

CHAPTER 145

AN ACT concerning civil and criminal penalties for offenses involving unstamped and counterfeit cigarettes and cigarette smuggling, amending various parts of statutory law and supplementing P.L.1948, c.65 (C.54:40A-1 et seq.).

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

1. Section 202 of P.L.1948, c.65 (C.54:40A-4) is amended to read as follows:

C.54:40A-4 License; issuance, fees.

202. a. All licenses shall be issued by the director, who shall make rules and regulations respecting applications therefor and issuance thereof.

b. The following individuals related to distributors, wholesale dealers, retail dealers operating more than nine cigarette vending machines, and retail dealers who sell cigarettes at retail at more than nine premises shall submit with applications for a license, fingerprints, which shall be processed through the Federal Bureau of Investigation and the New Jersey State Police, and such other information as the director may require:

- (1) Individuals having any interest whatsoever in a proprietorship or company.
- (2) Partners of a partnership, regardless of percentage.
- (3) Joint venturers in a joint venture.
- (4) Officers, directors, and all stockholders holding directly or indirectly a beneficial interest in more than 5% of the outstanding shares of a corporation.
- (5) Employees receiving in excess of \$30,000.00 per annum compensation whether as salary, commission, bonus or otherwise and persons who, in the judgment of the director are employed in a supervisory capacity or have the power to make or substantially affect discretionary business judgments of the applicant entity with regard to the cigarette business.
- (6) Other persons who the director establishes have the ability to control the applicant entity through any means including but not limited to, contracts, loans, mortgages or pledges of securities where such control is inimical to the policies of this act because such person is a career offender or a member of a career offender cartel as defined in paragraph (2) of subsection e. of this section. Individuals licensed pursuant to the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.) shall only be required to produce evidence of said licensure in satisfaction of the foregoing.

The provisions in this subsection as to wholesale dealers, retail dealers operating more than nine cigarette vending machines, and retail dealers who sell cigarettes at retail at more than nine premises do not apply to retail grocery stores and supermarkets primarily engaged in the self-service sale of foods and household supplies for off-premises consumption, to drug stores and pharmacies engaged in the retail sale of prescription drugs and patent medicines and which may carry a number of lines of related merchandise, or to restaurants, hotels and motels operated by national corporations with such premises in six or more states and primarily engaged in the sale of foods for retail consumption or in the rental of rooms for lodging.

c. (1) The director shall not issue any license under this act where he has reasonable cause to believe that anyone required to submit information under this act has willfully withheld information requested of him for the purpose of determining the eligibility of the applicant to receive a license or where the director has reasonable cause to believe that information submitted in the application is false and misleading and is not made in good faith.

(2) The director shall not issue a license under this act to a person that is a manufacturer or importer of cigarettes, tobacco products or processed tobacco if the manufacturer or

importer does not possess a valid federal permit issued pursuant to section 5713 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.5713, that is not suspended or revoked.

d. The director shall not issue any license under this act where he has reasonable cause to believe that anyone required to be licensed or anyone required to submit information under this act, has been convicted of any offense in any jurisdiction which would be at the time of conviction a crime involving moral turpitude.

It is further provided that any applicant or person required to submit information who has a charge pending pursuant to any of the foregoing shall disclose that fact to the director. The director may then withhold action on new applications or, in the case of an application for the renewal of a license, issue a temporary license until there has been a disposition of the charge. The director shall have the discretion to waive the prohibition against licensure herein provided upon the presentation of proof that a period of not less than five years has elapsed since the last conviction or the expiration of any period of incarceration imposed with respect thereto.

e. The director shall not issue any license where the applicant or anyone required to submit information has been identified as a career offender or a member of a career offender cartel in such a manner as to create a reasonable belief that the association is of such a nature as to be inimical to the policies of this act or to the taxation, distribution, and sale of cigarettes within the State. The director may request the Attorney General for advice respecting whether a person is a "career offender" within the meaning of this subsection, or is a "contumacious defiant" within the meaning of subsection f. of this section.

