

By: Representative Barnett

To: Business and Commerce

## HOUSE BILL NO. 1557

1       AN ACT TO AMEND SECTION 75-23-5, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE DEFINITION OF THE TERM "COST TO WHOLESALER" UNDER THE  
3 UNFAIR CIGARETTE SALES LAW TO PHASE IN AN INCREASE IN THE PRESUMED  
4 COST OF DOING BUSINESS BY THE WHOLESALER; TO REVISE THE DEFINITION  
5 OF THE TERM "COST TO THE RETAILER" UNDER THE UNFAIR CIGARETTE  
6 SALES LAW TO PHASE IN AN INCREASE IN THE PRESUMED COST OF DOING  
7 BUSINESS BY THE RETAILER; AND FOR RELATED PURPOSES.

8       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9       **SECTION 1.** Section 75-23-5, Mississippi Code of 1972, is  
10 amended as follows:

11       75-23-5. The following words, terms and phrases, when used  
12 in the Unfair Cigarette Sales Law, shall have the meaning ascribed  
13 to them in this section except where the context clearly indicates  
14 a different meaning:

15           (a) "Person" shall mean and include any individual,  
16 firm, association, company, partnership, corporation, joint-stock  
17 company, club, agency, syndicate, the State of Mississippi,  
18 county, municipal corporation or other political subdivision of  
19 this state, receiver, trustee, fiduciary, or trade association.

20 (b) "Commission" or "department" shall mean the  
21 Department of Revenue of the State of Mississippi.

22 (c) "Cigarettes" shall mean and include any roll for  
23 smoking made wholly or in part of tobacco, irrespective of size or  
24 shape and whether or not such tobacco is flavored, adulterated or  
25 mixed with any other ingredient, the wrapper or cover of which is  
26 made of paper or any other substance or material, excepting  
27 tobacco.

28 (d) "Wholesaler" shall mean and include any person  
29 qualified as a wholesaler with the Department of Revenue of  
30 Mississippi and shall also mean and include any person other than  
31 a buying pool as defined herein, wherever resident or located, who  
32 brings or causes to be brought into this state unstamped  
33 cigarettes purchased directly from the manufacturer thereof and  
34 who maintains an established place of business where substantially  
35 all of the business is the sale of cigarettes and related  
36 merchandise at wholesale to cigarette licensees and where at all  
37 times a substantial stock of cigarettes and related merchandise is  
38 available for resale; provided, that seventy-five percent (75%)  
39 thereof are sold to retailers or other wholesalers not connected  
40 with the wholesaler by reason of any business connection or  
41 otherwise; and also any person retailing cigarettes to consumers,  
42 provided, at least seventy-five percent (75%) of his purchases are  
43 made directly from the manufacturers thereof; and also any person  
44 in this state other than a buying pool as defined herein, who



45 purchases cigarettes, from any other person who purchases from a  
46 manufacturer at least seventy-five percent (75%) of which are for  
47 purposes of resale to retailers in this state not connected with  
48 said wholesaler by reason of any business connection or otherwise  
49 and who maintains an established place of business where  
50 cigarettes and related merchandise are sold at wholesale to  
51 persons licensed under this law, and where at all times a  
52 substantial stock of cigarettes and related merchandise is  
53 available to all retailers for resale; and also any person in this  
54 state who acquires cigarettes solely for the purpose of resale in  
55 cigarette vending machines; provided, such person operated thirty  
56 (30) or more machines.

57 (e) "Retailer" shall mean and include any person who is  
58 engaged in this state in the business of selling cigarettes at  
59 retail and includes any group of persons, cooperative  
60 organizations, buying pools, and any other person or group of  
61 retailers purchasing cigarettes on a cooperative basis from  
62 licensed distributors or wholesalers. Any person placing a  
63 cigarette vending machine at, on or in any premises shall be  
64 deemed to be a retailer from each such vending machine.

