

SENATE BILL REPORT

SB 5259

AS OF MARCH 4, 1991

Brief Description: Regulating cigarette sales.

SPONSORS: Senators L. Smith, Hayner, Snyder, Owen, Matson and Oke.

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Patrick Woods (786-7430)

Hearing Dates: March 5, 1991

BACKGROUND:

The Unfair Cigarette Sales Below Cost Act was enacted in 1957 in order to preclude sales of cigarettes below cost and prevent the use of cigarettes as loss leaders at a wholesale or retail level. The act prohibits cigarette wholesalers and retailers from engaging in competition, or destroying or substantially lessening competition by advertising or selling cigarettes at less than cost.

In order to establish pricing levels, the act provides specific criteria for determining "basic cost of cigarettes" to the wholesaler and the retailer. To this amount is added the "cost of doing business." A detailed schedule for determining the "cost of doing business" was outlined by the Legislature in 1986. The schedule provided for a gradual phase out of the cost of doing business for both wholesalers and retailers ranging from 4 percent to 2 percent, and 11.5 percent to 7.5 percent, respectively.

The act underwent a performance audit by the Legislative Budget Committee (LBC) in 1985 which recommended that it be terminated. The Legislature, acting upon the recommendation of the LBC provided for a gradual phase out of the act through July 1, 1991, and thereupon transfer of its licensing provisions to the Tax on Cigarettes Act.

SUMMARY:

The Unfair Cigarette Sales Below Cost Act is reestablished and the transfer of the cigarette licensing provisions to the Tax on Cigarette Act scheduled to take effect July 1, 1991 is repealed. The criteria for establishing the authorized price of cigarettes is reauthorized as provided prior to the 1986 legislation which includes both wholesale and retail pricing levels.

The wholesale price of cigarettes is determined from the manufacturer's invoice price plus 4 percent for the "cost of doing business" and 1/2 of 1 percent for shipping (cartage).

The retail price is determined from the wholesale invoice price of cigarettes plus 12.5 percent.

The "basic cost of cigarettes" means the invoice cost of cigarettes to the retailer or wholesaler in the quantity last purchased. The increase in cigarette cost becomes effective from the date of delivery to the wholesaler or retailer and includes existing stock.

Definition of "cost to the wholesaler" is modified in that an affiliate or subsidiary must include the cost of doing business of its parent company in determining its costs.

It is expressly prohibited to offer a rebate in price which includes the use of other products and services including samples.

Wholesalers are prohibited from selling cigarettes to retailers who do not possess a state retailer's license. The standard annual wholesalers' fee is set at \$650. Wholesalers having cigarette tax collections in excess of \$2 million are required to pay an \$850 annual fee. All funds from fees are deposited in a cigarette sales enforcement fund established under the act and located in the custody of the State Treasury. The retailers' license fee is set at \$25.

Appropriation: none

Revenue: none

Fiscal Note: none requested