

2A:170-51

LEGISLATIVE HISTORY CHECKLIST
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(Tobacco--under age of 18)

NJSA: 2A:170-51

LAWS OF: 1995 **CHAPTER:** 304

BILL NO: S279

SPONSOR(S): Adler and Sinagra

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY** Judiciary

SENATE: Health

AMENDED DURING PASSAGE: Yes Amendments during passage
Second reprint enacted denoted by superscript
numbers

DATE OF PASSAGE: **ASSEMBLY:** November 9, 1995

SENATE: May 23, 1995

DATE OF APPROVAL: January 5, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

[SECOND REPRINT]

SENATE, No. 279

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Senators ADLER and SINAGRA

1 AN ACT concerning ¹[the availability] penalties for the sale and
2 distribution¹ of tobacco to persons under the age of 18,
3 amending N.J.S.2A:170-51 and P.L.1987, c.423, and
4 supplementing chapter 170 of Title 2A of the New Jersey
5 Statutes.

6

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

9 1. N.J.S.2A:170-51 is amended to read as follows:

10 2A:170-51. a. Any person who directly or indirectly, acting as
11 agent or otherwise, distributes for commercial purposes at no
12 cost or at minimal cost or with coupons or rebate offers or sells,
13 gives or furnishes to a minor under the age of 18 years, any
14 cigarettes made of tobacco or of any other matter or substance
15 which can be smoked, or any cigarette paper or tobacco in any
16 form, including smokeless tobacco, either from a vending
17 machine or by retail counter sales, ¹[shall be punished by a fine
18 of \$250] is ²[a disorderly person] liable to a civil penalty of \$250
19 for the first violation, \$500 for the second violation and \$1,000
20 for the third and each subsequent violation². In addition, upon
21 the recommendation of the municipality, following a hearing by
22 the municipality, the Division of Taxation may suspend or, after a
23 second or subsequent violation, revoke the license issued under
24 section 202 of P.L.1948, c.65 (C.54:40A-4) of a retail dealer. The
25 licensee shall be subject to administrative charges based on a
26 schedule issued by the Director of the Division of Taxation which
27 ²[shall] may² provide for a fine in lieu of the suspension¹.

28 b. The establishment of all of the following shall constitute a
29 defense to any prosecution brought pursuant to subsection a. of
30 this section:

31 (1) that the purchaser of the tobacco product or person
32 receiving a promotional sample falsely represented, by producing
33 either a driver's license or non-driver identification card issued
34 by the Division of Motor Vehicles, a similar card issued pursuant
35 to the laws of another state or the federal government or
36 Canada, or a photographic identification card issued by a county
37 clerk, that he was of legal age to make the purchase ¹or receive
38 the sample¹;

39 (2) that the appearance of the purchaser of the tobacco product
40 or person receiving a promotional sample was such that an
41 ordinary prudent person would believe him to be of legal age to
42 make the purchase ¹or receive the sample¹; and

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:

¹ Senate SHH committee amendments adopted March 31, 1994.

² Assembly AJL committee amendments adopted February 23, 1995.

1 (3) that the sale or distribution was made in good faith, relying
 2 upon the production of the identification in paragraph (1), the
 3 minor's appearance, and in the reasonable belief that the
 4 purchaser¹ or recipient¹ was actually of legal age to make the
 5 purchase¹ or receive the sample¹.

6 ¹[c. A minor under the age of 18 years who purchases,
 7 attempts to purchase, or misrepresents his age for the purpose of
 8 purchasing a tobacco product or receiving a sample of a tobacco
 9 product shall be punished by a fine of not more than \$50 or be
 10 required to perform community service for not more than 10
 11 days, or both.]¹

12 (cf: P.L.1987, c.423, s.1)

13 2. Section 2 of P.L.1987, c.423 (C.54:40A-4.1) is amended to
 14 read as follows:

15 2. Notwithstanding any other provision of law to the contrary,
 16 a person to whom a license is issued pursuant to P.L.1948, c.65
 17 (C.54:40A-1 ¹et seq.¹) shall as a condition of the license
 18 conspicuously post a legible sign at the point of display of the
 19 tobacco products and at the point of sale. The sign, which also
 20 shall be posted conspicuously on any licensed cigarette vending
 21 machine, shall be at least [two] six inches by [two] three inches
 22 [square] in bold letters at least one-quarter inch high and shall
 23 read as follows:

24 ¹¹ A person who sells or offers to sell a tobacco product to a
 25 person under 18 [years of age] ¹years of age¹ shall ²[be ¹jailed
 26 for six months,¹]² ¹[fined] pay a penalty of¹ [\$250.00] ¹[\$250] up
 27 to \$1,000 and ²may² be subject to a license suspension or
 28 revocation¹.

