

52:4D-4

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2003 **CHAPTER:** 25
NJSA: 52:4D-4 (Tobacco product manufacturers)
BILL NO: A3079 (Substituted for S2141)

SPONSOR(S): Weinberg and Sarlo

DATE INTRODUCED: December 9, 2002

COMMITTEE: **ASSEMBLY:** Appropriations

SENATE: ----

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 12, 2002

SENATE: January 23, 2003

DATE OF APPROVAL: February 27, 2003

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)
(Amendments during passage denoted by superscript numbers)

A3079

[SPONSORS STATEMENT:](#) (Begins on page 9 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

[LEGISLATIVE FISCAL NOTE:](#) [Yes](#)

S2141

[SPONSORS STATEMENT:](#) (Begins on page 9 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A3079

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

[LEGISLATIVE FISCAL NOTE:](#) [Yes](#)

Identical to Fiscal Note to A3079

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

P.L. 2003, CHAPTER 25, *approved February 27, 2003*
Assembly, No. 3079 (*First Reprint*)

1 **AN ACT** concerning certain tobacco product manufacturers and
2 supplementing Title 52 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. The Legislature finds and declares that facilitating the diligent
8 enforcement of P.L.1999, c.148 (C.52:4D-1 et seq.), the so-called
9 "Model Statute" contemplated by the "Master Settlement Agreement"
10 which settled tobacco-related litigation between the settling states,
11 including New Jersey, and leading United States tobacco product
12 manufacturers, is beneficial to the public interest. The Model Statute
13 requires tobacco product manufacturers that are not participants in the
14 Master Settlement Agreement to pay into a qualified escrow fund to
15 guarantee a source of compensation to pay any future judgment or
16 settlement that may be reached with the State. Overall tobacco
17 industry compliance with the provisions of the Model Statute will be
18 encouraged by requiring cigarette distributors to stamp and distribute
19 only cigarettes of tobacco product manufacturers that are in
20 compliance with the act and by requiring holders of certificates of
21 authority under P.L.1990, c.39 (C.54:40B-1 et seq.) and other persons
22 that collect or pay the tax on a tobacco product as defined in section
23 2 of P.L.1990, c.39 (C.54:40B-2) that is also defined as a cigarette
24 under section 2 of P.L.1999, c.148 (C.52:4D-2) to distribute only the
25 tobacco products of tobacco product manufacturers that are in
26 compliance with the act. The establishment of additional procedural
27 enhancements and penalties related to these requirements will aid the
28 State in its continuing diligent enforcement of this law and thereby
29 safeguard the Master Settlement Agreement and the effectuation of the
30 goals of the tobacco litigation settlement, which in turn will have a
31 salutary effect on the fiscal soundness of the State and the public
32 health.

33

34 2. As used in this act, unless the context otherwise requires, the
35 following words and terms shall have the following meanings:

36 "Brand family" means all styles of cigarettes sold under the same
37 trademark and differentiated from one another by means of additional
38 modifiers or descriptors, including, but not limited to, "menthol,"

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted December 9, 2002.

1 "lights," "kings," and "100's" and includes any similar use of a brand
2 name, alone or in conjunction with any other word, trademark, logo,
3 symbol, motto, selling message, recognizable pattern of colors, or any
4 other indicia of product identification identical or similar to, or
5 identifiable with, a previously known brand of cigarettes.

6 "Cigarette" has the same meaning as that term is defined in section
7 2 of P.L.1999, c.148 (C.52:4D-2).

8 "Director" means the Director of the Division of Taxation in the
9 Department of the Treasury.

10 "Licensed distributor" means a person that is authorized pursuant
11 to P.L.1948, c.65 (C.54:40A-1 et seq.), to affix tax stamps or impress
12 or attach metered impressions of tax to packages or other containers
13 of cigarettes or any person that is required to pay the excise tax
14 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.).

15 "Master Settlement Agreement" means the settlement agreement,
16 and related documents, entered into on November 23, 1998 by the
17 State and leading United States tobacco product manufacturers.

18 "Non-Participating Manufacturer" means any tobacco product
19 manufacturer that is not a participating manufacturer.

20 "Participating Manufacturer" has the meaning given that term in
21 Section II(jj) of the Master Settlement Agreement and all amendments
22 thereto.

23 "Qualified escrow fund" has the same meaning as prescribed for
24 that term under section 2 of P.L.1999, c.148 (C.52:4D-2).

25 "Tobacco product manufacturer" has the same meaning as
26 prescribed for that term under section 2 of P.L.1999, c.148
27 (C.52:4D-2).

28 "Units sold" has the same meaning as prescribed for that term under
29 section 2 of P.L.1999, c.148 (C.52:4D-2).

30

31 3. a. Every tobacco product manufacturer whose cigarettes are
32 sold in this State, whether directly or through a distributor, retailer or
33 similar intermediary or intermediaries, annually shall execute and
34 deliver in the manner prescribed by the Attorney General a
35 certification to the director and Attorney General no later than April
36 30, certifying under penalty of perjury that, as of the date of such
37 certification, such tobacco product manufacturer either is a
38 participating manufacturer or is in full compliance with the
39 requirements of P.L.1999, c.148 (C.52:4D-1 et seq.).

40 (1) A participating manufacturer shall include in its certification a
41 complete list of its brand families. The participating manufacturer
42 shall update such list no later than 30 days prior to any addition or
43 modification to brand families by executing and delivering a
44 supplemental certification to the Attorney General.

45 (2) A non-participating manufacturer shall include in its
46 certification a complete list of all of its brand families: (a) separately

1 listing brand families of cigarettes and the number of units sold for
2 each brand family that were sold in the State during the preceding
3 calendar year; (b) all of its brand families that have been sold in the
4 State at any time during the current calendar year; (c) indicating, by an
5 asterisk, any brand family sold in the State during the preceding
6 calendar year that is no longer being sold in the State as of the date of
7 the certification; and (d) identifying by name and address any other
8 manufacturer of those brand families in the preceding calendar year.
9 The non-participating manufacturer shall update the list no later than
10 30 days prior to any addition or modification to its brand families by
11 executing and delivering a supplemental certification to the Attorney
12 General.

13 (3) In the case of a non-participating manufacturer, the certification
14 shall further certify: (a) that the non-participating manufacturer is
15 registered to do business in the State or has appointed a resident agent
16 for service of process and provided notice thereof as required by
17 subsection b. of section 6 of this act; (b) that the non-participating
18 manufacturer has (i) established and continues to maintain a qualified
19 escrow fund; and (ii) executed a qualified escrow agreement that has
20 been reviewed and approved by the Attorney General and that governs
21 the qualified escrow fund; (c) that the non-participating manufacturer
22 is in full compliance with P.L.1999, c.148 (C.52:4D-1 et seq.), and
23 this act, and any regulations promulgated pursuant thereto; (d) (i) the
24 name, address and telephone number of the financial institution at
25 which the non-participating manufacturer has established the qualified
26 escrow fund required pursuant to section 3 of P.L.1999, c.148
27 (C.52:4D-3), and all regulations promulgated thereto; (ii) the account
28 number of the qualified escrow fund and sub-account number for the
29 State of New Jersey; (iii) the amount the non-participating
30 manufacturer placed in the fund for units sold in the State during the
31 preceding calendar year, the date and amount of each of those
32 deposits, and such evidence or verification as may be deemed
33 necessary by the Attorney General to confirm the foregoing; and (iv)
34 the amounts of and dates of any withdrawal or transfer of funds the
35 non-participating manufacturer made at any time from the fund or
36 from any other qualified escrow fund into which it has ever made
37 escrow payments pursuant to section 3 of P.L.1999, c.148
38 (C.52:4D-3) and all regulations promulgated thereto.

39 b. A tobacco product manufacturer shall not include a brand family
40 in its certification unless:

41 (1) in the case of a participating manufacturer, that participating
42 manufacturer affirms that the brand family is to be deemed to be
43 cigarettes of the participating manufacturer for purposes of calculating
44 its payments under the Master Settlement Agreement for the relevant
45 year, in the volume and shares determined pursuant to the Master
46 Settlement Agreement; and

1 (2) in the case of a non-participating manufacturer, that
2 non-participating manufacturer affirms that the brand family is to be
3 deemed to be cigarettes of the non-participating manufacturer for
4 purposes of calculating its units sold pursuant to section 3 of
5 P.L.1999, c.148 (C.52:4D-3).

6 Nothing in this section shall be construed as limiting or otherwise
7 affecting the State's right to maintain that a brand family constitutes
8 cigarettes of a different tobacco product manufacturer for purposes of
9 calculating payments under the Master Settlement Agreement or for
10 purposes of P.L.1999, c.148 (C.52:4D-1 et seq.).

11 c. A tobacco product manufacturer shall maintain all invoices and
12 documentation of sales and any other information relied upon for the
13 certification for a period of five years, unless otherwise required by
14 law to maintain them for a longer period of time.

15

16 4. a. Not later than 60 days after enactment of this act, the
17 Attorney General shall develop and publish through the Internet a
18 directory listing all tobacco product manufacturers that have provided
19 current and accurate certifications conforming to the requirements of
20 subsection a. of section 3 of this act in a timely manner, pursuant to
21 the initial schedule provided in section 9 of this act, and all brand
22 families that are listed in those certifications, except as noted below.

23 b. The Attorney General shall not include or retain in the directory
24 the name or brand families of any non-participating manufacturer that
25 fails to provide the required certification or whose certification the
26 Attorney General determines is not in compliance with paragraph (2)
27 or paragraph (3) of subsection a. of section 3 of this act, unless the
28 Attorney General has determined that the violation has been cured to
29 the satisfaction of the Attorney General.

