

54:40A-46 to 54:40A-53

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 85

NJSA: 54:40A-46 to 54:40A-53 ("Cigarette Sales Act")

BILL NO A1838 (Substituted for S693)

SPONSOR(S): Weinberg and Johnson

DATE INTRODUCED: January 22, 2004

COMMITTEE: **ASSEMBLY:** Appropriations
SENATE: Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** May 24, 2004

SENATE: March 21, 2005

DATE OF APPROVAL: May 4, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (1st reprint enacted)

A1838

[SPONSOR'S STATEMENT](#): (Begins on page 4 of original bill) [Yes](#)

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

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

FLOOR AMENDMENT STATEMENT: No

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

S693

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

COMMITTEE STATEMENT: **ASSEMBLY:** No

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

FLOOR AMENDMENT STATEMENT: No

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

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

IS 5/24/07

Title 54.
Chapter 40A.
Article IX (New)
Cigarette Sales
Shipped From
Outside
§§1-8 - C.54:40A-46
to 54:40A-53
§9 - Note to §§1-8

P.L. 2005, CHAPTER 85, *approved May 4, 2005*
Assembly, No. 1838 (*First Reprint*)

1 AN ACT facilitating the collection of taxes on retail sales of cigarettes
2 shipped from outside this State, supplementing P.L.1948, c.65
3 (C.54:40A-1).

4

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

7

8 1. This act shall be known and may be cited as the "Cigarette Sales
9 Act."

10

11 2. The Legislature hereby finds and declares that:

12 a. Currently, the federal Jenkins Act, 15 U.S.C. s.375 et seq.,
13 requires any person that sells or transfers in interstate commerce
14 cigarettes into a state that taxes the sale or use of cigarettes to file
15 certain information with the tobacco tax administrator of that state;
16 and

17 b. According to the U.S. General Accounting Office, the Jenkins
18 Act is rarely enforced by the federal government and is currently
19 unenforceable by the states; and

20 c. As the sales of cigarettes to residents of this State by out-of-
21 State sellers increase and the difficulties associated with the collection
22 of sales and use taxes continue, there will be a steady erosion of the
23 sales and use tax revenues that this State is able to collect;

24 d. It is, therefore, the purpose of this act to facilitate the collection
25 of all applicable sales and use taxes on cigarettes sold to residents of
26 this State and to enforce the Jenkins Act.

27

28 3. As used in this act, "face-to-face sale" means a sale in which
29 the purchaser is in the physical presence of the seller or the seller's
30 employee or agent at the time of the sale. A "face-to-face sale" does
31 not include any transaction conducted by mail order, the Internet,
32 telephone, or any other anonymous transaction method in which the
33 buyer is not in the seller's physical presence or the physical presence

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 February 9, 2004.

1 of the seller's employee or agent at the time of the sale.

2

3 4. A person shall not engage in a retail sale of cigarettes in this
4 State unless the sale is a face-to-face sale, except that a person may
5 engage in a non-face-to-face sale of cigarettes to a person in this State
6 if the following conditions are met:

7 a. The seller has fully complied with all of the requirements of
8 the Jenkins Act, 15 U.S.C. s.375 et seq., for shipments to this State;
9 ¹[and]¹

10 b. The seller has ¹[fully complied with either of the following
11 requirements: (1)] verified payment of, paid, or collected¹ all
12 applicable State taxes, including the cigarette taxes imposed by the
13 "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) and the sales
14 or use taxes imposed by the "Sales and Use Tax Act," P.L.1966, c.30
15 (C.54:32B-1 et seq.), due on the cigarettes ¹[have been paid or (2) the
16 seller includes on the outside of the shipping container for any
17 cigarettes shipped to a resident in the State from any source in the
18 United States an externally visible and easily legible notice located on
19 the same side of the shipping container as the address to which the
20 package is delivered stating as follows: "IF THESE CIGARETTES
21 HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED
22 OUT OF THE STATE IN WHICH YOU RESIDE, THE SELLER
23 HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF
24 THESE CIGARETTES TO YOUR STATE TAX COLLECTION
25 AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE
26 LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID
27 STATE TAXES ON THESE CIGARETTES."'] ; and

28 c. The seller has, before mailing or shipping the cigarettes:

29 (1) obtained from the purchaser reliable confirmation that the
30 purchaser is at least 18 years old and a statement by the purchaser
31 under penalty of perjury certifying the purchaser's date of birth and
32 address;

33 (2) made good faith effort to verify the information contained in the
34 certification provided by the purchaser against a commercially
35 available database or has obtained a photocopy or other image of a
36 government-issued identification bearing the purchaser's image and
37 stating the date of birth or age of the purchaser.

38 (3) received payment for the sale from the prospective purchaser by
39 a credit or debit card that has been issued in the purchaser's name or
40 by check; and

41 (4) verified that a credit or debit card used for payment has been
42 issued in the purchaser's name, and the address to which the cigarettes
43 are being shipped matches the credit or debit card company's address
44 for the cardholder.

45 Sellers taking an order for a non-face-to-face sale may request that
46 prospective purchasers provide their e-mail addresses.¹

1 5. In addition to any other remedies provided by law, the Director
2 of the Division of Taxation in the Department of Treasury shall assess
3 penalties for violations of this act in accordance with the following
4 schedule:

5 a. a penalty of not less than \$1,000 and not more than \$2,000 for
6 the first violation;

7 b. a penalty of not less than \$2,500 and not more than \$3,500 for
8 the second violation within a five-year period;

9 c. a penalty of not less than \$4,000 and not more than \$5,000 for
10 the third violation within a five-year period;

11 d. a penalty of not less than \$5,500 and not more than \$6,500 for
12 a fourth violation within a five-year period; and

13 e. a penalty of \$10,000 for a fifth or subsequent violation within a
14 five-year period.

15

16 6. The Director of the Division of Taxation in the Department of
17 Treasury shall provide the Speaker of the General Assembly, the
18 Senate President, and the chairpersons of the Assembly Appropriations
19 Committee and the Senate Budget Committee, or the successor
20 committees, an annual report regarding all actions taken to comply
21 with and enforce this act.

