

[First Reprint]

## **ASSEMBLY, No. 148**

# **STATE OF NEW JERSEY**

## **208th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

**Sponsored by:**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Assemblyman WILFREDO CARABALLO**

**District 28 (Essex)**

**SYNOPSIS**

Revises and codifies certain criminal law.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on May 18, 1998.



1 AN ACT concerning various criminal offenses and revising and  
2 repealing various sections of the statutory laws.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. N.J.S.2C:35-2 is amended to read as follows:

8 2C:35-2. Definitions.

9 As used in this chapter:

10 "Administer" means the direct application of a controlled dangerous  
11 substance or controlled substance analog, whether by injection,  
12 inhalation, ingestion, or any other means, to the body of a patient or  
13 research subject by: (1) a practitioner (or, in his presence, by his  
14 lawfully authorized agent), or (2) the patient or research subject at the  
15 lawful direction and in the presence of the practitioner.

16 "Agent" means an authorized person who acts on behalf of or at the  
17 direction of a manufacturer, distributor, or dispenser but does not  
18 include a common or contract carrier, public warehouseman, or  
19 employee thereof.

20 "Controlled dangerous substance" means a drug, substance, or  
21 immediate precursor in Schedules I through V. The term shall not  
22 include distilled spirits, wine, malt beverages, as those terms are  
23 defined or used in R.S.33:1-1 et seq., or tobacco and tobacco  
24 products. The term, wherever it appears in any law or administrative  
25 regulation of this State, shall include controlled substance analogs.

26 "Controlled substance analog" means a substance that has a  
27 chemical structure substantially similar to that of a controlled  
28 dangerous substance and that was specifically designed to produce an  
29 effect substantially similar to that of a controlled dangerous substance.  
30 The term shall not include a substance manufactured or distributed in  
31 conformance with the provisions of an approved new drug application  
32 or an exemption for investigational use within the meaning of section  
33 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21  
34 U.S.C.{355}).

35 "Counterfeit substance" means a controlled dangerous substance or  
36 controlled substance analog which, or the container or labeling of  
37 which, without authorization, bears the trademark, trade name, or  
38 other identifying mark, imprint, number or device, or any likeness  
39 thereof, of a manufacturer, distributor, or dispenser other than the  
40 person or persons who in fact manufactured, distributed or dispensed  
41 such substance and which thereby falsely purports or is represented to  
42 be the product of, or to have been distributed by, such other

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly floor amendments adopted May 18, 1998.

1 manufacturer, distributor, or dispenser.

2 "Deliver" or "delivery" means the actual, constructive, or attempted  
3 transfer from one person to another of a controlled dangerous  
4 substance or controlled substance analog, whether or not there is an  
5 agency relationship.

6 "Dispense" means to deliver a controlled dangerous substance or  
7 controlled substance analog to an ultimate user or research subject by  
8 or pursuant to the lawful order of a practitioner, including the  
9 prescribing, administering, packaging, labeling, or compounding  
10 necessary to prepare the substance for that delivery. "Dispenser"  
11 means a practitioner who dispenses.

12 "Distribute" means to deliver other than by administering or  
13 dispensing a controlled dangerous substance or controlled substance  
14 analog. "Distributor" means a person who distributes.

15 "Drugs" means (a) substances recognized in the official United  
16 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the  
17 United States, or official National Formulary, or any supplement to  
18 any of them; and (b) substances intended for use in the diagnosis, cure,  
19 mitigation, treatment, or prevention of disease in man or other animals;  
20 and (c) substances (other than food) intended to affect the structure or  
21 any function of the body of man or other animals; and (d) substances  
22 intended for use as a component of any article specified in subsections  
23 (a), (b) and (c) of this section; but does not include evices or their  
24 components, parts or accessories.

25 "Drug dependent person" means a person who is using a controlled  
26 dangerous substance or controlled substance analog and who is in a  
27 state of psychic or physical dependence, or both, arising from the use  
28 of that controlled dangerous substance or controlled substance analog  
29 on a continuous basis. Drug dependence is characterized by behavioral  
30 and other responses, including but not limited to a strong compulsion  
31 to take the substance on a recurring basis in order to experience its  
32 psychic effects, or to avoid the discomfort of its absence.

33 "Hashish" means the resin extracted from any part of the plant  
34 Genus Cannabis L. and any compound, manufacture, salt, derivative,  
35 mixture, or preparation of such resin.

36 "Manufacture" means the production, preparation, propagation,  
37 compounding, conversion or processing of a controlled dangerous  
38 substance or controlled substance analog, either directly or by  
39 extraction from substances of natural origin, or independently by  
40 means of chemical synthesis, or by a combination of extraction and  
41 chemical synthesis, and includes any packaging or repackaging of the  
42 substance or labeling or relabeling of its container, except that this  
43 term does not include the preparation or compounding of a controlled  
44 dangerous substance or controlled substance analog by an individual  
45 for his own use or the preparation, compounding, packaging, or  
46 labeling of a controlled dangerous substance: (1) by a practitioner as

1 an incident to his administering or dispensing of a controlled  
2 dangerous substance or controlled substance analog in the course of  
3 his professional practice, or (2) by a practitioner (or under his  
4 supervision) for the purpose of, or as an incident to, research,  
5 teaching, or chemical analysis and not for sale.