29 ¹[A person under 18 who purchases or attempts to purchase a
 30 tobacco product shall be fined up to \$50 or perform community
 31 service, or both.]¹

32 Proof of age may be required for purchase.¹¹

33 (cf: P.L.1987, c.423, s.2)

34 ¹[3. (New section) a. As used in this act, "tobacco retailer"
 35 means any person who is licensed to sell tobacco products at
 36 retail under the "Cigarette Tax Act." P.L.1948, c.65 (C.54:40A-1
 37 et seq.).

38 b. A tobacco retailer shall not knowingly display or permit to
 39 be displayed at his business premises any tobacco products within
 40 the reach of a member of the public in an area where the public
 41 is permitted access.

42 c. A person who violates this section shall be punished by a
 43 fine of \$250.]¹

44 ¹[4.] ³.¹ (New section) A person 18 years of age or older who
 45 purchases a tobacco product for a person who is under 18 years of
 46 age is a petty disorderly person.

47 ¹[5. (New section) a. Any penalty recovered under the
 48 provisions of this act shall be recovered by and in the name of the
 49 local board of health. The penalty recovered shall be paid by the
 50 local board into the treasury of the municipality where the
 51 violation occurred.

52 b. Every municipal court shall have jurisdiction over
 53 proceedings to enforce and collect any penalty imposed because
 54 of a violation of any provision of this act, if the violation has

1 occurred within the territorial jurisdiction of the court. The
2 proceedings shall be summary and in accordance with "the
3 penalty enforcement law" (N.J.S.2A:58-1 et seq.). Process shall
4 be in the nature of a summons or warrant and shall issue by the
5 local board of health or the municipal law enforcement
6 authority.]¹

7 ¹4. Nothing in P.L. , c. (C.)(pending before the Legislature
8 as this bill) shall be construed to preempt the provisions of any
9 municipal ordinance concerning vending machines that dispense
10 tobacco products.¹

11 ²5. (New section) a. A penalty recovered under the provisions
12 of N.J.S.2A:170-51 shall be recovered by and in the name of the
13 local board of health. The penalty shall be paid into the treasury
14 of the municipality where the violation occurred, but shall be
15 appropriated to the local board of health for use by the local
16 health agency in enforcing the provisions of N.J.S.2A:170-51. A
17 penalty recovered under the provisions of N.J.S.2A:170-51 after
18 the enactment of P.L. c. (C.) (now pending before the
19 Legislature as Senate Bill No. 1186 of 1994) shall be recovered by
20 and in the name of the municipality. The penalty shall be paid
21 into the treasury of the municipality where the violation occurred
22 for the general uses of the municipality.

23 b. A municipal court shall have jurisdiction over proceedings
24 to enforce and collect any penalty imposed because of a violation
25 of the provisions of N.J.S.2A:170-51, if the violation has occurred
26 within the territorial jurisdiction of the court. The proceedings
27 shall be summary and in accordance with "the penalty
28 enforcement law," N.J.S.2A:58-1 et seq. Process shall be in the
29 nature of a summons or warrant and shall issue by the local board
30 of health or the municipal law enforcement authority.²

31 ¹[6.] ²[5.1] 6.² This act shall take effect on the ¹[first day of
32 the fourth month] 90th day¹ after enactment.

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37 Increases penalty for sale and distribution of tobacco to persons
38 under 18.

1 2. Section 2 of P.L.1987, c.423 (C.54:40A-4.1) is amended to
2 read as follows:

3 2. Notwithstanding any other provision of law to the contrary,
4 a person to whom a license is issued pursuant to P.L.1948, c.65
5 (C.54:40A-1) shall as a condition of the license conspicuously post
6 a legible sign at the point of display of the tobacco products and
7 at the point of sale. The sign, which also shall be posted
8 conspicuously on any licensed cigarette vending machine, shall be
9 at least [two] six inches by [two] three inches [square] in bold
10 letters at least one-quarter inch high and shall read as follows:

11 A person who sells or offers to sell a tobacco product to a
12 person under 18 [years of age] shall be fined [\$250.00] \$250.

13 A person under 18 who purchases or attempts to purchase a
14 tobacco product shall be fined up to \$50 or perform community
15 service, or both.

16 Proof of age may be required for purchase.

17 (cf: P.L.1987, c.423, s.2)

18 3. (New section) a. As used in this act, "tobacco retailer"
19 means any person who is licensed to sell tobacco products at
20 retail under the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1
21 et seq.).

22 b. A tobacco retailer shall not knowingly display or permit to
23 be displayed at his business premises any tobacco products within
24 the reach of a member of the public in an area where the public
25 is permitted access.

26 c. A person who violates this section shall be punished by a
27 fine of \$250.

28 4. (New section) A person 18 years of age or older who
29 purchases a tobacco product for a person who is under 18 years of
30 age is a petty disorderly person.

31 5. (New section) a. Any penalty recovered under the
32 provisions of this act shall be recovered by and in the name of the
33 local board of health. The penalty recovered shall be paid by the
34 local board into the treasury of the municipality where the
35 violation occurred.

36 b. Every municipal court shall have jurisdiction over
37 proceedings to enforce and collect any penalty imposed because
38 of a violation of any provision of this act, if the violation has
39 occurred within the territorial jurisdiction of the court. The
40 proceedings shall be summary and in accordance with "the
41 penalty enforcement law" (N.J.S.2A:58-1 et seq.). Process shall
42 be in the nature of a summons or warrant and shall issue by the
43 local board of health or the municipal law enforcement authority.

44 6. This act shall take effect on the first day of the fourth
45 month after enactment.

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STATEMENT

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50 Forty-one percent of New Jersey high school students
51 currently smoke and half of these smokers report smoking daily.
52 According to a recent survey, about 25 percent of the high school
53 seniors in New Jersey who had ever smoked reported doing so by
54 sixth grade, 50 percent by eighth grade, and 75 percent by ninth

1 grade. This bill is intended to help limit the access of youngsters
2 like these to cigarettes and other forms of tobacco.

3 The bill makes it unlawful for a person under 18 years of age to
4 purchase, attempt to purchase, or misrepresent his age for the
5 purpose of purchasing tobacco or receiving promotional samples
6 of tobacco products. A fine of up to \$50, or community service
7 of up to 10 days, or both, would be imposed for this violation.

8 N.J.S.2A:170-51 states that the sale or distribution of tobacco
9 to anyone under age 18 is punishable by a fine of \$250. The bill
10 recognizes a valid defense to this charge of underage sales or
11 distribution if the retailer can establish that:

12 (1) the underage minor showed authorized identification that
13 he was of legal age to make the purchase or receive the sample;

14 (2) that the minor would appear to an ordinary, prudent person
15 to be of legal age; and

16 (3) that the transaction was made in good faith, relying on
17 this identification and the purchaser's appearance.

18 This provision is intended to encourage the "proofing" for legal
19 age of prospective tobacco purchasers by retail tobacco dealers
20 in a manner similar to that used in alcoholic beverage sales.

21 Further, to prohibit the theft of tobacco products by those
22 under 18, the bill prohibits retailers from displaying or permitting
23 the display of these products within the reach of members of the
24 public. The fine for this violation would be \$250.

25 In addition, the bill increases the size of the signs required to
26 be displayed at tobacco products' points of display and sale,
27 stating that sales to persons under 18 are unlawful. It is also
28 made clear that vending machines are to have these signs. The
29 signs would be required to include the bill's underage purchasing
30 penalty and to state that proof of age may be required of the
31 purchaser.

32 The bill also makes it a petty disorderly person offense to
33 purchase a tobacco product for another person who is too young
34 to make the purchase himself.

35 In addition, this bill prohibits the distribution of promotional
36 samples of tobacco products to persons under 18 at no cost, at
37 minimal cost or with coupons or rebate offers. A number of
38 states have already enacted similar restrictions.

39 The proposed legislation gives local boards of health and law
40 enforcement authorities clear responsibility for enforcing the
41 law's display, sale, purchase, and distribution provisions. It
42 requires that fines be paid into municipal treasuries, thus offering
43 an incentive for local enforcement.

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48 Restricts the availability of tobacco to persons under age 18.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 279

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1995

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 279 [1R].

This bill amends and supplements various sections of the law to limit minors' access to cigarettes and other forms of tobacco.

Section 1 of the bill would amend N.J.S.2A:170-5 to encourage the "proofing" for legal age of prospective tobacco purchasers by retail tobacco dealers in a manner similar to that used in alcoholic beverage sales. Currently, a person who sells, gives or furnishes any tobacco product to a minor under 18 would be subject to a \$250.00 fine. The bill prior to amendment would have made this offense a disorderly persons offense. The committee amendments would impose a \$250.00 civil penalty for the first violation, a \$500.00 penalty for the second violation and a \$1,000.00 penalty for a third or subsequent violation.