30 c. The Attorney General shall not include or retain a tobacco
31 product manufacturer or brand family in the directory if the Attorney
32 General concludes that (1) in the case of a non-participating
33 manufacturer all escrow payments required pursuant to section 3 of
34 P.L.1999, c.148 (C.52:4D-3), for any period for any brand family,
35 whether or not listed by that non-participating manufacturer, have not
36 been fully paid into a qualified escrow fund governed by a qualified
37 escrow agreement that has been approved by the Attorney General, or
38 (2) all outstanding final judgments, including interest thereon, for
39 violations of P.L.1999, c.148 (C.52:4D-1 et seq.) have not been fully
40 satisfied for that brand family and that manufacturer.

41 d. The Attorney General shall ¹[within the Attorney General's
42 discretion take reasonable steps to]¹ update the directory ¹as
43 necessary¹ in order to correct mistakes and to add or remove a
44 tobacco product manufacturer or brand families to keep the directory
45 in conformity with the requirements of this act.

1 5. It shall be unlawful for any person: a. to affix a tax stamp or
2 impress or attach a metered impression of tax to a package or other
3 container of cigarettes of a tobacco product manufacturer or brand
4 family not included in the directory established pursuant to section 4
5 of this act, or, b. to sell, offer or possess for sale in this State,
6 cigarettes of a tobacco product manufacturer or brand family not
7 included in the directory established pursuant to this act.

8
9 6. a. Any non-resident or foreign non-participating manufacturer
10 that has not registered to do business in this State as a foreign
11 corporation or business entity shall, as a condition precedent to having
12 its brand families listed or retained in the directory established
13 pursuant to section 4 of this act, appoint and continually engage
14 without interruption the services of an agent in New Jersey to act as
15 agent for the service of process on whom all process, and any action
16 or proceeding against it concerning or arising out of the enforcement
17 of the act and P.L.1999, c.148 (C.52:4D-1 et seq.), may be served in
18 any manner authorized by law. Such service shall constitute legal and
19 valid service of process on the non-participating manufacturer. The
20 non-participating manufacturer shall provide the name, address,
21 telephone number and proof of the appointment and availability of
22 such agent to the Attorney General.

23 b. A non-participating manufacturer shall provide notice to the
24 director and Attorney General not later than 30 calendar days prior to
25 termination of the authority of an agent and shall further provide proof
26 to the satisfaction of the Attorney General of the appointment of a new
27 agent no less than five calendar days prior to the termination of an
28 existing agent appointment. If an agent terminates an agency
29 appointment, the non-participating manufacturer shall notify the
30 director and Attorney General of that termination within five calendar
31 days and shall include proof to the satisfaction of the Attorney General
32 of the appointment of a new agent.

33 c. A non-participating manufacturer whose products are sold in this
34 State, without appointing or designating an agent as herein required
35 shall be deemed to have appointed the Secretary of State as that agent
36 and may be proceeded against in the courts of this State by service of
37 process upon the Secretary of State; provided however, that the
38 appointment of the Secretary of State as that agent shall not satisfy the
39 condition precedent to having its brand families listed or retained in
40 the directory established pursuant to section 4 of this act.

41
42 7. a. Within 20 days after the end of each calendar quarter, and
43 more frequently if so directed by the director, each licensed distributor
44 and each holder of a certificate of authority pursuant to section 6 of
45 P.L.1990, c.39 (C.54:40B-6) shall submit such information as the
46 director requires to facilitate compliance with this section, including,

1 but not limited to, a list by brand family of the total number of
2 cigarettes or in the case of roll your own, the equivalent stick count,
3 for which the licensed distributor affixed stamps or impressed or
4 attached metered impressions or for which the holder of the certificate
5 of authority otherwise paid the tax due for such cigarettes during the
6 previous calendar quarter. Each licensed distributor and holder of a
7 certificate of authority shall, for a period of five years, maintain, and
8 make available to the director and the Attorney General, all invoices
9 and documentation of sales of all cigarettes sold by the licensed
10 distributor or holder of a certificate of authority that were
11 manufactured by a non-participating manufacturer and any other
12 information relied upon in reporting to the director.

13 b. The director is authorized to disclose to the Attorney General
14 any information received under this act or requested by the Attorney
15 General for purposes of determining compliance with and enforcing
16 the provisions of this act. The director and Attorney General shall
17 share with each other the information received under this act, and may
18 share such information with other federal, State or local agencies only
19 for purposes of enforcement of this act, P.L.1999, c.148 (C.52:4D-1
20 et seq.), or the corresponding laws of other states.

21 c. The Attorney General may require at any time that a
22 non-participating manufacturer provide from the financial institution
23 in which the manufacturer has established a qualified escrow fund for
24 the purpose of compliance with P.L.1999, c.148 (C.52:4D-1 et seq.),
25 proof of the amount of money in the fund being held on behalf of the
26 State and the dates of deposits, and listing the amounts of all
27 withdrawals from the fund and the dates thereof.

28 d. In addition to the information required to be submitted pursuant
29 to this section, the director or Attorney General may require a
30 stamping agent, licensed distributor, holder of a certificate of authority
31 pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6), or tobacco
32 product manufacturer to submit any additional information including,
33 but not limited to, samples of the packaging or labeling of each brand
34 family, as is necessary to enable the Attorney General to determine
35 whether a tobacco product manufacturer is in compliance with this act.

36 e. To promote compliance with the provisions of this act, the
37 Attorney General may promulgate regulations requiring a tobacco
38 product manufacturer subject to the requirements of paragraph (2) of
39 subsection a. of section 3 of this act to make the escrow deposits
40 required in more frequent installments during the year in which the
41 sales covered by the deposits are made. The Attorney General may
42 require production of information sufficient to enable the Attorney
43 General to determine the adequacy of the amount of the installment
44 deposit.

45

46 8. a. In addition to or in lieu of any other civil or criminal remedy

1 provided by law, upon a determination that any person has violated
2 section 5 of this act or any regulation adopted pursuant thereto, the
3 director may revoke or suspend the license of any person pursuant to
4 section 203 of P.L.1948, c.65 (C.54:40A-5) or revoke or suspend the
5 holder's certificate of authority pursuant to procedures applicable to
6 the suspension of a license set forth in section 203 of P.L.1948, c.65
7 (C.54:40A-5). Each stamp or metered impression affixed and each
8 offer to sell cigarettes in violation of section 5 of this act shall
9 constitute a separate violation. For each violation hereof, the director
10 may also impose a civil penalty in an amount not to exceed the greater
11 of 500% of the retail value of the cigarettes sold or \$5,000 upon a
12 determination of violation of section 5 of this act or any regulations
13 adopted pursuant thereto.

14 b. Any cigarettes that have been sold, offered for sale or possessed
15 for sale in this State in violation of section 5 of this act shall be
16 deemed contraband, without regard to whether the violation was
17 knowing under section 607 of P.L.1948, c. 65 (C.54:40A-30), and
18 those cigarettes shall be subject to seizure and forfeiture as provided
19 in section 607, and all cigarettes so seized and forfeited shall be
20 destroyed and not resold.

21 c. The Attorney General, on behalf of the director, may seek an
22 injunction to restrain a threatened or actual violation of section 5 of
23 this act, or subsection a. or subsection b. of section 7 of this act by a
24 licensed distributor or a holder of a certificate of authority pursuant to
25 section 6 of P.L.1990, c.39 (C.54:40B-6) and to compel the licensed
26 distributor or holder of a certificate of authority to comply with the
27 requirements provided therein. In any action brought pursuant to this
28 section, the State shall be entitled to recover the costs of investigation,
29 costs of the action and reasonable attorney fees.

30 d. It shall be unlawful for any person to sell or distribute cigarettes
31 or acquire, hold, own, possess, transport, import, or cause to be
32 imported cigarettes that the person knows or should know are
33 intended for distribution or sale in the State in violation of section 5
34 of this act. A violation of this subsection shall be a crime of the third
35 degree.

36
37 9. a. A determination of the Attorney General to not list or to
38 remove from the directory a brand family or tobacco product
39 manufacturer shall be subject to review in the manner prescribed by
40 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
41 seq.).

42 b. No person shall be issued a license or granted a renewal of a
43 license to act as a stamping agent, or a certificate of authority pursuant
44 to section 6 of P.L.1990, c.39 (C.54:40B-6), unless that person has
45 certified in writing, under penalty of perjury that the person will
46 comply fully with this section.

1 c. Notwithstanding the dates otherwise prescribed in this act:

2 (1) the first report required after enactment of this act by a licensed
3 distributor or a holder of a certificate of authority pursuant to
4 subsection a. of section 7 of this act shall be due 30 days after
5 enactment of this act;

6 (2) the first certification required after enactment of this act by a
7 tobacco product manufacturer described in subsection a. of section 3
8 of this act shall be due 45 days after enactment of this act; and

9 (3) the first publication required after enactment of this act of the
10 directory described in subsection a. of section 4 of this act shall be
11 completed within 90 days after the enactment of this act.

12 d. The Attorney General may promulgate regulations necessary to
13 effect the purposes of this act.

14 e. In any action brought by the State to enforce this act, the State
15 shall be entitled to recover the costs of investigation, expert witness
16 fees, costs of the action and reasonable attorney fees.

17 f. If a court determines that a person has violated this act, the court
18 shall order any profits, gain, gross receipts or other benefit from the
19 violation to be disgorged and paid to the State Treasurer. Unless
20 otherwise expressly provided, the remedies or penalties provided by
21 this act are cumulative, and in addition to the remedies or penalties
22 available under all other laws of this State.

23

24 10. This act shall take effect immediately.

25

26

27

28

29 _____
Concerns certain tobacco product manufacturers.

