

ASSEMBLY, No. 1579

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

SYNOPSIS

Increases wholesale sales and use tax rate on tobacco products, changes tax base, and requires licenses to conduct business in tobacco products.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



A1579 CONAWAY

2

1 AN ACT concerning increased taxation of and new licensure for
2 sales of certain tobacco products, amending P.L.2000, c.87,
3 P.L.2006, c.37, and amending and supplementing P.L.1990, c.39.
4

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

7
8 1. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read
9 as follows:

10 2. As used in sections 2 through 14 and section 20 of **[this act]**
11 P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of P.L.2006, c.37
12 (C.54:40B-3.1), and P.L. , c. (C.) (pending before the
13 Legislature as this bill):

14 “Cigar” means any roll of tobacco for smoking that is: wrapped
15 in leaf tobacco, or any other substance or material containing
16 tobacco; offered to, or purchased by, consumers with or without a
17 mouthpiece, tip, or filter for smoking; and, sold by the distributor or
18 wholesaler to the retail dealer or consumer for a pre-tax sales price
19 of more than \$2.00 per cigar. A cigar shall not include a cigarillo
20 or little cigar;

21 “Cigarillo” means any roll of tobacco for smoking that is:
22 wrapped in leaf tobacco, or any other substance or material
23 containing tobacco; offered to, or purchased by, consumers with or
24 without a mouthpiece, tip, or filter for smoking; and, sold by the
25 distributor or wholesaler to the retail dealer or consumer for a pre-
26 tax sales price of not more than \$2.00 per cigarillo. A cigarillo
27 shall not include a cigar or little cigar;

28 "Consumer" means a person except a distributor, manufacturer,
29 or wholesaler who acquires a tobacco product for consumption,
30 storage, or use in this State;

31 "Director" means the Director of the Division of Taxation in the
32 Department of the Treasury;

33 "Distributor" means:

34 a person engaged in the business of selling tobacco products in
35 this State who brings **[.]** or causes to be brought into this State from
36 without the State a tobacco product for sale within this State,

37 a person who makes or manufactures tobacco products in this
38 State for sale in the State,

39 a person engaged in the business of selling tobacco products
40 without this State who ships or transports tobacco products to a
41 person in this State to be sold to a retail dealer, or

42 a person who receives tobacco products **[on which the tax has**
43 **not or will not be]** without receiving proof that the tax has been or
44 will be paid by another distributor;

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

Matter underlined thus is new matter.

1 "Dry snuff" means any finely cut, ground, or powdered
2 smokeless tobacco that is intended to be sniffed through the nasal
3 cavity, but does not include moist snuff or a single-dose smokeless
4 tobacco product;

5 "Little cigar" means any roll of tobacco for smoking that: is
6 wrapped in leaf tobacco, or any other substance or material
7 containing tobacco; is offered to, or purchased by, consumers with
8 or without a mouthpiece, tip, or filter for smoking; and, weighs not
9 more than three pounds per 1,000 units. A little cigar shall not
10 include a cigar or cigarillo;

11 "Manufacturer" means a person, wherever resident or located,
12 who manufactures or produces, or causes to be manufactured or
13 produced, a tobacco product and sells, uses, stores, or distributes
14 the product regardless of whether it is intended for sale, use, or
15 distribution within or without this State;

16 "Moist snuff" means any finely cut, ground, or powdered
17 smokeless tobacco that is intended to be placed or dipped in the oral
18 cavity, but does not include dry snuff or a single-dose smokeless
19 tobacco product;

20 "Person" means an individual, firm, corporation, copartnership,
21 joint venture, association, receiver, trustee, guardian, executor,
22 administrator, or any other person acting in a fiduciary capacity, or
23 an estate, trust or group or combination acting as a unit, the State
24 Government and any political subdivision thereof, and the plural as
25 well as the singular, unless the intention to give a more limited
26 meaning is disclosed by the context;

27 "Pipe tobacco" means any tobacco that, because of its
28 appearance, type, packaging, or labeling, is suitable for use and
29 likely to be offered to, or purchased by, consumers as tobacco to be
30 smoked in a pipe;

31 "Place of business" means a place where a tobacco product is
32 sold or where a tobacco product is brought or kept for the purpose
33 of sale or consumption, including so far as may be applicable a
34 vessel, vehicle, airplane, train, or vending machine;

35 "Receipt" means the sale price of a tobacco product valued in
36 money, whether received in money or otherwise, including early
37 payment discounts, and without any deduction or exclusion for
38 expenses or costs whatsoever;

39 "Retail dealer" means a person who is engaged in this State in
40 the business of selling any tobacco product at retail. A person
41 placing a tobacco product vending machine at[,] or on any
42 premises shall be deemed to be a retail dealer for each vending
43 machine;

44 "Sale" means any sale, transfer, exchange, barter, or gift, in any
45 manner or by any means whatsoever;

46 "Single-dose smokeless tobacco product" means any finely cut,
47 ground, or powdered tobacco or product derived from tobacco that
48 is intended for consumption without being combusted and is

1 suitable for use and likely to be offered to, or purchased by,
2 consumers as uniform, individual dose servings or other discrete
3 single-use units. A single-dose smokeless tobacco product includes
4 snus, lozenges, tablets, sticks, and strips, but does not include dry
5 snuff or moist snuff;

6 “Smoking tobacco” means any tobacco that, because of its
7 appearance, type, packaging, or labeling, is suitable for use and
8 likely to be offered to, or purchased by, consumers as tobacco for
9 making cigarettes or cigars, or for use as wrappers for making
10 cigarettes or cigars;

11 "Tobacco product" means any product containing **【any】** , made,
12 or derived from tobacco for **【personal】** human consumption, or
13 placement in the oral or nasal cavity or otherwise into the human
14 body, whether chewed, smoked, absorbed, dissolved, inhaled,
15 snorted, sniffed, or ingested by other means, including, but not
16 limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe
17 tobacco, smoking tobacco, and their substitutes, **【and】** dry and
18 moist snuff, and single-dose smokeless tobacco, but does not
19 include cigarette as defined in section 102 of the "Cigarette Tax
20 Act," P.L.1948, c.65 (C.54:40A-1 et seq.). "Tobacco product" does
21 not include any product that is approved by the United States Food
22 and Drug Administration for tobacco cessation, nicotine cessation,
23 or other therapeutic purpose if that product is marketed and sold
24 solely for that approved purpose;