In addition, section 1 of the bill would authorize the Division of Taxation, after a hearing on the matter and upon the recommendation of the municipality, to suspend a retail dealer's license if that dealer sells tobacco products to a minor under 18 years of age. The bill would also authorize the Division of Taxation to revoke the license of any retail dealer after a second or subsequent violation. The license would be subject to administrative charges which may provide for a fine in lieu of the suspension. The bill recognizes a valid defense to the charge of underage sales or distribution if the retailer can establish that: (1) the underage minor showed authorized identification that the minor was of legal age; (2) that the minor would appear to an ordinary, prudent person to be of legal age; and (3) that the transaction was made in good faith, relying on this identification and the purchaser's appearance.

Section 2 of the bill would amend N.J.S.54:40A-4.1 to increase the size of the signs and enhance the lettering of the signs which are currently required to be displayed at points of display and sale of tobacco products advising the public that selling tobacco products to a minor is prohibited. The bill also specifies that signs are to be posted conspicuously on any license cigarette vending machine. The signs would advise the public that any person who sells or offers to sell tobacco products to a minor under 18 would be punishable by a maximum term of imprisonment of six months, a fine of \$1,000.00 and a license suspension or revocation.

Section 3 of the bill would make it a petty disorderly persons offense for any person to purchase a tobacco product for any minor under 18 years of age. A petty disorderly offense is punishable by a maximum term of imprisonment of 30 days, a fine of \$500.00 or both.

Section 4 of the bill would clarify that this amendatory and supplementary act should not be construed to preempt the provisions of any municipal ordinance concerning vending machines that dispense tobacco products.

The committee added a new section 5 to the bill to provide that any penalties collected under the statute would be paid into the treasury of the municipality where the violation occurred but appropriated to the local board of health for use by the local health agency in enforcing the provisions of N.J.S.2A:170-51. Additionally, if Senate Bill No. 1186 is enacted the moneys would be appropriated to the municipality for general use.

Finally, the amendments change the effective date of the bill, making the bill effective on the 90th day after enactment.

As amended, this bill is identical to Assembly Bill No. 1163 [1R].

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE, No. 279

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 24, 1994

The Senate Health Committee favorably reports Senate Bill No. 279 with committee amendments.

As amended by committee, this bill is intended to help limit the access of youth under 18 years of age to cigarettes and other forms of tobacco.

The bill upgrades the penalty for sale of tobacco products to a person under 18 years of age from a \$250 fine to a disorderly persons offense. Also, a person licensed to sell tobacco products may have his license suspended or revoked if he sells tobacco products to a person under 18 years of age. The bill recognizes a valid defense to the charge of underage sales or distribution if a retailer can establish that:

- (1) the underage minor showed authorized identification that he was of legal age to make the purchase or receive the sample;
- (2) that the minor would appear to an ordinary, prudent person to be of legal age; and
- (3) that the transaction was made in good faith, relying on this identification and the purchaser's appearance.

This provision is intended to encourage the "proofing" for legal age of prospective tobacco purchasers by retail tobacco dealers in a manner similar to that used in alcoholic beverage sales.

The bill increases the size of the signs required to be displayed at tobacco products' points of display and sale and specifies that vending machines also are to have these signs. The signs would state:

"A person who sells or offers to sell a tobacco product to a person under 18 years of age shall be jailed for six months, pay a penalty of up to \$1,000 and be subject to a license suspension or revocation.

Proof of age may be required for purchase."

The bill also makes it a petty disorderly persons offense to purchase a tobacco product for another person who is under 18 years of age.

In addition, this bill prohibits the distribution of promotional samples of tobacco products to persons under 18 at no cost, at minimal cost or with coupons or rebate offers. A number of states have already enacted similar restrictions.

The committee amended the bill to upgrade the penalties for licensees who sell to underage persons. The disorderly persons offense included in the bill is the same as provided for persons who sell alcoholic beverages to underage persons (NJSA 33:1-77). Amendments also clarify that nothing in this bill shall be construed to preempt the provisions of any municipal ordinance concerning vending machines that dispense tobacco products. Other amendments delete the penalty on persons under 18 years of age

who purchase tobacco products and delete the prohibition on retail display of tobacco products within the reach of the public. Section 5 of the bill concerning the collection and enforcement of civil penalties is also deleted because the penalties in the bill are upgraded from a civil penalty to a disorderly persons offense.

This bill was prefiled for introduction in the 1994-95 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.