ASSEMBLY, No. 3079

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED DECEMBER 9, 2002

Sponsored by:

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblyman PAUL SARLO

District 36 (Bergen, Essex and Passaic)

SYNOPSIS

Concerns certain tobacco product manufacturers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain tobacco product manufacturers and
2 supplementing Title 52 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. The Legislature finds and declares that facilitating the diligent
8 enforcement of P.L.1999, c.148 (C.52:4D-1 et seq.), the so-called
9 "Model Statute" contemplated by the "Master Settlement Agreement"
10 which settled tobacco-related litigation between the settling states,
11 including New Jersey, and leading United States tobacco product
12 manufacturers, is beneficial to the public interest. The Model Statute
13 requires tobacco product manufacturers that are not participants in the
14 Master Settlement Agreement to pay into a qualified escrow fund to
15 guarantee a source of compensation to pay any future judgment or
16 settlement that may be reached with the State. Overall tobacco
17 industry compliance with the provisions of the Model Statute will be
18 encouraged by requiring cigarette distributors to stamp and distribute
19 only cigarettes of tobacco product manufacturers that are in
20 compliance with the act and by requiring holders of certificates of
21 authority under P.L.1990, c.39 (C.54:40B-1 et seq.) and other persons
22 that collect or pay the tax on a tobacco product as defined in section
23 2 of P.L.1990, c.39 (C.54:40B-2) that is also defined as a cigarette
24 under section 2 of P.L.1999, c.148 (C.52:4D-2) to distribute only the
25 tobacco products of tobacco product manufacturers that are in
26 compliance with the act. The establishment of additional procedural
27 enhancements and penalties related to these requirements will aid the
28 State in its continuing diligent enforcement of this law and thereby
29 safeguard the Master Settlement Agreement and the effectuation of the
30 goals of the tobacco litigation settlement, which in turn will have a
31 salutary effect on the fiscal soundness of the State and the public
32 health.

33
34 2. As used in this act, unless the context otherwise requires, the
35 following words and terms shall have the following meanings:

36 "Brand family" means all styles of cigarettes sold under the same
37 trademark and differentiated from one another by means of additional
38 modifiers or descriptors, including, but not limited to, "menthol,"
39 "lights," "kings," and "100's" and includes any similar use of a brand
40 name, alone or in conjunction with any other word, trademark, logo,
41 symbol, motto, selling message, recognizable pattern of colors, or any
42 other indicia of product identification identical or similar to, or
43 identifiable with, a previously known brand of cigarettes.

44 "Cigarette" has the same meaning as that term is defined in section
45 2 of P.L.1999, c.148 (C.52:4D-2).

1 "Director" means the Director of the Division of Taxation in the
2 Department of the Treasury.

3 "Licensed distributor" means a person that is authorized pursuant
4 to P.L.1948, c.65 (C.54:40A-1 et seq.), to affix tax stamps or impress
5 or attach metered impressions of tax to packages or other containers
6 of cigarettes or any person that is required to pay the excise tax
7 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.).

8 "Master Settlement Agreement" means the settlement agreement,
9 and related documents, entered into on November 23, 1998 by the
10 State and leading United States tobacco product manufacturers.

11 "Non-Participating Manufacturer" means any tobacco product
12 manufacturer that is not a participating manufacturer.

13 "Participating Manufacturer" has the meaning given that term in
14 Section II(jj) of the Master Settlement Agreement and all amendments
15 thereto.

16 "Qualified escrow fund" has the same meaning as prescribed for
17 that term under section 2 of P.L.1999, c.148 (C.52:4D-2).

18 "Tobacco product manufacturer" has the same meaning as
19 prescribed for that term under section 2 of P.L.1999, c.148
20 (C.52:4D-2).

21 "Units sold" has the same meaning as prescribed for that term under
22 section 2 of P.L.1999, c.148 (C.52:4D-2).

23

24 3. a. Every tobacco product manufacturer whose cigarettes are
25 sold in this State, whether directly or through a distributor, retailer or
26 similar intermediary or intermediaries, annually shall execute and
27 deliver in the manner prescribed by the Attorney General a
28 certification to the director and Attorney General no later than April
29 30, certifying under penalty of perjury that, as of the date of such
30 certification, such tobacco product manufacturer either is a
31 participating manufacturer or is in full compliance with the
32 requirements of P.L.1999, c.148 (C.52:4D-1 et seq.).

33 (1) A participating manufacturer shall include in its certification a
34 complete list of its brand families. The participating manufacturer
35 shall update such list no later than 30 days prior to any addition or
36 modification to brand families by executing and delivering a
37 supplemental certification to the Attorney General.

38 (2) A non-participating manufacturer shall include in its
39 certification a complete list of all of its brand families: (a) separately
40 listing brand families of cigarettes and the number of units sold for
41 each brand family that were sold in the State during the preceding
42 calendar year; (b) all of its brand families that have been sold in the
43 State at any time during the current calendar year; (c) indicating, by an
44 asterisk, any brand family sold in the State during the preceding
45 calendar year that is no longer being sold in the State as of the date of
46 the certification; and (d) identifying by name and address any other

1 manufacturer of those brand families in the preceding calendar year.
2 The non-participating manufacturer shall update the list no later than
3 30 days prior to any addition or modification to its brand families by
4 executing and delivering a supplemental certification to the Attorney
5 General.

6 (3) In the case of a non-participating manufacturer, the certification
7 shall further certify: (a) that the non-participating manufacturer is
8 registered to do business in the State or has appointed a resident agent
9 for service of process and provided notice thereof as required by
10 subsection b. of section 6 of this act; (b) that the non-participating
11 manufacturer has (i) established and continues to maintain a qualified
12 escrow fund; and (ii) executed a qualified escrow agreement that has
13 been reviewed and approved by the Attorney General and that governs
14 the qualified escrow fund; (c) that the non-participating manufacturer
15 is in full compliance with P.L.1999, c.148 (C.52:4D-1 et seq.), and
16 this act, and any regulations promulgated pursuant thereto; (d) (i) the
17 name, address and telephone number of the financial institution at
18 which the non-participating manufacturer has established the qualified
19 escrow fund required pursuant to section 3 of P.L.1999, c.148
20 (C.52:4D-3), and all regulations promulgated thereto; (ii) the account
21 number of the qualified escrow fund and sub-account number for the
22 State of New Jersey; (iii) the amount the non-participating
23 manufacturer placed in the fund for units sold in the State during the
24 preceding calendar year, the date and amount of each of those
25 deposits, and such evidence or verification as may be deemed
26 necessary by the Attorney General to confirm the foregoing; and (iv)
27 the amounts of and dates of any withdrawal or transfer of funds the
28 non-participating manufacturer made at any time from the fund or
29 from any other qualified escrow fund into which it has ever made
30 escrow payments pursuant to section 3 of P.L.1999, c.148
31 (C.52:4D-3) and all regulations promulgated thereto.

32 b. A tobacco product manufacturer shall not include a brand family
33 in its certification unless:

34 (1) in the case of a participating manufacturer, that participating
35 manufacturer affirms that the brand family is to be deemed to be
36 cigarettes of the participating manufacturer for purposes of calculating
37 its payments under the Master Settlement Agreement for the relevant
38 year, in the volume and shares determined pursuant to the Master
39 Settlement Agreement; and

40 (2) in the case of a non-participating manufacturer, that
41 non-participating manufacturer affirms that the brand family is to be
42 deemed to be cigarettes of the non-participating manufacturer for
43 purposes of calculating its units sold pursuant to section 3 of
44 P.L.1999, c.148 (C.52:4D-3).

45 Nothing in this section shall be construed as limiting or otherwise
46 affecting the State's right to maintain that a brand family constitutes

1 cigarettes of a different tobacco product manufacturer for purposes of
2 calculating payments under the Master Settlement Agreement or for
3 purposes of P.L.1999, c.148 (C.52:4D-1 et seq.).

4 c. A tobacco product manufacturer shall maintain all invoices and
5 documentation of sales and any other information relied upon for the
6 certification for a period of five years, unless otherwise required by
7 law to maintain them for a longer period of time.

8
9 4. a. Not later than 60 days after enactment of this act, the
10 Attorney General shall develop and publish through the Internet a
11 directory listing all tobacco product manufacturers that have provided
12 current and accurate certifications conforming to the requirements of
13 subsection a. of section 3 of this act in a timely manner, pursuant to
14 the initial schedule provided in section 9 of this act, and all brand
15 families that are listed in those certifications, except as noted below.

16 b. The Attorney General shall not include or retain in the directory
17 the name or brand families of any non-participating manufacturer that
18 fails to provide the required certification or whose certification the
19 Attorney General determines is not in compliance with paragraph (2)
20 or paragraph (3) of subsection a. of section 3 of this act, unless the
21 Attorney General has determined that the violation has been cured to
22 the satisfaction of the Attorney General.

23 c. The Attorney General shall not include or retain a tobacco
24 product manufacturer or brand family in the directory if the Attorney
25 General concludes that (1) in the case of a non-participating
26 manufacturer all escrow payments required pursuant to section 3 of
27 P.L.1999, c.148 (C.52:4D-3), for any period for any brand family,
28 whether or not listed by that non-participating manufacturer, have not
29 been fully paid into a qualified escrow fund governed by a qualified
30 escrow agreement that has been approved by the Attorney General, or
31 (2) all outstanding final judgments, including interest thereon, for
32 violations of P.L.1999, c.148 (C.52:4D-1 et seq.) have not been fully
33 satisfied for that brand family and that manufacturer.

34 d. The Attorney General shall within the Attorney General's
35 discretion take reasonable steps to update the directory in order to
36 correct mistakes and to add or remove a tobacco product
37 manufacturer or brand families to keep the directory in conformity
38 with the requirements of this act.

39
40 5. It shall be unlawful for any person: a. to affix a tax stamp or
41 impress or attach a metered impression of tax to a package or other
42 container of cigarettes of a tobacco product manufacturer or brand
43 family not included in the directory established pursuant to section 4
44 of this act, or, b. to sell, offer or possess for sale in this State,
45 cigarettes of a tobacco product manufacturer or brand family not
46 included in the directory established pursuant to this act.

