

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

Act 627 of 2003
SENATE BILL 532

5 By: Senators T. Smith, Horn
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE UNFAIR
10 CIGARETTE SALES ACT TO SIMPLIFY THE APPLICATION
11 AND ADMINISTRATION OF THE ACT, AND TO AVOID THE
12 LOSS OF GROSS RECEIPTS TAX REVENUES FROM
13 CIGARETTE SALES; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO AMEND VARIOUS PROVISIONS OF THE
16 UNFAIR CIGARETTE SALES ACT TO SIMPLIFY
17 THE APPLICATION AND ADMINISTRATION OF
18 THE ACT, AND TO AVOID THE LOSS OF GROSS
19 RECEIPTS TAX REVENUES FROM CIGARETTE
20 SALES.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 4-75-702(1), relating to the meaning of the
27 term "basic cost of cigarettes" as used in the Unfair Cigarette Sales Act, is
28 amended to read as follows:

29 (1) "Basic cost of cigarettes" means whichever of the two (2)
30 following amounts is lower, namely, the gross invoice cost of cigarettes to
31 the wholesaler or retailer, as the case may be, or the lowest gross
32 replacement cost of cigarettes to the wholesaler or retailer, as the case may
33 be, within thirty (30) days prior to the date of sale, in the quantity last
34 purchased, whether within or before the thirty-day period, ~~less, in either of~~
35 ~~the two (2) cases, all trade discounts except customary discounts for cash,~~
36 plus the full face value of any stamps or any tax which may be required by



1 any cigarette tax act of this state or political subdivision thereof, now in
 2 effect or hereafter enacted, if not already included in the gross invoice
 3 cost of cigarettes to the wholesaler or retailer, as the case may be;

4
 5 SECTION 2. Arkansas Code § 4-75-702(4), relating to the meaning of the
 6 term "Cost to the retailer" as used in the Unfair Cigarette Sales Act, is
 7 amended to read as follows:

8 (4)(A) "Cost to the retailer" means the basic cost of the
 9 cigarettes involved to the retailer plus the cost of doing business by the
 10 retailer as evidenced by the standards and methods of accounting regularly
 11 employed by him or her and must include, without limitation, labor including
 12 salaries of executives and officers, rent, depreciation, selling costs,
 13 maintenance of equipment, delivery costs, all types of licenses, taxes,
 14 insurance, and advertising.

15 (B) In the absence of the filing with the Arkansas Tobacco
 16 Control Board of proof satisfactory to the Board, of a lesser or higher cost
 17 of doing business by the retailer making the sale, the cost of doing business
 18 by the retailer shall be presumed to be ~~six~~ seven and one-half percent ~~(6%)~~
 19 (7 1/2%) of the basic cost of cigarettes to the retailer.

20 (C) In the case of any retail dealer who in connection
 21 with the retail dealer's purchase of any cigarettes shall receive not only
 22 the discounts ordinarily allowed upon purchases by a retail dealer but also
 23 in whole or in part the discounts ordinarily allowed upon purchases by a
 24 wholesale dealer, the cost of doing business by the retail dealer with
 25 respect to the said cigarettes shall be, in the absence of proof of a lesser
 26 or higher cost of doing business by the retail dealer, the sum of the cost of
 27 doing business by the retail dealer and, to the extent that he or she shall
 28 have received the full discounts ordinarily allowed to a wholesale dealer,
 29 the cost of doing business by a wholesale dealer as defined in subdivision
 30 (5)(B) of this section.

31
 32 SECTION 3. Arkansas Code § 4-75-702(5), relating to the meaning of the
 33 term "Cost to the wholesaler" as used in the Unfair Cigarette Sales Act, is
 34 amended to read as follows:

35 (5)(A) "Cost to wholesaler" means the basic cost of the
 36 cigarettes involved to the wholesaler plus the cost of doing business by the

1 wholesaler as evidenced by the standards and methods of accounting regularly
 2 employed by him or her and must include, without limitation, labor costs,
 3 including salaries of executives and officers, rent, depreciation, selling
 4 costs, maintenance of equipment, delivery costs, all types of licenses,
 5 taxes, insurance, and advertising.

