

P.L. 2005, CHAPTER 384, *approved January 15, 2006*
Senate, No. 2783 (*First Reprint*)

1 **AN ACT** concerning penalties for the sale or distribution of tobacco
2 products to persons under 19 years of age and revising parts of the
3 statutory law.

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

7
8 1. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to read
9 as follows:

10 1. a. No person, either directly or indirectly by an agent or
11 employee, or by a vending machine owned by the person or located in
12 the person's establishment, shall sell, offer for sale, distribute for
13 commercial purpose at no cost or minimal cost or with coupons or
14 rebate offers, give or furnish, to a person under **[18]** 19 years of age,
15 any cigarettes made of tobacco or of any other matter or substance
16 which can be smoked, or any cigarette paper or tobacco in any form,
17 including smokeless tobacco.

18 b. The establishment of all of the following shall constitute a
19 defense to any prosecution brought pursuant to subsection a. of this
20 section:

21 (1) that the purchaser of the tobacco product or the recipient of the
22 promotional sample falsely represented, by producing either a driver's
23 license or non-driver identification card issued by the New Jersey
24 Motor Vehicle Commission **[in the Department of Transportation]**,
25 **[or]** a similar card issued pursuant to the laws of another state or the
26 federal government of Canada, or a photographic identification card
27 issued by a county clerk, that the purchaser or recipient was of legal
28 age to make the purchase or receive the sample;

29 (2) that the appearance of the purchaser of the tobacco product or
30 the recipient of the promotional sample was such that an ordinary
31 prudent person would believe the purchaser or recipient to be of legal
32 age to make the purchase or receive the sample; and

33 (3) that the sale or distribution of the tobacco product was made
34 in good faith, relying upon the production of the identification set
35 forth in paragraph (1) of this subsection, the appearance of the
36 purchaser or recipient, and in the reasonable belief that the purchaser
37 or recipient was of legal age to make the purchase or receive the
38 sample.

39 c. A person who violates the provisions of subsection a. of this
40 section, including an employee of a retail dealer licensee under

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 December 1, 2005.

1 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise
2 provides a tobacco product to a person under 19 years of age, shall
3 be liable to a civil penalty of not less than \$250 for the first violation,
4 not less than \$500 for the second violation, and \$1,000 for the third
5 and each subsequent violation. The civil penalty shall be collected
6 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
7 (C.2A:58-10 et seq.), in a summary proceeding before the municipal
8 court having jurisdiction. An official authorized by statute or
9 ordinance to enforce the State or local health codes or a law
10 enforcement officer having enforcement authority in that municipality
11 may issue a summons for a violation of the provisions of subsection a.
12 of this section, and may serve and execute all process with respect to
13 the enforcement of this section consistent with the Rules of Court. A
14 penalty recovered under the provisions of this subsection shall be
15 recovered by and in the name of the State by the local health agency.
16 The penalty shall be paid into the treasury of the municipality in which
17 the violation occurred for the general uses of the municipality.

18 d. In addition to the provisions of subsection c. of this section,
19 upon the recommendation of the municipality, following a hearing by
20 the municipality, the Division of Taxation in the Department of the
21 Treasury may suspend or, after a second or subsequent violation of the
22 provisions of subsection a. of this section, revoke the license issued
23 under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail dealer.
24 The licensee shall be subject to administrative charges, based on a
25 schedule issued by the Director of the Division of Taxation, which may
26 provide for a monetary penalty in lieu of a suspension.

27 e. A penalty imposed pursuant to this section shall be in addition
28 to any penalty that may be imposed pursuant to section 3 of P.L.1999,
29 c. 90 (C.2C:33-13.1).
30 (cf: P.L.2003, c.175, s.1)

31

32 2. Section 7 of P.L.1966, c.36 (C.26:2F-7) is amended to read as
33 follows:

34 7. (a) There is hereby established a special projects and
35 development fund which shall consist of all funds appropriated or
36 otherwise made available for the purposes set forth in this section.
37 The commissioner, with the approval of the Public Health Council,
38 may make grants from the special projects and development fund to
39 local health agencies, to hospitals, and to voluntary health agencies to
40 provide State health assistance for new health services and for special
41 health projects in order to stimulate continued development of health
42 services and to assure the citizens of New Jersey the benefits of the
43 most advanced health protection techniques.

44 (b) Except as provided in subsection (c) of this section, grants
45 from the special projects and development fund for specific purposes
46 shall be made on an annual basis for a period not in excess of 5 years

1 and such grants shall be in diminishing amounts during this period. The
2 commissioner shall determine the conditions applicable to each such
3 grant including the extent of local financial participation to be
4 required. Grants from the special projects and development fund to
5 voluntary health agencies shall not exceed 40% of said fund.

6 (c) (1) Grants from the special projects and development fund shall
7 be made on an annual basis to local health agencies for local
8 enforcement efforts concerning the sale and commercial distribution
9 of tobacco products to persons under the age of [18] 19 years, in an
10 amount determined by the commissioner. The grants shall be
11 distributed based on the number of cigarette retail dealer and vending
12 machine licenses issued within a local health agency's jurisdictional
13 authority in order to ensure Statewide coverage and Statewide
14 consistency of enforcement efforts; except that the commissioner may
15 designate up to 5% of available funds, annually, for incentive grants to
16 local health agencies to enhance enforcement efforts.