1 6. a. Any non-resident or foreign non-participating manufacturer
2 that has not registered to do business in this State as a foreign
3 corporation or business entity shall, as a condition precedent to having
4 its brand families listed or retained in the directory established
5 pursuant to section 4 of this act, appoint and continually engage
6 without interruption the services of an agent in New Jersey to act as
7 agent for the service of process on whom all process, and any action
8 or proceeding against it concerning or arising out of the enforcement
9 of the act and P.L.1999, c.148 (C.52:4D-1 et seq.), may be served in
10 any manner authorized by law. Such service shall constitute legal and
11 valid service of process on the non-participating manufacturer. The
12 non-participating manufacturer shall provide the name, address,
13 telephone number and proof of the appointment and availability of
14 such agent to the Attorney General.

15 b. A non-participating manufacturer shall provide notice to the
16 director and Attorney General not later than 30 calendar days prior to
17 termination of the authority of an agent and shall further provide proof
18 to the satisfaction of the Attorney General of the appointment of a new
19 agent no less than five calendar days prior to the termination of an
20 existing agent appointment. If an agent terminates an agency
21 appointment, the non-participating manufacturer shall notify the
22 director and Attorney General of that termination within five calendar
23 days and shall include proof to the satisfaction of the Attorney General
24 of the appointment of a new agent.

25 c. A non-participating manufacturer whose products are sold in this
26 State, without appointing or designating an agent as herein required
27 shall be deemed to have appointed the Secretary of State as that agent
28 and may be proceeded against in the courts of this State by service of
29 process upon the Secretary of State; provided however, that the
30 appointment of the Secretary of State as that agent shall not satisfy the
31 condition precedent to having its brand families listed or retained in
32 the directory established pursuant to section 4 of this act.

33

34 7. a. Within 20 days after the end of each calendar quarter, and
35 more frequently if so directed by the director, each licensed distributor
36 and each holder of a certificate of authority pursuant to section 6 of
37 P.L.1990, c.39 (C.54:40B-6) shall submit such information as the
38 director requires to facilitate compliance with this section, including,
39 but not limited to, a list by brand family of the total number of
40 cigarettes or in the case of roll your own, the equivalent stick count,
41 for which the licensed distributor affixed stamps or impressed or
42 attached metered impressions or for which the holder of the certificate
43 of authority otherwise paid the tax due for such cigarettes during the
44 previous calendar quarter. Each licensed distributor and holder of a
45 certificate of authority shall, for a period of five years, maintain, and
46 make available to the director and the Attorney General, all invoices

1 and documentation of sales of all cigarettes sold by the licensed
2 distributor or holder of a certificate of authority that were
3 manufactured by a non-participating manufacturer and any other
4 information relied upon in reporting to the director.

5 b. The director is authorized to disclose to the Attorney General
6 any information received under this act or requested by the Attorney
7 General for purposes of determining compliance with and enforcing
8 the provisions of this act. The director and Attorney General shall
9 share with each other the information received under this act, and may
10 share such information with other federal, State or local agencies only
11 for purposes of enforcement of this act, P.L.1999, c.148 (C.52:4D-1
12 et seq.), or the corresponding laws of other states.

13 c. The Attorney General may require at any time that a
14 non-participating manufacturer provide from the financial institution
15 in which the manufacturer has established a qualified escrow fund for
16 the purpose of compliance with P.L.1999, c.148 (C.52:4D-1 et seq.),
17 proof of the amount of money in the fund being held on behalf of the
18 State and the dates of deposits, and listing the amounts of all
19 withdrawals from the fund and the dates thereof.

20 d. In addition to the information required to be submitted pursuant
21 to this section, the director or Attorney General may require a
22 stamping agent, licensed distributor, holder of a certificate of authority
23 pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6), or tobacco
24 product manufacturer to submit any additional information including,
25 but not limited to, samples of the packaging or labeling of each brand
26 family, as is necessary to enable the Attorney General to determine
27 whether a tobacco product manufacturer is in compliance with this act.

28 e. To promote compliance with the provisions of this act, the
29 Attorney General may promulgate regulations requiring a tobacco
30 product manufacturer subject to the requirements of paragraph (2) of
31 subsection a. of section 3 of this act to make the escrow deposits
32 required in more frequent installments during the year in which the
33 sales covered by the deposits are made. The Attorney General may
34 require production of information sufficient to enable the Attorney
35 General to determine the adequacy of the amount of the installment
36 deposit.

37
38 8. a. In addition to or in lieu of any other civil or criminal remedy
39 provided by law, upon a determination that any person has violated
40 section 5 of this act or any regulation adopted pursuant thereto, the
41 director may revoke or suspend the license of any person pursuant to
42 section 203 of P.L.1948, c.65 (C.54:40A-5) or revoke or suspend the
43 holder's certificate of authority pursuant to procedures applicable to
44 the suspension of a license set forth in section 203 of P.L.1948, c.65
45 (C.54:40A-5). Each stamp or metered impression affixed and each
46 offer to sell cigarettes in violation of section 5 of this act shall

1 constitute a separate violation. For each violation hereof, the director
2 may also impose a civil penalty in an amount not to exceed the greater
3 of 500% of the retail value of the cigarettes sold or \$5,000 upon a
4 determination of violation of section 5 of this act or any regulations
5 adopted pursuant thereto.

6 b. Any cigarettes that have been sold, offered for sale or possessed
7 for sale in this State in violation of section 5 of this act shall be
8 deemed contraband, without regard to whether the violation was
9 knowing under section 607 of P.L.1948, c. 65 (C.54:40A-30), and
10 those cigarettes shall be subject to seizure and forfeiture as provided
11 in section 607, and all cigarettes so seized and forfeited shall be
12 destroyed and not resold.

13 c. The Attorney General, on behalf of the director, may seek an
14 injunction to restrain a threatened or actual violation of section 5 of
15 this act, or subsection a. or subsection b. of section 7 of this act by a
16 licensed distributor or a holder of a certificate of authority pursuant to
17 section 6 of P.L.1990, c.39 (C.54:40B-6) and to compel the licensed
18 distributor or holder of a certificate of authority to comply with the
19 requirements provided therein. In any action brought pursuant to this
20 section, the State shall be entitled to recover the costs of investigation,
21 costs of the action and reasonable attorney fees.

22 d. It shall be unlawful for any person to sell or distribute cigarettes
23 or acquire, hold, own, possess, transport, import, or cause to be
24 imported cigarettes that the person knows or should know are
25 intended for distribution or sale in the State in violation of section 5
26 of this act. A violation of this subsection shall be a crime of the third
27 degree.

28

29 9. a. A determination of the Attorney General to not list or to
30 remove from the directory a brand family or tobacco product
31 manufacturer shall be subject to review in the manner prescribed by
32 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
33 seq.).

34 b. No person shall be issued a license or granted a renewal of a
35 license to act as a stamping agent, or a certificate of authority pursuant
36 to section 6 of P.L.1990, c.39 (C.54:40B-6), unless that person has
37 certified in writing, under penalty of perjury that the person will
38 comply fully with this section.

39 c. Notwithstanding the dates otherwise prescribed in this act:

40 (1) the first report required after enactment of this act by a licensed
41 distributor or a holder of a certificate of authority pursuant to
42 subsection a. of section 7 of this act shall be due 30 days after
43 enactment of this act;

44 (2) the first certification required after enactment of this act by a
45 tobacco product manufacturer described in subsection a. of section 3
46 of this act shall be due 45 days after enactment of this act; and

1 (3) the first publication required after enactment of this act of the
2 directory described in subsection a. of section 4 of this act shall be
3 completed within 90 days after the enactment of this act.

4 d. The Attorney General may promulgate regulations necessary to
5 effect the purposes of this act.

6 e. In any action brought by the State to enforce this act, the State
7 shall be entitled to recover the costs of investigation, expert witness
8 fees, costs of the action and reasonable attorney fees.

9 f. If a court determines that a person has violated this act, the court
10 shall order any profits, gain, gross receipts or other benefit from the
11 violation to be disgorged and paid to the State Treasurer. Unless
12 otherwise expressly provided, the remedies or penalties provided by
13 this act are cumulative, and in addition to the remedies or penalties
14 available under all other laws of this State.

15
16 10. This act shall take effect immediately.

17
18
19 STATEMENT

20
21 This bill prohibits any cigarette tax stamp or meter impression to be
22 affixed to a package of cigarettes, or tax to be paid on a tobacco
23 product defined as a cigarette, unless the tobacco manufacturer and
24 brand family in question is a participating manufacturer under the
25 Model Settlement Act (MSA), or a non-participating manufacturer
26 that has made all required escrow payments. These manufacturers will
27 be included on a list posted by the Attorney General. The Attorney
28 General's list will be posted and updated on the Attorney General's
29 web site and include the following: (1) all tobacco product
30 manufacturers that are participating manufacturer under the MSA; (2)
31 all non-participating tobacco product manufacturers in the MSA that
32 have been determined by the Attorney General to have made all
33 escrow payments required by law; and (3) all brand families of such
34 participating and non-participating manufacturers.

35 This bill authorizes the Director of the Division of Taxation in the
36 Department of the Treasury to revoke or suspend the license of a
37 distributor, or the certificate of authority under the Tobacco Products
38 Wholesale Sales Tax, for stamping or paying taxes on brands that are
39 in violation of requirements of this bill. The director is also authorized
40 to impose a penalty not to exceed the greater of either five times the
41 retail value of the cigarettes or tobacco products or \$5,000. Any
42 cigarette or tobacco products that are stamped or to which a meter
43 impression is affixed, or for which tax is paid in violation of the
44 provisions of the bill, would be deemed "contraband" and subject to
45 seizure and forfeiture pursuant to the Cigarette Tax Act. The
46 cigarettes or tobacco products seized and forfeited are required to be

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10

1 destroyed.

2 This bill also authorizes the director to require those persons that
3 affix stamps or meter impressions to packages of cigarettes, or that
4 pay the tax on a tobacco product defined as a cigarette, to submit all
5 information necessary to enable the Attorney General to determine
6 whether a tobacco product manufacturer has made all escrow
7 payments. The bill authorizes the director and the Attorney General
8 to exchange information as is reasonably necessary for the
9 enforcement and administration of this bill.