As used in this subsection:

(1) "career offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State; and (2) "career offender cartel" means any group of persons who operate together as career offenders.

f. The director shall not issue any license where the applicant or anyone required to submit information has been found to be contumaciously defiant before any legislative investigative body or other official investigative body of this State or of the United States when such body is engaged in the investigation of organized crime, official corruption or the cigarette industry itself.

g. Each such license shall lapse on March 31 of the period for which it is issued, and each such license shall be continued annually upon the conditions that the licensee shall have paid the required fee and complied with all the provisions of this act and the rules and regulations of the director made pursuant thereto.

h. For each license issued to a distributor there shall be paid to the director a fee of \$350.00. If a distributor sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license shall be required for each place of business. Each license, or certificate, thereof, and such other evidence of license shall be exhibited in the place of business for which it is issued and in such manner as may be prescribed by the director. The director shall require each licensed distributor to file with him a bond in an amount not less than the average monthly value of the cigarette stamps used by the licensed distributor to guarantee the proper performance of his duties and the discharge of his liabilities under this act. The bond shall be executed by such licensed distributor as principal, and by a corporation approved by the director and duly authorized to engage in business as a surety company in the State of New Jersey, as surety. The bond shall run concurrently with the distributor's license.

For each license issued to a manufacturer, and for each continuance thereof, there shall be paid to the director a fee of \$10.00.

For each license issued to a manufacturer's representative, and for each continuance thereof, there shall be paid to the director a fee of \$5.00.

For each license issued to a wholesale dealer there shall be paid to the director a fee of \$250.00. If a wholesale dealer sells or intends to sell cigarettes at 10 or more places of business, whether established or temporary, a separate license shall be required for each place of business. Each license, or certificate thereof, and such other evidence of license shall be exhibited in the place of business for which it is issued and in such manner as may be prescribed by the director.

For each license issued to a retail dealer and for each continuance thereof, excepting a retail dealer operating a cigarette vending machine, there shall be paid to the director a fee of \$40 in 1996 and \$50 in 1997 and each year thereafter. For each license issued to a retail dealer operating a vending machine for the sale of cigarettes and for each continuance thereof, there shall be paid to the director a fee of \$40 in 1996 and \$50 in 1997 and each year thereafter. Of the license fee of \$40 and \$50, respectively, \$30 shall be credited in 1996 and \$40 shall be credited in 1997 and each year thereafter to the special projects and development fund in the Department of Health and Senior Services established pursuant to section 7 of P.L.1966, c.36 (C.26:2F-7) for the purposes specified therein, and \$5 shall be credited each year, beginning with 1996, to the division for administrative costs associated with the requirements established pursuant to subsection i. of this section and section 2 of P.L.1995, c.320 (C.26:3A2-20.1). The director shall determine and certify to the State Treasurer on a monthly basis the amount of revenues collected by the director which are to be credited to the special projects and development fund in the Department of Health.

If a retail dealer sells or intends to sell cigarettes at two or more places of business, whether established or temporary, or whether in the same building or not, a separate license shall be required for each place of business. Each vending machine for the sale of cigarettes shall be separately licensed and be deemed a separate place of business. Each license, or certificate thereof, and such other evidence of license shall be exhibited in the place of business for which it is issued and in such manner as may be prescribed by the director.

Any person licensed only as a distributor or as a manufacturer or as a manufacturer's representative or as a wholesale dealer or as a retail dealer shall not operate in any other capacity except under that for which he is licensed herein, unless the appropriate license or licenses therefor are first secured.

For each license issued to a consumer and for each continuance thereof there shall be paid to the director a fee of \$1.00. Each license, or certificate thereof, or such other evidence of license as may be prescribed by the director, shall be so kept by the consumer as to be readily available for inspection.

