

By: Senator(s) Fillingane

To: Finance

## SENATE BILL NO. 2583

1 AN ACT TITLED THE "SMALL BUSINESS FAIR TRADE ACT"; TO AMEND  
2 SECTION 75-23-5, MISSISSIPPI CODE OF 1972, TO INCREASE THE  
3 PRESUMPTION OF A CIGARETTE WHOLESALE DEALER'S COST OF DOING  
4 BUSINESS FROM 2% TO 4.5% OF THE BASIC COST OF CIGARETTES TO THE  
5 WHOLESALE DEALER, FOR PURPOSES OF THE UNFAIR CIGARETTE SALES LAW;  
6 TO INCREASE THE PRESUMPTION OF CARTAGE COST FROM 0.5% TO 1% OF THE  
7 BASIC COST OF CIGARETTES TO THE WHOLESALE DEALER; AND FOR RELATED  
8 PURPOSES.

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

10 **SECTION 1.** This act shall be known and may be cited as the  
11 "Small Business Fair Trade Act."

12 **SECTION 2.** Section 75-23-5, Mississippi Code of 1972, is  
13 amended as follows:

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

18 (a) "Person" shall mean and include any individual,  
19 firm, association, company, partnership, corporation, joint-stock  
20 company, club, agency, syndicate, the State of Mississippi,



21 county, municipal corporation or other political subdivision of  
22 this state, receiver, trustee, fiduciary, or trade association.

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

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

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



made directly from the manufacturers thereof; and also any person in this state other than a buying pool as defined herein, 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 said 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 law, and where at all times a substantial stock of cigarettes and related merchandise is available to all retailers for resale; and also any person in this state who acquires cigarettes solely for the purpose of resale in cigarette vending machines; provided, such person operated thirty (30) or more machines.

(e) "Retailer" shall mean and include 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 from each such vending machine.

(f) "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 such retail dealers.

(g) "Sale" or "sell" shall mean 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.

(h) "Sell at wholesale," "sale at wholesale" and "wholesale sales" shall 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.

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

(j) "Basic cost of cigarettes" shall mean whichever of the two (2) following amounts is lower, namely, (i) the invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or (ii) 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 the cigarettes to the wholesaler or retailer, as the case may be.

(k) (i) "Cost to wholesaler" shall mean 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.

(ii) 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 \* \* \* four and one-half percent (4.5%) of the basic cost of cigarettes to the wholesale dealer, any fraction of a cent thus computed shall be rounded off to the next highest cent, 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 \* \* \* one percent (1%) of the basic cost of the cigarettes to the wholesale dealer, any fraction of a cent in computing the amount of the cartage shall be rounded off to the next highest cent.

(l) (i) "Cost to the retailer" shall mean 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.

(ii) 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. Any fraction of a cent thus computed shall be rounded off to the next highest cent.

(iii) 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 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 hereinabove defined in paragraph (j)(ii) of this section.



145           **SECTION 3.** This act shall take effect and be in force from  
146 and after July 1, 2025.