6 "Marijuana" means all parts of the plant Genus Cannabis L.,  
7 whether growing or not; the seeds thereof, and every compound,  
8 manufacture, salt, derivative, mixture, or preparation of such plant or  
9 its seeds, except those containing resin extracted from such plant; but  
10 shall not include the mature stalks of such plant, fiber produced from  
11 such stalks, oil or cake made from the seeds of such plant, any other  
12 compound, manufacture, salt, derivative, mixture, or preparation of  
13 such mature stalks, fiber, oil, or cake, or the sterilized seed of such  
14 plant which is incapable of germination.

15 "Narcotic drug" means any of the following, whether produced  
16 directly or indirectly by extraction from substances of vegetable origin,  
17 or independently by means of chemical synthesis, or by a combination  
18 of extraction and chemical synthesis:

19 (a) Opium, coca leaves, and opiates;

20 (b) A compound, manufacture, salt, derivative, or preparation of  
21 opium, coca leaves, or opiates;

22 (c) A substance (and any compound, manufacture, salt, derivative,  
23 or preparation thereof) which is chemically identical with any of the  
24 substances referred to in subsections (a) and (b), except that the words  
25 "narcotic drug" as used in this act shall not include decocainized coca  
26 leaves or extracts of coca leaves, which extracts do not contain  
27 cocaine or ecogine.

28 "Opiate" means any dangerous substance having an  
29 addiction-forming or addiction-sustaining liability similar to morphine  
30 or being capable of conversion into a drug having such  
31 addiction-forming or addiction-sustaining liability. It does not include,  
32 unless specifically designated as controlled pursuant to the provisions  
33 of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer  
34 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).  
35 It does include its racemic and levorotatory forms.

36 "Opium poppy" means the plant of the species *Papaver somniferum*  
37 L., except the seeds thereof.

38 "Person" means any corporation, association, partnership, trust,  
39 other institution or entity or one or more individuals.

40 "Plant" means an organism having leaves and a readily observable  
41 root information, including, but not limited to, a cutting having roots,  
42 a rootball or root hairs.

43 "Poppy straw" means all parts, except the seeds, of the opium  
44 poppy, after mowing.

45 "Practitioner" means a physician, dentist, veterinarian, scientific  
46 investigator, laboratory, pharmacy, hospital or other person licensed,

1 registered, or otherwise permitted to distribute, dispense, conduct  
2 research with respect to, or administer a controlled dangerous  
3 substance or controlled substance analog in the course of professional  
4 practice or research in this State.

5 (a) "Physician" means a physician authorized by law to practice  
6 medicine in this or any other state and any other person authorized by  
7 law to treat sick and injured human beings in this or any other state  
8 and

9 (b) "Veterinarian" means a veterinarian authorized by law to  
10 practice veterinary medicine in this State.

11 (c) "Dentist" means a dentist authorized by law to practice  
12 dentistry in this State.

13 (d) "Hospital" means any federal institution, or any institution for  
14 the care and treatment of the sick and injured, operated or approved  
15 by the appropriate State department as proper to be entrusted with the  
16 custody and professional use of controlled dangerous substances or  
17 controlled substance analogs.

18 (e) "Laboratory" means a laboratory to be entrusted with the  
19 custody of narcotic drugs and the use of controlled dangerous  
20 substances or controlled substance analogs for scientific, experimental  
21 and medical purposes and for purposes of instruction approved by the  
22 State Department of Health.

23 "Production" includes the manufacture, planting, cultivation,  
24 growing, or harvesting of a controlled dangerous substance or  
25 controlled substance analog.

26 "Immediate precursor" means a substance which the State  
27 Department of Health has found to be and by regulation designates as  
28 being the principal compound commonly used or produced primarily  
29 for use, and which is an immediate chemical intermediary used or  
30 likely to be used in the manufacture of a controlled dangerous  
31 substance or controlled substance analog, the control of which is  
32 necessary to prevent, curtail, or limit such manufacture.

33 "Residential treatment facility" means any facility approved by any  
34 county probation department for the inpatient treatment and  
35 rehabilitation of drug dependent persons.

36 "Schedules I, II, III, IV, and V" are the schedules set forth in  
37 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8)  
38 and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any  
39 regulations issued by the Commissioner of Health pursuant to his  
40 authority as provided in section 3 of P.L.1970, c.226 (C.24:21-3).

41 "State" means the State of New Jersey.

42 "Ultimate user" means a person who lawfully possesses a controlled  
43 dangerous substance or controlled substance analog for his own use  
44 or for the use of a member of his household or for administration to an  
45 animal owned by him or by a member of his household.

46 "Prescription legend drug" means any drug which under Federal or

1 State law requires dispensing by prescription or order of a licensed  
2 physician, veterinarian or dentist and is required to bear the statement  
3 "Caution: Federal law prohibits dispensing without a prescription" and  
4 is not a controlled dangerous substance or stramonium preparation.

5 "Stramonium preparation" means a substance prepared from any  
6 part of the stramonium plant in the form of a powder, pipe mixture,  
7 cigarette, or any other form with or without other ingredients.