22

23 7. This act shall not prohibit any lawful sale of a tobacco product
24 that occurs by means of a vending machine.

25

26 8. Nothing in this act shall relieve the seller of cigarettes from any
27 other applicable requirement of law relating to the sale of cigarettes.

28

29 9. This act shall take effect on the first day of the sixth month
30 following enactment and apply to shipments made on and after that
31 date.

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36 "_____
37 "Cigarette Sales Act;" facilitates collection of taxes on retail sales of
cigarettes shipped from outside this State.

ASSEMBLY, No. 1838

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 22, 2004

Sponsored by:

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Co-Sponsored by:

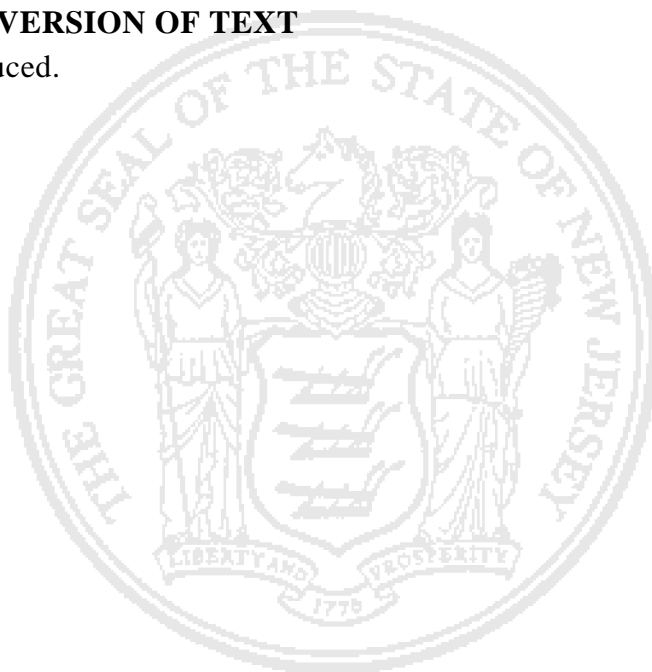
Assemblywoman Voss

SYNOPSIS

"Cigarette Sales Act;" facilitates collection of taxes on retail sales of cigarettes shipped from outside this State.

CURRENT VERSION OF TEXT

As introduced.



A1838 WEINBERG, JOHNSON

2

1 AN ACT facilitating the collection of taxes on retail sales of cigarettes
2 shipped from outside this State, supplementing P.L.1948, c.65
3 (C.54:40A-1).

4

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

7

8 1. This act shall be known and may be cited as the "Cigarette Sales
9 Act."

10

11 2. The Legislature hereby finds and declares that:

12 a. Currently, the federal Jenkins Act, 15 U.S.C. s.375 et seq.,
13 requires any person that sells or transfers in interstate commerce
14 cigarettes into a state that taxes the sale or use of cigarettes to file
15 certain information with the tobacco tax administrator of that state;
16 and

17 b. According to the U.S. General Accounting Office, the Jenkins
18 Act is rarely enforced by the federal government and is currently
19 unenforceable by the states; and

20 c. As the sales of cigarettes to residents of this State by out-of-
21 State sellers increase and the difficulties associated with the collection
22 of sales and use taxes continue, there will be a steady erosion of the
23 sales and use tax revenues that this State is able to collect;

24 d. It is, therefore, the purpose of this act to facilitate the collection
25 of all applicable sales and use taxes on cigarettes sold to residents of
26 this State and to enforce the Jenkins Act.

27

28 3. As used in this act, "face-to-face sale" means a sale in which
29 the purchaser is in the physical presence of the seller or the seller's
30 employee or agent at the time of the sale. A "face-to-face sale" does
31 not include any transaction conducted by mail order, the Internet,
32 telephone, or any other anonymous transaction method in which the
33 buyer is not in the seller's physical presence or the physical presence
34 of the seller's employee or agent at the time of the sale.

35

36 4. A person shall not engage in a retail sale of cigarettes in this
37 State unless the sale is a face-to-face sale, except that a person may
38 engage in a non-face-to-face sale of cigarettes to a person in this State
39 if the following conditions are met:

40 a. The seller has fully complied with all of the requirements of
41 the Jenkins Act, 15 U.S.C. s.375 et seq., for shipments to this State;
42 and

43 b. The seller has fully complied with either of the following
44 requirements: (1) all applicable State taxes, including the cigarette
45 taxes imposed by the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-
46 1 et seq.) and the sales or use taxes imposed by the "Sales and Use

1 Tax Act," P.L.1966, c.30 (C.54:32B et seq.), due on the cigarettes
2 have been paid or (2) the seller includes on the outside of the shipping
3 container for any cigarettes shipped to a resident in the State from any
4 source in the United States an externally visible and easily legible
5 notice located on the same side of the shipping container as the
6 address to which the package is delivered stating as follows: "IF
7 THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A
8 SELLER LOCATED OUT OF THE STATE IN WHICH YOU
9 RESIDE, THE SELLER HAS REPORTED PURSUANT TO
10 FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR
11 STATE TAX COLLECTION AGENCY, INCLUDING YOUR
12 NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE
13 FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE
14 CIGARETTES."

15

16 5. In addition to any other remedies provided by law, the Director
17 of the Division of Taxation in the Department of Treasury shall assess
18 penalties for violations of this act in accordance with the following
19 schedule:

20 a. a penalty of not less than \$1,000 and not more than \$2,000 for
21 the first violation;

22 b. a penalty of not less than \$2,500 and not more than \$3,500 for
23 the second violation within a five-year period;

24 c. a penalty of not less than \$4,000 and not more than \$5,000 for
25 the third violation within a five-year period;

26 d. a penalty of not less than \$5,500 and not more than \$6,500 for
27 a fourth violation within a five-year period; and

28 e. a penalty of \$10,000 for a fifth or subsequent violation within a
29 five-year period.

30

31 6. The Director of the Division of Taxation in the Department of
32 Treasury shall provide the Speaker of the General Assembly, the
33 Senate President, and the chairpersons of the Assembly Appropriations
34 Committee and the Senate Budget Committee, or the successor
35 committees, an annual report regarding all actions taken to comply
36 with and enforce this act.

37

38 7. This act shall not prohibit any lawful sale of a tobacco product
39 that occurs by means of a vending machine.

40

41 8. Nothing in this act shall relieve the seller of cigarettes from any
42 other applicable requirement of law relating to the sale of cigarettes.

43

44 9. This act shall take effect on the first day of the sixth month
45 following enactment and apply to shipments made on and after that
46 date.

STATEMENT

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This bill facilitates the collection of taxes on retail sales of cigarettes shipped from outside this State. It requires that all cigarette sales be made "face-to-face" unless the seller has complied with the Jenkins Act, 15 U.S.C. s.375 et seq., and either (1) paid all applicable State taxes, including the cigarette taxes imposed by the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) and the sales or use taxes imposed by the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B et seq.) or (2) posted a prescribed notice on the outside of the shipping container, among other things, warning the recipient of the shipment that the recipient is responsible for all unpaid State taxes.

The federal Jenkins Act requires that anyone selling cigarettes to a buyer in another state report the sale to the state tobacco tax administrator for the buyer's state. The state tobacco tax administrator, the Director of the Division of Taxation in the Department of Treasury in this State, then has the information he or she needs to collect cigarette and sales or use taxes due. If the sale is "face-to-face," as this bill requires (unless certain conditions are met), the seller collects the taxes from the buyer and remits them to the Director. However, if the sale is not "face-to-face," it is often impossible for the Department of Treasury to collect the taxes due. By allowing non-face-to-face sales of cigarettes only if the seller has complied with the Jenkins Act, this bill enforces the Jenkins Act and facilitates the collection of cigarette and sales or use taxes due.

The Jenkins Act is rarely enforced by the federal government and it is currently unenforceable by the states. The U.S. General Accounting Office reported that most Internet cigarette vendors do not comply with the Jenkins Act or notify consumers of their responsibilities with respect to the payment of taxes. *Internet Cigarette Sales*, GAO-02-743 (Washington, DC: August 2001).

As the sales of cigarettes to residents of this State by out-of-State sellers increase and the difficulties associated with the collection of sales and use taxes continue, there will be a steady erosion of the tax revenues that the State is able to collect. Indeed, it is projected that in 2005, states will lose \$1.4 billion in tax revenue to the sale of tobacco products online. (*Online Tobacco Sales Grow, States Lose*, Forrester Research, Inc., April 27, 2001.)

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1838

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 9, 2004

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1838, with committee amendments.

Assembly Bill No. 1838, as amended, facilitates the collection of taxes on retail sales of cigarettes shipped from outside this State and regulates those sales.

The bill requires that all cigarette sales be made "face-to-face" unless the seller has (1) complied with the federal Jenkins Act; (2) verified payment of, paid, or collected all applicable State taxes, including the cigarette tax (N.J.S.A.54:40A-1 et seq., currently \$2.05 per pack) and the sales and use tax (N.J.S.A.54:32B-1 et seq., currently 6% of the retail price) and (3) verified that the purchaser is 18 years of age or older.

The federal Jenkins Act, 15 U.S.C. s.375 et seq., requires anyone selling cigarettes to a buyer in another state to report the sale to the state tobacco tax administrator for the buyer's state. The state tobacco tax administrator, the Director of the Division of Taxation in the Department of the Treasury in New Jersey, then has the information needed to collect cigarette tax and sales and use taxes due. If the sale is "face-to-face," as this bill requires unless certain conditions are met, the seller collects the taxes from the buyer and remits them to the director. However, if the sale is not "face-to-face," it is often impossible for the Department of the Treasury to collect the taxes due. By allowing non-face-to-face sales of cigarettes only if the seller has complied with the Jenkins Act, this bill enforces the Jenkins Act and facilitates the collection of cigarette tax and sales and use taxes due.

The Jenkins Act is rarely enforced by the federal government and it is currently unenforceable by the states. The U.S. General Accounting Office reported that most Internet cigarette vendors do not comply with the Jenkins Act or notify consumers of their responsibilities with respect to the payment of taxes. *Internet Cigarette Sales*, GAO-02-743 (Washington, DC: August 2001).

The bill requires that a non-face-to-face seller of cigarettes has verified payment of, paid, or collected all applicable State taxes. As the sales of cigarettes to residents of this State by out-of-State sellers

increase and the difficulties associated with the collection of sales and use taxes continue, there will be a steady erosion of the tax revenues that the State is able to collect. Indeed, it had been projected that in 2005, states will lose \$1.4 billion in tax revenue to the sale of tobacco products online. (*Online Tobacco Sales Grow, States Lose*, Forrester Research, Inc., April 27, 2001.)

The bill requires a non-face-to-face seller of cigarettes to verify the age of the purchaser. "Bricks and mortar" retail stores invest in employee training and education to prevent the sale of tobacco products to underage customers at the sales counter, and pay fines if an illegal sale is made. Studies have shown that children as young as eleven can easily bypass these age-verification checks by ordering cigarettes from remote sellers via mail-order or the Internet.

The bill requires a non-face-to-face seller of cigarettes, before mailing or shipping the cigarettes, to (1) obtain confirmation that the purchaser is at least 18 years old; (2) make a good faith effort to verify the information provided by the purchaser against a commercially available database or obtain a photocopy or other image of government-issued picture identification stating the age of the purchaser (3) receive payment for the sale by a credit or debit card that has been issued in the purchaser's name or by check; and (4) verify that a credit or debit card used for payment has been issued in the purchaser's name, and that the address to which the cigarettes are being shipped matches the credit or debit card company's address for the cardholder.

FISCAL IMPACT:

While this bill may have a positive impact on the ability of the State to collect the cigarette tax and sales and use taxes due on the sales of cigarettes to residents of the State by out-of-State sellers, information on the size of the interstate sales market and vendor compliance is not available to estimate the fiscal effects of the bill.