No license shall be issued to any person except upon the payment of the full fee therefor, any statute or exemption to the contrary notwithstanding. No license shall be assignable or transferable, except as hereinafter provided, but in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if for any other reason whatsoever the business of the licensee shall devolve upon another by operation of law, the director may, in his discretion, extend said license for a limited time to the executor, administrator, trustee, receiver, or person upon whom the same has devolved. A purchaser or assignee of a licensed wholesaler or licensed distributor, or any other person upon whom the business of a licensed wholesaler or licensed distributor shall devolve by operation of law, shall upon application to the director, be entitled to an assignment or transfer of the wholesale or distributor license

for the balance of the existing license period upon payment of a transfer fee of \$5.00 and subject to his qualification to be a licensed wholesaler or licensed distributor under the provisions of this act. The license issued for each vending machine for the sale of cigarettes may be transferred from machine to machine in the same ownership. No refund of the license fee shall be paid to any person upon the surrender or revocation of any license except a license fee paid or collected in error. But, upon payment of a \$1.00 fee, there may be obtained (1) a duplicate license, or certificate thereof, in the event the original is lost, destroyed or defaced, and (2) an amended license, or certificate thereof, upon a change in the location of the place of business of any distributor or dealer.

i. The director shall require an applicant for a cigarette retail dealer license, including a license to operate a vending machine for the sale of cigarettes, to include on the application the address of the place of business where the cigarettes will be sold or the address where the vending machine will be located, as the case may be.

If the place of business or the vending machine is moved to a different address than that provided on the license application, the licensee shall notify the director within 30 days of the change of address.

2. Section 205 of P.L.1948, c.65 (C.54:40A-7) is amended to read as follows:

C.54:40A-7 Reports required; penalty required for not filing reports.

205. Every licensed distributor shall file with the director on or before the twentieth day of each month, a report in such form as the director shall prescribe, which report shall disclose the number of cigarettes on hand by brand family, as defined pursuant to section 2 of P.L.2003, c.25 (C.52:4D-5), on the first and last days of the calendar month immediately preceding the month in which such report is required; together with the quantity, by brand family, of cigarettes purchased or sold during the report period, and such information concerning the amount of stamps purchased, used, and on hand during the report period; together with any other information for the report period that the director shall prescribe.

Every licensed manufacturer shall file with the director on or before the twentieth day of each month, a report in such form as the director shall prescribe, which report shall disclose the number of cigarettes sold, subject to the cigarette tax, for the calendar month immediately preceding the month in which such report is required; together with any other information for the report period that the director shall prescribe.

Every licensed manufacturer's representative, wholesale and retail dealer, upon notice from the director, shall file with the director a report in such form, and on such dates, as the director shall prescribe.

Every licensed consumer who has acquired cigarettes for use, storage or consumption subject to the tax shall, on or before the twentieth day of the month following receipt of such cigarettes, complete and file with the director, in such form as the director shall prescribe, a report showing the amount of cigarettes so received. Said report shall be accompanied by a remittance for the full amount of the tax due.

Any person, other than a licensed distributor, who transports unstamped cigarettes upon the public highways, roads, or streets of this State or who stores unstamped cigarettes in this State upon notice from the director, shall file with the director a report in such form, and on such dates, as the director shall prescribe.

Any person who shall fail to file any report on the day when it shall be due, shall forfeit as a penalty, an amount as provided in the State Uniform Tax Procedure Law, subtitle 9 of Title

54 of the Revised Statutes. The director, if satisfied that the failure to comply with any provision of this section was excusable, may remit the whole or any part of said penalty.

C.54:40A-7.1 Monthly report produced by director.

3. The director shall produce a monthly report listing the quantity of cigarettes sold in this State by distributors, aggregated by manufacturer and by brand family as defined pursuant to section 2 of P.L.2003, c.25 (C.52:4D-5), during the month immediately preceding the monthly report, which shall be published on the website of the Division of Taxation in the Department of the Treasury on or before the 15th day of each month.

4. Section 601 of P.L.1948, c.65 (C.54:40A-24) is amended to read as follows:

C.54:40A-24 Penalties; jurisdiction; disposition; costs; expenses.

