

As Re-Referred by the House Rules and Reference Committee

132nd General Assembly

Regular Session

2017-2018

H. B. No. 566

Representatives Scherer, Cera

Cosponsors: Representatives Butler, Antani, Lipps, Seitz, Retherford

A BILL

To amend sections 1333.11, 1333.12, and 1333.15 and 1
to enact section 1333.13 of the Revised Code 2
regarding cigarette minimum pricing. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1333.11, 1333.12, and 1333.15 be 4
amended and section 1333.13 of the Revised Code be enacted to 5
read as follows: 6

Sec. 1333.11. As used in sections 1333.11 to 1333.21 of 7
the Revised Code: 8

(A) "Cost to the retailer" means the invoice cost of 9
cigarettes to the retailer, or the replacement cost of 10
cigarettes to the retailer within thirty days prior to the date 11
of sale, in the quantity last purchased, whichever is lower, 12
less all trade discounts except customary discounts for cash, to 13
which shall be added the cost of doing business by the retailer 14
as evidenced by the standards and the methods of accounting 15
regularly employed by the retailer in the retailer's allocation 16
of overhead costs and expenses, paid or incurred. "Cost to the 17
retailer" must include, without limitation, labor, including 18

salaries of executives and officers, rent, depreciation, selling 19
costs, maintenance of equipment, delivery costs, all types of 20
licenses, insurance, advertising, and taxes, exclusive of county 21
cigarette taxes paid or payable on the cigarettes. Where the 22
sale to the retailer is on a cash and carry basis, the cartage 23
to the retail outlet, if performed or paid for by the retailer, 24
shall be added to the invoice cost of the cigarettes to the 25
retailer. In the absence of proof of a lesser or higher cost by 26
the retailer, the cartage cost shall be three-fourths of one per 27
cent of the invoice cost of the cigarettes to the retailer, not 28
including the amount added thereto by the wholesaler for the 29
face value of state and county cigarette tax stamps affixed to 30
each package of cigarettes. 31

(B) In the absence of proof of a lesser or higher cost of 32
doing business by the retailer making the sale, the cost of 33
doing business to the retailer shall be eight per cent of the 34
invoice cost of the cigarettes to the retailer exclusive of the 35
face value of county cigarette taxes paid on the cigarettes or 36
of the replacement cost of the cigarettes to the retailer within 37
thirty days prior to the date of sale in the quantity last 38
purchased exclusive of the face value of county cigarette taxes 39
paid on the cigarettes, whichever is lower, less all trade 40
discounts except customary discounts for cash. 41

(C) "Cost to the wholesaler" means the manufacturer gross 42
invoice cost of the cigarettes to the wholesaler, or the 43
replacement cost of the cigarettes to the wholesaler within 44
thirty days prior to the date of sale, in the quantity last 45
purchased, whichever is lower, less all trade discounts except 46
customary discounts for cash, to which shall be added a 47
wholesaler's markup to cover in part the cost of doing business, 48
which wholesaler's markup, in the absence of proof filed with 49

and satisfactory to the tax commissioner of a lesser or higher 50
cost of doing business by the wholesaler as evidenced by the 51
standards and methods of accounting regularly employed by the 52
wholesaler in the wholesaler's allocation of overhead costs and 53
expenses, paid or incurred, including without limitation, labor, 54
salaries of executives and officers, rent, depreciation, selling 55
costs, maintenance of equipment, delivery, delivery costs, all 56
types of licenses, taxes, insurance, and advertising, shall be 57
three and five-tenths per cent of such invoice cost of the 58
cigarettes to the wholesaler, to which shall be added the full 59
face value of state and county cigarette tax stamps affixed by 60
the wholesaler to each package of cigarettes, or of the 61
replacement cost of the cigarettes to the wholesaler within 62
thirty days prior to the date of sale in the quantity last 63
purchased, whichever is lower, less all trade discounts except 64
customary discounts for cash. 65

Where the sale by the wholesaler to the retailer is on a 66
cash and carry basis, the wholesaler may, in the absence of 67
proof of a lesser or higher cost filed with and satisfactory to 68
the tax commissioner, allow to the retailer an amount not to 69
exceed three-fourths of one per cent of the "cost to the 70
wholesaler" excluding the amount added thereto for the face 71
value of state and county cigarette tax stamps affixed to each 72
package of cigarettes. 73