8 "Stramonium plant" means the plant Datura Stramonium Linne,  
9 including Datura Tatula Linne.

10 (cf: P.L.1997, c.186, s.1.)

11  
12 2. N.J.S.2C:36-6 is amended to read as follows:

13 2C:36-6. a. Except as [otherwise] authorized by subsections b. c.  
14 or other law, it shall be unlawful for a person to have under his control  
15 or possess with intent to use a hypodermic syringe, hypodermic needle  
16 or any other instrument adapted for the use of a controlled dangerous  
17 substance or a controlled substance analog as defined in chapter 35 of  
18 Title 2C of the New Jersey Statutes or to sell, furnish or give to any  
19 person such syringe, needle or instrument. Any person who violates  
20 this section is guilty of a disorderly persons offense.

21 b. A person is authorized to possess and use a hypodermic needle  
22 or hypodermic syringe if the person obtains the hypodermic syringe or  
23 hypodermic needle by a valid prescription issued by a licensed  
24 physician, dentist or veterinarian and uses it for its authorized purpose.  
25 No prescription for a hypodermic syringe, hypodermic needle or any  
26 other instrument adapted for the use of controlled dangerous  
27 substances by subcutaneous injections shall be valid for more than one  
28 year from the date of issuance.

29 c. Subsection a. does not apply to a duly licensed physician,  
30 dentist, veterinarian, undertaker, nurse, podiatrist, registered  
31 pharmacist, or a hospital, sanitarium, clinical laboratory or any other  
32 medical institution, or a state or a governmental agency, or a regular  
33 dealer in medical, dental or surgical supplies, or a resident physician  
34 or intern of a hospital, sanitarium or other medical institution.

35 (cf: P.L.1987, c.106, s.2.)

36  
37 3. (New section) Sale of cigarettes to minors.

38 A person who sells or gives to a person under the age of 18 tobacco  
39 in any form, including smokeless tobacco, or cigarette papers shall be  
40 punished by a fine as provided for a petty disorderly persons offense.  
41 A person who has been previously punished under this section and  
42 who commits another offense under it may be punishable by a fine of  
43 twice that provided for a petty disorderly persons offense.

44 (Source: 2A:170-51)

45  
46 4. (New section) Sale of motor vehicle on Sunday.

1 A person who engages in the business of buying, selling or  
2 exchanging motor vehicles or who opens a place of business and  
3 attempts to engage in such conduct on a Sunday commits a disorderly  
4 persons offense. The first offense is punishable by a fine not to exceed  
5 \$100.00 or imprisonment for a period of not more than 10 days or  
6 both; the second offense is punishable by a fine not exceed \$500 or  
7 imprisonment for a period of not more than 30 days or both; the third  
8 or each subsequent offense is punishable by a fine of \$750.00 or  
9 imprisonment for a period of 6 months or both. If the person is a  
10 licensed dealer in new or used motor vehicles in this State, under the  
11 provisions of chapter 10, Title 39 of the Revised Statutes, the person  
12 shall also be subject to suspension or revocation of his dealer's license  
13 to engage in the business of buying, selling or exchanging in motor  
14 vehicles in this State as provided in Title 39, chapter 10, section 10,  
15 section 20, for violation of this statute.

16 (Source: 2A:171-1.1)

17

18 5. (New section) Consumption of alcohol in restaurants.

19 a. No person who owns or operates a restaurant, dining room or  
20 other public place where food or liquid refreshments are sold or served  
21 to the general public, and for which premises a license or permit  
22 authorizing the sale of alcoholic beverages for on-premises  
23 consumption has not been issued:

24 (1) Shall allow the consumption of alcoholic beverages, other than  
25 wine or a malt alcoholic beverage, in a portion of the premises which  
26 is open to the public; or

27 (2) Shall charge any admission fee or cover, corkage or service  
28 charge or advertise inside or outside of such premises that patrons may  
29 bring and consume their own wine or malt alcoholic beverages in a  
30 portion of the premises which is open to the public.

31 (3) Shall allow the consumption of wine or malt alcoholic  
32 beverages at times or by persons to who the service or consumption  
33 or alcoholic beverages on licensed premises is prohibited by State or  
34 municipal law or regulation.

35 b. Nothing in this act shall restrict the right of a municipality or an  
36 owner or operator of a restaurant, dining room or other public place  
37 where food or liquid refreshments are sold or served to the general  
38 public from prohibiting the consumption of alcoholic beverages on  
39 those premises.

40 c. A person who violates any provision of this act is a disorderly  
41 person, and the court, in addition to the sentence imposed for the  
42 disorderly person violation, may by its judgment bar the owner or  
43 operator from allowing consumption of wine or malt alcoholic  
44 beverages in his premises as authorized by this act.

45 (Source: 2A:170-25.21; 2A:170-25.22; 2A:170-25.23)

1       6. (New section) Discarding hypodermic needle or syringe.

2       a. A persons commits a petty disorderly persons offense if:

3       (1) the persons discards, in a place accessible to other persons, a  
4 hypodermic needle or syringe without destroying the hypodermic  
5 needle or syringe; or

6       (2) he is the owner, lessee or person in control of real property and,  
7 knowing that needles and syringes in an intact condition have been  
8 discarded or abandoned on his real property, allows them to remain.

