

2C:40-16

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 69

NJSA: 2C:40-16 (Upgrades tampering generally; upgrades tampering with prescribed medicine to second degree crime under certain circumstances)

BILL NO: S339 (Substituted for A3405)

SPONSOR(S) Bark and Others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 8, 2007

SENATE: March 12, 2007

DATE OF APPROVAL: April 30, 2007

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (First reprint enacted)

S339

[SPONSOR'S STATEMENT:](#) (Begins on page 3 of original bill) [Yes](#)

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

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

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL NOTE: No

A3405

[SPONSOR'S STATEMENT:](#) (Begins on page 3 of original bill) [Yes](#)

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

SENATE: No

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH 4/24/08

P.L. 2007, CHAPTER 69, *approved April 30, 2007*
Senate, No. 339 (*First Reprint*)

1 AN ACT concerning criminal penalties for tampering and amending
2 P.L.1987, c.421.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.1987, c.421 (C.2C:40-16) is amended to read
8 as follows:

9 1. As used in this act:

10 a. "Cosmetic" means any substance or other device which is
11 used for the treatment of the skin, hair or nails.

12 b. "Drug" means any over-the-counter or prescribed medicine.

13 c. "Food product" means anything sold for human consumption,
14 and includes tobacco products.

15 d. "Tamper" means to adulterate a cosmetic, drug or food
16 product by adding any poisonous, deleterious or noxious substance
17 or diluent which may be injurious or detrimental to a person's
18 health. "Tamper" includes the addition of any substance or diluent
19 or both to a prescribed drug resulting in a reduction or increase of
20 the strength of that drug without so being ordered by the prescriber.
21 Any change in the strength of the prescribed drug must be noted on
22 the medication or prescription label and if not so noted the drug
23 shall be considered to have been tampered with and mislabeled.

24 (cf: P.L.1987, c.421, s.1)

25

26 2. Section 2 of P.L.1987, c.421 (C.2C:40-17) is amended to read
27 as follows:

28 2. **[A]** a. Except as provided in subsection b. of this section, a
29 person who 'knowingly' tampers with a cosmetic, drug or food
30 product is guilty of a crime of the **[fourth]** third degree, except that
31 nothing herein shall be deemed to preclude a charge for a greater
32 crime under any other provision of Title 2C of the New Jersey
33 Statutes.

34 b. A health care professional or his agent who is authorized to
35 prescribe, dispense or administer medication who knowingly
36 tampers with medicine prescribed for a person is guilty of a crime
37 of the second degree, except that nothing herein shall be deemed to
38 preclude a charge for a greater crime under any other provision of
39 Title 2C of the New Jersey Statutes.

40 c. Notwithstanding the provisions of paragraph (2) of subsection
41 a. of N.J.S.2C:43-6, any sentence imposed upon a health care
42 professional or his agent pursuant to subsection b. of this section
43 shall include a term of imprisonment. The court may not suspend

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted February 22, 2007.

1 or make any other noncustodial disposition of a person sentenced
2 pursuant to the provisions of this subsection.

3 (cf: P.L.1987, c.421, s.2)

4

5 3. This act shall take effect immediately.

6

7

8

9

10 Upgrades tampering generally; upgrades tampering with
11 prescribed medicine to second degree crime under certain
12 circumstances.

SENATE, No. 339

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator MARTHA W. BARK

District 8 (Burlington)

Senator DIANE B. ALLEN

District 7 (Burlington and Camden)

Co-Sponsored by:

Senator Palaia

SYNOPSIS

Upgrades tampering generally; upgrades tampering with prescribed medicine to second degree crime under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning criminal penalties for tampering and amending
2 P.L.1987, c.421.

3

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

6

7 1. Section 1 of P.L.1987, c.421 (C.2C:40-16) is amended to read
8 as follows:

9 1. As used in this act:

10 a. "Cosmetic" means any substance or other device which is
11 used for the treatment of the skin, hair or nails.

12 b. "Drug" means any over-the-counter or prescribed medicine.

13 c. "Food product" means anything sold for human consumption,
14 and includes tobacco products.