6 (B) In the absence of the filing with the Arkansas Tobacco
 7 Control Board of proof satisfactory to the Board, of a lesser or higher cost
 8 of doing business by the wholesale dealer making the sale, the cost of doing
 9 business by the wholesale dealer shall be presumed to be ~~two~~ four percent
 10 ~~(2%) (4%)~~ of the basic cost of the cigarettes to the wholesale dealer, ~~plus~~
 11 ~~cartage to the retail outlet, if performed or paid for by the wholesale~~
 12 ~~dealer, which cartage cost, in the absence of proof of a lesser or higher~~
 13 ~~cost, shall be presumed to be three fourths of one percent (0.75%) of the~~
 14 ~~basic cost of the cigarettes to the wholesale dealer;~~

15
 16 SECTION 4. Arkansas Code § 4-75-702, concerning definitions under the
 17 Unfair Cigarette Sales Act, is amended to add additional subdivisions to read
 18 as follows:

19 (13) "Gross Invoice Cost" means the manufacturer's or wholesaler's
 20 price for the product sold as listed on the invoice to the wholesaler or
 21 retailer, as the case may be, before any deduction for allowances, whether
 22 manufacturer promotional allowances or otherwise, or for discounts of any
 23 kind; and

24 (14) "Manufacturer Promotional Allowance" means any payment or
 25 compensation given by a manufacturer of cigarettes to wholesalers or to
 26 retailers to promote the sale of cigarettes, and which the manufacturer
 27 requires the wholesaler to pass on to the retailer and the retailer to pass
 28 on to the retailer's customer.

29
 30 SECTION 5. Arkansas Code § 4-75-709 is amended to read as follows:
 31 4-75-709. Combination sales.

32 (a) In all advertisements, offers for sale, or sales involving two (2)
 33 or more items, at least one (1) of which items is cigarettes, at a combined
 34 price, and in all advertisements, offers for sale, or sales involving the
 35 giving of any gift or concession of any kind, whether coupons or otherwise,
 36 the wholesaler's or retailer's combined selling price shall not be below the

1 cost to the wholesaler or the cost to the retailer, respectively, of the
 2 total of all articles, products, commodities, gifts, and concessions included
 3 in the transactions; but if any such articles, products, commodities, gifts,
 4 or concessions shall not be cigarettes, the basic cost thereof shall be
 5 determined in the manner provided in § 4-75-702(1).

6 (b) The redemption by a retailer of coupons supplied to consumers by
 7 manufacturers and redeemable from the retailer by the manufacturers is not a
 8 violation of this subchapter, if the sum of the coupon and other
 9 consideration paid by the consumer is not below the cost to the retailer.
 10 However, a retailer accepting a manufacturer's coupon must compute the
 11 applicable gross receipts tax on the full selling price before deduction for
 12 the manufacturer's coupon.

13 (c) Any manufacturer promotional allowance provided to a wholesaler or
 14 retailer may be passed on to the purchaser by the wholesaler or retailer
 15 without violating this subchapter, if the sum of the manufacturer promotional
 16 allowance and other consideration paid by the purchaser is not below the cost
 17 to the wholesaler or retailer, as the case may be. However, a retailer
 18 passing a manufacturer promotional allowance on to the retailer's customer
 19 must compute the applicable gross receipts tax on the full selling price
 20 before deduction for the manufacturer promotional allowance.

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 22 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
 23 Eighty-Fourth General Assembly of the State of Arkansas that the Arkansas
 24 Unfair Cigarette Sales Act, § 4-75-701 et seq., sets minimum selling prices
 25 for wholesale and retail sales of cigarettes in Arkansas; that the purpose of
 26 the Unfair Cigarette Sales Act is to promote the fair and lawful competition
 27 in the wholesale and retail sale of cigarettes in the State of Arkansas; that
 28 confusion has arisen as to the proper application of the Unfair Cigarette
 29 Sales Act in light of certain promotional activities of cigarette
 30 manufacturers; that the confusion threatens to negatively impact fair and
 31 lawful competition in the wholesale and retail sale of cigarettes in the
 32 State of Arkansas; and that the confusion threatens to negatively impact the
 33 proper and lawful collection of the gross receipts tax. Therefore, an
 34 emergency is declared to exist and this act being immediately necessary for
 35 the preservation of the public peace, health, and safety shall become
 36 effective on:

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(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

APPROVED: 3/24/2003