25 "Treasurer" means the State Treasurer;

26 "Use" means the exercise of any right or power incidental to the
27 ownership of a tobacco product, including a sale at retail;

28 **【**"Wholesale price" means the actual price for which a
29 manufacturer sells tobacco products to a distributor;**】** and

30 "Wholesaler" means a person, wherever resident or located, other
31 than a distributor as defined herein, who:

32 a. purchases tobacco products from any other person who
33 purchases from the manufacturer and who acquires tobacco
34 products solely for the purpose of bona fide resale to retail dealers
35 or to other persons for the purposes of resale only; or

36 b. services retail outlets by the maintenance of an established
37 place of business for the purchase of tobacco products including,
38 but not limited to, the maintenance of warehousing facilities for the
39 storage and distribution of tobacco products.

40 (cf: P.L.2006, c.37, s.4)

41

42 2. Section 3 of P.L.1990, c.39 (C.54:40B-3) is amended to read
43 as follows:

44 3. a. There is imposed a tax of **【30%】** 68% upon the
45 **【wholesale price upon the】** receipts from the sale, use, or
46 distribution of a tobacco product **【within】** by a distributor or a

1 wholesaler to a retail dealer or consumer in this State, except that if
2 the product is:
3 moist snuff, the tax shall be imposed as provided in section 3 of
4 P.L.2006, c.37 (C.54:40B-3.1),
5 a cigar, the tax shall be imposed as provided in section 4 of
6 P.L. , c. (C.) (pending before the Legislature as this bill),
7 a cigarillo, the tax shall be imposed as provided in section 5 of
8 P.L. , c. (C.) (pending before the Legislature as this bill),
9 a little cigar, the tax shall be imposed as provided in section 6 of
10 P.L. , c. (C.) (pending before the Legislature as this bill),
11 a single-dose smokeless tobacco product, the tax shall be
12 imposed as provided in section 7 of P.L. , c. (C.) (pending
13 before the Legislature as this bill), and
14 pipe tobacco or smoking tobacco, the tax shall be imposed as
15 provided in section 8 of P.L. , c. (C.) (pending before the
16 Legislature as this bill).

17 b. Unless a tobacco product has already been or will be subject
18 to the wholesale sales tax imposed in subsection a. of this section, if
19 a distributor or wholesaler uses a tobacco product within this State,
20 there is imposed upon the distributor or wholesaler a compensating
21 use tax of **【30%】** 68% measured by the **【sales price】** receipt from a
22 sale of a similar tobacco product to a distributor, except that if the
23 product is:
24 moist snuff, the tax shall be imposed as provided in section 3 of
25 P.L.2006, c.37 (C.54:40B-3.1),
26 a cigar, the tax shall be imposed as provided in section 4 of
27 P.L. , c. (C.) (pending before the Legislature as this bill),
28 a cigarillo, the tax shall be imposed as provided in section 5 of
29 P.L. , c. (C.) (pending before the Legislature as this bill),
30 a little cigar, the tax shall be imposed as provided in section 6 of
31 P.L. , c. (C.) (pending before the Legislature as this bill),
32 a single-dose smokeless tobacco product, the tax shall be
33 imposed as provided in section 7 of P.L. , c. (C.) (pending
34 before the Legislature as this bill), and
35 pipe tobacco or smoking tobacco, the tax shall be imposed as
36 provided in section 8 of P.L. , c. (C.) (pending before the
37 Legislature as this bill).

38 c. Unless a wholesale use tax is due pursuant to subsection b.
39 of this section, if a distributor or wholesaler has not paid the
40 wholesale sales tax imposed in subsection a. of this section upon a
41 sale that is subject to the wholesale sales tax imposed in that
42 subsection a., there is imposed upon the retail dealer or consumer
43 chargeable for the sale a compensating use tax of **【30%】** 68% of the
44 price paid or charged for the tobacco product, except that if the
45 product is:
46 moist snuff, the tax shall be imposed as provided in section 3 of
47 P.L.2006, c.37 (C.54:40B-3.1),

1 a cigar, the tax shall be imposed as provided in section 4 of
2 P.L. , c. (C.) (pending before the Legislature as this bill),
3 a cigarillo, the tax shall be imposed as provided in section 5 of
4 P.L. , c. (C.) (pending before the Legislature as this bill),
5 a little cigar, the tax shall be imposed as provided in section 6 of
6 P.L. , c. (C.) (pending before the Legislature as this bill),
7 a single-dose smokeless tobacco product, the tax shall be
8 imposed as provided in section 7 of P.L. , c. (C.) (pending
9 before the Legislature as this bill), and
10 pipe tobacco or smoking tobacco, the tax shall be imposed as
11 provided in section 8 of P.L. , c. (C.) (pending before the
12 Legislature as this bill),
13 which shall be collected in the manner provided in subsection b.
14 of section 5 of **【this act】** P.L.1990, c.39 (C.54:40B-5).
15 (cf: P.L.2006, c.37, s.5)

16
17 3. Section 3 of P.L.2006, c.37 (C.54:40B-3.1) is amended to
18 read as follows:

19 3. a. There is imposed a tax upon the receipts from the sale,
20 use, or distribution of moist snuff within this State by a distributor
21 or wholesaler to a retail dealer or consumer at the rate of **【\$0.75】**
22 \$2.25 per ounce on the net weight, as listed by the manufacturer, of
23 the moist snuff, and a proportionate rate on all fractional parts of an
24 ounce of the net weight of moist snuff.

25 b. Unless a moist snuff product has already been or will be
26 subject to the wholesale sales tax imposed in subsection a. of this
27 section, if a distributor or wholesaler uses the moist snuff within
28 this State, there is imposed upon the distributor or wholesaler a
29 compensating use tax of **【\$0.75】** \$2.25 per ounce on the net weight,
30 as listed by the manufacturer, of the moist snuff, and a
31 proportionate rate on all fractional parts of an ounce of the net
32 weight of moist snuff.