9       b. A hypodermic needle is destroyed if the needle is broken from  
10 the hub or mangled. A syringe is destroyed if the nipple of the barrel  
11 is broken from the barrel, or the plunger and barrel are melted.  
12 Alternatively, a hypodermic needle or syringe is destroyed if it is  
13 discarded as a single unit, without recapping, into a rigid container and  
14 the container is destroyed by grinding or crushing in a compactor, or  
15 by burning in an incinerator approved by the Department of  
16 Environmental Protection, or by another method approved by the  
17 Department of Health.

18 (Source: 2A:170-25.17)

19

20       7. (New section) Toxic chemicals.

21       a. As used in this section the term "toxic chemical" means any  
22 chemical having the property of releasing toxic fumes and includes the  
23 following chemicals: acetone, acetate, benzine, butyl alcohol, ethyl  
24 alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl  
25 ethyl ketone, pentachlorophenol, petroleum ether, toluol, or toluene.

26       b. A person commits a disorderly persons offense if the person:

27       (1) inhales the fumes of any toxic chemical for the purpose of  
28 causing a condition of intoxication; or

29       (2) possesses any toxic chemical for the purpose of causing a  
30 condition of intoxication.

31       c. A person commits a fourth degree offense if the persons sells, or  
32 offers to sell, any substance containing a toxic chemical knowing that  
33 the intended use of the product is to cause a condition of intoxication,  
34 or knowing that the product does not include an additive required by  
35 the Commissioner of the State Department of Health to discourage the  
36 inhalation of vapors of toxic chemicals for the purpose of causing a  
37 condition of intoxication. This subsection does not apply to adhesives  
38 manufactured only for industrial application.

39 (Source: 2A:170-25.9 through 2A:170-25.13)

40

41       8. (New section) Prescription legend drugs.

42       a. Except as authorized by sections 9 through 15 of P.L.1970,  
43 c.226 (C.24:21-9 through 24:21-15) a person who knowingly  
44 distributes a prescription legend drug or stramonium preparation  
45 unless lawfully prescribed or administered by a licensed physician,  
46 veterinarian or dentist is a disorderly person.



b. A person who uses any prescription legend drug or stramonium preparation for a purpose other than treatment of sickness or injury as lawfully prescribed or administered by a licensed physician is a disorderly person.

c. A defendant may be convicted for a violation of subsection b. if the State proves that the defendant manifested symptoms or reactions caused by the use of prescription legend drugs or stramonium preparation. The State need not prove which specific prescription legend drug or stramonium preparation defendant used.

d. A person who obtains or attempts to obtain possession of a prescription legend drug or stramonium preparation by forgery or deception is a disorderly person. Nothing in this section shall be deemed to preclude or limit a prosecution for theft as defined in chapter 20 of Title 2C of the New Jersey Statutes.

(Source: 2A:170-77.8 through 2A:170-77.11)

9. (New section) Possession of certain prescription drugs.

A person who possesses a controlled dangerous substance that was prescribed or dispensed lawfully may possess it only in the container in which it was dispensed; except that the person may possess no more than a 10-day supply in other than the original container if the person produces, upon the request of a law enforcement officer, the name and address of the practitioner who prescribed the substance or the pharmacist who dispensed it. A person who violates this section is a disorderly person.

(Source: 24:21-18.)

10. (New section) Violation of contract to pay employees.

a. An employer who has agreed with an employee or with a bargaining agent for employees to pay wages, compensation or benefits to or for the benefit of employees commits a disorderly persons offense if the employer:

(1) fails to pay wages when due; or

(2) fails to pay compensation or benefits within 30 days after due.

b. If a corporate employer violates subsection a., any officer or employee of the corporation who is responsible for the violation commits a disorderly persons offense.

(Source: 2A:170-90.2)

11. (New section) Wrongful discharge of employee.

a. An employer who discharges an employee or takes any other disciplinary action against the employee because the employee's earnings have been subjected to garnishment commits a disorderly persons offense.

b. An employer who discharges an employee or takes any other disciplinary action in violation of this section shall re-employ any

1 employee discharged, and shall compensate any employee for any  
2 damages resulting from the discharge or disciplinary action.

3 c. The term "earnings" means any form of compensation payable  
4 for personal services, regardless of whether the payment is  
5 denominated as wages, salary, commission, bonus, income from trust  
6 funds, profits, or otherwise, and includes periodic payments pursuant  
7 to a pension or retirement program.

8 (Source: 2A:170-90.3 through 2A:170-90.5)

9

10 12. (New section) a. No person shall, for any fee, or other  
11 remuneration, prepare, offer to prepare, cause to be prepared, sell or  
12 offer for sale any term paper, thesis, dissertation, essay, report or  
13 other written, recorded, pictorial, artistic or other assignment  
14 knowing, or under the circumstances having reason to know, that said  
15 assignment is intended for submission either in whole or substantial  
16 part under a student's name in fulfillment of the requirements for a  
17 degree, diploma, certificate, course or courses of study at any  
18 university, college, academy, school or other educational institution.