17 Each grant recipient shall report quarterly to the commissioner on
18 the number of compliance check inspections it has completed and the
19 results of those compliance checks. The commissioner shall determine
20 any other conditions applicable to the grants.

21 (2) Beginning in 1999, notwithstanding the provisions of paragraph
22 (1) of this subsection to the contrary, the commissioner may make
23 grants from the special projects and development fund to public and
24 private local agencies to reduce teenage use of addictive substances.
25 (cf: P.L.1995, c.320, s.1)

26

27 3. Section 3 of P.L.1995, c.304 (C.2A:170-51.1) is amended to
28 read as follows:

29 3. A person [18] 19 years of age or older who purchases a
30 tobacco product for a person who is under [18] 19 years of age is a
31 petty disorderly person.
32 (cf: P.L.1995, c.304, s.3)

33

34 4. Section 2 of P.L.1995, c.320 (C.26:3A2-20.1) is amended to
35 read as follows:

36 2. a. The Commissioner of Health and Senior Services is
37 authorized to enforce the provisions of section 1 of P.L.2000, c.87
38 (C.2A:170-51.4) with respect to the prohibition on the sale and
39 commercial distribution of tobacco products to persons under [18] 19
40 years of age. The commissioner may delegate the enforcement
41 authority provided in this section to local health agencies, subject to
42 the availability of sufficient funding. The commissioner shall report
43 quarterly to the Legislature on the enforcement program's progress,
44 use of grants awarded pursuant to section 7 of P.L.1966, c.36
45 (C.26:2F-7), results of enforcement efforts and other matters the
46 commissioner deems appropriate.

1 b. The Department of the Treasury shall provide the commissioner
2 with information about retail tobacco dealer licensees necessary to
3 carry out the purpose of this section.

4 (cf: P.L.2000, c.87, s.3)

5
6 5. Section 3 of P.L.1999, c.90 (C.2C:33-13.1) is amended to read
7 as follows:

8 3. a. A person who sells or gives to a person under ~~18~~ 19 years
9 of age any cigarettes made of tobacco or of any other matter or
10 substance which can be smoked, or any cigarette paper or tobacco in
11 any form, including smokeless tobacco, including an employee of a
12 retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who
13 actually sells or otherwise provides a tobacco product to a person
14 under 19 years of age, shall be punished by a fine as provided for a
15 petty disorderly persons offense. A person who has been previously
16 punished under this section and who commits another offense under
17 it may be punishable by a fine of twice that provided for a petty
18 disorderly persons offense.

19 b. The establishment of all of the following shall constitute a
20 defense to any prosecution brought pursuant to subsection a. of this
21 section:

22 (1) that the purchaser or recipient of the tobacco product falsely
23 represented, by producing either a driver's license or non-driver
24 identification card issued by the ~~Division of Motor Vehicles in the~~
25 Department of Transportation New Jersey Motor Vehicle
26 Commission, a similar card issued pursuant to the laws of another state
27 or the federal government of Canada, or a photographic identification
28 card issued by a county clerk, that the purchaser or recipient was of
29 legal age to purchase or receive the tobacco product;

30 (2) that the appearance of the purchaser or recipient of the tobacco
31 product was such that an ordinary prudent person would believe the
32 purchaser or recipient to be of legal age to purchase or receive the
33 tobacco product; and

34 (3) that the sale or distribution of the tobacco product was made
35 in good faith, relying upon the production of the identification set
36 forth in paragraph (1) of this subsection, the appearance of the
37 purchaser or recipient, and in the reasonable belief that the purchaser
38 or recipient was of legal age to purchase or receive the tobacco
39 product.

40 c. A penalty imposed pursuant to this section shall be in addition
41 to any penalty that may be imposed pursuant to section 1 of P.L.2000,
42 c.87 (C.2A:170-51.4).

43 (cf: P.L.2000, c.87, s.4)

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

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

"A person who sells or offers to sell a tobacco product to a person under **[18]** 19 years of age shall pay a penalty of up to \$1,000 and may be subject to a license suspension or revocation.

Proof of age may be required for purchase."

(cf: P.L.1995, c.304, s.2)

¹7. Section 4 of P.L.2005, c.85 (C. 54:40A-49) is amended to read as follows:

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

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

b. The seller has verified payment of, paid, or collected 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-1 et seq.), due on the cigarettes; and

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

(1) obtained from the purchaser reliable confirmation that the purchaser is at least **[18]** 19 years old and a statement by the purchaser under penalty of perjury certifying the purchaser's date of birth and address;

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

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

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

Sellers taking an order for a non-face-to-face sale may request that

1 prospective purchasers provide their e-mail addresses.¹
2 (cf: P.L.2005, c.85, s.4)

3
4 ¹[7.] 8.¹ This act shall take effect on the 90th day after enactment;
5 except that the Commissioner of Health and Senior Services may take
6 such anticipatory administrative action in advance as shall be necessary
7 for the implementation of the act.

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12 Raises minimum age for sale and purchase of tobacco products from
13 18 to 19.