When cigarettes are sold at retail in this State, the vendor is responsible for payment or verification of payment (through seeing State tax stamps on the cigarette pack) of cigarette tax and is responsible for collection of the sales tax. A vendor outside of the State usually does not have enough legal connection to the State to be required to pay and collect taxes, so when a person buys cigarettes from an out-of-State seller for consumption in the State, the purchaser must pay cigarette tax and the "use tax" component of the sales and use tax directly. Use taxes are difficult to collect from consumers. As non-face-to-face sales increase, there will be a steady erosion of the tax revenues.

This bill is to require both tax compliance and age-verification compliance. To the extent that it improves tax compliance, tax collections may improve. However, the extent to which the industry segment concerned is based on noncompliance and the extent to which the bill will discourage non-compliant sales are both unknown. The

bill may merely have the effect of decreasing cigarette sales by noncompliant sellers.

COMMITTEE AMENDMENTS:

The amendments delete a provision that would have otherwise provided a label notice alternative to seller tax compliance and add the provisions concerning seller age-verification.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1838

STATE OF NEW JERSEY

DATED: MARCH 14, 2005

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1838 (1R).

This bill facilitates the collection of taxes on retail sales of cigarettes shipped from outside this State and regulates those sales.

The bill requires that all retail cigarette sales in New Jersey be made "face-to-face" unless the seller has (1) complied with the federal Jenkins Act; (2) verified payment of, paid, or collected all applicable State taxes, including the cigarette tax (currently \$2.40 per pack) and the sales and use tax (currently 6% of the retail price); and (3) verified that the purchaser is 18 years of age or older.

The federal Jenkins Act, 15 U.S.C. s.375 et seq., requires anyone selling cigarettes to a buyer in another state to report the sale to the state tobacco tax administrator for the buyer's state. The state tobacco tax administrator (in New Jersey, the Director of the Division of Taxation in the Department of the Treasury) then has the information needed to collect cigarette tax and sales and use taxes due. If the sale is "face-to-face," as this bill requires unless certain conditions are met, the seller collects the taxes from the buyer and remits them to the director. However, if the sale is not "face-to-face," it is often impossible for the Department of the Treasury to collect the taxes due. By allowing non-face-to-face sales of cigarettes only if the seller has complied with the Jenkins Act, this bill enforces the Jenkins Act and facilitates the collection of cigarette tax and sales and use taxes due.

The Jenkins Act is rarely enforced by the federal government and it is currently unenforceable by the states. The U.S. General Accounting Office reported that most Internet cigarette vendors do not comply with the Jenkins Act or notify consumers of their responsibilities with respect to the payment of taxes. *Internet Cigarette Sales*, GAO-02-743 (Washington, DC: August 2001).

The bill requires a non-face-to-face seller of cigarettes, before making any such sale, to verify payment of, pay, or collect all applicable State taxes. As the sales of cigarettes to residents of this State by out-of-State sellers increase and the difficulties associated with the collection of sales and use taxes continue, there will be a steady erosion of the tax revenues that the State is able to collect.

Indeed, it had been projected that in 2005, states will lose \$1.4 billion in tax revenue to the sale of tobacco products online. (*Online Tobacco Sales Grow, States Lose*, Forrester Research, Inc., April 27, 2001.)

The bill also requires a non-face-to-face seller of cigarettes, before mailing or shipping the cigarettes, to (1) obtain reliable confirmation that the purchaser is at least 18 years old; (2) make a good faith effort to verify the information provided by the purchaser against a commercially available database or obtain a photocopy or other image of government-issued picture identification stating the age of the purchaser; (3) receive payment for the sale by a credit or debit card that has been issued in the purchaser's name or by check; and (4) verify that a credit or debit card used for payment has been issued in the purchaser's name, and that the address to which the cigarettes are being shipped matches the credit or debit card company's address for the cardholder.

The bill imposes penalties, assessable by the Director of the Division of Taxation, for violations of any provision of the legislation.

FISCAL IMPACT

While this bill may have a positive impact on the ability of the State to collect the cigarette tax and sales and use taxes due on the sales of cigarettes to residents of the State by out-of-State sellers, information on the size of the interstate sales market and vendor compliance is not available to estimate the fiscal effects of the bill.

When cigarettes are sold at retail in this State, the vendor is responsible for payment or verification of payment (through seeing State tax stamps on the cigarette pack) of cigarette tax and is responsible for collection of the sales tax. A vendor outside of the State usually does not have enough legal connection to the State to be required to pay and collect taxes, so when a person buys cigarettes from an out-of-State seller for consumption in the State, the purchaser must pay cigarette tax and the "use tax" component of the sales and use tax directly. Use taxes are difficult to collect from consumers. As non-face-to-face sales increase, there will be a steady erosion of the tax revenues.

This bill is to require both tax compliance and age-verification compliance. To the extent that it improves tax compliance, tax collections may improve. However, the extent to which the industry segment concerned is based on noncompliance and the extent to which the bill will discourage non-compliant sales are both unknown. The bill may merely have the effect of decreasing cigarette sales by noncompliant sellers.

FISCAL NOTE
[First Reprint]
ASSEMBLY, No. 1838
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: MAY 16, 2005

SUMMARY

Synopsis: "Cigarette Sales Act;" facilitates collection of taxes on retail sales of cigarettes shipped from outside this State.

Type of Impact: Annual Increase in General Fund Revenues.

Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
State Revenue	\$1,270,000	\$2,780,000	\$2,840,000	\$2,850,000

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
State Revenue	\$0	\$1,390,000	\$2,840,000	\$2,850,000

- ! The Office of Legislative Services (OLS) **generally concurs** with the Executive's estimate of the potential impact of this bill. However, the OLS believes this bill cannot take effect until some time in Fiscal Year 2006, and accordingly estimates a partial impact in that year and no impact in Fiscal Year 2005.

BILL DESCRIPTION

Assembly Bill No. 1838 (1R) of 2004 facilitates the collection of taxes on retail sales of cigarettes shipped from outside this State and regulates those sales.

