

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

May 12, 2011

SENATE SUBSTITUTE FOR
SENATE BILL NO. 2175

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Substitute for Senate Bill No. 2175 with my recommendations for reconsideration.

This bill would prevent State law enforcement agents from using certain forfeited tobacco products for undercover operations or other legitimate investigative purposes. Additionally, the bill requires all cigarettes used for law enforcement operations to be destroyed, rather than sold back to the manufacturers. Finally, the bill would add counterfeit tobacco products to the list of items that are considered to be "prima facie" contraband under New Jersey's criminal code, permitting immediate forfeiture and destruction.

While I commend the sponsors for addressing the issue of contraband tobacco, I believe this bill does not appropriately balance the needs of law enforcement, nor sufficiently remedy the burdens on business posed by these products. According to the Federal Bureau of Alcohol, Tobacco and Firearms, the diversion of legal tobacco products through theft, smuggling, and counterfeiting, annually results in more \$5 billion in lost tax revenue nationwide. The relative simplicity of rebranding tobacco products helps fuel the illicit trade in counterfeits, producing large illegal profits that may help finance other criminal activity.

These problems require stronger action. Accordingly, I recommend amending the bill to include higher civil penalties for the possession of contraband cigarettes. The existing fine of \$25 per carton is actually less than the amount of tax

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charged for the same quantity of cigarettes, and provides far too little deterrence. Instead, I recommend that the fine be increased to \$250 per carton, an amount that meaningfully changes the calculus of criminal profitability.

In addition, I recommend amending the provision of the bill that restricts law enforcement use of damaged or trademark infringed products. While I recognize the importance of protecting manufacturers from all sources of contraband products, I fully expect that law enforcement will not allow these products to enter the stream of commerce where they could harm legitimate businesses. Finally, my proposed amendments will allow products used for law enforcement purposes to be sold back to their manufacturers where appropriate, or destroyed.

Accordingly, I herewith return Senate Substitute for Senate Bill No. 2175 and recommend that it be amended as follows:

Page 2, Section 1, Lines 33 to 39:

After "section", delete
"; provided, however,
that this provision
shall not apply to
cigarettes which the
director determines
violates federal
trademark laws or has
been damaged. All
tobacco products used
for law enforcement
purposes in accordance
with this section shall
be destroyed after such
use, unless such tobacco
products are rendered
unavailable for such
disposition as a result
of the use for law
enforcement purposes"

Page 3, Section 2, Lines 35 to 41:

After "section", delete
"; provided, however,
that this provision
shall not apply to
cigarettes which the
director determines
violate federal
trademark laws or have
been damaged. All
cigarettes used for law
enforcement purposes in
accordance with this
section shall be
destroyed after such
use, unless such

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cigarettes are rendered
unavailable for such
disposition as a result
of the use for law
enforcement purposes"

Page 4, Line 5:

Insert new section. "3.
Section 602 of P.L.
1948, c.65 (C.54:40A-25)
is amended to read as
follows:

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 [twenty-
five dollars (\$ 25)]
two-hundred and fifty
dollars (\$250) 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.
(cf: P.L.1999, c.328,
s.3)"

Page 4, Line 6:

Delete "3", and insert
"4"

Page 5, Line 6:

Delete "4", and insert
"5"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor