

By: Representative Barnett

To: Ways and Means

HOUSE BILL NO. 1571

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.

82 (j) "Basic cost of cigarettes" shall mean whichever of
83 the two (2) following amounts is lower, namely, (i) the invoice
84 cost of cigarettes to the wholesaler or retailer, as the case may
85 be, or (ii) the lowest replacement cost of cigarettes to the
86 wholesaler or retailer, as the case may be, within thirty (30)
87 days prior to the date of sale, in the quantity last purchased
88 (whether within or before the thirty-day period), less, in either
89 of the two (2) cases, all trade discounts except customary
90 discounts for cash, plus the full face value of any stamps or any
91 tax which may be required by any cigarette tax act of this state
92 or political subdivision thereof, now in effect or hereafter
93 enacted, if not already included in the invoice cost of the
94 cigarettes to the wholesaler or retailer, as the case may be.



95 (k) (i) "Cost to wholesaler" shall mean the basic cost
96 of the cigarettes involved to the wholesaler plus the cost of
97 doing business by the wholesaler as evidenced by the standards and
98 methods of accounting regularly employed by him, and must include,
99 without limitation, labor costs (including salaries of executives
100 and officers), rent, depreciation, selling costs, maintenance of
101 equipment, delivery costs, all types of licenses, taxes, insurance
102 and advertising.

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, 2024; three percent (3%) of
108 the basic cost of cigarettes to the wholesale dealer from and
109 after July 1, 2024, through June 30, 2025; four percent (4%) of
110 the basic cost of cigarettes to the wholesale dealer from and
111 after July 1, 2025, through June 30, 2026; and five percent (5%)
112 of the basic cost of cigarettes to the wholesale dealer from and
113 after July 1, 2026. 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 (1) (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, 2024; eight percent (8%) of the basic cost of
134 cigarettes to the retailer from and after July 1, 2024, through
135 June 30, 2025; ten percent (10%) of the basic cost of cigarettes
136 to the retailer from and after July 1, 2025, through June 30,
137 2026; and twelve percent (12%) of the basic cost of cigarettes to
138 the retailer from and after July 1, 2026. 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.