The bill requires that all cigarette sales be made "face-to-face" unless the seller has (1) complied with the federal Jenkins Act; (2) verified payment of, paid, or collected all applicable State taxes, including the cigarette tax and the sales and use tax and (3) verified that the purchaser is 18 years of age or older. The federal Jenkins Act, 15 U.S.C. s.375 et seq., requires anyone selling cigarettes to a buyer in another state to report the sale to the state tobacco tax administrator for the buyer's state (the Director of the Division of Taxation in New Jersey).

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury estimates that this bill would increase State revenue in the general Fund by \$1.27 million in Fiscal Year (FY) 2005, \$2.78 million in FY 2006, \$2.84 million in FY 2007, and \$2.85 million in FY 2008.

Precise figures are not available, so the Treasury's estimate is based on a series of assumptions. First, Treasury assumes that the 1995-1998 period best represents the recent experience with a "natural rate of decrease in cigarette consumption in New Jersey". Consumption declined by an annualized rate of 0.6 percent during these years. Prior and subsequent years were affected by significant tax rate changes. By comparing consumption that would have occurred under a continuation of the "natural" 0.6 percent annual decline with the declines that actually occurred as cigarette tax rates increased in the years since 1998, the Treasury estimates that in 2003 as much as \$352.25 million in tax revenue has been lost due to tax avoidance and evasion activity. This estimate includes \$298.7 million from cigarette excise taxes and \$53.8 million from the sales tax. Treasury further estimates that this amount would grow to \$505.9 million by FY 2005 and continue to grow thereafter by between 2.0 percent and 4.0 percent annually.

These estimated amounts assume "total compliance and perfect enforcement" of tax laws. Next, Treasury assumes such compliance and enforcement is not possible, and further assumes that only 0.5 percent of compliance can be achieved by this bill. Accordingly, tax revenues from this bill would grow from \$1.27 million in FY 2005 (half of a full year at \$2.53 million), to \$2.78 million in FY 2006, \$2.84 million in FY 2007, and \$2.85 million in FY 2008.

OFFICE OF LEGISLATIVE SERVICES

The OLS generally concurs with the Executive's estimate of the potential impact of this bill. However, the OLS believes this bill cannot take effect until some time in Fiscal Year 2006, and accordingly estimates a partial impact in that year and no impact in Fiscal Year 2005.

While this bill may have a positive impact on the ability of the State to collect the cigarette tax and sales and use taxes due on the sales of cigarettes to residents of the State by out-of-State sellers, the OLS agrees with the Executive that precise information on the size of the interstate sales market and vendor compliance is not available. The OLS also notes that the most important issues will involve compliance and enforcement of this bill. When cigarettes are sold at retail in this State, the vendor is responsible for payment or verification of payment (through seeing State tax stamps on the cigarette pack) of cigarette tax and is responsible for collection of the sales tax. A vendor *outside* of the State usually does not have enough legal connection to the State to be required to pay and collect taxes. To the extent that this bill improves tax compliance, tax collections may improve. However, the extent to which the industry segment concerned is based on non-compliance and the extent to which the bill will discourage non-compliant sales are both unknown. According to the U.S. Government Accountability Office's 2002 report, *Internet Cigarette Sales*, online cigarette retailers are already not complying with the federal Jenkins Act. The Executive's assumptions to estimate the fiscal effects of the bill, including the assumption that perhaps only 0.5 percent of foregone tax revenues can be recovered, are not unreasonable given the data limitations and the compliance concerns. To the extent that compliance exceeds or lags this assumption, tax revenues will also exceed or lag the Executive's estimate.

Section: *Revenue, Finance and Appropriations*

Analyst: *Martin Poethke*
Senior Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

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

SENATE, No. 693

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 26, 2004

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator ELLEN KARCHER

District 12 (Mercer and Monmouth)

Co-Sponsored by:

Senator Buono

SYNOPSIS

Prohibits Internet and mail-order cigarette sales.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/6/2004)

1 AN ACT concerning the sale of cigarettes and supplementing Titles 2A
2 and 2C of the New Jersey Statutes.

3

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

6

7 1. a. It is unlawful for any person engaged in the business of
8 selling cigarettes to ship or cause to be shipped any cigarettes to a
9 person in this State who is not:

10 (1) a person licensed as a wholesale or retail dealer pursuant to
11 P.L.1948, c.65 (C.54:40A-1 et seq.);

12 (2) an export warehouse proprietor pursuant to chapter 52 of the
13 federal Internal Revenue Code or an operator of a customs bonded
14 warehouse pursuant to 19 U.S.C. s.1311 or 19 U.S.C. s.1555; or

15 (3) a person who is an officer, employee or agent of the United
16 States government, this State or a department, agency instrumentality
17 or political subdivision of the United States or this State, when that
18 person is acting in accordance with his official duties.

19 b. It is unlawful for a common or contract carrier to knowingly
20 transport cigarettes to a person in this State reasonably believed by
21 that carrier to be other than a person described in paragraph (1), (2)
22 or (3) of subsection a. of this section.

23 c. For the purposes of subsection a. of this section, if cigarettes are
24 transported to a home or residence, it shall be presumed that the
25 common or contract carrier knew that the person in the home or
26 residence was not a person described in paragraph (1), (2) or (3) of
27 subsection a. of this section. It is unlawful for any other person to
28 knowingly transport cigarettes to a person in this State, other than to
29 a person described in paragraph (1), (2) or (3) of subsection a. of this
30 section.

31 d. Nothing in this section shall be construed to prohibit a person
32 other than a common or contract carrier from transporting not more
33 than 800 cigarettes at any one time to any person in this State.

34

35 2. When a person engaged in the business of selling cigarettes ships
36 or causes to be shipped any cigarettes to a person in this State, other
37 than in the cigarette manufacturer's original container or wrapping, the
38 container or wrapping shall be plainly and visibly marked with the
39 word "cigarettes."

40

41 3. A law enforcement officer, acting pursuant to his official duties,
42 who discovers any cigarettes that have been, or are being, shipped or
43 transported in violation of this act, is authorized to seize and take
44 possession of the cigarettes, and those cigarettes shall be subject to a
45 forfeiture action pursuant to the procedures provided for in law.