15 d. "Tamper" means to adulterate a cosmetic, drug or food
16 product by adding any poisonous, deleterious or noxious substance
17 or diluent which may be injurious or detrimental to a person's
18 health. "Tamper" includes the addition of any substance or diluent
19 or both to a prescribed drug resulting in a reduction or increase of
20 the strength of that drug without so being ordered by the prescriber.
21 Any change in the strength of the prescribed drug must be noted on
22 the medication or prescription label and if not so noted the drug
23 shall be considered to have been tampered with and mislabeled.

24 (cf: P.L.1987, c.421, s.1)

25

26 2. Section 2 of P.L.1987, c.421 (C.2C:40-17) is amended to read
27 as follows:

28 2. [A] a. Except as provided in subsection b. of this section, a
29 person who tampers with a cosmetic, drug or food product is guilty
30 of a crime of the [fourth] ~~third~~ degree, except that nothing herein
31 shall be deemed to preclude a charge for a greater crime under any
32 other provision of Title 2C of the New Jersey Statutes.

33 b. A health care professional or his agent who is authorized to
34 prescribe, dispense or administer medication who knowingly
35 tampers with medicine prescribed for a person is guilty of a crime
36 of the second degree, except that nothing herein shall be deemed to
37 preclude a charge for a greater crime under any other provision of
38 Title 2C of the New Jersey Statutes.

39 c. Notwithstanding the provisions of paragraph (2) of subsection
40 a. of N.J.S.2C:43-6, any sentence imposed upon a health care
41 professional or his agent pursuant to subsection b. of this section
42 shall include a term of imprisonment. The court may not suspend
43 or make any other noncustodial disposition of a person sentenced
44 pursuant to the provisions of this subsection.

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

Matter underlined thus is new matter.

1 (cf: P.L.1987, c.421, s.2)

2 3. This act shall take effect immediately.

3

4

5

STATEMENT

6

7 This bill amends the criminal penalties for tampering with a
8 cosmetic, drug or food product generally from a crime of the fourth
9 degree to a crime of the third degree. A crime of the fourth degree
10 is punishable by a fine not to exceed \$10,000, a term of
11 imprisonment not to exceed 18 months or both. A crime of the
12 third degree is punishable by a fine not to exceed \$15,000, a term of
13 imprisonment between 3 to 5 years or both. The bill further
14 upgrades the crime to one of the second degree if the tampering
15 occurs under certain circumstances in new subsection b. of
16 N.J.S.A.2C:40-17. A crime of the second degree is punishable by a
17 fine not to exceed \$150,000, a term of imprisonment between 5 to
18 10 years or both. This new subsection b. in N.J.S.A.2C:40-17 does
19 not apply to over-the-counter drugs so tampering with them, under
20 the bill, is a third degree crime regardless of the circumstances.

21 The bill in section 1 amends the existing definition of "tamper"
22 to include the addition of any substance or diluent or both to a
23 prescribed drug resulting in a reduction or increase of the strength
24 of that drug without so being ordered by the prescriber. Any change
25 in the strength of the prescribed drug must be noted on the
26 medication or prescription label and if not so noted the drug shall be
27 considered to have been tampered with and mislabeled. Currently
28 the definition refers to the adding of any poisonous, deleterious or
29 noxious substance which may be injurious or detrimental to a
30 person's health.

31 The bill limits the second degree crime set forth in new
32 subsection b. of N.J.S.A.2C:40-17 to health care professionals who
33 prescribe, dispense or administer medication. Those same persons
34 would be subject to a mandatory term of imprisonment as set forth
35 in new subsection c. of N.J.S.A.2C:40-17.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 339

STATE OF NEW JERSEY

DATED: JANUARY 22, 2007

The Assembly Judiciary Committee reports favorably Senate Bill No. 339.

This bill increases the criminal penalties for tampering with a cosmetic, drug or food product.

Under the current law, tampering with a cosmetic, drug or food product is a crime of the fourth degree. This bill would upgrade it to a crime of the third degree. A crime of the fourth degree is punishable by a fine not to exceed \$10,000, a term of imprisonment not to exceed 18 months or both. A crime of the third degree is punishable by a fine not to exceed \$15,000, a term of imprisonment between 3 to 5 years or both.

The bill would further upgrade tampering to a crime of the second degree if a health care professional or his agent tampers with prescribed medication. A crime of the second degree is punishable by a fine not to exceed \$150,000, a term of imprisonment between 5 to 10 years or both. This second degree crime would not apply to over-the-counter drugs therefore tampering with over the counter drugs would be graded as a crime of the third degree regardless of the circumstances. Those same persons would be subject to a mandatory term of imprisonment as set forth in new subsection c. of N.J.S.A.2C:40-17.