10 This bill also establishes crimes of the third degree for violations of
11 the stamping, metering and tax paying restrictions applicable for
12 non-listed brands and for false representations made concerning the
13 compliance requirements of the bill.

14 The provisions of this bill are complementary to the Model Statute,
15 and are not intended to amend, restrict or modify, the provisions of
16 P.L.1999, c.148 (C.52:4D-1 et seq.).

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3079

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2002

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3079, with committee amendments.

Assembly Bill No. 3079, as amended, prohibits any cigarette tax stamp or meter impression to be affixed to a package of cigarettes, or tax to be paid on a tobacco product defined as a cigarette, unless the tobacco manufacturer and brand family in question is a participating manufacturer under the Model Settlement Act (or MSA; in 1998 the Attorneys General of 46 states signed the MSA with the four largest tobacco companies in the United States to settle state suits to recover costs associated with treating smoking-related illnesses.) or a non-participating manufacturer that has made all required escrow payments. These manufacturers will be included on a list posted by the Attorney General. The Attorney General's list will be posted and updated on the Attorney General's web site and include the following: (1) all tobacco product manufacturers that are participating manufacturer under the MSA; (2) all non-participating tobacco product manufacturers in the MSA that have been determined by the Attorney General to have made all escrow payments required by law; and (3) all brand families of such participating and non-participating manufacturers.

This bill authorizes the Director of the Division of Taxation in the Department of the Treasury to revoke or suspend the license of a distributor, or the certificate of authority under the Tobacco Products Wholesale Sales Tax, for stamping or paying taxes on brands that are in violation of requirements of this bill. The director is also authorized to impose a penalty not to exceed the greater of either five times the retail value of the cigarettes or tobacco products or \$5,000. Any cigarette or tobacco products that are stamped or to which a meter impression is affixed, or for which tax is paid in violation of the provisions of the bill, would be deemed "contraband" and subject to seizure and forfeiture pursuant to the Cigarette Tax Act. The cigarettes or tobacco products seized and forfeited are required to be destroyed.

This bill also authorizes the director to require those persons that affix stamps or meter impressions to packages of cigarettes, or that

pay the tax on a tobacco product defined as a cigarette, to submit all information necessary to enable the Attorney General to determine whether a tobacco product manufacturer has made all escrow payments. The bill authorizes the director and the Attorney General to exchange information as is reasonably necessary for the enforcement and administration of this bill.

This bill also establishes crimes of the third degree for violations of the stamping, metering and tax paying restrictions applicable for non-listed brands and for false representations made concerning the compliance requirements of the bill.

The provisions of this bill are complementary to the Model Statute, and are not intended to amend, restrict or modify, the provisions of P.L.1999, c.148 (C.52:4D-1 et seq.; that act requires a tobacco product manufacturer that did not participate in the MSA to either become a participant in the settlement or make payments, based on the number of cigarettes the manufacturer sells in New Jersey, into an escrow arrangement).

FISCAL IMPACT:

The fiscal impact of this bill is likely to be modest. The purpose of the bill and its potential State fiscal impact is the protection and restoration of the cigarette market share held by participants in the MSA and the corresponding enhancement of New Jersey's payments under the MSA. The MSA provides that payments to states are to be adjusted annually in accordance with changes in national sales volume by the participating manufacturers. Industry representatives estimate that in 2002 New Jersey experienced a loss of about \$6 million in payments otherwise expected under the MSA because of market share captured by non-complying, non-participating tobacco manufacturers. The Office of Legislative Services can not verify the accuracy of this assertion. It is possible, however, to calculate the potential fiscal impact of this bill, if it achieves its objectives, using the industry estimate. New Jersey cigarette sales represent about 2% of national sales. If it is assumed that New Jersey also has about 2% of the sales of non-complying, non-participating tobacco manufacturers, then the shifting of all of those sales back to the MSA participating manufacturers would have restored about \$120,000 of the \$6,000,000 that the State is estimated to have lost in 2002.

Of course, to the extent that other states enact legislation similar to this bill and those efforts have the intended effect, New Jersey could regain the remaining \$5,880,000 in annual MSA payments. Additionally, industry representatives predict that the loss of market share to non-complying, non-participating tobacco manufacturers (and therefore the loss of State revenues) will increase in future. If this is correct, the revenue gains under this bill would increase proportionately.

It should be noted that as the State has assigned some (and may assign more) of its proceeds from the MSA to the Tobacco Settlement

Financing Corporation, the relationship of this bill to the State's General Fund resources is further attenuated.

Alternatively, should the deterrent effect of the penalty provisions of the bill be unsuccessful, the State could receive some additional revenue from fines imposed under successfully pursued sanctions.

COMMITTEE AMENDMENTS:

The amendments make an adjustment to clarify the discretion of the Attorney General in updating the list of participating and nonparticipating manufacturers under the MSA. This change is made to reflect the final draft language approved by the National Association of Attorney's General.

FISCAL NOTE
[First Reprint]
ASSEMBLY, No. 3079
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: FEBRUARY 3, 2003

SUMMARY

Synopsis: Concerns certain tobacco product manufacturers.
Type of Impact: May avert a potential reduction in revenue
Agencies Affected: Department of the Treasury; Tobacco Settlement Financing Corporation

Executive Estimate

Fiscal Impact	annually
State Revenue	indeterminate, but modest

- ! The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- ! The bill may preserve market share of participants in the master settlement agreement and thereby avert a reduction in payments to New Jersey
- ! Should the deterrent effect of the penalties be unsuccessful the State could receive some additional income from increased fines.

BILL DESCRIPTION

Assembly Bill No. 3079 (1R) of 2002 tightens enforcement of the New Jersey "model act" adopted as part of the State's participation in the national tobacco settlement agreement to ensure the compliance of non-participating tobacco manufacturers with certain escrow fund payment obligations. Currently tobacco product manufacturers who do not participate in the national tobacco settlement are required to pay into a State reserve fund. There are, however, non-compliant manufacturers located in foreign countries and elsewhere, whose participation cannot be compelled.

The bill prohibits any cigarette tax stamp or meter impression to be affixed to a package of cigarettes, or tax be paid on a tobacco product defined as a cigarette, unless the tobacco manufacturer participates in the the Master Settlement Agreement (MSA) or makes required payments to the escrow account. This bill authorizes the Director of the Division of Taxation

to revoke or suspend the license of a distributor for stamping or paying taxes on brands that are in violation of this bill's requirements. The director is also authorized to impose a penalty not to exceed the greater of either five times the retail value of the cigarettes or tobacco products or \$5,000.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive states the bill would have very little, if any, impact on State revenue.

OFFICE OF LEGISLATIVE SERVICES

The fiscal impact of this bill is likely to be modest. The purpose of the bill and its potential State fiscal impact is the protection and restoration of the cigarette market share held by participants in the MSA and the corresponding enhancement of New Jersey's payments under the MSA. The MSA provides that payments to states are to be adjusted annually in accordance with changes in national sales volume by the participating manufacturers. Industry representatives estimate that in 2002 New Jersey experienced a loss of about \$6 million in expected payments under the MSA because of market share captured by non-complying, non-participating tobacco manufacturers. The Office of Legislative Services (OLS) can not verify the accuracy of this assertion. It is possible, however, to calculate the potential fiscal impact of this bill, if it achieves its objectives, using the industry estimate. New Jersey cigarette sales represent about 2 percent of national sales. If we assume that New Jersey also has about 2 percent of the sales of non-complying, non-participating tobacco manufacturers, the shifting of all of those sales back to the MSA participating manufacturers would have restored about \$120,000 of the \$6,000,000 that the State is estimated to have lost in 2002.

Of course, to the extent that other states enact legislation similar to this bill and those efforts have intended effect, New Jersey could regain the remaining \$5,880,000 in annual MSA payments. Additionally, industry representative predict that the loss of market share to non-complying, non-participating tobacco manufacturers (and therefore State revenues) will increase in future. If this is correct, the revenue gains under this bill would increase proportionately.

It should be noted that since the State has assigned some (and may assign more) of its proceeds from the MSA to the Tobacco Settlement Financing Corporation, the relationship of this bill to the State's General Fund resources is further attenuated.

Alternatively, should the deterrent effect of the penalty provisions of the bill be unsuccessful, the State could receive some additional revenue from fines imposed under successfully pursued sanctions.

Section: *Revenue, Finance and Appropriations*

Analyst: *David J. Rosen*
Section Chief

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

A3079 [1R]

3

SENATE, No. 2141

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED DECEMBER 9, 2002

Sponsored by:

Senator JOSEPH SULIGA

District 22 (Middlesex, Somerset and Union)

Senator ANTHONY R. BUCCO

District 25 (Morris)

SYNOPSIS

Concerns certain tobacco product manufacturers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain tobacco product manufacturers and
2 supplementing Title 52 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. The Legislature finds and declares that facilitating the diligent
8 enforcement of P.L.1999, c.148 (C.52:4D-1 et seq.), the so-called
9 "Model Statute" contemplated by the "Master Settlement Agreement"
10 which settled tobacco-related litigation between the settling states,
11 including New Jersey, and leading United States tobacco product
12 manufacturers, is beneficial to the public interest. The Model Statute
13 requires tobacco product manufacturers that are not participants in the
14 Master Settlement Agreement to pay into a qualified escrow fund to
15 guarantee a source of compensation to pay any future judgment or
16 settlement that may be reached with the State. Overall tobacco
17 industry compliance with the provisions of the Model Statute will be
18 encouraged by requiring cigarette distributors to stamp and distribute
19 only cigarettes of tobacco product manufacturers that are in
20 compliance with the act and by requiring holders of certificates of
21 authority under P.L.1990, c.39 (C.54:40B-1 et seq.) and other persons
22 that collect or pay the tax on a tobacco product as defined in section
23 2 of P.L.1990, c.39 (C.54:40B-2) that is also defined as a cigarette
24 under section 2 of P.L.1999, c.148 (C.52:4D-2) to distribute only the
25 tobacco products of tobacco product manufacturers that are in
26 compliance with the act. The establishment of additional procedural
27 enhancements and penalties related to these requirements will aid the
28 State in its continuing diligent enforcement of this law and thereby
29 safeguard the Master Settlement Agreement and the effectuation of the
30 goals of the tobacco litigation settlement, which in turn will have a
31 salutary effect on the fiscal soundness of the State and the public
32 health.