601. a. Penalties. Any person who shall engage in any business or activity for which a license is required under the provisions of this act, without first having obtained a license to do so, or who, having had such a license, shall continue to engage in or conduct such business after any such license shall have been revoked, or during a suspension thereof, shall be liable to a penalty of not more than \$1,000, which penalty shall be sued for, and shall be recoverable in the name of the director; and each day that any such business is so engaged in or conducted shall be deemed a separate offense.

b. Jurisdiction of court; proceedings. The Superior Court and every municipal court within their respective jurisdictions, and with respect to offenses occurring within the territorial jurisdiction of the court, shall have jurisdiction over proceedings to enforce and collect the penalty. The proceedings shall be brought by and in the name of the director. They shall be summary and in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be either in the nature of a summons or warrant.

If judgment be rendered for the plaintiff, the court shall cause any defendant who refuses or fails to pay forthwith the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for such period as the court shall determine, not exceeding 60 days.

c. Penalty for further violations; recovery; proceedings in court. In case a person shall, after conviction of any violation of this act, be again convicted of violating the same provision thereof, he may be liable to a penalty for such further violation, in double the maximum penalty which might have been imposed on the first conviction, to be sued for and recovered in the manner above set forth. In case any defendant against whom judgment has been rendered for a money penalty under this subsection, shall fail or neglect to pay forthwith the amount of said penalty, the court shall commit him to jail for such number of days not exceeding 180 days, as the court shall determine.

d. Disposition of penalties. All penalties recovered for violations of this act shall be paid to the director and by him accounted for and paid to the State Treasurer as in the case of State taxes.

e. Costs; expenses. The costs recoverable in any such proceeding shall be recovered by the director in the event of judgment in his favor. If the judgment be for the defendant it shall be without costs against the director. All expenses incident to the recovery of any penalty pursuant to the provisions of this section shall be paid for as any other expense incident to the administration of this act.

5. Section 10 of P.L.1968, c.351 (C.54:40A-24.1) is amended to read as follows:

C.54:40A-24.1 Penalty for selling cigarettes not of employer's manufacture.

10. Any manufacturer's representative, as defined in this act, who sells or exchanges cigarettes other than those of his employer's manufacture shall be liable to a penalty of not more than \$1,000 for each separate offense.

6 Section 602 of P.L.1948, c.65 (C.54:40A-25) is amended to read as follows:

C.54:40A-25 Possessing cigarettes not bearing required revenue stamps.

602. Possessing cigarettes not bearing required revenue stamps.

Any wholesale dealer or retail dealer who violates the provisions of section four hundred six of this act, and any consumer who fails to report and remit the tax due as provided by section two hundred five of this act, shall be liable to a penalty of not more than \$1,000 for each individual carton of unstamped or illegally stamped cigarettes in the dealer's possession, which penalty shall be sued for and recovered in the same manner as provided for the penalties imposed by section six hundred one of this act.

7. Section 603 of P.L.1948, c.65 (C.54:40A-26) is amended to read as follows:

C.54:40A-26 Refusal or failure to produce records.

603. Any person engaged in the business of manufacturing, purchasing, selling, consigning, shipping, distributing, or transporting cigarettes, who shall refuse or fail to produce, on demand by the director or any designated assistant, invoices of all cigarettes purchased or received by him within three years prior to such demand, unless his inability to do so for reasons beyond his control shall be shown by satisfactory proof, shall be guilty of a disorderly persons offense and shall be fined \$1,000.

8. Section 604 of P.L.1948, c.65 (C.54:40A-27) is amended to read as follows:

C.54:40A-27 Interfering with administration of the act.

604. Any person who prevents or hinders the director or any designated assistant from making a cigarette inventory, examination and full inspection of any place where cigarettes are sold or stored, or prevents or hinders the inspection of invoices, books, records, or papers required to be kept, shall be guilty of a disorderly persons offense and shall be fined \$1,000.

9. Section 605 of P.L.1948, c.65 (C.54:40A-28) is amended to read as follows:

C.54:40A-28 Sale of cigarettes without required stamp, violations.

605. Any person who sells cigarettes without the stamp or stamps required by this act being affixed thereto or cigarettes stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15) shall be guilty of a crime of the third degree.

