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HOUSE DISTRICT 96

**Sponsor Testimony for House Bill 71**  
**House Ways and Means Committee**  
**February 26<sup>th</sup>, 2019**

Chairman Schaffer, Vice Chairman Lipps, Ranking Member Rogers and members of the House Ways and Means Committee, thank you for allowing us to come before you today and present sponsor testimony on House Bill 71.

This legislation will bring necessary clarifications to Ohio's unfair Cigarette Sales Act, more commonly known as the cigarette minimum price law. Background and points of the proposed legislation are below.

The law requires wholesalers to apply a minimum mark-up to cigarettes before selling them to retailers, and requires retailers to apply a minimum mark-up before selling cigarettes to consumers. The mark-up is presumed to be the cost of doing business. The historical intent of the law is to prevent predatory pricing. For the most part, the law has remained unchanged since it was originally adopted in the 1940's but the distribution channel has changed, making clarifications to the law necessary.

This legislation brings clarity for purposes of complying with, administering and enforcing the law. The legislation *does not* change the minimum mark-ups. Specifically, the drafted legislation does the following:

**Cost to the wholesaler clarifications**

Makes it clear that "invoice cost" in the definition of "cost to the wholesaler" is the manufacturer gross invoice cost to the wholesaler. This is consistent with the historical understanding of the reference to "invoice".

Current law allows for less than the statutory minimum mark-up provided there is proof that the wholesaler's costs are less than the statutory mark-up. The legislation makes it clear that such proof of a lesser cost of doing business must be filed with, and approved by the tax commissioner.

**Meeting a competitor's below statutory mark-up price**

The law allows a wholesaler or retailer to sell at a price that is below the minimum price if they are doing so to meet the price of the competitor. The assumption is that in a "meeting the competition" scenario, the competitor price is a legal price, *ie, the competitor has shown that*

*their costs are less than the statutory mark-up and has been approved to apply a lower mark-up.* However, the absence of the law being very clear on this point can lead to illegal/below minimum pricing. The legislation makes it clear that a competitor's price can be met only if the competitor has demonstrated to the department that his cost is less than the stated mark-up.

### **Sales between wholesalers**

States that when a wholesaler sells cigarettes to any other wholesaler, the former is not required to apply the mark-up, but the latter wholesaler, upon resale to a retailer, is required to apply the mark-up. This is consistent with an information release issued by the Tax Department and practice within the industry.

### **Soliciting or offering prices that are below cost**

Current law prohibits a wholesaler from offering to sell or selling cigarettes below the wholesale minimum price to a retailer, but it does not prohibit a retailer from **soliciting** the wholesaler for a price that is below the wholesale minimum price. The legislation adds that a retailer cannot solicit the wholesaler for a price that is below the wholesale minimum price.

In closing, we want to reiterate that House Bill 71 clarifies Ohio law without changing the intended function of the law. Chairman Schaffer and members of the House Ways and Means Committee, thank you for the opportunity to offer sponsor testimony on behalf of HB 71. We would be happy to answer any questions.