19 b. Nothing contained in this section shall prevent any person from  
20 providing tutorial assistance, research material, information or other  
21 assistance to persons enrolled in a university, college, academy, school  
22 or other educational institution, which is not intended for submission  
23 directly or in substantial part as an assignment under the student's  
24 name to such educational institution in fulfillment of the requirements  
25 for a degree, diploma, certificate or course of study. Nor shall any  
26 person be prevented by this act from rendering services for a fee which  
27 include the typing, research, assembling, transcription, reproduction  
28 or editing of a manuscript or other assignment which he has not  
29 prepared at the request of or on behalf of the purchaser.

30 c. Anyone convicted of violating any provision of this act shall be  
31 subject to a civil penalty of up to \$1,000.00 which shall be collected  
32 in a summary manner pursuant to "the penalty enforcement law"  
33 (N.J.S.2A:58-1 et seq.) in the Superior Court or any municipal court.  
34 The Superior Court may also grant further relief necessary to enforce  
35 the provisions of this section, including the issuance of an injunction.

36 d. Actions for injunction under the provisions of this act may be  
37 brought in the name of the people of this State upon their own  
38 complaint or upon the complaint of any person, or any public or  
39 private college, university, academy, school or other educational  
40 institution which is chartered, incorporated, licensed, registered or  
41 supervised by this State, acting for the interest of itself, its students,  
42 or the general public.

43 (Source 2A:170-77.16; 2A:170-77.17; 2A:170-77.18).

44

45 13. (New section) a. It shall be unlawful for any person to  
46 purchase or have assigned to him, other than by order of court, any

1 salary, wages, commissions, pay or other compensation for services,  
2 or any part thereof, due or to become due to any employee and any  
3 purchase or assignment, whenever executed, shall be void. It shall  
4 also be unlawful for any person to withhold or to pay to any other  
5 person on the basis of any assignment or purchase prohibited by this  
6 act any salary, wages, commissions, pay or other compensation due to  
7 any employee.

8 b. Any person who violates this act, or attempts to do so, shall be  
9 liable to the employee for the amount of the salary, wages,  
10 commissions, or other compensation for services withheld from the  
11 employee.

12 c. Nothing contained in this act shall be construed to make  
13 unlawful the withholding or diverting of wages by any employer in  
14 accordance with section 4 of P.L.1965, c.173 (C.34:11-4.4).

15 (Source: 2A:150A-1; 2A:150A-2; 2A:150A-3; 2A:150A-4;  
16 2A:150A-5; 2A:150A-6; 34:11-25 and 26)

17  
18 14. (New section) a. On Sunday, it shall be unlawful for any  
19 person whether it be at retail, wholesale or by auction, to sell, attempt  
20 to sell or offer to sell or to engage in the business of selling clothing  
21 or wearing apparel, building and lumber supply materials, furniture,  
22 home or business or office furnishings, household, business or office  
23 appliances, except as works of necessity and charity or as isolated  
24 transactions not in the usual course of the business of the participants.

25 b. Any person who violates any provision of this section is a  
26 disorderly person and upon conviction for the first offense, shall pay  
27 a fine of \$250.00; and for the second offense, shall pay a fine of not  
28 less than \$250.00 or more than \$1,000.00 to be fixed by the court; and  
29 for the third offense, shall pay a fine of not less than \$1,000.00 or  
30 more than \$2,000.00 to be fixed by the court or, in the discretion of  
31 the court, may be imprisoned for a period of not more than 30 days,  
32 or both; and for the fourth or each subsequent offense, shall pay a fine  
33 of not less than \$2,000.00 or more than \$5,000.00 to be fixed by the  
34 court, or, in the discretion of the court, may be imprisoned for a  
35 period of not less than 30 days or more than six months, or both. A  
36 single sale of an article of merchandise of the character prohibited to  
37 any one customer, or a single offer to sell an article of such  
38 merchandise to any one prospective customer, shall be a distinct  
39 violation of this act. The directors, officers, managers, agents or  
40 employees of corporations shall be personally liable for these penalties.

41 c. In addition to the penalties provided for conviction under this  
42 section, upon any four convictions for violations of this section, the  
43 premises in or upon which the violation occurred shall be deemed a  
44 nuisance.

45 d. As used in this section:

46 (1) "Clothing and wearing apparel" includes any article or articles

1 to be worn on the person by man, woman, or child as bodily covering  
2 or protection, including garments of all types, headwear and footwear.

3 (2) "Furniture" includes all articles of furniture used inside or  
4 outside a house or office, including chairs, tables, beds, desks,  
5 wardrobes, dressers, bureaus, cupboards, cabinets, bookcases, sofas,  
6 couches, and related items; and materials especially designed and  
7 prepared for assembly into furniture; and all such furniture, whether  
8 finished or unfinished, painted or unpainted.

9 (3) "Home furnishings" includes items of equipment and furnishings  
10 used in a home or office, such as floor coverings, lamps and lighting  
11 fixtures, household linens, drapes, blinds, curtains, mattresses, bed  
12 coverings, mirrors, china, kitchenware and kitchen utensils, silverware,  
13 cutlery.