10. Section 2 of P. L.1977, c.188 (C.54:40A-28.1) is amended to read as follows:

C.54:40A-28.1 Possession of cigarettes without proper stamp, violations.

2. Any person, other than a licensee permitted under this act to possess any unstamped cigarettes, who possesses 2,000 but fewer than 20,000 cigarettes without the stamp or stamps

required by this act being affixed thereto or stamped in violation of subsection b. of section 405 shall be guilty of a crime of the fourth degree; and any such person who possesses 20,000 or more cigarettes without the stamp or stamps required by this act being affixed thereto or stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15) shall be guilty of a crime of the third degree.

11. Section 609 of P.L.1948, c.65 (C.54:40A-32) is amended to read as follows:

C.54:40A-32 Records; possession and transportation of unstamped cigarettes; seizure and confiscation of vessel or vehicles.

609. Records; possession and transportation of unstamped cigarettes; seizure and confiscation of vessel or vehicles. Every person who shall transport cigarettes not stamped as required by this act or stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15) upon the public highways, waterways, roads or streets of this State shall have in his actual possession invoices or delivery tickets for such cigarettes which shall show the true name and complete and exact address of the consignor or seller, the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes transported and in addition shall show separately the true name and complete and exact address of the person who has or shall assume the payment of the New Jersey State tax or the tax, if any, of the State or foreign country at the point of ultimate destination, provided that any common carrier which has issued a bill of lading for a shipment of cigarettes and is without notice to itself or to any of its agents or employees that said cigarettes are not stamped as required by this act shall be deemed to have complied with this act and the vehicle or vessel in which said cigarettes are being transported shall not be subject to confiscation hereunder. In the absence of such invoices, delivery tickets or bills of lading, as the case may be, the cigarettes so transported, the vehicle, or vessel in which the cigarettes are being transported and any paraphernalia or devices used in connection with the unstamped cigarettes or cigarettes stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15), are declared to be contraband goods and may be seized by the director, his agents or employees or by any peace officer of the State when directed by the director, his agents or employees so to do, without a warrant. The director shall immediately thereafter institute a proceeding for the confiscation thereof in the Superior Court or the municipal court within the jurisdiction of which the seizure is made. The owner or any person having a security interest in any such vehicle may secure release of the same by depositing with the clerk of the court, in which such proceeding is pending, a bond with good and sufficient sureties in an amount to be fixed by the court, conditioned upon the return of said vehicle to the director upon demand after completion of said proceeding. The court may proceed in a summary manner and may direct confiscation to the director; provided, however, anything to the contrary notwithstanding, that the owner or any person claiming to be the holder of a mortgage, conditional sales contract or other security interest in any vehicle or vessel, the disposition of which is provided for above, may present his petition so alleging and be heard, and in the event it appears to the court that the property was unlawfully used by a person other than the owner or such claimant, and if such owner or claimant acquired ownership or his security interest in good faith and without knowledge that the vehicle or vessel was going to be so used, the court shall either waive forfeiture in favor of such owner or claimant and order the vehicle or vessel returned or delivered to such owner or claimant, or if it is found that the value thereof exceeds the amount of the claim, the court shall order payment of the amount of the claim out of the proceeds of the sale. Every

transporter who violates the provisions of this act shall be guilty of a crime of the fourth degree, and shall, in addition to such penalties as may be imposed therefor, be liable to a penalty equal to double the amount of tax due on any unstamped cigarettes transported by him, which penalty shall be sued for and recovered in the same manner as provided for the penalties imposed by section 601 of the act to which this act is amendatory (C.54:40A-24).

12. Section 9 of P.L.1968, c.351 (C.54:40A-32.1) is amended to read as follows:

C.54:40A-32.1 Cigarette vending machines, certain circumstances, seized, sealed.