33 c. Unless a wholesale use tax is due pursuant to subsection b.
34 of this section, if a distributor or wholesaler has not paid the
35 wholesale sales tax imposed in subsection a. of this section upon a
36 sale that is subject to the wholesale sales tax imposed in that
37 subsection a., there is imposed upon the retail dealer or consumer
38 chargeable for the sale a compensating use tax of **【\$0.75】** \$2.25 per
39 ounce on the net weight, as listed by the manufacturer, of the moist
40 snuff, and a proportionate rate on all fractional parts of an ounce of
41 the net weight of moist snuff, which shall be collected in the
42 manner provided in subsection b. of section 5 of P.L.1990, c.39
43 (C.54:40B-5).
44 (cf: P.L.2006, c.37, s.3)

1 4. (New section) a. There is imposed a tax upon the receipts
2 from the sale, use, or distribution of a cigar within this State by a
3 distributor or a wholesaler to a retail dealer or consumer at the rate
4 of \$2.70 for each cigar.

5 b. Unless a cigar has already been or will be subject to the
6 wholesale sales tax imposed in subsection a. of this section, if a
7 distributor or wholesaler uses a cigar within this State, there is
8 imposed upon the distributor or wholesaler a compensating use tax
9 at the rate of \$2.70 for each cigar.

10 c. Unless a wholesale use tax is due pursuant to subsection b.
11 of this section, if a distributor or wholesaler has not paid the
12 wholesale sales tax imposed in subsection a. of this section upon a
13 sale that is subject to the wholesale sales tax imposed in that
14 subsection a., there is imposed upon the retail dealer or consumer
15 chargeable for the sale a compensating use tax at the rate of \$2.70
16 for each cigar, which shall be collected in the manner provided in
17 subsection b. of section 5 of P.L.1990, c.39 (C.54:40B-5).

18

19 5. (New section) a. There is imposed a tax upon the receipts
20 from the sale, use, or distribution of a cigarillo within this State by
21 a distributor or a wholesaler to a retail dealer or consumer at the
22 rate of \$0.54 for each cigarillo.

23 b. Unless a cigarillo has already been or will be subject to the
24 wholesale sales tax imposed in subsection a. of this section, if a
25 distributor or wholesaler uses a cigarillo within this State, there is
26 imposed upon the distributor or wholesaler a compensating use tax
27 at the rate of \$0.54 for each cigarillo.

28 c. Unless a wholesale use tax is due pursuant to subsection b.
29 of this section, if a distributor or wholesaler has not paid the
30 wholesale sales tax imposed in subsection a. of this section upon a
31 sale that is subject to the wholesale sales tax imposed in that
32 subsection a., there is imposed upon the retail dealer or consumer
33 chargeable for the sale a compensating use tax at the rate of \$0.54
34 for each cigarillo, which shall be collected in the manner provided
35 in subsection b. of section 5 of P.L.1990, c.39 (C.54:40B-5).

36

37 6. (New section) a. There is imposed a tax upon the receipts
38 from the sale, use, or distribution of a little cigar within this State
39 by a distributor or a wholesaler to a retail dealer or consumer at the
40 rate of \$0.135 for each little cigar.

41 b. Unless a little cigar has already been or will be subject to the
42 wholesale sales tax imposed in subsection a. of this section, if a
43 distributor or wholesaler uses a little cigar within this State, there is
44 imposed upon the distributor or wholesaler a compensating use tax
45 at the rate of \$0.135 for each little cigar.

46 c. Unless a wholesale use tax is due pursuant to subsection b.
47 of this section, if a distributor or wholesaler has not paid the
48 wholesale sales tax imposed in subsection a. of this section upon a

1 sale that is subject to the wholesale sales tax imposed in that
2 subsection a., there is imposed upon the retail dealer or consumer
3 chargeable for the sale a compensating use tax at the rate of \$0.135
4 for each little cigar, which shall be collected in the manner provided
5 in subsection b. of section 5 of P.L.1990, c.39 (C.54:40B-5).

6
7 7. (New section) a. There is imposed a tax upon the receipts
8 from the sale, use, or distribution of a single-dose smokeless
9 tobacco product within this State by a distributor or a wholesaler to
10 a retail dealer or consumer at the rate of \$0.135 for each single-dose
11 smokeless tobacco product.

12 b. Unless a single-dose smokeless tobacco product has already
13 been or will be subject to the wholesale sales tax imposed in
14 subsection a. of this section, if a distributor or wholesaler uses a
15 single-dose smokeless tobacco product within this State, there is
16 imposed upon the distributor or wholesaler a compensating use tax
17 at the rate of \$0.135 for each single-dose smokeless tobacco
18 product.

19 c. Unless a wholesale use tax is due pursuant to subsection b.
20 of this section, if a distributor or wholesaler has not paid the
21 wholesale sales tax imposed in subsection a. of this section upon a
22 sale that is subject to the wholesale sales tax imposed in that
23 subsection a., there is imposed upon the retail dealer or consumer
24 chargeable for the sale a compensating use tax at the rate of \$0.135
25 for each single-dose smokeless tobacco product, which shall be
26 collected in the manner provided in subsection b. of section 5 of
27 P.L.1990, c.39 (C.54:40B-5).

28
29 8. (New section) a. There is imposed a tax upon the receipts
30 from the sale, use, or distribution of pipe tobacco or smoking
31 tobacco within this State by a distributor or a wholesaler to a retail
32 dealer or consumer at the rate of \$4.15 per ounce on the net weight,
33 as listed by the manufacturer, of the pipe tobacco or smoking
34 tobacco, and a proportionate rate on all fractional parts of an ounce
35 of the net weight of pipe tobacco or smoking tobacco.

36 b. Unless a pipe tobacco or smoking tobacco product has
37 already been or will be subject to the wholesale sales tax imposed in
38 subsection a. of this section, if a distributor or wholesaler uses the
39 pipe tobacco or smoking tobacco within this State, there is imposed
40 upon the distributor or wholesaler a compensating use tax at the rate
41 of \$4.15 per ounce on the net weight, as listed by the manufacturer,
42 of the pipe tobacco or smoking tobacco, and a proportionate rate on
43 all fractional parts of an ounce of the net weight of pipe tobacco or
44 smoking tobacco.

