

By: Senator(s) Fillingane

To: Finance

SENATE BILL NO. 2312

1 AN ACT TO AMEND SECTION 75-23-5, MISSISSIPPI CODE OF 1972, TO  
2 INCREASE THE PRESUMPTION OF A CIGARETTE WHOLESALE DEALER'S COST OF  
3 DOING BUSINESS FROM 2% TO 4.5% OF THE BASIC COST OF CIGARETTES TO  
4 THE WHOLESALE DEALER, FOR PURPOSES OF THE UNFAIR CIGARETTE SALES  
5 LAW; TO INCREASE THE PRESUMPTION OF CARTAGE COST FROM 0.5% TO 1%  
6 OF THE BASIC COST OF CIGARETTES TO THE WHOLESALE DEALER; AND FOR  
7 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 \* \* \* four and one-half percent (4.5%) of the basic  
107 cost of cigarettes to the wholesale dealer, any fraction of a cent  
108 thus computed shall be rounded off to the next highest cent, plus  
109 cartage to the retail outlet, if performed or paid for by the  
110 wholesale dealer, which cartage cost, in the absence of proof of a  
111 lesser or higher cost, shall be presumed to be \* \* \* one percent  
112 (1%) of the basic cost of the cigarettes to the wholesale dealer,  
113 any fraction of a cent in computing the amount of the cartage  
114 shall be rounded off to the next highest cent.

115           (1)   (i)   "Cost to the retailer" shall mean the basic  
116 cost of the cigarettes involved to the retailer plus the cost of  
117 doing business by the retailer as evidenced by the standards and  
118 methods of accounting regularly employed by him and must include,  
119 without limitation, labor (including salaries of executives and



120 officers), rent, depreciation, selling costs, maintenance of  
121 equipment, delivery costs, all types of licenses, taxes, insurance  
122 and advertising.

123 (ii) In the absence of proof of a lesser or higher  
124 cost of doing business by the retailer making the sale, the cost  
125 of doing business by the retailer shall be presumed to be six  
126 percent (6%) of the basic cost of cigarettes to the retailer. Any  
127 fraction of a cent thus computed shall be rounded off to the next  
128 highest cent.

129 (iii) In the case of any retail dealer who in  
130 connection with the retail dealer's purchase of any cigarettes  
131 shall receive not only the discounts ordinarily allowed upon  
132 purchases by a retail dealer but also in whole or in part the  
133 discounts ordinarily allowed upon purchases by a wholesale dealer,  
134 the cost of doing business by the retail dealer with respect to  
135 the cigarettes shall be, in the absence of proof of a lesser or  
136 higher cost of doing business by the retail dealer, the sum of the  
137 cost of doing business by the retail dealer and, to the extent  
138 that he shall have received the full discounts ordinarily allowed  
139 to a wholesale dealer, the cost of doing business by a wholesale  
140 dealer as hereinabove defined in paragraph (j)(ii) of this  
141 section.

142 **SECTION 2.** This act shall take effect and be in force from  
143 and after July 1, 2024.

