dietetics and Nutrition Licensing Act".

A1991 (Sumter, Munoz, Mukherji/Singer, Gordon) - Requires students at institutions of higher education to receive immunization for meningitis in accordance with recommendations of Advisory Committee on Immunization Practices.

A3101 (Egan Jones, Benson, Land/Singleton) - Increases minimum annual amounts for appropriation for certain arts, historical heritage, and tourism purposes from hotel and motel occupancy fee revenues.

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A3160 (Lampitt, Giblin, Murphy/Beach) - Permits cosmetology and hairstyling school clinics to charge certain fees for services rendered to general public.

A3832 (Mukherji, McKnight, Chiaravalloti/Cryan, Stack) - Authorizes municipal tax levy through public question for certain purposes; clarifies ability of local government entities to issue non-recourse bonds; appropriates \$100,000.

A4493 (Pinkin, Conaway, Vainieri Huttie/Vitale) - Authorizes expedited partner therapy, under which sexual partners or patients diagnosed with sexually transmitted disease are treated without prior clinical examination.

A4608 (Zwicker, Downey/Weinberg, Kean) - " Applied Behavior Analyst Licensing Act."

A4710 (Lampitt, Zwicker, Vainieri Huttie/Beach,Turner) - "Strengthening Gifted and Talented Education Act"; establishes school district responsibilities in educating gifted and talented students.

A5037 (Pintor Marin, Speight, Vainieri Huttie/Andrzejczak, Greenstein) - Enhances penalties related to counterfeit drugs.

A5091 (McKeon, Vainieri Huttie, Pinkin/Pou, Singleton) - Establishes "Safeguarding Against Financial Exploitation Act."

A5263 (Tully, Armato/Corrado) - Requires four-year public institution of higher education to award college credits to firefighters for certain courses completed at county fire academies.

A5277 (DeAngelo, Houghtaling/Greenstein) - Eliminates term limits for members of State Board of Examiners of Master Plumbers and State Board of Examiners of Heating, Ventilating, Air Conditioning and Refrigeration Contractors.

A5624 (Pintor Marin, Munoz, Lampitt/Weinberg, Corrado) - Requires that State employee serve as Equal Employment Opportunity and Affirmative Action officer for gubernatorial transitions.

A5625 (Pintor Marin, Munoz, Lampitt/Weinberg, Corrado) - Requires payment of expenses related to background investigations for certain gubernatorial transition positions.

A5628 (Pintor Marin, Munoz, McKnight/Weinberg, Corrado) - Requires Civil Service Commission establish standardize recordkeeping and retention requirements with regard to unclassified State employees.

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A5631 (Pintor Marin, Munoz, Pinkin/Weinberg, Corrado) - Specifies certain requirements for State agency review of complaint of workplace discrimination.

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A5632 (Pintor Marin, Munoz, Reynolds-Jackson/Weinberg) - Requires certain public employees receive additional training to manage harassment or discrimination complaints.

A5917 (Chiaravalloti, McKnight/Cunningham, Weinberg) - Expands DOH oversight of hospital finances.

A6007 (McKeon/Pou) - Requires insurers and insurance groups to submit corporate governance annual disclosure to DOBI Commissioner.

S463 (Singer, Greenstein/Dancer, Calabrese, DeAngelo) - Provides for voluntary contributions by taxpayers on gross income tax returns for Meals on Wheels.

S538 (Oroho, Stack/Wirths, Vaineri Huttie, Bucco) - Allows long term tax exemption extension for certain low-income housing.

S775 (Cunningham, Sacco/Sumter, Caride, Vainieri Huttie) - Establishes Tuition Aid Grant Study Commission to examine New Jersey's Tuition Aid Grant Program and make recommendations regarding improvements to program.

S778 (Cunningham, Kean/Quijano, Jasey, Pintor Marin) - Establishes Campus Sexual Assault Commission.

S1493 (Stack, Singleton/Quijano, Chaparro, Timberlake) - Prohibits landlords from requiring residential tenants to pay rent and other related charges through electronic funds transfer; requires landlords to provide receipts for cash payments.

S1508 (Turner, Singleton/Reynolds-Jackson, Sumter, Wimberly) - Eliminates motor vehicle surcharges following retirement of bonds and debts tied to surcharges.