9. Any cigarette vending machine not bearing a proper license or identification, or which is found to contain unstamped packages of cigarettes, or cigarettes bearing counterfeit impressions, or cigarettes stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15), may be seized or sealed by the director, the director's agents or employees or by any peace officer of this State, when directed by the director so to do. If the owner or the owner's agent destroys or removes said seal, that individual may, upon conviction, be subject to a penalty of not more than \$1,000. Any vending machine containing unstamped or counterfeit stamped cigarettes may be declared forfeited to the director.

13. Section 6 of P.L.1950, c.134 (C.54:40A-44) is amended to read as follows:

C.54:40A-44 Advertisements; penalties therefor.

6. No radio or television broadcast originating in this State, or newspaper, or other publication published in this State, shall accept an advertisement from any out-of-State cigarette dealer for the sale of cigarettes by mail or express, unless there is included in said advertisement the following words: "Before any person may receive cigarettes in New Jersey by mail or express, a license for that purpose must be obtained from the Division of Taxation, New Jersey Department of the Treasury."

Any person who violates these provisions, upon conviction thereof, shall be fined not more than \$1,000 for each individual offense.

14. Section 5 of P.L.2005, c.85 (C.54:40A-50) is amended to read as follows:

C.54:40A-50 Additional penalties, schedule.

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

- a. a penalty of not less than \$2,000 and not more than \$4,000 for the first violation;
- b. a penalty of not less than \$5,000 and not more than \$7,000 for the second violation within a five-year period;
- c. a penalty of not less than \$8,000 and not more than \$10,000 for the third violation within a five-year period;
- d. a penalty of not less than \$11,000 and not more than \$13,000 for a fourth violation within a five-year period; and
- e. a penalty of \$20,000 for a fifth or subsequent violation within a five-year period.

C.54:40A-29.1 Offenses involving counterfeit cigarettes.

15. a. Any person who imports into this State, directly or indirectly, or offers for sale, sells, distributes, transports or possesses with intent to sell a counterfeit cigarette, knowing that the cigarette is a counterfeit cigarette, shall be guilty of a crime of the third degree. As used in this section, "counterfeit cigarette" means a cigarette or a pack or other container of cigarettes that bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted by or used by a licensed manufacturer to identify its own cigarettes but is not manufactured by the owner or holder of that trademark, service mark, trade name, label, term, design, or work, or by any authorized licensee of that person.

b. Notwithstanding N.J.S.2C:1-8 or any other provision of law, a conviction of an offense defined in this section shall not merge with a conviction for any other offense constituting the criminal activity defined in section 1 of the "New Jersey Trademark Counterfeiting Act," P.L.1997, c.57 (C.2C:21-32), and the sentence imposed upon a conviction of an offense defined in this section shall be ordered to be served consecutively to that imposed for a conviction of any offense under section 1 of P.L.1997, c.57 (C.2C:21-32) constituting the criminal activity involving the counterfeit cigarettes. Nothing in section 1 of P.L.1997, c.57 (C.2C:21-32) shall be construed to preclude or limit a prosecution or conviction for any other offense defined in P.L.1948, c.65 (C.54:40A-1 et seq.) or any other statute.

c. (1) Proof that a person possessed a quantity of 2,000 or more counterfeit cigarettes shall give rise to an inference that the person intended to sell those cigarettes.

(2) Proof that a person who sold or distributed 2,000 or more counterfeit cigarettes did not provide or retain an invoice or other business record documenting the transfer of the cigarettes to the recipient shall give rise to an inference that the person knew that the cigarettes were counterfeit cigarettes, and proof that a person who obtained 2,000 or more counterfeit cigarettes did not receive or retain an invoice or other record of the price from the source of the cigarettes shall give rise to an inference that the person knew that the cigarettes were counterfeit cigarettes.

(3) Proof that a person who imported or possessed any quantity of counterfeit cigarettes obtained them at a price substantially below their fair and reasonable value shall give rise to an inference that the person knew that the cigarettes were counterfeit cigarettes, and proof that a person who offered for sale, sold or distributed any quantity of counterfeit cigarettes at a price substantially below their fair and reasonable value shall give rise to an inference that the person knew that the cigarettes were counterfeit cigarettes.

16. This act shall take effect immediately.

Approved August 19, 2013.