

ARKANSAS SENATE
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of Senate Bill No. 920

"AN ACT TO REMOVE LICENSED CIGARETTE WHOLESALERS FROM THE
REQUIREMENTS OF THE UNFAIR CIGARETTE SALES ACT; TO LEVY A TAX AT THE
WHOLESALE LEVEL."

Amendment No. 3 to Senate Bill No. 920.

Amend Senate Bill No. 920 as engrossed, S4/09/03:

Delete Section 1 and substitute the following:

"SECTION 1. Arkansas Code § 4-75-702, as amended by Act 627 of 2003,
is amended to read as follows:

4-75-702. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Basic cost of cigarettes" means whichever of the two (2) following amounts is lower, namely, the ~~gross~~ invoice cost of cigarettes to the ~~wholesaler or~~ retailer, ~~as the case may be~~, or the lowest ~~gross~~ replacement cost of cigarettes to the ~~wholesaler or~~ retailer, ~~as the case may be~~, within thirty (30) days prior to the date of sale, in the quantity last purchased, whether within or before the thirty-day period, less, in either of the two (2) cases, all trade discounts except customary discounts for cash, plus the full face value of any stamps or any tax which may be required by any cigarette tax act of this state or political subdivision thereof, now in effect or hereafter enacted, if not already included in the ~~gross~~ invoice cost of cigarettes to the ~~wholesaler or~~ retailer, ~~as the case may be~~;

(2) "Buying pool" means and includes any combination, corporation, association, affiliation, or group of retail dealers operating jointly in the purchase, sale, exchange, or barter of cigarettes, the profits of which accrue directly or indirectly to the retail dealers;

(3) "Cigarettes" means and includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, except tobacco;

(4)(A) "Cost to the retailer" means the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by him or her and must include, without limitation, labor including salaries of executives and officers, rent, depreciation, selling costs,



maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.

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

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

~~(5)(A) "Cost to wholesaler" means the basic cost of the cigarettes involved to the wholesaler plus the cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by him or her and must include, without limitation, labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.~~

~~(B) In the absence of the filing with the Arkansas Tobacco Control Board of proof satisfactory to the Board, of a lesser or higher cost of doing business by the wholesale dealer making the sale, the cost of doing business by the wholesale dealer shall be presumed to be four percent (4%) of the basic cost of the cigarettes to the wholesale dealer;~~

~~(6)(5) "Director" means the Director of the Arkansas Tobacco Control Board;~~

~~(7)(6) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation, or other political subdivision of this state, receiver, trustee, fiduciary, or trade association;~~

~~(8)(7) "Retailer" means and includes any person who is engaged in this state in the business of selling cigarettes at retail and includes any group of persons, cooperative organizations, buying pools, and any other person or group of retailers purchasing cigarettes on a cooperative basis from licensed distributors or wholesalers. Any person placing a cigarette vending machine at, on, or in any premises shall be deemed to be a retailer for each such vending machine;~~

~~(9) (8) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for cigarettes, and distribution in any manner or by any means whatsoever;~~

~~(10) (9) "Sell at retail", "sale at retail", or "retail sales" means and includes any sale for consumption or use made in the ordinary course of trade or usual conduct of the seller's business;~~

~~(11) "Sell at wholesale", "sale at wholesale", and "wholesale sales" mean and include any sale made in the ordinary course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale; and~~

~~(12)(A) "Wholesaler" means and includes:~~

~~(A) Any person other than a buying pool as defined in subdivision (2) of this section, wherever resident or located, who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturer thereof and who maintains an established place of business where substantially all of the business is the sale of cigarettes and related merchandise at wholesale to cigarette licensees and where at all times a substantial stock of cigarettes and related merchandise is available for resale, if seventy five percent (75%) thereof are sold to retailers or other wholesalers not connected with the wholesaler by reason of any business connection or otherwise; and~~

~~(B) Any person retailing cigarettes to consumers, if at least seventy five percent (75%) of his or her purchases are made directly from the manufacturers thereof; and~~

~~(C) Any person in this state other than a buying pool, as defined in subdivision (2) of this section, who purchases cigarettes from any other person who purchases from a manufacturer, at least seventy five percent (75%) of which are for purposes of resale to retailers in this state not connected with the wholesaler by reason of any business connection or otherwise and who maintains an established place of business where cigarettes and related merchandise are sold at wholesale to persons licensed under this subchapter, and where at all times a substantial stock of cigarettes and related merchandise is available to all retailers for resale; and~~

~~(D) Any person in this state who acquires cigarettes solely for the purpose of resale in cigarette vending machines, provided the person operates thirty (30) or more machines.~~

~~(13)(10) "Gross Invoice Cost" means the manufacturer's or wholesaler's price for the product sold as listed on the invoice to the wholesaler or retailer, as the case may be, before any deduction for all allowances, whether manufacturer promotional allowances or otherwise, or for discounts of any kind; and~~

~~(14)(11) "Manufacturer Promotional Allowance" means any payment or compensation given by a manufacturer of cigarettes to wholesalers or to retailers to promote the sale of cigarettes, and which the manufacturer requires the wholesaler to pass on to the retailer and the retailer to pass on to the retailer's customer."~~

AND

Delete Section 5 and substitute the following:

"SECTION 5. Arkansas Code § 4-75-709, as amended by Act 627 of 2003, is amended to read as follows:

4-75-709. Combination sales.

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

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

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

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

AND

Page 8, delete line 32 and substitute the following:

"Account of the State Apportionment Fund to be utilized for educational purposes."

AND

Insert an additional section immediately following section 9 to read as follows:

"SECTION 10. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Supreme Court in Lake View School District No. 25. v. Huckabee, 351 Ark. 31, (2002) has declared the now existent system of education to be unconstitutional because it is both inequitable and inadequate; that revenue available for the support of necessary state services has declined during the last twelve months as a result of the nationwide economic slow down; and that a tax levied on cigarettes at the wholesale level will provide necessary revenue to fund educational improvements. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(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."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Bisbee

LDH/JMB - 041520031119

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Secretary