1 4. A person who violates the provisions of section 1 or 2 of this act
2 is liable to a civil penalty of not more than \$5,000 for each offense, to
3 be sued for and collected in a summary proceeding by the Director of
4 the Division of Taxation pursuant to the "Penalty Enforcement Law of
5 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). A penalty imposed
6 pursuant to this section shall be in addition to any penalty that may be
7 imposed pursuant to section 5 of P.L. , c. (C.)(pending before the
8 Legislature as this bill).

9
10 5. A person who violates the provisions of section 1 of P.L. ,
11 c. (C.)(pending before the Legislature as this bill) is a disorderly
12 person for a first offense, and guilty of a crime of the fourth degree for
13 a second or subsequent offense. A penalty imposed pursuant to this
14 section shall be in addition to any penalty that may be imposed
15 pursuant to section 4 of P.L. , c. (C.)(pending before the
16 Legislature as this bill).

17
18 6. This act shall take effect on the first day of the fifth month after
19 enactment.

20
21
22 STATEMENT

23
24 This bill would prohibit Internet and mail-order cigarette sales
25 directly to New Jersey consumers.

26 The bill is modeled after a 2000 New York State law that prohibits
27 cigarette sellers and common and contract carriers from shipping and
28 transporting cigarettes directly to consumers in that state (codified at
29 section 1399-11 of New York's Public Health Law). The New York
30 statute was upheld by the United States Court of Appeals for the
31 Second Circuit in its February 13, 2003 decision on an action by
32 Brown & Williamson Tobacco Corporation and Santa Fe Natural
33 Tobacco Company challenging the constitutionality of the law as a
34 violation of the Commerce Clause of the United States Constitution
35 (reversing a 2001 decision by the United States District Court for the
36 Southern District of New York). The Court of Appeals held that the
37 New York statute does not discriminate against, and would have only
38 "incidental effects" on, interstate commerce; and that, to the extent
39 that its provisions burden interstate commerce, that burden is
40 significantly outweighed by the "putative local benefits" of the law,
41 including the public health goal of reducing the demand for cigarettes
42 by requiring that purchasers pay a high cigarette excise tax.

43 In addition to the prohibition on Internet and mail-order cigarette
44 sales, the bill provides that when a person engaged in the business of
45 selling cigarettes ships or causes to be shipped any cigarettes to a
46 person in this State, other than in the cigarette manufacturer's original

1 container or wrapping, the container or wrapping is to be plainly and
2 visibly marked with the word "cigarettes."

3 The bill further provides that:

4 -- a law enforcement officer, acting pursuant to his official duties,
5 who discovers any cigarettes that have been, or are being, shipped or
6 transported in violation of the bill, is authorized to seize and take
7 possession of the cigarettes; and

8 -- those cigarettes are subject to a forfeiture action pursuant to the
9 procedures provided for in law.

10 A person who violates the provisions of the bill that prohibit
11 Internet and mail-order cigarette sales directly to New Jersey
12 consumers is:

13 -- a disorderly person for a first offense (punishable by
14 imprisonment for up to six months and a fine of up to \$1,000);

15 -- guilty of a crime of the fourth degree for a second or subsequent
16 offense (punishable by imprisonment for up to 18 months and a fine of
17 up to \$10,000); and

18 -- in addition, is liable to a civil penalty of not more than \$5,000
19 for each offense, to be sued for and collected in a summary proceeding
20 by the Director of the Division of Taxation pursuant to the "Penalty
21 Enforcement Law of 1999."

22 Also, a person who violates the provisions of the bill concerning the
23 marking of a container or wrapping in which cigarettes are shipped is
24 liable to a civil penalty of not more than \$5,000 for each offense, to be
25 sued for and collected in a summary proceeding by the Director of the
26 Division of Taxation pursuant to the "Penalty Enforcement Law of
27 1999."

28 The bill would take effect on the first day of the fifth month after
29 its enactment.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 693

STATE OF NEW JERSEY

DATED: MAY 6, 2004

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 693.

This bill would prohibit Internet and mail-order cigarette sales directly to New Jersey consumers.

The bill is modeled after a 2000 New York State law that prohibits cigarette sellers and common and contract carriers from shipping and transporting cigarettes directly to consumers in that state (codified at section 1399-11 of New York's Public Health Law). The New York statute was upheld by the United States Court of Appeals for the Second Circuit in its February 13, 2003 decision on an action by Brown & Williamson Tobacco Corporation and Santa Fe Natural Tobacco Company challenging the constitutionality of the law as a violation of the Commerce Clause of the United States Constitution (reversing a 2001 decision by the United States District Court for the Southern District of New York). The Court of Appeals held that the New York statute does not discriminate against, and would have only "incidental effects" on, interstate commerce; and that, to the extent that its provisions burden interstate commerce, that burden is significantly outweighed by the "putative local benefits" of the law, including the public health goal of reducing the demand for cigarettes by requiring that purchasers pay a high cigarette excise tax.

In addition to the prohibition on Internet and mail-order cigarette sales, the bill provides that when a person engaged in the business of selling cigarettes ships or causes to be shipped any cigarettes to a person in this State, other than in the cigarette manufacturer's original container or wrapping, the container or wrapping is to be plainly and visibly marked with the word "cigarettes."

The bill further provides that:

-- a law enforcement officer, acting pursuant to his official duties, who discovers any cigarettes that have been, or are being, shipped or transported in violation of the bill, is authorized to seize and take possession of the cigarettes; and

-- those cigarettes are subject to a forfeiture action pursuant to the procedures provided for in law.

A person who violates the provisions of the bill that prohibit

Internet and mail-order cigarette sales directly to New Jersey consumers is:

- a disorderly person for a first offense (punishable by imprisonment for up to six months and a fine of up to \$1,000);

- guilty of a crime of the fourth degree for a second or subsequent offense (punishable by imprisonment for up to 18 months and a fine of up to \$10,000); and

- in addition, is liable to a civil penalty of not more than \$5,000 for each offense, to be sued for and collected in a summary proceeding by the Director of the Division of Taxation pursuant to the "Penalty Enforcement Law of 1999."