S1834 (Ruiz, Cunningham/Quijano, Murphy) - Requires each public institution of higher education to post its budget on the institution's website.

S1953 (Oroho, Cruz-Perez/Space, Andrzejcack, Wirths) - Directs Dept. of Agriculture to authorize and advise food hubs.

S1966 (Sweeney, Singleton/Taliaferro) - Increases death benefit of active member of PFRS and SPRS to 50 percent of final compensation for surviving child or children.

S2527 (Ruiz, Turner/Lampitt, Quijano, Timberlake) - Requires Department of Agriculture to promote school meal programs.

S2533 (Greenstein, Cruz-Perez/Vainieri Huttie, Lopez, Timberlake) - Requires Office of Victim-Witness Advocacy to provide services to certain inmates.

S2898 (Madden, Sarlo/Murphy, Mosquera, Vainieri Huttie) - Establishes "New Jersey Fire and EMS Crisis Intervention Services" telephone hotline; provides funding for hotline through fire inspection fees and penalties.

S2980 (Ruiz/Lampitt, McKnight) - Provides that school district may not condition student enrollment in district on fact that MVC does not have name or address of parent or guardian on file.

S2982 (Ruiz/Lampitt, Mukherji, Lopez) - Clarifies that child may not be excluded from public school based on membership in protected category under "Law Against Discrimination" or immigration status.

S2998 (Ruiz/Freiman, Downey) - Requires creditors to make certain disclosures regarding collateral protection insurance to consumer debtors.

S3064 (Ruiz, Singleton/Armato, Conaway, Swain) - Establishes task force to develop State-wide plan to diversify apprenticeships.

S3066 (Ruiz, Singleton/Lampitt, Mukherji, Benson) - Creates five year High-Growth Industry Regional Apprenticeship Development Grant Pilot Program.

S3118 (Ruiz/Speight, Munoz, Tucker) - Establishes public awareness campaign to promote early conversations about advance care planning and end-of-life care.

S3124 (Stack/Mukherji) - Requires landlords to allow tenants to pay rent up to three business days after eviction order or lockout is executed and accept rent payments by any means.

S3206 (Pou, Cruz-Perez/Lopez, McKeon, Murphy) - Establishes "Unbanked and Underbanked Consumers Study Commission."

S3215 (Greenstein, Singleton/Zwicker, Mukherji, Swain) - Requires State to use 20-year time horizon and most recent Intergovernmental Panel on Climate Change Assessment Report when calculating global warming potential to measure global warming impact of greenhouse gases.

S3246 (Sarlo, Singleton, Oroho, Bucco/Benson, Bucco, Freiman) - Establishes elective pass-through entity business alternative income tax and allows corresponding refundable gross income tax and corporation business tax credit.

S3327 (Ruiz, Cruz-Perez/Lopez, Timberlake) - Establishes Commission on Latino and Hispanic Heritage in DOE.

S3348 (Weinberg/Vainieri Huttle, McKnight) - Requires home health agencies and specialty pharmacies providing services related to bleeding episodes associated with hemophilia to comply with certain minimum practice standards.

S3528 (Scutari, Codey/Vainieri Huttle, Quijano, Kennedy) - Establishes process to obtain judgement of adoption for civil union partner or spouse of natural or legal parent of child when that person is named as parent on child's birth certificate.

S3574 (Scutari, Kean, Cryan/Carter, Kennedy, Freiman) - Requires NJT to conduct feasibility study on restoring one-seat ride to Manhattan on Raritan Valley Line.

Governor Murphy conditionally vetoed the following bills:

A2431 (Benson, Jimenez, DeCroce, Eustace/Weinberg, Kean) – Requires health insurers to provide plans that limit patient cost-sharing concerning certain prescription drug coverage.

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A4978 (Timberlake, Zwicker, Vainieri Huttle/Greenstein, Cryan) – Prohibits online education services from using and disclosing certain information, engaging in targeted advertising, and requires deletion of certain information in certain circumstances.

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S3920 (Pou/Wimberly, Sumter) – Concerns provision of energy to certain manufacturing facilities by providing exemptions to certain energy related taxes.

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Governor Murphy absolute vetoed the following bill:

S4139 (Greenstein/Benson) - Makes Fiscal Year 2020 supplemental appropriation of \$250,000 to Rutgers University - New Brunswick for School of Dental Medicine - Special Care Treatment Center.

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