

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 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/13/01 H4/4/01 H4/6/01

A Bill

HOUSE BILL 2589

5 By: Representatives Haak, Jones
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For An Act To Be Entitled

9 AN ACT TO SIMPLIFY THE ENFORCEMENT OF THE UNFAIR
10 CIGARETTE SALES ACT AND TO CLARIFY THAT CIGARETTE
11 MANUFACTURER'S BUY DOWN OR PAPERLESS COUPON
12 PROGRAMS FOR REDUCING THE RETAIL SALES PRICE OF
13 CIGARETTES SOLD BY ARKANSAS RETAILERS DO NOT
14 VIOLATE THE PROVISIONS OF THE UNFAIR CIGARETTE
15 SALES ACT; AND FOR OTHER PURPOSES.

Subtitle

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18 AN ACT TO SIMPLIFY THE ENFORCEMENT OF
19 THE UNFAIR CIGARETTE SALES ACT, AND TO
20 CLARIFY THAT BUY DOWN PROGRAMS OF
21 CIGARETTE MANUFACTURERS GIVEN TO
22 CIGARETTE RETAILERS DO NOT VIOLATE THE
23 UNFAIR CIGARETTE SALES ACT.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 *SECTION 1. Arkansas Code 4-75-702 is amended to read as follows:*
29 *4-75-702. Definitions.*

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

31 *(1) "Person" means and includes any individual, firm,*
32 *association, company, partnership, corporation, joint-stock company, club,*
33 *agency, syndicate, the State of Arkansas, county, municipal corporation, or*
34 *other political subdivision of this state, receiver, trustee, fiduciary, or*
35 *trade association;*

36 *(2) "Director" means the Director of the Arkansas Tobacco*

1 Control Board;

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

7 (4) "Wholesaler" means and includes:

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

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

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

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

33 (5) "Retailer" means and includes any person who is engaged in
34 this state in the business of selling cigarettes at retail and includes any
35 group of persons, cooperative organizations, buying pools, and any other
36 person or group of retailers purchasing cigarettes on a cooperative basis

1 from licensed distributors or wholesalers. Any person placing a cigarette
2 vending machine at, on, or in any premises shall be deemed to be a retailer
3 for each such vending machine;

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

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

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

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

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

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

1 (B) In the absence of proof of a lesser or higher cost of
2 doing business by the wholesale dealer making the sale, the cost of doing
3 business by the wholesale dealer shall be presumed to be two percent (2%) of
4 the basic cost of the cigarettes to the wholesale dealer, plus cartage to the
5 retail outlet, if performed or paid for by the wholesale dealer, which
6 cartage cost, in the absence of proof of a lesser or higher cost, shall be
7 presumed to be three-fourths of one percent (0.75%) of the basic cost of the
8 cigarettes to the wholesale dealer; ~~and~~

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

16 (B) In the absence of proof of a lesser or higher cost of
17 doing business by the retailer making the sale, the cost of doing business by
18 the retailer shall be presumed to be six percent (6%) of the basic cost of
19 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 shall have
28 received the full discounts ordinarily allowed to a wholesale dealer, the
29 cost of doing business by a wholesale dealer as defined in subdivision
30 (11)(B) of this section; ~~and~~

31 (13) "Buydown" or "paperless coupon" means a promotion in which
32 a cigarette manufacturer makes a payment to a retailer, as a contribution to
33 the retail price of one or more packages or cartons of cigarettes, in
34 exchange for the retailer's agreement to reduce the retail price paid by the
35 consumer for the cigarettes by the amount of the payment by the manufacturer
36 to the retailer, as described in section 4-75-714.

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

4 4-75-714. (a) Sales of cigarettes at a reduced price to the consumer,
5 pursuant to a cigarette manufacturer-funded promotion, including paper and
6 paperless coupons, discounts, stickers, buydowns or other similar actions,
7 intended as a contribution by the cigarette manufacturer to the retail price
8 of the cigarettes to be paid by the consumer, shall not be a violation of the
9 Unfair Cigarette Sales Act, if the retail sales price of the cigarettes
10 subject to the cigarette manufacturer's promotion program is equal to or
11 greater than the retail sales price for such cigarettes otherwise required by
12 the provisions of this act.

13 (b) Before the retailer reduces the price at which cigarettes subject
14 to a manufacturer's buydown or paperless coupon program are sold to the
15 consumer, the retailer must have written or documentary evidence of the
16 manufacturer's authorized promotion program at the retailer's place of
17 business where the cigarettes are offered for sale.

18 (c) Buydown or paperless coupon price reduction promotion programs
19 shall only be applicable at the retail level for retailers of cigarettes
20 licensed to do business, and no wholesaler of cigarettes selling cigarettes
21 to retailers with places of business located in Arkansas, shall be entitled
22 to participate in a cigarette manufacturer's buydown or paperless coupon
23 promotion program for cigarettes sold in Arkansas.

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25 SECTION 3. Legislative intent.

26 It is the intent of the General Assembly of the State of Arkansas that,
27 in the regulation of the sale and distribution of cigarettes in Arkansas, the
28 provisions of the Unfair Cigarette Sales Act shall be simplified and
29 clarified to eliminate problems of enforcement that have arisen for the
30 Arkansas Tobacco Control Board, and to prevent predatory pricing at the
31 wholesale level, so as to ensure fair competition at the retail level by
32 preventing buy downs from being given to wholesalers.

33 /s/ Haak
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