Also, a person who violates the provisions of the bill concerning the marking of a container or wrapping in which cigarettes are shipped is liable to a civil penalty of not more than \$5,000 for each offense, to be sued for and collected in a summary proceeding by the Director of the Division of Taxation pursuant to the "Penalty Enforcement Law of 1999."

The bill would take effect on the first day of the fifth month after its enactment.

FISCAL NOTE
SENATE, No. 693
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: NOVEMBER 17, 2004

SUMMARY

Synopsis: Prohibits Internet and mail-order cigarette sales.
Type of Impact: Permanent Increase in General Fund Revenues.
Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
State Revenue	\$483,000	\$959,500	\$952,500	\$946,000

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
State Revenue	\$0	\$600,000	\$590,000	\$570,000

- ! The Office of Legislative Services (OLS) generally **agrees** with the Executive's analysis of the potential impact of this bill, but uses some different underlying assumptions to estimate a lower annual impact.
- ! The two fiscal year 2005 estimates differ because the Executive expects the bill to be in effect for the second half of the fiscal year, while the OLS rules out that the bill will be in force prior to fiscal year 2006.
- ! No precise figures exist on the size of the online cigarette market. Nationwide estimates on the percentage of cigarettes sold online range from three to 14 percent of total sales.
- ! Since most online cigarette vendors operate outside of New Jersey, the State will be challenged to impose the ban of cigarette sales and shipments to New Jersey customers upon businesses accustomed to disregarding legal requirements.

BILL DESCRIPTION

Senate Bill No. 693 of 2004 prohibits Internet and mail-order cigarette sales to New Jersey consumers. Every violation will result in a civil penalty not exceeding \$5,000. In addition, a

first time perpetrator will be considered a disorderly person (punishable by imprisonment for up to six months and a fine of up to \$1,000) and a repeat offender guilty of a crime of the fourth degree (punishable by imprisonment for up to 18 months and a fine of up to \$10,000). Moreover, each breach of the bill's provisions concerning the marking of a cigarette shipment carries a civil penalty of not more than \$5,000 for each offense. The bill takes effect on the first day of the fifth month after its enactment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Division of Taxation within the Department of the Treasury estimates this bill to increase New Jersey cigarette tax and sales and use tax collections by a combined \$483,000 in fiscal year 2005, \$959,500 in fiscal year 2006, \$952,500 in fiscal year 2007, and \$946,000 in fiscal year 2008. The table below depicts the share of the anticipated revenue gain the division attributes to the cigarette tax and the sales and use tax.

	Est. Online Cigarette Sales to New Jersey Residents in Million of Packs	Est. Increase in Cigarette Tax Collections	Est. Increase in Sales and Use Tax Collections	Est. Increase in Total Tax Collections
Fiscal Year 2005	81.2	\$416,000	\$67,000	\$483,000
Fiscal Year 2006	80.6	\$826,500	\$133,000	\$959,500
Fiscal Year 2007	80.1	\$820,500	\$132,000	\$952,500
Fiscal Year 2008	79.5	\$815,000	\$131,000	\$946,000

The division made five assumptions that drive its final projections:

- 1) this bill will increase the rate of compliance with New Jersey cigarette tax and sales and use tax laws from zero percent of all online cigarette purchases by State residents to at most one-half of a percent;
- 2) online cigarette purchases comprise 14 percent of total statewide cigarette consumption, according to a report by Forrester Research Inc. that projected in 2001 that 14 percent of national cigarette sales would occur online by 2005;
- 3) New Jersey's cigarette consumption will fall by .7 percent per year, which equals the average annual decline in State cigarette stamp sales from 1994 to 1997, a decline the division attributes exclusively to less consumption, as the State did not alter its cigarette tax rate during those years that also saw the Internet still in its infancy;
- 4) 1997 is the base year from whose number of State cigarette stamp sales the division subtracts .7 percent per year to estimate total New Jersey cigarette consumption in any given year thereafter; the division deems 1997 stamp sales to better represent statewide consumption levels than their equivalent in out years because subsequent cigarette tax increases have motivated New Jerseyans to buy more cigarettes out-of-State; and
- 5) the legislation will become effective on January 1, 2005, thereby producing a fiscal year 2005 revenue impact reflecting six months of tax collections.

To assess the amount of cigarette tax liability that New Jerseyans evade annually through online cigarette purchases, the division takes 14 percent of 1997 cigarette stamp sales and subtracts .7 percent per year from that figure, before it applies the fiscal year 2004 cigarette tax rate of \$2.05 per pack to that total. Next, it applies the six percent sales tax rate to estimated

annual online cigarette pack sales to New Jersey customers at a putative price of \$5.50 per pack to obtain the amount of evaded State sales and use tax revenue. Lastly, it assumes that this bill will allow the State to collect .5 percent of total tax liabilities accruing from those transactions.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) estimates this bill to increase New Jersey cigarette tax and sales and use tax collections by a combined \$600,000 in fiscal year 2006, \$590,000 in fiscal year 2007, and \$570,000 in fiscal year 2008. The agency foresees no fiscal impact during fiscal year 2005. The table below depicts the portion of the anticipated revenue gain the OLS attributes to the cigarette tax and the sales and use tax.

	Est. Online Cigarette Sales to New Jersey Residents in Million of Packs	Est. Increase in Cigarette Tax Collections	Est. Increase in Sales and Use Tax Collections	Est. Increase in Total Tax Collections
Fiscal Year 2005	45.2	\$0	\$0	\$0
Fiscal Year 2006	44.1	\$530,000	\$70,000	\$600,000
Fiscal Year 2007	42.9	\$520,000	\$70,000	\$590,000
Fiscal Year 2008	41.8	\$500,000	\$70,000	\$570,000

A) The OLS and the Executive Rely on the Same Method

The OLS replicates the division's approach to generate its estimate. Based on assumptions, it projects the number of cigarette packs New Jerseyans purchase online. To that figure, it applies the current cigarette tax rate of \$2.40 per pack to estimate the cigarette tax revenue the State does not collect from those transactions. Next, it applies the six percent sales tax rate to the number of packs sold at a putative price of \$5.50 per pack to obtain the sales and use tax liabilities evaded by online purchasers. Lastly, the OLS assumes this bill to enable the State to collect .5 percent of total evaded tax liabilities from online cigarette sales.