33
34 2. As used in this act, unless the context otherwise requires, the
35 following words and terms shall have the following meanings:

36 "Brand family" means all styles of cigarettes sold under the same
37 trademark and differentiated from one another by means of additional
38 modifiers or descriptors, including, but not limited to, "menthol,"
39 "lights," "kings," and "100's" and includes any similar use of a brand
40 name, alone or in conjunction with any other word, trademark, logo,
41 symbol, motto, selling message, recognizable pattern of colors, or any
42 other indicia of product identification identical or similar to, or
43 identifiable with, a previously known brand of cigarettes.

44 "Cigarette" has the same meaning as that term is defined in section
45 2 of P.L.1999, c.148 (C.52:4D-2).

1 "Director" means the Director of the Division of Taxation in the
2 Department of the Treasury.

3 "Licensed distributor" means a person that is authorized pursuant
4 to P.L.1948, c.65 (C.54:40A-1 et seq.), to affix tax stamps or impress
5 or attach metered impressions of tax to packages or other containers
6 of cigarettes or any person that is required to pay the excise tax
7 imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.).

8 "Master Settlement Agreement" means the settlement agreement,
9 and related documents, entered into on November 23, 1998 by the
10 State and leading United States tobacco product manufacturers.

11 "Non-Participating Manufacturer" means any tobacco product
12 manufacturer that is not a participating manufacturer.

13 "Participating Manufacturer" has the meaning given that term in
14 Section II(jj) of the Master Settlement Agreement and all amendments
15 thereto.

16 "Qualified escrow fund" has the same meaning as prescribed for
17 that term under section 2 of P.L.1999, c.148 (C.52:4D-2).

18 "Tobacco product manufacturer" has the same meaning as
19 prescribed for that term under section 2 of P.L.1999, c.148
20 (C.52:4D-2).

21 "Units sold" has the same meaning as prescribed for that term under
22 section 2 of P.L.1999, c.148 (C.52:4D-2).

23

24 3. a. Every tobacco product manufacturer whose cigarettes are
25 sold in this State, whether directly or through a distributor, retailer or
26 similar intermediary or intermediaries, annually shall execute and
27 deliver in the manner prescribed by the Attorney General a
28 certification to the director and Attorney General no later than April
29 30, certifying under penalty of perjury that, as of the date of such
30 certification, such tobacco product manufacturer either is a
31 participating manufacturer or is in full compliance with the
32 requirements of P.L.1999, c.148 (C.52:4D-1 et seq.).

33 (1) A participating manufacturer shall include in its certification a
34 complete list of its brand families. The participating manufacturer
35 shall update such list no later than 30 days prior to any addition or
36 modification to brand families by executing and delivering a
37 supplemental certification to the Attorney General.

38 (2) A non-participating manufacturer shall include in its
39 certification a complete list of all of its brand families: (a) separately
40 listing brand families of cigarettes and the number of units sold for
41 each brand family that were sold in the State during the preceding
42 calendar year; (b) all of its brand families that have been sold in the
43 State at any time during the current calendar year; (c) indicating, by an
44 asterisk, any brand family sold in the State during the preceding
45 calendar year that is no longer being sold in the State as of the date of
46 the certification; and (d) identifying by name and address any other

1 manufacturer of those brand families in the preceding calendar year.
2 The non-participating manufacturer shall update the list no later than
3 30 days prior to any addition or modification to its brand families by
4 executing and delivering a supplemental certification to the Attorney
5 General.

6 (3) In the case of a non-participating manufacturer, the certification
7 shall further certify: (a) that the non-participating manufacturer is
8 registered to do business in the State or has appointed a resident agent
9 for service of process and provided notice thereof as required by
10 subsection b. of section 6 of this act; (b) that the non-participating
11 manufacturer has (i) established and continues to maintain a qualified
12 escrow fund; and (ii) executed a qualified escrow agreement that has
13 been reviewed and approved by the Attorney General and that governs
14 the qualified escrow fund; (c) that the non-participating manufacturer
15 is in full compliance with P.L.1999, c.148 (C.52:4D-1 et seq.), and
16 this act, and any regulations promulgated pursuant thereto; (d) (i) the
17 name, address and telephone number of the financial institution at
18 which the non-participating manufacturer has established the qualified
19 escrow fund required pursuant to section 3 of P.L.1999, c.148
20 (C.52:4D-3), and all regulations promulgated thereto; (ii) the account
21 number of the qualified escrow fund and sub-account number for the
22 State of New Jersey; (iii) the amount the non-participating
23 manufacturer placed in the fund for units sold in the State during the
24 preceding calendar year, the date and amount of each of those
25 deposits, and such evidence or verification as may be deemed
26 necessary by the Attorney General to confirm the foregoing; and (iv)
27 the amounts of and dates of any withdrawal or transfer of funds the
28 non-participating manufacturer made at any time from the fund or
29 from any other qualified escrow fund into which it has ever made
30 escrow payments pursuant to section 3 of P.L.1999, c.148
31 (C.52:4D-3) and all regulations promulgated thereto.

32 b. A tobacco product manufacturer shall not include a brand family
33 in its certification unless:

34 (1) in the case of a participating manufacturer, that participating
35 manufacturer affirms that the brand family is to be deemed to be
36 cigarettes of the participating manufacturer for purposes of calculating
37 its payments under the Master Settlement Agreement for the relevant
38 year, in the volume and shares determined pursuant to the Master
39 Settlement Agreement; and

40 (2) in the case of a non-participating manufacturer, that
41 non-participating manufacturer affirms that the brand family is to be
42 deemed to be cigarettes of the non-participating manufacturer for
43 purposes of calculating its units sold pursuant to section 3 of
44 P.L.1999, c.148 (C.52:4D-3).

45 Nothing in this section shall be construed as limiting or otherwise
46 affecting the State's right to maintain that a brand family constitutes

1 cigarettes of a different tobacco product manufacturer for purposes of
2 calculating payments under the Master Settlement Agreement or for
3 purposes of P.L.1999, c.148 (C.52:4D-1 et seq.).

4 c. A tobacco product manufacturer shall maintain all invoices and
5 documentation of sales and any other information relied upon for the
6 certification for a period of five years, unless otherwise required by
7 law to maintain them for a longer period of time.

8
9 4. a. Not later than 60 days after enactment of this act, the
10 Attorney General shall develop and publish through the Internet a
11 directory listing all tobacco product manufacturers that have provided
12 current and accurate certifications conforming to the requirements of
13 subsection a. of section 3 of this act in a timely manner, pursuant to
14 the initial schedule provided in section 9 of this act, and all brand
15 families that are listed in those certifications, except as noted below.

16 b. The Attorney General shall not include or retain in the directory
17 the name or brand families of any non-participating manufacturer that
18 fails to provide the required certification or whose certification the
19 Attorney General determines is not in compliance with paragraph (2)
20 or paragraph (3) of subsection a. of section 3 of this act, unless the
21 Attorney General has determined that the violation has been cured to
22 the satisfaction of the Attorney General.

23 c. The Attorney General shall not include or retain a tobacco
24 product manufacturer or brand family in the directory if the Attorney
25 General concludes that (1) in the case of a non-participating
26 manufacturer all escrow payments required pursuant to section 3 of
27 P.L.1999, c.148 (C.52:4D-3), for any period for any brand family,
28 whether or not listed by that non-participating manufacturer, have not
29 been fully paid into a qualified escrow fund governed by a qualified
30 escrow agreement that has been approved by the Attorney General, or
31 (2) all outstanding final judgments, including interest thereon, for
32 violations of P.L.1999, c.148 (C.52:4D-1 et seq.) have not been fully
33 satisfied for that brand family and that manufacturer.

34 d. The Attorney General shall within the Attorney General's
35 discretion take reasonable steps to update the directory in order to
36 correct mistakes and to add or remove a tobacco product
37 manufacturer or brand families to keep the directory in conformity
38 with the requirements of this act.

39
40 5. It shall be unlawful for any person: a. to affix a tax stamp or
41 impress or attach a metered impression of tax to a package or other
42 container of cigarettes of a tobacco product manufacturer or brand
43 family not included in the directory established pursuant to section 4
44 of this act, or, b. to sell, offer or possess for sale in this State,
45 cigarettes of a tobacco product manufacturer or brand family not
46 included in the directory established pursuant to this act.

1 6. a. Any non-resident or foreign non-participating manufacturer
2 that has not registered to do business in this State as a foreign
3 corporation or business entity shall, as a condition precedent to having
4 its brand families listed or retained in the directory established
5 pursuant to section 4 of this act, appoint and continually engage
6 without interruption the services of an agent in New Jersey to act as
7 agent for the service of process on whom all process, and any action
8 or proceeding against it concerning or arising out of the enforcement
9 of the act and P.L.1999, c.148 (C.52:4D-1 et seq.), may be served in
10 any manner authorized by law. Such service shall constitute legal and
11 valid service of process on the non-participating manufacturer. The
12 non-participating manufacturer shall provide the name, address,
13 telephone number and proof of the appointment and availability of
14 such agent to the Attorney General.

15 b. A non-participating manufacturer shall provide notice to the
16 director and Attorney General not later than 30 calendar days prior to
17 termination of the authority of an agent and shall further provide proof
18 to the satisfaction of the Attorney General of the appointment of a new
19 agent no less than five calendar days prior to the termination of an
20 existing agent appointment. If an agent terminates an agency
21 appointment, the non-participating manufacturer shall notify the
22 director and Attorney General of that termination within five calendar
23 days and shall include proof to the satisfaction of the Attorney General
24 of the appointment of a new agent.