14 (4) "Household appliances" includes stoves, heating devices,  
15 cooking equipment, refrigerators, air conditioning equipment, electric  
16 fans, clocks, radios, toasters, television sets, washing machines,  
17 dryers, and all such electrical and gas appliances used in the home.

18 (5) "Building and lumber supply materials" includes all items used  
19 in the construction of buildings, whether residential or industrial, and  
20 particularly, but not limited to lumber, cement, building blocks,  
21 sashes, frames, windows, doors and related items.

22 (6) "Sell" means to enter into an agreement whereby the seller  
23 transfers ownership of property in the goods or an interest in the  
24 goods to the purchaser for a consideration, whether or not the transfer  
25 is for immediate or future delivery, and whether or not the transaction  
26 is regarded as absolute, conditional or secured, and whether or not  
27 immediate consideration is paid therefor. The acceptance of a deposit  
28 for future delivery of any such merchandise, or an agreement for future  
29 delivery of any such merchandise, whether or not immediate  
30 consideration is paid therefor, shall also be deemed a sale for purposes  
31 of this act.

32 (7) "Offer to sell" means the acceptance of bids or proposals for the  
33 purchase of goods at a future date or the attempt to induce a sale as  
34 hereinabove defined, or the attempt to induce an immediate transfer of  
35 any such merchandise, but not to include advertising or display of any  
36 such merchandise, which merchandise is not available for purchase on  
37 Sunday.

38 (8) "Engage in selling" means the attempt to sell or to induce an  
39 immediate or future transfer of any such merchandise by describing,  
40 explaining, extolling or identifying any such merchandise while the  
41 seller is in personal contact with the potential purchaser.

42 (Source: 2A:171-5.8; 2A:171-5.9; 2A:171-5.10; 2A:171-5.11)

43  
44 15. (New section) a. Section 14 of P.L. , c. (C. )  
45 now pending before the Legislature as this bill) prohibiting Sunday  
46 sales shall not become operative in any county unless the voters of the

1 county have determined by referendum held pursuant to P.L. , c.  
2 (C. ) (now pending before the Legislature as this bill) or its  
3 predecessor that Sunday sales shall not be permitted in the county.

4 b. A public question as to whether Sunday sales shall be permitted  
5 in a county shall be submitted to the voters of the county at a general  
6 election if a petition signed by not less than 2,500 registered voters of  
7 the county requesting that the question be submitted is filed with the  
8 county clerk prior to the 45th day preceding the general election.

9 c. There shall be printed on each official ballot to be used at such  
10 election, the following:

11

12 If you favor the proposition printed below make a cross (X), plus  
13 (+) or check (√) in the square opposite the word "Yes." If you are  
14 opposed thereto make a cross (X), plus (+) or check (√) in the square  
15 opposite the word "No."

16

17 YES. Shall Sunday sales be permitted in this county?

18

19 NO.

20

21 In any municipality in which voting machines are used, the question  
22 shall be placed upon the official ballots to be used upon the voting  
23 machines without the instructions and shall be voted upon by the use  
24 of such machines.

25 d. If at the election at which the question is submitted, the majority  
26 of all the votes cast are cast against the question, the provisions of  
27 section 14 of P.L. , c. (C. ) (now pending before the  
28 Legislature as this bill) shall be operative in the county on the first  
29 Sunday after the election. If a majority of votes is cast in favor of the  
30 question, the provisions of this act shall remain inoperative in the  
31 county.

32 e. In a county in which there has been a referendum on Sunday  
33 sales provided in this section, a public question as to whether Sunday  
34 sales shall be permitted shall be submitted again to the voters of the  
35 county if three years has elapsed since the last referendum on the  
36 subject and a petition signed by at least 10% of the registered voters  
37 of the county requesting that the question again be submitted is filed  
38 with the county clerk. The election shall be held at the next general  
39 election after the 45th day following the date of the filing of the  
40 petition in the same manner as provided in subsection c.

41 (Source: 2A:171-5.12; 2A:171-5.13; 2A:171-5.14; 2A:171-5.15;  
42 2A:171-5.16; 2A:171-5.17; 2A:171-5.18).

43

44 16. (New section) a. If in any city of the first class located within  
45 any county in which, by referendum of the voters Sunday sales are  
46 prohibited, a petition is filed with the city clerk signed by not less than

1 2,500 registered voters of the city requesting that there shall be  
2 submitted to the voters of the city the question of whether the  
3 provisions of Section 17 of P.L. , c. (C. ) (now pending  
4 before the Legislature as this bill) prohibiting Sunday sales shall apply  
5 within the city, the question shall be submitted to the voters of the  
6 city at the next general election after the 30th day following the date  
7 of the filing of the petition.

8 b. There shall be printed on each official ballot to be used at the  
9 election authorized by P.L. , c. (C. ) (now pending before the  
10 Legislature as this bill) the following:

11  
12 If you favor the proposition printed below make a cross (X), plus  
13 (+) or check (√) in the square opposite the word "Yes." If you are  
14 opposed thereto make a cross (X), plus (+) or check (√) in the square  
15 opposite the word "No."

16  
17 YES. Shall Sunday sales be permitted in this city?

18  
19 NO.