A divergence arises between the OLS and the division estimates as to fiscal year 2005. The division expects the bill to be in effect for the second half of the year, resulting in \$483,000 in additional State revenue, while the OLS rules out a fiscal year 2005 impact in consideration of the bill not becoming effective until five months after enactment. Both agencies presume the bill will be in force throughout fiscal year 2006 and thereafter.

Any other discrepancy between the estimates derives largely from differing assumptions on the scope of online cigarette purchases by New Jerseyans. The discrepancy is somewhat mollified by the OLS applying the current cigarette tax rate of \$2.40 per pack to online cigarette purchases, while the division uses the lower fiscal year 2004 rate of \$2.05.

B) Different Estimates on the Number of Cigarettes New Jerseyans Purchase Online

The key difference between the two forecasts stems from unequal assessments of the number of cigarettes New Jerseyans buy online. According to the division, in calendar year 2003, the State's citizenry purchased a total of 201.6 million cigarette packs in out-of-state locations or on the Internet. The OLS posits instead that the scale might be closer to 85.8 million packs.

Three disparate assumptions account for the discrepancy. They concern the choice of the proper baseline, the annual rate of decline in statewide cigarette consumption, and the portion of total cigarette purchases by New Jersey residents that transpire online.

1) The Baseline: Whereas the OLS chooses the midpoint between 1997 and 1998 State

cigarette stamp sales as its baseline, the division opts for 1997 stamp sales as its baseline. The ensuing lower OLS baseline triggers out year projections that are noticeably below division estimates.

Effective January 1 of 1998, the State doubled its cigarette tax rate from \$0.40 to \$0.80. While data is unavailable on the response of smokers to the rise, it created an incentive to smoke less and to buy cigarettes out-of-state. By choosing 1997 cigarette stamp sales as its baseline and not adjusting its total 1998 consumption estimate to reflect the tax rate change, the division is implying that the rate increase did not induce New Jerseyans to smoke less and that the 21.4 percent drop in cigarette stamp sales from 1997 to 1998 was, apart from the average long-term annual consumption decline, exclusively due to residents buying cigarettes out-of-state or online. The OLS opts instead for the midpoint between 1997 and 1998 stamp sales as its baseline. That choice implies that half of the 21.4 percent drop in stamp sales is attributable to reduced consumption with the other half being accounted for by a shift in cigarette sales to out-of-state venues.

II) The Rate of Decline in New Jersey Cigarette Consumption: In surmising that statewide cigarette consumption trends mirrored the national counterpart from 1997 to 2003, the OLS decreases New Jersey's consumption at a sharper rate than the division. Based on data from the United States Department of Agriculture, nationwide consumption fell at an annualized rate of 2.57 percent during that time frame. New Jersey consumption might have actually been falling more sharply by reason of several cigarette tax increases that raised the tax rate from \$0.40 per pack in 1997 to \$2.40 per pack in 2004. The division, on the other hand, assumes that statewide cigarette consumption decreases by .7 percent per year, the average annual decline in State cigarette stamp sales between 1994 and 1997.

III) The Portion of Cigarettes New Jerseyans Buy Online: Absent any precise figure on the size of the national online cigarette market, the OLS estimates that New Jerseyans purchase ten percent of their cigarettes online, while the division uses a 14 percent estimate.

Nationwide estimates on the percentage of cigarettes sold online range from three to 14 percent of total sales. In its "Indian Web Sales Of Taxless Tobacco Face New Pressure" article from September 26, 2004, the New York Times cites a report by Robert Campagnino, an analyst for Prudential Securities, who estimates that about two percent of national 2002 cigarette sales occurred online. By now, he deems three percent to be more accurate. The same article mentions a survey by researchers at the University of Medicine and Dentistry of New Jersey that found that 6.7 percent of New Jersey smokers had bought cigarettes online in 2002--a jump from 1.1 percent in 2000. During that time, the State increased the cigarette tax from \$0.80 to \$1.50 per pack. Lastly, the Government Accountability Office report *Internet Cigarette Sales* refers to the 2001 analysis by Forrester Research, Inc., *Online Tobacco Sales Grow, States Lose*, that estimated 14 percent of cigarette sales to transpire online by 2005.

The division uses the 14 percent Forrester Research estimate. Even if New Jersey smokers likely exceed the national average, given that the State boasts the highest cigarette tax rate among all the states, the 14 percent seem somewhat high. Hence, in light of all of the above data, the OLS presumes that New Jersey smokers buy ten percent of their cigarettes online.

C) Enforcement Challenges

The OLS agrees with the division's assessment that this bill will increase the rate of compliance with State cigarette tax and sales and use tax laws from zero percent of all online cigarette purchases by State residents to at most one-half of a percent. Since most online cigarette vendors operate outside of New Jersey, the State will be challenged to impose the bill's provisions upon businesses accustomed to disregarding legal requirements.

As relayed by United States Government Accountability Office in its 2002 *Internet Cigarette Sales* report, the online cigarette retailers are already shirking their obligations under the federal Jenkins Act of 1949. The law requires vendors who sell and ship cigarettes into another state to anyone other than a licensed distributor to report to a state's tobacco tax administrator (1) the name and address of the person to whom the cigarettes were shipped, (2) the brands of cigarettes shipped, and (3) the quantities of cigarettes shipped.

Compliance with the Jenkins Act would enable the State to collect the appropriate amount of taxes on cigarette sales owed by its citizenry and would thus erode the competitive advantage online vendors enjoy by allowing their customers to evade State cigarette and sales taxes.

Section: *Revenue, Finance and Appropriations*

Analyst: *Thomas Koenig*
Assistant Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

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