In addition, the bill amends the existing definition of "tamper" to include the addition of any diluent to a prescribed drug resulting in a reduction or increase of the strength of that drug without so being ordered by the prescriber. Any change in the strength of the prescribed drug must be noted on the medication or prescription label and if not so noted the drug shall be considered to have been tampered with and mislabeled. Currently the definition refers to the adding of any poisonous, deleterious or noxious substance which may be injurious or detrimental to a person's health.

This bill is identical to Assembly Bill No. 3405.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 339

STATE OF NEW JERSEY

DATED: MAY 11, 2006

The Senate Judiciary Committee reports favorably Senate Bill No. 339.

This bill amends the criminal penalties for tampering with a cosmetic, drug or food product generally from a crime of the fourth degree to a crime of the third degree. A crime of the fourth degree is punishable by a fine not to exceed \$10,000, a term of imprisonment not to exceed 18 months or both. A crime of the third degree is punishable by a fine not to exceed \$15,000, a term of imprisonment between 3 to 5 years or both. The bill further upgrades the crime to one of the second degree if the tampering occurs under certain circumstances in new subsection b. of N.J.S.A.2C:40-17. A crime of the second degree is punishable by a fine not to exceed \$150,000, a term of imprisonment between 5 to 10 years or both. This new subsection b. in N.J.S.A.2C:40-17 does not apply to over-the-counter drugs so tampering with them, under the bill, is a third degree crime regardless of the circumstances.

The bill in section 1 amends the existing definition of "tamper" to include the addition of any substance or diluent or both to a prescribed drug resulting in a reduction or increase of the strength of that drug without so being ordered by the prescriber. Any change in the strength of the prescribed drug must be noted on the medication or prescription label and if not so noted the drug shall be considered to have been tampered with and mislabeled. Currently the definition refers to the adding of any poisonous, deleterious or noxious substance which may be injurious or detrimental to a person's health.

The bill limits the second degree crime set forth in new subsection b. of N.J.S.A.2C:40-17 to health care professionals or their agents who prescribe, dispense or administer medication. Those same persons would be subject to a mandatory term of imprisonment as set forth in new subsection c. of N.J.S.A.2C:40-17.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO

SENATE, No. 339

with Assembly Floor Amendments
(Proposed By Assemblyman CHIVUKULA)

ADOPTED: FEBRUARY 22, 2007

This bill increases the criminal penalties for tampering with a cosmetic, drug or food product. This floor amendment would amend subsection a. of N.J.S.A.2C:40-17 (section 2 of the bill) to clarify that a person commits the third degree crime of tampering if he “knowingly” tampers with a cosmetic, drug or food product. This bill currently provides that a health care professional who knowingly tampers commits a second degree crime. This amendment would clarify that the culpability for both the third and second degree crimes of tampering is “knowingly.”

ASSEMBLY, No. 3405

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JULY 4, 2006

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman SAMUEL D. THOMPSON

District 13 (Middlesex and Monmouth)

Assemblyman LARRY CHATZIDAKIS

District 8 (Burlington)

Co-Sponsored by:

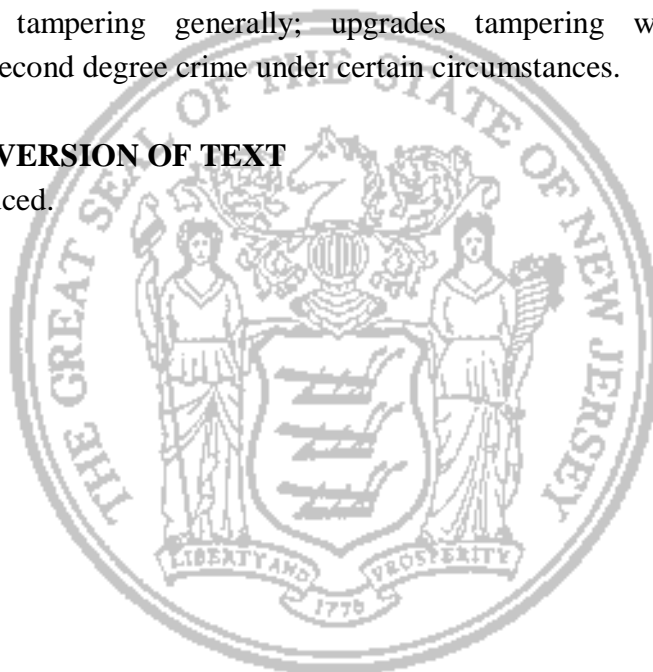
Assemblymen Vas and Whelan

SYNOPSIS

Upgrades tampering generally; upgrades tampering with prescribed medicine to second degree crime under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/19/2007)