45 c. Unless a wholesale use tax is due pursuant to subsection b.
46 of this section, if a distributor or wholesaler has not paid the
47 wholesale sales tax imposed in subsection a. of this section upon a
48 sale that is subject to the wholesale sales tax imposed in that

1 subsection a., there is imposed upon the retail dealer or consumer
2 chargeable for the sale a compensating use tax at the rate of \$4.15
3 per ounce on the net weight, as listed by the manufacturer, of the
4 pipe tobacco or smoking tobacco, which shall be collected in the
5 manner provided in subsection b. of section 5 of P.L.1990, c.39
6 (C.54:40B-5).

7
8 9. Section 4 of P.L.1990, c.39 (C.54:40B-4) is amended to read
9 as follows:

10 4. Every distributor or wholesaler shall be liable to pay the tax
11 imposed by P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of
12 P.L.2006, c.37 (C.54:40B-3.1), or P.L. , c. (C.) (pending
13 before the Legislature as this bill) when it has sold or otherwise
14 disposed of the tobacco product to the retail dealer or consumer.
15 The retail dealer or consumer shall be given a true copy of an
16 invoice, receipt, or other statement or memorandum [stating that]
17 of the charge made for the sale or other disposition and the tax that
18 has been or will be paid by the distributor or wholesaler, which
19 amount of tax shall be stated and shown separately on the document
20 given to the retail dealer or consumer.

21 The director may provide by regulation that the tax upon tobacco
22 products, sold to a retail dealer or consumer who pays the
23 distributor or wholesaler in installments, may be paid and the return
24 filed on the amount of each installment.

25 (cf: P.L.2001, c.448, s.3)

26
27 10. Section 5 of P.L.1990, c.39 (C.54:40B-5) is amended to read
28 as follows:

29 5. a. Every distributor or wholesaler required to pay **[the]** a
30 tax imposed by **[this act]** P.L.1990, c.39 (C.54:40B-1 et seq.),
31 section 3 of P.L.2006, c.37 (C.54:40B-3.1), or P.L. , c. (C.)
32 (pending before the Legislature as this bill) shall be personally
33 liable for **[the]** such tax **[imposed under this act]**.

34 b. If a distributor or wholesaler fails to pay the tax imposed by
35 **[this act]** P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of
36 P.L.2006, c.37 (C.54:40B-3.1), or P.L. , c. (C.) (pending
37 before the Legislature as this bill) when required to pay the same,
38 then in addition to all other rights, obligations and remedies
39 provided, the compensating use tax imposed in subsection c. of
40 section 3 of P.L.1990, c.39 (C.54:40B-3), subsection c. of section 3
41 of P.L.2006, c.37 (C.54:40B-3.1), subsection c. of section 4 of
42 P.L. , c. (C.) (pending before the Legislature as this bill),
43 subsection c. of section 5 of P.L. , c. (C.) (pending before
44 the Legislature as this bill), subsection c. of section 6 of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 subsection c. of section 7 of P.L. , c. (C.) (pending before
47 the Legislature as this bill), or subsection c. of section 8 of P.L. ,

1 c. (C.) (pending before the Legislature as this bill), shall be
2 payable by the retail dealer or consumer directly to the director, and
3 it shall be the duty of the retail dealer or consumer to file a return,
4 on a form prescribed by the director, with the director and to pay
5 the tax to the director within 20 days of the date the tax was
6 required to be paid or at other times as specified by the director.

7 (cf: P.L.2001, c.448, s.4)

8

9 11. Section 6 of P.L.1990, c.39 (C.54:40B-6) is amended to read
10 as follows:

11 6. a. Within 15 days **【from】** after the effective date of 【this
12 act】 P.L. , c. (pending before the Legislature as this bill), or in
13 the case of ~~manufacturers, distributors, 【or】 wholesalers, or retail~~
14 dealers commencing business or opening new places of business
15 **【after that】** on or after the effective date of P.L. , c. (pending
16 before the Legislature as this bill), within three days after the
17 commencement or opening, every distributor or wholesaler required
18 to pay the taxes imposed by 【this act】 P.L.1990, c.39 (C.54:40B-1
19 et seq.), section 3 of P.L.2006, c.37 (C.54:40B-3.1), or P.L. ,
20 c. (C.) (pending before the Legislature as this bill) and every
21 manufacturer or retail dealer who sells tobacco products shall file
22 with the director **【a certificate of registration】** an application for the
23 applicable license in a form prescribed by the director **【unless】**
24 which shall be in addition to a certificate of authority that has been
25 previously issued to any distributor or wholesaler.

26 b. The director shall issue, without charge, to each **【registrant】**
27 manufacturer, distributor, wholesaler, and retail dealer a certificate
28 of authority requiring the **【registrant】** licensee to pay the **【tax and】**
29 taxes imposed pursuant to P.L.1990, c.39 (C.54:40B-1 et seq.),
30 section 3 of P.L.2006, c.37 (C.54:40B-3.1), or P.L. , c. (C.)
31 (pending before the Legislature as this bill), along with a duplicate
32 **【thereof】** certificate for each additional place of business of the
33 **【registrant】** licensee. Each certificate or duplicate shall state the
34 place of business to which it is applicable. The certificate of
35 authority shall be prominently displayed in the place of business of
36 the **【registrant】** licensee. Certificates shall be nonassignable and
37 nontransferable and shall be surrendered to the director immediately
38 upon the **【registrant's】** licensee's ceasing to do business at the place
39 named.

40 c. On and after the effective date of P.L. , c. (pending
41 before the Legislature as this bill), no person who is a manufacturer,
42 distributor, wholesaler, or retail dealer shall engage in that business
43 without having first obtained the appropriate license for that
44 purpose as required under this section. All licenses shall be issued
45 by the director, who shall make rules and regulations respecting
46 applications for licensure, which may include, in the discretion of

1 the director, requirements based upon the provisions of subsections
2 a. through f. of section 202 of P.L.1948, c.65 (C.54:40A-4).