20  
21 In any city in which voting machines are used, the question shall be  
22 placed upon the official ballots to be used upon the voting machines  
23 without the instructions and shall be voted upon by the use of such  
24 machines.

25 c. If at the election at which the question is submitted, the majority  
26 of all the votes cast are cast in favor of the question, the provisions of  
27 section 14 of P.L. , c. (C. ) (now pending before the  
28 Legislature as this bill) prohibiting Sunday sales shall be inoperative in  
29 the city; if a majority of votes is cast against the question, the  
30 provisions shall remain operative in the city.

31 (Source: 2A:171-5.19; 2A:171-5.20; 2A:171-5.21)

32  
33 17. (New section) In a county that has approved Sunday sales by  
34 referendum, any municipality in that county which voted to prohibit  
35 Sunday sales at that referendum may by municipal referendum and  
36 pursuant to R.S.40:45-3 submit to the voters of the municipality for  
37 their approval the question of whether Sunday sales shall be permitted  
38 in that municipality.

39 (Source: 2A:171-5.24)

40  
41 18. (New section) a. As used in this section:

42 (1) "Fundraising event" means a planned, scheduled activity which  
43 has as its main purpose the generating of money to be used for any  
44 educational purposes benefiting students including, but not limited to,  
45 use for scholarships or educational or athletic equipment. The money  
46 generated as a result of the sponsorship of a fundraising event, the

1 leasing of space to vendors, and any actual sales by the educational  
2 organization itself must be used in their entirety for educational  
3 purposes. These events shall be conducted on the premises of the  
4 school with which the educational organization is affiliated and may  
5 include, but are not limited to, flea markets, auctions, and bazaars.

6 (2) "Educational organizations" means associations of parents of  
7 public or private, nonprofit school students and faculty members of the  
8 public or private, nonprofit school where those students are enrolled,  
9 including teachers and administrators, or student groups consisting of  
10 present or former enrollees of the school or organizations consisting  
11 of some members of both these associations or groups who have  
12 joined together to conduct activities relating to the improvement of the  
13 quality of education. These activities include, meetings devoted to  
14 issues concerning administration or curriculum matters or volunteer  
15 efforts concerning any extracurricular activities or athletic events.

16 b. Notwithstanding any other provisions of law to the contrary, in  
17 a county in which the provisions of section 14 of P.L. , c. (C. )  
18 (now pending before the Legislature as this bill) prohibiting Sunday  
19 sales apply, an educational organization may be authorized by the  
20 appropriate school board of a public school or the appropriate chief  
21 administrative officer of a private, nonprofit school, as the case may  
22 be, in that county to conduct, on the appropriate school premises, no  
23 more than 10 fundraising events on any 10 Sundays in a calendar year.  
24 Each event shall be subject to separate approval by the board of chief  
25 administrative officer, as the case may be. The 10-day limitation  
26 provided for herein shall apply to all educational organizations for  
27 which a fundraising event would be subject to the approval of a single  
28 school district or chief administrative officer, as the case may be.

29 c. The governing body of a municipality may, by ordinance or  
30 resolution, provide that the provisions of this section will not be  
31 applicable in that municipality or may regulate or otherwise limit the  
32 fundraising events permitted by this act.

33 (Source: 2A:171-5.26; 2A:171-5.27; 2A:171-5.28).

34  
35 <sup>1</sup>[19. (New section) a. All moneys paid to a funeral director,  
36 undertaker, cemetery, any other person, firm or corporation, in  
37 connection with an agreement for the sale of personal property to be  
38 used in connection with a funeral or burial, or for the furnishing of  
39 personal services of a funeral director or undertaker, where the  
40 personal property is not to be delivered or the personal services are  
41 not to be rendered until the death of the person for whose funeral or  
42 burial such property or services are to be furnished, shall be trust funds  
43 in the possession of such funeral director, undertaker, cemetery, or  
44 other person, firm or corporation, and shall be deposited within 30  
45 days after its receipt in a special account maintained exclusively for the  
46 deposit of such money in a federally insured State or federally

1 chartered bank, savings bank or savings and loan association; or, if the  
2 person paying the moneys requests, in a pooled trust account  
3 established pursuant to P.L.1985, c.147 (C.3B:11-16 et seq.) and  
4 chosen by the person paying the moneys, and shall be held on deposit,  
5 together with any interest on it, until the personal property has been  
6 delivered and the personal services have been rendered, unless it is  
7 sooner repaid, in whole or in part. No depository institution shall be  
8 liable for the misuse, misapplication or improper withdrawal by any  
9 such funeral director, undertaker, cemetery or other person, firm or  
10 corporation, of any moneys deposited pursuant to this section.

11 b. The amount of all moneys paid in connection with such an  
12 agreement, with any interest accrued, shall be repaid on demand at  
13 any time prior to the delivery of the personal property or the rendering  
14 of the personal services.

15 c. Any provisions of any agreement where a person waives any  
16 provisions of this section shall be void.

17 d. Any person who receives moneys in connection with such an  
18 agreement and who fails to deposit, keep on deposit, or repay any such  
19 money as provided in this act, shall be guilty of a crime of the fourth  
20 degree.