25 c. A non-participating manufacturer whose products are sold in this
26 State, without appointing or designating an agent as herein required
27 shall be deemed to have appointed the Secretary of State as that agent
28 and may be proceeded against in the courts of this State by service of
29 process upon the Secretary of State; provided however, that the
30 appointment of the Secretary of State as that agent shall not satisfy the
31 condition precedent to having its brand families listed or retained in
32 the directory established pursuant to section 4 of this act.

33
34 7. a. Within 20 days after the end of each calendar quarter, and
35 more frequently if so directed by the director, each licensed distributor
36 and each holder of a certificate of authority pursuant to section 6 of
37 P.L.1990, c.39 (C.54:40B-6) shall submit such information as the
38 director requires to facilitate compliance with this section, including,
39 but not limited to, a list by brand family of the total number of
40 cigarettes or in the case of roll your own, the equivalent stick count,
41 for which the licensed distributor affixed stamps or impressed or
42 attached metered impressions or for which the holder of the certificate
43 of authority otherwise paid the tax due for such cigarettes during the
44 previous calendar quarter. Each licensed distributor and holder of a
45 certificate of authority shall, for a period of five years, maintain, and
46 make available to the director and the Attorney General, all invoices

1 and documentation of sales of all cigarettes sold by the licensed
2 distributor or holder of a certificate of authority that were
3 manufactured by a non-participating manufacturer and any other
4 information relied upon in reporting to the director.

5 b. The director is authorized to disclose to the Attorney General
6 any information received under this act or requested by the Attorney
7 General for purposes of determining compliance with and enforcing
8 the provisions of this act. The director and Attorney General shall
9 share with each other the information received under this act, and may
10 share such information with other federal, State or local agencies only
11 for purposes of enforcement of this act, P.L.1999, c.148 (C.52:4D-1
12 et seq.), or the corresponding laws of other states.

13 c. The Attorney General may require at any time that a
14 non-participating manufacturer provide from the financial institution
15 in which the manufacturer has established a qualified escrow fund for
16 the purpose of compliance with P.L.1999, c.148 (C.52:4D-1 et seq.),
17 proof of the amount of money in the fund being held on behalf of the
18 State and the dates of deposits, and listing the amounts of all
19 withdrawals from the fund and the dates thereof.

20 d. In addition to the information required to be submitted pursuant
21 to this section, the director or Attorney General may require a
22 stamping agent, licensed distributor, holder of a certificate of authority
23 pursuant to section 6 of P.L.1990, c.39 (C.54:40B-6), or tobacco
24 product manufacturer to submit any additional information including,
25 but not limited to, samples of the packaging or labeling of each brand
26 family, as is necessary to enable the Attorney General to determine
27 whether a tobacco product manufacturer is in compliance with this act.

28 e. To promote compliance with the provisions of this act, the
29 Attorney General may promulgate regulations requiring a tobacco
30 product manufacturer subject to the requirements of paragraph (2) of
31 subsection a. of section 3 of this act to make the escrow deposits
32 required in more frequent installments during the year in which the
33 sales covered by the deposits are made. The Attorney General may
34 require production of information sufficient to enable the Attorney
35 General to determine the adequacy of the amount of the installment
36 deposit.

37
38 8. a. In addition to or in lieu of any other civil or criminal remedy
39 provided by law, upon a determination that any person has violated
40 section 5 of this act or any regulation adopted pursuant thereto, the
41 director may revoke or suspend the license of any person pursuant to
42 section 203 of P.L.1948, c.65 (C.54:40A-5) or revoke or suspend the
43 holder's certificate of authority pursuant to procedures applicable to
44 the suspension of a license set forth in section 203 of P.L.1948, c.65
45 (C.54:40A-5). Each stamp or metered impression affixed and each
46 offer to sell cigarettes in violation of section 5 of this act shall

1 constitute a separate violation. For each violation hereof, the director
2 may also impose a civil penalty in an amount not to exceed the greater
3 of 500% of the retail value of the cigarettes sold or \$5,000 upon a
4 determination of violation of section 5 of this act or any regulations
5 adopted pursuant thereto.

6 b. Any cigarettes that have been sold, offered for sale or possessed
7 for sale in this State in violation of section 5 of this act shall be
8 deemed contraband, without regard to whether the violation was
9 knowing under section 607 of P.L.1948, c. 65 (C.54:40A-30), and
10 those cigarettes shall be subject to seizure and forfeiture as provided
11 in section 607, and all cigarettes so seized and forfeited shall be
12 destroyed and not resold.

13 c. The Attorney General, on behalf of the director, may seek an
14 injunction to restrain a threatened or actual violation of section 5 of
15 this act, or subsection a. or subsection b. of section 7 of this act by a
16 licensed distributor or a holder of a certificate of authority pursuant to
17 section 6 of P.L.1990, c.39 (C.54:40B-6) and to compel the licensed
18 distributor or holder of a certificate of authority to comply with the
19 requirements provided therein. In any action brought pursuant to this
20 section, the State shall be entitled to recover the costs of investigation,
21 costs of the action and reasonable attorney fees.

22 d. It shall be unlawful for any person to sell or distribute cigarettes
23 or acquire, hold, own, possess, transport, import, or cause to be
24 imported cigarettes that the person knows or should know are
25 intended for distribution or sale in the State in violation of section 5
26 of this act. A violation of this subsection shall be a crime of the third
27 degree.

28

29 9. a. A determination of the Attorney General to not list or to
30 remove from the directory a brand family or tobacco product
31 manufacturer shall be subject to review in the manner prescribed by
32 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
33 seq.).

34 b. No person shall be issued a license or granted a renewal of a
35 license to act as a stamping agent, or a certificate of authority pursuant
36 to section 6 of P.L.1990, c.39 (C.54:40B-6), unless that person has
37 certified in writing, under penalty of perjury that the person will
38 comply fully with this section.

39 c. Notwithstanding the dates otherwise prescribed in this act:

40 (1) the first report required after enactment of this act by a licensed
41 distributor or a holder of a certificate of authority pursuant to
42 subsection a. of section 7 of this act shall be due 30 days after
43 enactment of this act;

44 (2) the first certification required after enactment of this act by a
45 tobacco product manufacturer described in subsection a. of section 3
46 of this act shall be due 45 days after enactment of this act; and

1 (3) the first publication required after enactment of this act of the
2 directory described in subsection a. of section 4 of this act shall be
3 completed within 90 days after the enactment of this act.

4 d. The Attorney General may promulgate regulations necessary to
5 effect the purposes of this act.

6 e. In any action brought by the State to enforce this act, the State
7 shall be entitled to recover the costs of investigation, expert witness
8 fees, costs of the action and reasonable attorney fees.

9 f. If a court determines that a person has violated this act, the court
10 shall order any profits, gain, gross receipts or other benefit from the
11 violation to be disgorged and paid to the State Treasurer. Unless
12 otherwise expressly provided, the remedies or penalties provided by
13 this act are cumulative, and in addition to the remedies or penalties
14 available under all other laws of this State.

15
16 10. This act shall take effect immediately.

17
18
19 STATEMENT

20
21 This bill prohibits any cigarette tax stamp or meter impression to be
22 affixed to a package of cigarettes, or tax to be paid on a tobacco
23 product defined as a cigarette, unless the tobacco manufacturer and
24 brand family in question is a participating manufacturer under the
25 Model Settlement Act (MSA), or a non-participating manufacturer
26 that has made all required escrow payments. These manufacturers will
27 be included on a list posted by the Attorney General. The Attorney
28 General's list will be posted and updated on the Attorney General's
29 web site and include the following: (1) all tobacco product
30 manufacturers that are participating manufacturer under the MSA; (2)
31 all non-participating tobacco product manufacturers in the MSA that
32 have been determined by the Attorney General to have made all
33 escrow payments required by law; and (3) all brand families of such
34 participating and non-participating manufacturers.

35 This bill authorizes the Director of the Division of Taxation in the
36 Department of the Treasury to revoke or suspend the license of a
37 distributor, or the certificate of authority under the Tobacco Products
38 Wholesale Sales Tax, for stamping or paying taxes on brands that are
39 in violation of requirements of this bill. The director is also authorized
40 to impose a penalty not to exceed the greater of either five times the
41 retail value of the cigarettes or tobacco products or \$5,000. Any
42 cigarette or tobacco products that are stamped or to which a meter
43 impression is affixed, or for which tax is paid in violation of the
44 provisions of the bill, would be deemed "contraband" and subject to
45 seizure and forfeiture pursuant to the Cigarette Tax Act. The
46 cigarettes or tobacco products seized and forfeited are required to be

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1 destroyed.

2 This bill also authorizes the director to require those persons that
3 affix stamps or meter impressions to packages of cigarettes, or that
4 pay the tax on a tobacco product defined as a cigarette, to submit all
5 information necessary to enable the Attorney General to determine
6 whether a tobacco product manufacturer has made all escrow
7 payments. The bill authorizes the director and the Attorney General
8 to exchange information as is reasonably necessary for the
9 enforcement and administration of this bill.

10 This bill also establishes crimes of the third degree for violations of
11 the stamping, metering and tax paying restrictions applicable for
12 non-listed brands and for false representations made concerning the
13 compliance requirements of the bill.

14 The provisions of this bill are complementary to the Model Statute,
15 and are not intended to amend, restrict or modify, the provisions of
16 P.L.1999, c.148 (C.52:4D-1 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2141

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2002

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2141.

This bill seeks to improve the compliance of certain tobacco manufacturers with a State "model statute" enacted as part of New Jersey's participation in the nationwide state tobacco-related settlement agreement. The bill seeks to improve enforcement of the "model statute" requirement that non-settling tobacco manufacturers make certain escrow fund payments by establishing a public directory of tobacco brand products whose manufacturers are in compliance with the "model statute." The bill makes it illegal for tobacco product distributors to put cigarette tax stamps on, and therefore sell, cigarettes marketed under any brand not included in the directory of complying manufacturers and brands.