3 d. A license issued pursuant to this section shall lapse on
4 March 31 of the period for which it is issued, and each license shall
5 be continued annually provided that the licensee has paid the
6 required fee for continuance of the license and is compliant with the
7 provisions of P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of
8 P.L.2006, c.37 (C.54:40B-3.1), and P.L. , c. (C.) (pending
9 before the Legislature as this bill), and any rules and regulations
10 adopted by the director pursuant thereto.

11 e. (1) For each license issued to a manufacturer, and for each
12 continuance of the license, there shall be paid to the director a fee
13 of \$350.

14 (2) For each license issued to a distributor, and for each
15 continuance of the license, there shall be paid to the director a fee
16 of \$350. If a distributor sells or intends to sell tobacco products at
17 two or more places of business, whether established or temporary, a
18 separate license shall be required for each place of business. Each
19 license, or certificate or other evidence of licensure, shall be
20 exhibited in the place of business for which it is issued and in the
21 manner as may be prescribed by the director. The director shall
22 require each licensed distributor to file with the director a bond in
23 an amount not less than \$10,000 to guarantee the proper
24 performance of the distributor's duties and the discharge of the
25 distributor's liabilities under P.L.1990, c.39 (C.54:40B-1 et seq.),
26 section 3 of P.L.2006, c.37 (C.54:40B-3.1), and P.L. ,
27 c. (C.) (pending before the Legislature as this bill). The
28 bond shall be executed by the licensed distributor as principal, and
29 by a corporation approved by the director and duly authorized to
30 engage in business as a surety company in the State of New Jersey,
31 as surety. The bond shall run concurrently with the distributor's
32 license.

33 (3) For each license issued to a wholesaler, and for each
34 continuance of the license, there shall be paid to the director a fee
35 of \$250. If a wholesaler sells or intends to sell tobacco products at
36 two or more places of business, whether established or temporary, a
37 separate license shall be required for each place of business. Each
38 license, or certificate or other evidence of licensure, shall be
39 exhibited in the place of business for which it is issued and in the
40 manner as may be prescribed by the director.

41 (4) (a) For each license issued to a retail dealer, and for each
42 continuance thereof, there shall be paid to the director a fee of \$50.
43 Of the license fee \$40 shall be credited to the special projects and
44 development fund in the Department of Health established pursuant
45 to section 7 of P.L.1966, c.36 (C.26:2F-7) for the purposes
46 specified therein. The director shall determine and certify to the
47 State Treasurer on a monthly basis the amount of revenues collected
48 by the director which are to be credited to the special projects and

1 development fund in the Department of Health. If a retail dealer
2 sells or intends to sell tobacco products at two or more places of
3 business, whether established or temporary, or whether in the same
4 building or not, a separate license shall be required for each place of
5 business. Each license, or certificate or other evidence of licensure,
6 shall be exhibited in the place of business for which it is issued and
7 in the manner as may be prescribed by the director.

8 (b) The director shall require an applicant for a tobacco products
9 retail dealer license to include on the application the address of the
10 place of business where the tobacco products will be sold. If the
11 place of business is moved to a different address than that provided
12 on the license application, the licensee shall notify the director
13 within 30 days of the change of address.

14 f. A person licensed as a distributor, manufacturer, wholesaler,
15 or retail dealer pursuant to subsection e. of this section shall not
16 operate in any other capacity except that for which the person is
17 licensed.

18 g. No license shall be issued to a person except upon the
19 payment of the full fee for licensure, notwithstanding any statute or
20 exemption to the contrary. No license shall be assignable or
21 transferable, except as provided in this subsection, but in the case of
22 death, bankruptcy, receivership, or incompetency of the licensee, or
23 if for any other reason the business of the licensee shall devolve
24 upon another by operation of law, the director may, in the director's
25 discretion, extend that license for a limited time to the executor,
26 administrator, trustee, receiver, or person upon whom the license
27 has devolved. A purchaser or assignee of a licensed wholesaler or
28 licensed distributor, or any other person upon whom the business of
29 a licensed wholesaler or licensed distributor shall devolve by
30 operation of law, shall upon application to the director, be entitled
31 to an assignment or transfer of the wholesale or distributor license
32 for the balance of the existing license period upon payment of a
33 transfer fee of \$5 and subject to that person's qualification to be a
34 licensed wholesaler or licensed distributor under the provisions of
35 this section. Except in the case of a license fee paid or collected in
36 error, no refund of the license fee shall be paid to a person upon the
37 surrender or revocation of a license. Upon payment of a \$5 fee,
38 there may be obtained (1) a duplicate license or certificate of
39 licensure, in the event the original is lost, destroyed, or defaced, and
40 (2) an amended license or certificate of licensure, upon a change in
41 the location of the place of business of a wholesaler, distributor, or
42 retail dealer.

43 (cf: P.L.2001, c.448, s.5)

44
45 12. Section 7 of P.L.1990, c.39 (C.54:40B-7) is amended to read
46 as follows:

47 7. Every distributor or wholesaler required to pay any tax
48 imposed by **[this act]** P.L.1990, c.39 (C.54:40B-1 et seq.), section 3

1 of P.L.2006, c.37 (C.54:40B-3.1), or P.L. , c. (C.)
2 (pending before the Legislature as this bill) shall keep records of
3 every charge for and of all amounts of **【wholesale price paid or due**
4 **thereon】** each sale, use, or distribution of a tobacco product by the
5 distributor or wholesaler and of the tax payable thereon, in such
6 form as the director may require. Records shall include a true copy
7 of each invoice, receipt, statement, or memorandum upon which the
8 provisions of section 4 of **【this act】** P.L.1990, c.39 (C.54:40B-4)
9 require that the tax paid be stated. Records shall be available for
10 inspection and examination at any time upon demand by the
11 director or duly authorized agent or employee and shall be
12 preserved for a period of three years, except that the director may
13 consent to their destruction within that period or may require that
14 they be kept longer.