A3405 CHIVUKULA, GREENSTEIN

2

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2 P.L.1987, c.421.

3

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14 consumption, and includes tobacco products.

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18 health. "Tamper" includes the addition of any substance or diluent
19 or both to a prescribed drug resulting in a reduction or increase of
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22 the medication or prescription label and if not so noted the drug
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30 of a crime of the [fourth] third degree, except that nothing herein
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32 other provision of Title 2C of the New Jersey Statutes.

33 b. A health care professional or his agent who is authorized to
34 prescribe, dispense or administer medication who knowingly
35 tampers with medicine prescribed for a person is guilty of a crime
36 of the second degree, except that nothing herein shall be deemed to
37 preclude a charge for a greater crime under any other provision of
38 Title 2C of the New Jersey Statutes.

39 c. Notwithstanding the provisions of paragraph (2) of
40 subsection a. of N.J.S.2C:43-6, any sentence imposed upon a health
41 care professional or his agent pursuant to subsection b. of this
42 section shall include a term of imprisonment. The court may not
43 suspend or make any other noncustodial disposition of a person
44 sentenced pursuant to the provisions of this subsection.

45 (cf: P.L.1987, c.421, s.2)

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

Matter underlined thus is new matter.

1 3. This act shall take effect immediately.

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STATEMENT

5

6 This bill amends the criminal penalties for tampering with a
7 cosmetic, drug or food product generally from a crime of the fourth
8 degree to a crime of the third degree. A crime of the fourth degree
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12 imprisonment between 3 to 5 years or both. The bill further
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14 occurs under certain circumstances in new subsection b. of
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19 the bill, is a third degree crime regardless of the circumstances.

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21 to include the addition of any substance or diluent or both to a
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23 of that drug without so being ordered by the prescriber. Any change
24 in the strength of the prescribed drug must be noted on the
25 medication or prescription label and if not so noted the drug shall be
26 considered to have been tampered with and mislabeled. Currently
27 the definition refers to the adding of any poisonous, deleterious or
28 noxious substance which may be injurious or detrimental to a
29 person's health.

30 The bill limits the second degree crime set forth in new
31 subsection b. of N.J.S.A.2C:40-17 to health care professionals or
32 their agents who prescribe, dispense or administer medication.
33 Those same persons would be subject to a mandatory term of
34 imprisonment as set forth in new subsection c. of N.J.S.A.2C:40-17.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3405

STATE OF NEW JERSEY

DATED: JANUARY 22, 2007

The Assembly Judiciary Committee reports favorably Assembly Bill No. 3405.

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In addition, the bill amends the existing definition of "tamper" to include the addition of any diluent to a prescribed drug resulting in a reduction or increase of the strength of that drug without so being ordered by the prescriber. Any change in the strength of the prescribed drug must be noted on the medication or prescription label and if not so noted the drug shall be considered to have been tampered with and mislabeled. Currently the definition refers to the adding of any poisonous, deleterious or noxious substance which may be injurious or detrimental to a person's health.

This bill is identical to Senate Bill No. 339.

STATEMENT TO
ASSEMBLY, No. 3405

with Assembly Floor Amendments
(Proposed By Assemblyman CHIVUKULA)

ADOPTED: FEBRUARY 22, 2007

This bill increases the criminal penalties for tampering with a cosmetic, drug or food product. This floor amendment would amend subsection a. of N.J.S.A.2C:40-17 (section 2 of the bill) to clarify that a person commits the third degree crime of tampering if he “knowingly” tampers with a cosmetic, drug or food product. This bill currently provides that a health care professional who knowingly tampers commits a second degree crime. This amendment would clarify that the culpability for both the third and second degree crimes of tampering is “knowingly.”