65 (f) "Buying pool" means and includes any combination,  
66 corporation, association, affiliation or group of retail dealers  
67 operating jointly in the purchase, sale, exchange, or barter of  
68 cigarettes, the profits of which accrue directly or indirectly to  
69 such retail dealers.



70 (g) "Sale" or "sell" shall mean any transfer for a  
71 consideration, exchange, barter, gift, offer for sale, advertising  
72 for sale, soliciting an order for cigarettes and distribution in  
73 any manner or by any means whatsoever.

74 (h) "Sell at wholesale," "sale at wholesale" and  
75 "wholesale sales" shall mean and include any sale made in the  
76 ordinary course of trade or usual conduct of the wholesaler's  
77 business to a retailer for the purpose of resale.

78 (i) "Sell at retail," "sale at retail" or "retail  
79 sales" shall mean and include any sale for consumption or use made  
80 in the ordinary course of trade or usual conduct of the seller's  
81 business.



103 (ii) In the absence of proof of a lesser or higher  
104 cost of doing business by the wholesale dealer making the sale,  
105 the cost of doing business by the wholesale dealer shall be  
106 presumed to be two percent (2%) of the basic cost of cigarettes to  
107 the wholesale dealer through June 30, 2025; three percent (3%) of  
108 the basic cost of cigarettes to the wholesale dealer from and  
109 after July 1, 2025, through June 30, 2026; four percent (4%) of  
110 the basic cost of cigarettes to the wholesale dealer from and  
111 after July 1, 2026, through June 30, 2027; and five percent (5%)  
112 of the basic cost of cigarettes to the wholesale dealer from and  
113 after July 1, 2027. Any fraction of a cent thus computed shall be  
114 rounded off to the next highest cent, plus cartage to the retail  
115 outlet, if performed or paid for by the wholesale dealer, which  
116 cartage cost, in the absence of proof of a lesser or higher cost,  
117 shall be presumed to be one-half of one percent (1/2 of 1%) of the  
118 basic cost of the cigarettes to the wholesale dealer, any fraction



119 of a cent in computing the amount of the cartage shall be rounded  
120 off to the next highest cent.

121 (l) (i) "Cost to the retailer" shall mean the basic  
122 cost of the cigarettes involved to the retailer plus the cost of  
123 doing business by the retailer as evidenced by the standards and  
124 methods of accounting regularly employed by him and must include,  
125 without limitation, labor (including salaries of executives and  
126 officers), rent, depreciation, selling costs, maintenance of  
127 equipment, delivery costs, all types of licenses, taxes, insurance  
128 and advertising.

129 (ii) In the absence of proof of a lesser or higher  
130 cost of doing business by the retailer making the sale, the cost  
131 of doing business by the retailer shall be presumed to be six  
132 percent (6%) of the basic cost of cigarettes to the retailer  
133 through June 30, 2025; eight percent (8%) of the basic cost of  
134 cigarettes to the retailer from and after July 1, 2025, through  
135 June 30, 2026; ten percent (10%) of the basic cost of cigarettes  
136 to the retailer from and after July 1, 2026, through June 30,  
137 2027; and twelve percent (12%) of the basic cost of cigarettes to  
138 the retailer from and after July 1, 2027. Any fraction of a cent  
139 thus computed shall be rounded off to the next highest cent.

140 (iii) In the case of any retail dealer who in  
141 connection with the retail dealer's purchase of any cigarettes  
142 shall receive not only the discounts ordinarily allowed upon  
143 purchases by a retail dealer but also in whole or in part the



144 discounts ordinarily allowed upon purchases by a wholesale dealer,  
145 the cost of doing business by the retail dealer with respect to  
146 the cigarettes shall be, in the absence of proof of a lesser or  
147 higher cost of doing business by the retail dealer, the sum of the  
148 cost of doing business by the retail dealer and, to the extent  
149 that he shall have received the full discounts ordinarily allowed  
150 to a wholesale dealer, the cost of doing business by a wholesale  
151 dealer as hereinabove defined in paragraph (j)(ii) of this  
152 section.

153         **SECTION 2.** This act shall take effect and be in force from  
154 and after its passage.