15 (cf: P.L.2001, c.448, s.6)

16

17 13. Section 8 of P.L.1990, c.39 (C.54:40B-8) is amended to read
18 as follows:

19 8. a. Every distributor or wholesaler required to pay tax under
20 **【this act】** P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of
21 P.L.2006, c.37 (C.54:40B-3.1), or P.L. , c. (C.) (pending
22 before the Legislature as this bill) shall on or before August 20,
23 1990, and on or before the 20th day of each month thereafter, make
24 and file a return for the preceding month with the director. The
25 return shall show the total amount of **【wholesale price paid】**
26 receipts for sales **【to】** , distribution, and use by the distributor or
27 wholesaler for tobacco products that are payable during the period
28 and the amount of taxes required to be paid with respect to such
29 amount. The return shall also reflect any use tax due.

30 b. The director may permit or require returns to be made
31 covering other periods and upon such dates as the director may
32 specify. In addition, the director may require payments of tax
33 liability at such intervals and based upon such classifications as the
34 director may designate. In prescribing other periods to be covered
35 by the return or intervals or classifications for payment of tax
36 liability, the director may take into account the dollar volume of tax
37 involved as well as the need for ensuring the prompt and orderly
38 collection of the taxes imposed.

39 c. The form of returns shall be prescribed by the director and
40 shall contain such information as the director may deem necessary
41 for the proper administration of **【this act】** P.L.1990, c.39
42 (C.54:40B-1 et seq.), section 3 of P.L.2006, c.37 (C.54:40B-3.1),
43 and P.L. , c. (C.) (pending before the Legislature as this
44 bill). The director may require amended returns to be filed within
45 20 days after notice and to contain the information specified in the
46 notice.

1 d. To ensure the proper administration of P.L.1990, c.39
2 (C.54:40B-1 et seq.), section 3 of P.L.2006, c.37 (C.54:40B-3.1),
3 and P.L. , c. (C.) (pending before the Legislature as this
4 bill), the director may require that, in addition to any return required
5 to be filed, each licensee file a quarterly report, on such dates as the
6 director may specify, concerning, but not limited to, the amounts
7 and quantities of each type of tobacco product purchased, sold, or
8 used at each of the licensee's premises, including the prices paid
9 and collected for those products.

10 (cf: P.L.2001, c.448, s.7)

11

12 14. Section 9 of P.L.1990, c.39 (C.54:40B-9) is amended to read
13 as follows:

14 9. Every distributor or wholesaler required to file a return
15 under **【this act】** P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of
16 P.L.2006, c.37 (C.54:40B-3.1), or P.L. , c. (C.) (pending
17 before the Legislature as this bill) shall, at the time of filing the
18 return, pay to the director the taxes imposed by **【this act】** P.L.1990,
19 c.39 (C.54:40B-1 et seq.), section 3 of P.L.2006, c.37 (C.54:40B-
20 3.1), and P.L. , c. (C.) (pending before the Legislature as
21 this bill). Taxes for the period for which a return is required to be
22 filed or for a lesser interval as shall have been designated by the
23 director, shall be due and payable to the director on the date limited
24 for the filing of the return for the period, or on the date limited for
25 such lesser interval as the director has designated, without regard to
26 whether a return is filed or whether the return which is filed
27 correctly shows the total amount of the **【wholesale price paid for】**
28 **receipts from sales 【to】** , distribution, and use by the distributor or
29 wholesaler for tobacco products that are taxable during the period
30 or the taxes due thereon. **【If】** In addition to the requirements set
31 forth in section 6 of P.L.1990, c.39 (C.54:40B-6), if the director
32 deems it necessary to protect the revenues to be obtained under
33 **【this act】** P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of
34 P.L.2006, c.37 (C.54:40B-3.1), or P.L. , c. (C.) (pending
35 before the Legislature as this bill), the director **【may】** shall require
36 a distributor or wholesaler required to pay the tax imposed by **【this**
37 **act】** P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of P.L.2006,
38 c.37 (C.54:40B-3.1), or P.L. , c. (C.) (pending before the
39 Legislature as this bill) to file with the director a bond, issued by a
40 surety company authorized to transact business in this State as to
41 solvency and responsibility, in an amount as the director may fix,
42 but not less than \$10,000, to secure the payment of any tax or
43 penalties or interest due or which may become due from the
44 distributor or wholesaler under **【this act】** P.L.1990, c.39 (C.54:40B-
45 1 et seq.), section 3 of P.L.2006, c.37 (C.54:40B-3.1), and P.L. ,
46 c. (C.) (pending before the Legislature as this bill). If the
47 director determines that a distributor or wholesaler is to file a bond,

1 the director shall give notice to the distributor or wholesaler to that
2 effect specifying the amount of the bond required. The distributor
3 or wholesaler shall file the bond within five days after the giving of
4 notice unless within the five days the distributor or wholesaler
5 requests in writing a hearing before the director at which the
6 necessity, propriety, and amount of the bond shall be determined by
7 the director. The determination shall be final and shall be complied
8 with within 15 days after the giving of notice thereof. In lieu of
9 bond, securities approved by the director or cash in an amount as
10 the director may prescribe, may be deposited, which shall be kept in
11 the custody of the director who may at any time without notice to
12 the depositor apply them to any tax or interest or penalties due, and
13 for that purpose the securities may be sold by the director at public
14 or private sale without notice to the depositor thereof.

15 (cf: P.L.2001, c.448, s.8)

16

17 15. Section 12 of P.L.1990, c.39 (C.54:40B-12) is amended to
18 read as follows:

19 12. In addition to the powers granted in **【this act】** P.L.1990,
20 c.39 (C.54:40B-1 et seq.), section 3 of P.L.2006, c.37 (C.54:40B-
21 3.1), and P.L. _____, c. (C. _____) (pending before the Legislature as
22 this bill), the director may:

23 a. Make, adopt, and amend rules and regulations appropriate to
24 the carrying out of **【this act】** P.L.1990, c.39 (C.54:40B-1 et seq.),
25 section 3 of P.L.2006, c.37 (C.54:40B-3.1), and P.L. _____,
26 c. (C. _____) (pending before the Legislature as this bill).

27 b. Extend, for cause shown by general regulation or individual
28 authorization, the time of filing any return for a period not
29 exceeding three months on such terms and conditions as the director
30 may require; and for cause shown, remit penalties and interest as
31 provided for in the State Uniform Tax Procedure Law, R.S.54:48-1
32 et seq.