Background. In September 1996, New Jersey sued the major tobacco manufacturers for money damages to compensate for medical costs incurred in treating State residents for tobacco-related illnesses. In 1997, this State joined 40 others in reaching a proposed settlement with the tobacco industry that required Congressional ratification. When the ratification effort failed, the states opened fresh negotiations with the industry, seeking an agreement that would not require federal action. In November 1998, 46 states and the District of Columbia concluded a "Master Settlement Agreement" ("MSA") with the largest tobacco manufacturers requiring those participating in the agreement to make payments in perpetuity to the settling states.

One of the provisions of the MSA directed the settling states each to enact a "model statute" requiring tobacco manufacturers who did *not* join in the national settlement to make payments into an escrow fund. This payment requirement had two primary purposes:

(i) To prevent these non-participating manufacturers (mainly smaller companies) from using the money they would save from not making settlement payments to gain a pricing advantage over the participating manufacturers. The participating manufacturers were not the only parties with an interest in protecting those manufacturers' market share: under the MSA, the size of the payments to settling states is in part determined by the volume of cigarette sales by those

manufacturers; and

(ii) To guarantee a source of compensation for any future judgment or settlement involving any of the non-participating manufacturers.

New Jersey's version of the "model statute," enacted in 1999, requires the non-participating tobacco manufacturers to deposit amounts ranging from \$.0094241 per unit (i.e., per cigarette) sold in 1999 to \$.0188482 per unit sold in 2007 and each year thereafter. Funds on deposit, if not paid in judgment or settlement, are returned to the companies with interest 25 years after being placed in escrow.

Compliance with the escrow contribution requirement has been less than perfect: uncertainty regarding the State's jurisdiction over out-of-state (including foreign) non-participating manufacturers has resulted in the receipt by the escrow funds of less than the amounts called for under the MSA.

Bill provisions. This bill seeks to address the escrow contribution enforcement problem through the State's exercise of regulatory power over businesses with respect to which its jurisdiction is uncontested: distributors, wholesalers and retailers of tobacco products who are responsible for collecting New Jersey's cigarette tax or tobacco products wholesale sales tax. In the case of the cigarette tax, these vendors meet their liability for tax by paying for tax stamps or metered impressions that the vendors apply to containers of tobacco products at the point of taxable sale, and the cigarettes cannot be sold without bearing the stamp or impression. In the case of the tobacco products wholesale sales tax, payment is made through remission of collections based on wholesale sales.

Under the bill, vendors would be prohibited from applying a cigarette tax stamp or metered impression to a package of cigarettes, or from paying the wholesale sales tax on a tobacco product defined as a cigarette, unless the tobacco manufacturer and brand family in question is a participating manufacturer under the Model Settlement Act (MSA), or a non-participating manufacturer that has made all required escrow payments. To enable vendors to identify tax-eligible brands and manufacturers, the Attorney General is required to compile, and maintain on the Attorney General's internet website, and to update as needed, a directory of these makers and brands. The contents of the directory would include the following: (1) all tobacco product manufacturers that are participating manufacturers under the MSA; (2) all non-participating tobacco product manufacturers in the MSA that have been determined by the Attorney General to have made all escrow payments required by law; and (3) all brand families of such participating and non-participating manufacturers.

This bill authorizes the Director of the Division of Taxation in the Department of the Treasury to revoke or suspend the license of a distributor, or the certificate of authority under the Tobacco Products Wholesale Sales Tax, for stamping or paying taxes on brands that are

in violation of requirements of this bill. The director is also authorized to impose a penalty not to exceed the greater of either five times the retail value of the cigarettes or tobacco products or \$5,000. Any cigarette or tobacco products that are stamped or to which a metered impression is affixed, or for which tax is paid in violation of the provisions of the bill, would be deemed "contraband" and subject to seizure and forfeiture pursuant to the Cigarette Tax Act. The cigarettes or tobacco products seized and forfeited are required to be destroyed.

This bill also authorizes the director to require those persons that affix stamps or metered impressions to packages of cigarettes, or that pay the tax on a tobacco product defined as a cigarette, to submit all information necessary to enable the Attorney General to determine whether a tobacco product manufacturer has made all escrow payments. The bill authorizes the director and the Attorney General to exchange information as is reasonably necessary for the enforcement and administration of this bill.

This bill also establishes crimes of the third degree for violations of the stamping, metering and tax paying restrictions applicable for non-listed brands and for false representations made concerning the compliance requirements of the bill.

The provisions of this bill, as amended, are identical to those of Assembly Bill No. 3079 (1R).

COMMITTEE AMENDMENTS:

Committee amendments to this bill clarify the wording of a provision directing the Attorney General to update the directory of manufacturers and brands.

FISCAL IMPACT:

The fiscal impact of this bill is likely to be modest. As noted above, the goal of the bill is to enhance compliance with the "model statute" meant to protect and restore the cigarette market share held by participants in the MSA; its potential State fiscal impact derives from the resulting increase in New Jersey's payments under the MSA. The MSA provides that participating manufacturers' payments to states are to be adjusted annually in accordance with changes in the manufacturers' national sales volume. Industry representatives estimate that in 2002 New Jersey experienced a loss of about \$6 million in expected payments under the MSA because of the manufacturers' loss of national market share to non-complying, non-participating tobacco manufacturers. The Office of Legislative Services (OLS) can not verify the accuracy of this assertion. It is possible, however, to calculate the potential fiscal impact of this bill, if it achieves its objectives, using the industry estimate. New Jersey cigarette sales represent about 2% of national sales. If it is assumed that New Jersey also has about 2% of the sales of non-complying, non-

participating tobacco manufacturers, the shifting of all of those sales back to the MSA participating manufacturers would have restored about \$120,000 of the \$6,000,000 that the State is estimated to have lost in 2002.

Of course, to the extent that other states enact legislation similar to this bill and those efforts have the intended effect, New Jersey could regain the remaining \$5,880,000 in annual MSA payments. Additionally, industry representatives predict that the loss of market share to non-complying, non-participating tobacco manufacturers (and therefore State revenue losses) will increase in the future. If this is correct, the revenue gains under this bill would increase proportionately.

It should be noted that since the State has assigned some (and may assign more) of its proceeds from the MSA to the Tobacco Settlement Financing Corporation, the relationship of this bill to the State's General Fund resources is further attenuated.

Alternatively, should the deterrent effect of the penalty provisions of the bill be unsuccessful, the State could receive some additional revenue from fines imposed under successfully pursued sanctions.

FISCAL NOTE
[First Reprint]
SENATE, No. 2141
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: JANUARY 16, 2003

SUMMARY

Synopsis: Concerns certain tobacco product manufactures.
Type of Impact: May avert a potential reduction in revenue
Agencies Affected: Department of the Treasury; Tobacco Settlement Financing Corporation

Executive Estimate

Fiscal Impact	annually
State Revenue	indeterminate, but modest

- ! The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- ! The bill may preserve market share of participants in the master settlement agreement and thereby avert a reduction in payments to New Jersey.
- ! Should the deterrent effect of the penalties be unsuccessful the State could receive some additional income from increased fines.

BILL DESCRIPTION

Senate Bill No. 2141 (1R) of 2002 tightens enforcement of the New Jersey "model act" adopted as part of the State's participation in the national tobacco settlement agreement to ensure the compliance of non-participating tobacco manufacturers with certain escrow fund payment obligations. Currently tobacco product manufacturers who do not participate in the national tobacco settlement are required to pay into a State reserve fund. There are, however, non-compliant manufacturers located in foreign countries and elsewhere, whose participation cannot be compelled.

The bill prohibits any cigarette tax stamp or meter impression to be affixed to a package of cigarettes, or tax be paid on a tobacco product defined as a cigarette, unless the tobacco manufacturer participates in the the Master Settlement Agreement (MSA) or makes required payments to the escrow account. This bill authorizes the Director of the Division of Taxation to revoke or suspend the license of a distributor for stamping or paying taxes on brands that are in violation of this bill's requirements. The director is also authorized to impose a penalty not to

exceed the greater of either five times the retail value of the cigarettes or tobacco products or \$5,000.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive states the bill would have very little, if any, impact on State revenue.

OFFICE OF LEGISLATIVE SERVICES

The fiscal impact of this bill is likely to be modest. The purpose of the bill and its potential State fiscal impact is the protection and restoration of the cigarette market share held by participants in the MSA and the corresponding enhancement of New Jersey's payments under the MSA. The MSA provides that payments to states are to be adjusted annually in accordance with changes in national sales volume by the participating manufacturers. Industry representatives estimate that in 2002 New Jersey experienced a loss of about \$6 million in expected payments under the MSA because of market share captured by non-complying, non-participating tobacco manufacturers. The Office of Legislative Services (OLS) can not verify the accuracy of this assertion. It is possible, however, to calculate the potential fiscal impact of this bill, if it achieves its objectives, using the industry estimate. New Jersey cigarette sales represent about 2 percent of national sales. If we assume that New Jersey also has about 2 percent of the sales of non-complying, non-participating tobacco manufacturers, the shifting of all of those sales back to the MSA participating manufacturers would have restored about \$120,000 of the \$6,000,000 that the State is estimated to have lost in 2002.

Of course, to the extent that other states enact legislation similar to this bill and those efforts have intended effect, New Jersey could regain the remaining \$5,880,000 in annual MSA payments. Additionally, industry representative predict that the loss of market share to non-complying, non-participating tobacco manufacturers (and therefore State revenues) will increase in future. If this is correct, the revenue gains under this bill would increase proportionately.

It should be noted that since the State has assigned some (and may assign more) of its proceeds from the MSA to the Tobacco Settlement Financing Corporation, the relationship of this bill to the State's General Fund resources is further attenuated.

Alternatively, should the deterrent effect of the penalty provisions of the bill be unsuccessful, the State could receive some additional revenue from fines imposed under successfully pursued sanctions.

Section: *Revenue, Finance and Appropriations*

Analyst: *David J. Rosen*
Section Chief

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67.