21 (Source: 2A:102-13; 2A:102-14; 2A:102-15; 2A:102-16).]<sup>1</sup>

22

23 <sup>1</sup>[20. (New section) a. Notwithstanding the provisions of Section  
24 19 of P.L. , c. (C. ) (now pending before the Legislature as  
25 this bill), an agreement may provide that the trust shall be irrevocable  
26 during the lifetime of the beneficiary, if at the time of the signing of  
27 an agreement, the beneficiary or grantor of the trust is:

28 (1) An aged, blind or disabled applicant for, or recipient of,  
29 benefits pursuant to the Supplemental Security Income Program under  
30 P.L.1973, c.256 (C. 4:7-85 et seq.) or any Medicaid program under  
31 P.L.1968, c.413 (C.30:4D-1 et seq.) utilizing the eligibility criteria of  
32 the Supplemental Security Income Program in regard to burial spaces  
33 and funds set aside for burial expenses; or

34 (2) An aged, blind or disabled person who reasonably anticipates  
35 applying for, or receiving, the benefits provided for in subsection a. of  
36 this section within six months.

37 b. An irrevocable trust established pursuant to this section shall not  
38 affect the selection of funeral goods or services or the selection of the  
39 funeral home. If the beneficiary or grantor of the trust enters into an  
40 agreement, reasonably anticipating that the beneficiary or grantor will  
41 become an applicant for, or recipient of, these programs within six  
42 months from the execution of the agreement, the agreement shall  
43 provide that, in the event the beneficiary or grantor of the trust does  
44 not become an applicant for, or recipient of, any of these programs  
45 within the six month period, the trust shall revert to a revocable trust.

46 c. As used in this section, "agreement" means an agreement for the



1 sale of personal property to be used in connection with a funeral or  
2 burial, or for the furnishing of personal services of a funeral director  
3 or undertaker, wherein the personal property is not to be delivered or  
4 the personal services are not to be rendered until the occurrence of  
5 the death of the person for whose funeral or burial the property or  
6 services are to be furnished.

7 d. A person shall be guilty of a crime of the fourth degree if he  
8 knowingly solicits or induces any person to execute an irrevocable  
9 trust pursuant to this action with an intent to collect or charge more  
10 than the fair market value for funeral goods or services.

11 e. A person shall be guilty of a crime of the fourth degree if the  
12 proceeds of the trust are expended on anything other than the fair  
13 market value of the funeral goods or services.

14 f. This act shall not apply to the sale of lots or graves by a  
15 cemetery.

16 (Source: 2A:102-16.1; 2A:102-16.2; 2A:102-17)]<sup>1</sup>

17  
18 <sup>1</sup>[21.] 19.<sup>1</sup> The following sections are repealed:

19 R.S.34:11-25;

20 R.S.34:11-26;

21 N.J.S.2A:170-51;

22 N.J.S.2A:170-77;

23 N.J.S.2A:170-91;

24 <sup>1</sup>[P.L.1957, c.182 (C.2A:102-13 through 2A:102-17);

25 Section 1 and 3 of P.L.1991, c.502 (C.2A:102-16.1 and  
26 C.2A:102-16.2);]<sup>1</sup>

27 P.L.1952, c.95 (C.2A:108-9);

28 P.L.1971, c.412 (C.2A:150A-1 through 2A:150A-5);

29 P.L.1973, c.354 (C.2A:150A-6);

30 P.L.1952, c.136 (C.2A:170-25.1);

31 P.L.1965, c.41 (C.2A:170-25.9 through 2A:170-25.13);

32 P.L.1972, c.143 (C.2A:170-25.17);

33 Sections 1 through 4 of P.L.1977, c.244 (C.2A:170-25.21 through  
34 2A:170-25.23);

35 P.L.1955, c.48 (C.2A:170-77.2);

36 P.L.1962, c.174 (C.2A:170-77.2a and 2A:170-77.2b);

37 P.L.1962, c.113 (C.2A:170-77.8 through 2A:170-77.11);

38 P.L.1964, c.230 (C.2A:170-77.12 through 2A:170-77.14);

39 Section 7 of P.L.1966, c.314 (C.2A:170-77.15);

40 P.L.1977, c.215 (C.2A:170-77.16 through 2A:170-77.18);

41 P.L.1966, c.121 (C.2A:170-90.2);

42 P.L.1975, c.182 (C.2A:170-90.3 through 2A:170-90.5);

43 P.L.1955, c.254 (C.2A:171-1.1 and 2A:171-1.2);

44 P.L.1959, c.119 (C.2A:171-5.8 through 2A:171-5.18);

45 P.L.1984, c.160 (C.2A:171-5.19 through 2A:171-5.21);

46 Sections 6 and 7 of P.L.1985, c.271 (C.2A:171-5.22 and

1 2A:171-5.23);  
2 P.L.1985, c.417 (C.2A:171-5.24 and 2A:171-5.25);  
3 P.L.1988, c.62 (C.2A:171-5.26 through 2A:171-5.28);  
4 Section 6 of P.L.1980, c.133 (C.24:21-51);  
5 Section 18 of P.L.1970, c.226 (C.24:21-18).  
6  
7 <sup>1</sup>**[22.]** 20.<sup>1</sup> This act shall take effect immediately.