33 c. Delegate functions and powers to any officer or employee of
34 the division, and such of the director's powers as the director may
35 deem necessary to carry out efficiently the provisions of **【this act】**
36 P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of P.L.2006, c.37
37 (C.54:40B-3.1), and P.L. _____, c. (C. _____) (pending before the
38 Legislature as this bill), and the person or persons to whom such
39 power has been delegated shall possess and may exercise all of the
40 power and perform all of the duties as delegated.

41 d. Require any distributor or wholesaler required to pay tax to
42 keep detailed records of all amounts of **【wholesale prices paid for】**
43 receipts from sales, distribution, and use of the tobacco products on
44 which taxes are payable, and names and addresses of wholesalers,
45 distributors, retail dealers, and consumers, and other facts relevant
46 in determining the amount of tax due and to furnish such
47 information upon request to the director.

1 e. Assess, determine, revise, and readjust the taxes imposed by
2 **[this act]** P.L.1990, c.39 (C.54:40B-1 et seq.), section 3 of
3 P.L.2006, c.37 (C.54:40B-3.1), and P.L. , c. (C.) (pending
4 before the Legislature as this bill).

5 f. Enter into agreements with other states and the District of
6 Columbia, providing for the reciprocal enforcement of similar tax
7 laws imposed by the states entering into such an agreement. The
8 agreement may empower the duly authorized officer of any
9 contracting state, which extends like authority to officers or
10 employees of this State, to sue for the collection of that state's taxes
11 in the courts of this State.

12 (cf: P.L.2001, c.448, s.10)

13
14 16. (New section) There is established in the Department of the
15 Treasury a special, non-lapsing fund to be known as the "Smoking
16 and Tobacco Use Cessation and Prevention Fund."

17 The fund shall be administered by the State Treasurer, and shall
18 be credited annually with \$22,000,000 of revenues collected from
19 the tax imposed by the "Tobacco Products Wholesale Sales and Use
20 Tax Act," P.L.1990, c.39 (C.54:40B-1 et seq.), as amended and
21 supplemented by section 3 of P.L.2006, c.37 (C.54:40B-3.1), and
22 P.L. , c. (C.) (pending before the Legislature as this bill),
23 after the first \$5,000,000 of revenue collected annually from the tax
24 imposed by P.L.1990, c.39 (C.54:40B-1 et seq.) has been deposited
25 into the Health Care Subsidy Fund in accordance with section 4 of
26 P.L.1997, c.264 (C.26:2H-18.58g).

27 The revenue credited to the fund shall be annually appropriated
28 to the Department of the Treasury, and shall be allocated by the
29 department, during the fiscal year in which an appropriation is
30 made, to the Department of Health to fund smoking and tobacco
31 control, cessation, and prevention programs in the State.

32
33 17. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to
34 read as follows:

35 1. a. No person, either directly or indirectly by an agent or
36 employee, or by a vending machine owned by the person or located
37 in the person's establishment, shall sell, offer for sale, distribute for
38 commercial purpose at no cost or minimal cost or with coupons or
39 rebate offers, give or furnish, to a person under 19 years of age:

40 (1) any cigarettes made of tobacco or of any other matter or
41 substance which can be smoked, or any cigarette paper or tobacco
42 in any form, including smokeless tobacco; or

43 (2) any electronic smoking device that can be used to deliver
44 nicotine or other substances to the person inhaling from the device,
45 including, but not limited to, an electronic cigarette, cigar, cigarillo,
46 or pipe, or any cartridge or other component of the device or related
47 product.

1 b. The establishment of all of the following shall constitute a
2 defense to any prosecution brought pursuant to subsection a. of this
3 section:

4 (1) that the purchaser of the tobacco product or electronic
5 smoking device or the recipient of the promotional sample falsely
6 represented, by producing either a driver's license or non-driver
7 identification card issued by the New Jersey Motor Vehicle
8 Commission, a similar card issued pursuant to the laws of another
9 state or the federal government of Canada, or a photographic
10 identification card issued by a county clerk, that the purchaser or
11 recipient was of legal age to make the purchase or receive the
12 sample;

13 (2) that the appearance of the purchaser of the tobacco product
14 or electronic smoking device or the recipient of the promotional
15 sample was such that an ordinary prudent person would believe the
16 purchaser or recipient to be of legal age to make the purchase or
17 receive the sample; and

18 (3) that the sale or distribution of the tobacco product or
19 electronic smoking device was made in good faith, relying upon the
20 production of the identification set forth in paragraph (1) of this
21 subsection, the appearance of the purchaser or recipient, and in the
22 reasonable belief that the purchaser or recipient was of legal age to
23 make the purchase or receive the sample.

24 c. A person who violates the provisions of subsection a. of this
25 section, including an employee of a retail dealer licensee under
26 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise
27 provides a tobacco product to a person under 19 years of age, shall
28 be liable to a civil penalty of not less than \$250 for the first
29 violation, not less than \$500 for the second violation, and \$1,000
30 for the third and each subsequent violation. The civil penalty shall
31 be collected pursuant to the "Penalty Enforcement Law of 1999,"
32 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding
33 before the municipal court having jurisdiction. An official
34 authorized by statute or ordinance to enforce the State or local
35 health codes or a law enforcement officer having enforcement
36 authority in that municipality may issue a summons for a violation
37 of the provisions of subsection a. of this section, and may serve and
38 execute all process with respect to the enforcement of this section
39 consistent with the Rules of Court. A penalty recovered under the
40 provisions of this subsection shall be recovered by and in the name
41 of the State by the local health agency. The penalty shall be paid
42 into the treasury of the municipality in which the violation occurred
43 for the general uses of the municipality.

44 d. In addition to the provisions of subsection c. of this section,
45 upon the recommendation of the municipality, following a hearing
46 by the municipality, the Division of Taxation in the Department of
47 the Treasury may suspend or, after a second or subsequent violation
48 of the provisions of subsection a. of this section, revoke the license

1 issued under section 202 of P.L.1948, c.65 (C.54:40A-4) or section
2 6 of P.L.1990, c.39 (C.54:40B-6) of a retail dealer. The licensee
3 shall be subject to administrative charges, based on a schedule
4 issued by the Director of the Division of Taxation, which may
5 provide for a monetary penalty in lieu of a suspension.

