

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 2589

"AN ACT TO SIMPLIFY THE ENFORCEMENT OF THE UNFAIR CIGARETTE SALES
ACT, AND TO CLARIFY THAT BUY DOWN PROGRAMS OF CIGARETTE
MANUFACTURERS GIVEN TO CIGARETTE RETAILERS DO NOT VIOLATE THE
UNFAIR CIGARETTE SALES ACT."

Amendment No. 1 to House Bill No. 2589.

Amend House Bill No. 2589 as originally introduced:

Add Representative Jones as a cosponsor of the bill

AND

Delete everything after the Enacting Clause and substitute the following:

"SECTION 1. Arkansas Code 4-75-702 is amended to read as follows:
4-75-702. Definitions.

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

(1) "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;

(2) "Director" means the Director of the Arkansas Tobacco Control Board;

(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) "Wholesaler" means and includes:

(A) Any person other than a buying pool as defined in 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 purchases are made directly from the manufacturers thereof; and

(C) Any person in this state other than a buying pool, as defined in 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;

(5) "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;

(6) "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;

(7) "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;

(8) "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;

(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;

(10) "Basic cost of cigarettes" means whichever of the two (2) following amounts is lower, namely, the invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or the lowest 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 invoice cost of cigarettes to the wholesaler or retailer, as the case may be;

(11)(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 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 proof 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 two percent (2%) of the basic cost of the cigarettes to the wholesale dealer, plus cartage to the retail outlet, if performed or paid for by the wholesale dealer, which cartage cost, in the absence of proof of a lesser or higher cost, shall be presumed to be three-fourths of one percent (0.75%) of the basic cost of the cigarettes to the wholesale dealer; ~~and~~

(12)(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 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 proof 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 six percent (6%) 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 shall have received the full discounts ordinarily allowed to a wholesale dealer, the cost of doing business by a wholesale dealer as defined in subdivision (11)(B) of this section; ~~and~~

(13) "Buydown or paperless coupon price reduction program" means any cigarette manufacturer's reimbursement program to promote the sale of the manufacturer's cigarettes, as described in § 4-75-714.

SECTION 2. Arkansas Code Title 4, Chapter 75, Subchapter 7 is amended by adding the following additional section.

4-75-714. (a) A buydown or paperless coupon reimbursement program is a program in which the retail sales price of the manufacturer's cigarettes is reduced because the cigarette manufacturer provides reimbursement for the amount of the reduction, after the sale of the cigarettes.

(b) A buydown or paperless coupon price reduction program includes the consideration, whether in money or otherwise, given to retailers of cigarettes by the cigarette manufacturer, which consideration results directly in the reduction of the retail selling price of the manufacturer's cigarettes to retail consumers.

(c) Sales of cigarettes at a reduced price pursuant to a cigarette manufacturer's buydown or paperless coupon price reduction program will not be a violation of the Unfair Cigarette Sales Act, if the total amount of the

retail sales price of the manufacturer's cigarettes, which is the amount paid by the retail customer plus the amount of the buydown or paperless coupon price reduction, is at least equal to the cost to the retailer of those cigarettes.

(d) Before the retailer reduces the retail price of the cigarette manufacturer's cigarettes offered for sale to customers in a buydown or paperless coupon price reduction program, the retailer must have written or documentary evidence of the manufacturer's authorized buydown or paperless coupon price reduction program at the retailer's place of business where the cigarettes are offered for sale.

(e) Buydown or paperless coupon price reduction programs shall only be applicable at the retail level for retailers of cigarettes with places of business located in Arkansas, and no wholesaler of cigarettes selling cigarettes to retailers with places of business located in Arkansas shall be entitled to participate in a cigarette manufacturer's buydown or paperless coupon reimbursement program for cigarettes sold in Arkansas.

SECTION 3. Legislative intent.

It is the intent of the General Assembly of the State of Arkansas that, in the regulation of the sale and distribution of cigarettes in Arkansas, the provisions of the Unfair Cigarette Sales Act shall be simplified and clarified to eliminate problems of enforcement that have arisen for the Arkansas Tobacco Control Board, and to prevent predatory pricing at the wholesale level, so as to ensure fair competition at the retail level by preventing buy downs from being given to wholesalers which may result in the selective distribution of these discounts to retailers, thereby substantially lessening competition at the retail level."

The Amendment was read _____

By: Representative Haak

MF/RTK

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Chief Clerk