(D) Any person licensed to sell cigarettes as both a 74
wholesaler and a retailer, who does sell cigarettes at retail, 75
shall, in determining "cost to the retailer", first compute 76
"cost to the wholesaler" as provided in division (C) of this 77
section; that "cost to the wholesaler" shall then be used in 78
lieu of the lower of either invoice cost or replacement cost 79
less all trade discounts except customary discounts for cash in 80

computing "cost to the retailer" as provided in divisions (A) 81
and (B) of this section. 82

(E) In all advertisements, offers for sale, or sales 83
involving two or more items at a combined price and in all 84
advertisements, offers for sale, or sales involving the giving 85
of any concession of any kind, whether it be coupons or 86
otherwise, the retailer's or wholesaler's selling price shall 87
not be below the "cost to the retailer" or the "cost to 88
wholesaler", respectively, of all articles, products, 89
commodities, and concessions included in such transactions. 90

(F) (1) "Sell at retail," "sales at retail," and "retail 91
sales" include any transfer of title to tangible personal 92
property for a valuable consideration made, in the ordinary 93
course of trade or usual prosecution of the seller's business, 94
to the purchaser for consumption or use. 95

(2) "Sell at wholesale," "sales at wholesale," and 96
"wholesale sales" include any such transfer of title to tangible 97
personal property for the purpose of resale. 98

(G) "Retailer" includes any person who is permitted to 99
sell cigarettes at retail within this state under section 100
5743.15 of the Revised Code. 101

(H) "Wholesaler" includes any person who is permitted to 102
sell cigarettes at wholesale within this state under that 103
section. 104

(I) "Person" includes individuals, corporations, 105
partnerships, associations, joint-stock companies, business 106
trusts, unincorporated organizations, receivers, or trustees. 107

(J) "County cigarette taxes" means the taxes levied under 108
section 5743.021, 5743.024, or 5743.026 of the Revised Code. 109

Sec. 1333.12. (A) No retailer shall, with intent to injure competitors, destroy substantially or lessen competition, advertise, offer to sell, or sell at retail cigarettes at less than cost to the retailer.

(B) No retailer shall recklessly induce, procure, or attempt to induce or procure, either of the following:

(1) The purchase of cigarettes at a price that is less than the cost to the wholesaler;

(2) A concession of any kind in connection with the purchase of cigarettes from a wholesaler.

(C) No wholesaler shall recklessly, with intent to injure competitors, destroy substantially or lessen competition, advertise,do either of the following:

(1) Advertise, offer to sell, or sell at wholesale cigarettes at less than cost to the wholesaler, unless the wholesaler has demonstrated to the department of taxation that the wholesaler's cost is less than the cost specified in division (C) of section 1333.11 of the Revised Code;

(2) Offer or give a concession of any kind in connection with the sale of cigarettes.

(D) Evidence of advertisement, offering to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to him the wholesaler or retailer, is prima-facie evidence of intent to injure competitors, destroy substantially or lessen competition.

Sec. 1333.13. When one wholesaler sells cigarettes to another wholesaler, the selling wholesaler shall not be required to include in the selling price the cost to the wholesaler who

is the seller, as defined in division (C) of section 1333.11 of 138
the Revised Code. Upon resale to a retailer, the purchasing 139
wholesaler shall be deemed to be the wholesaler and shall be 140
governed by division (C) of section 1333.11 of the Revised Code. 141

Sec. 1333.15. Any retailer or wholesaler may advertise, 142
offer to sell, or sell cigarettes at a price made in good faith 143
to meet the prices of a competitor who is selling the same 144
article at cost to ~~him~~ the competitor as a wholesaler or 145
retailer if the competitor has demonstrated to the department of 146
taxation that the competitor's cost is less than the cost as 147
specified in division (A), (B), or (C), as applicable, of 148
section 1333.11 of the Revised Code. The prices of cigarettes 149
advertised, offered for sale, or sold under the exemptions 150
specified in section 1333.14 of the Revised Code shall not be 151
considered the price of a competitor and used as a basis for 152
establishing prices below cost, nor shall prices established at 153
bankrupt sales be considered as prices of a competitor under 154
this section. 155

Section 2. That existing sections 1333.11, 1333.12, and 156
1333.15 of the Revised Code are hereby repealed. 157