6 e. A penalty imposed pursuant to this section shall be in
7 addition to any penalty that may be imposed pursuant to section 3
8 of P.L.1999, c.90 (C.2C:33-13.1).
9 (cf: P.L.2009, c.182, s.3)

10
11 18. (New section) a. Notwithstanding the provisions of section
12 8 of P.L.1990, c.39 (C.54:40B-8) to the contrary, each distributor
13 and wholesaler under P.L.1990, c.39 (C.54:40B-1 et seq.), shall
14 take a physical inventory of all items of tobacco products in that
15 distributor's or wholesaler's possession at the close of business on
16 the last day of the first month following the date of enactment of
17 P.L. , c. (C.) (pending before the Legislature as this bill)
18 or another date as the director may prescribe, and shall file a return
19 under oath or certified under the penalties of perjury with the
20 director in the form as the director may prescribe by the twentieth
21 day of the third month following that date of enactment, showing
22 the amount of all items of tobacco products in that distributor's or
23 wholesaler's possession in the State at the close of business on the
24 day prior to the effective date of P.L. , c. (pending before the
25 Legislature as this bill) and shall at the time of filing that return pay
26 to the director the tax imposed pursuant to P.L.1990, c.39
27 (C.54:40B-1 et seq.) and section 3 of P.L.2006, c.37 (C.54:40B-
28 3.1), as amended and supplemented by P.L. , c. (C.)
29 (pending before the Legislature as this bill), as reflected on that
30 return.

31 Failure to obtain those forms shall not be an excuse for the
32 failure to make a return containing the information required by the
33 director.

34 b. Each retail dealer shall take a physical inventory of all items
35 of tobacco products in that dealer's possession in this State at the
36 close of business on the last day of the first month following the
37 date of enactment of P.L. , c. (C.) (pending before the
38 Legislature as this bill) or another date as the director may
39 prescribe, and shall file a return under oath or certified under the
40 penalties of perjury with the director in such form as the director
41 may prescribe by the twentieth day of the third month following
42 that date of enactment, showing the amount of all items of tobacco
43 products in that dealer's possession in this State at the close of
44 business on that day and shall at the time of filing that return pay to
45 the director the tax imposed pursuant to pursuant to P.L.1990, c.39
46 (C.54:40B-1 et seq.) and section 3 of P.L.2006, c.37 (C.54:40B-
47 3.1), as amended and supplemented by P.L. , c. (C.)

1 (pending before the Legislature as this bill), as reflected on that
2 return.

3 Failure to obtain those forms shall not be an excuse for the
4 failure to make a return containing the information required by the
5 director.

6
7 19. This act shall take effect on the first day of the second month
8 beginning after the date of enactment, and shall apply to tobacco
9 products sold or otherwise disposed of on and after that date, except
10 for those tobacco products for which the tax was paid prior to the
11 effective date of this act, except that sections 16 and 17 of this act
12 shall take effect immediately.

13

14

15 STATEMENT

16

17 This bill increases the rate of tax imposed on tobacco products
18 under the "Tobacco Products Wholesale Sales and Use Tax Act,"
19 changes the base of the tax, requires licenses to conduct business in
20 tobacco products, and dedicates certain revenues collected from the
21 tax.

22 Specifically, the bill increases, from 30% to 68%, the general tax
23 rate imposed on tobacco products under the tobacco products
24 wholesale sales and use tax, increases, from \$0.75 per ounce to \$2.25
25 per ounce, the current weight-based tax on moist snuff, and establishes
26 specific per unit rates of tax for certain other tobacco products, as
27 follows: \$2.70 for each cigar, \$0.54 for each cigarillo, \$0.135 for each
28 little cigar, \$0.135 for each single-dose smokeless tobacco product,
29 and \$4.15 per ounce for cigar and pipe tobacco.

30 The bill changes the base of the tobacco products wholesale sales
31 and use tax by reestablishing the wholesaler's price charged by the
32 wholesaler upon their sale of any tobacco product to a retail dealer as
33 the base upon which the tax is determined. This was the tax base
34 imposed under the tax first enacted in 1990 but was changed in 2002
35 to the manufacturer's wholesale price, which has complicated the
36 calculation, collection, and enforcement of the tax as the sale by a
37 manufacturer to a wholesaler does not trigger the wholesaler's tax
38 liability.

39 The bill requires licensure by the Division of Taxation in the
40 Department of the Treasury in order to operate as a manufacturer,
41 distributor, wholesaler, or retailer of tobacco products. Currently, a
42 tax license is not required to sell tobacco products such as cigars,
43 chewing tobacco, pipe tobacco, and moist snuff. The license will be in
44 addition to the certificate of authority to collect the tax and will allow
45 the director to conduct the same review of the background and
46 qualifications of these businesses as is authorized under the cigarette
47 tax act. The director will have the authority to issue the license,
48 impose licensing fees, and adopt appropriate rules and regulations.

A1579 CONAWAY

20

1 Eighty percent of the State revenue from the \$50 annual licensing fees
2 collected from retailer dealers will be credited to the special projects
3 and development fund in the Department of Health to provide grants to
4 local health agencies for local enforcement efforts concerning the sale
5 and commercial distribution of tobacco products to persons under the
6 age of 19 years. The bill additionally amends P.L.2000, c.87
7 (C.2A:170-51.4), which prohibits sale or distribution of tobacco
8 products to persons under 19 years of age and provides that a cigarette
9 retail dealer license may be suspended or revoked for a violation of
10 this prohibition, to provide that a retail license issued under the bill for
11 other tobacco retailers may similarly be suspended or revoked for a
12 violation.

13 The bill requires the State Treasurer to annually credit \$22,000,000
14 of revenues collected from the tobacco products wholesale sales and
15 use tax to a special, nonlapsing fund in the Department of the
16 Treasury. These funds are to be annually appropriated to the
17 Department of Health to be used for tobacco control, cessation,
18 prevention, and treatment initiatives.