



DATE: December 9, 2020

TO: The Honorable Bill Coley, Chairman  
Government Oversight and Reform Committee  
Ohio Senate

cc: Government Oversight and Reform Committee Members

FROM: Dave McCarter, Owner and President  
Flichia Wholesale Distributing

RE: Statement of Support for House Bill 71 – Cigarette Minimum Mark-up Clarifications

Mr. Chairman and members of the committee, as the owner and president of Flichia Wholesale Distributing in Columbus, Ohio and on behalf of my employees who rely on jobs at the company, I am submitting this statement of support for House Bill 71.

Flichia Wholesale has been in business for more than 30 years selling cigarettes/tobacco, snacks and grocery items to c-stores, tobacco shops, mom-n-pops and other retailers in central Ohio. We compete daily against in-state and out-of-state large to small wholesalers for the same retail accounts. Despite the intense competition, we are successful because as a company we take pride in providing our retail customers with reliable service, the product mix they want and fair pricing on all products, including on cigarettes within the framework of the cigarette minimum mark-up law. The later point is the most frustrating and ongoing challenge for my company and even for many of my competitors.

The intent of the mark-up law is simple – to prevent businesses from using cigarette pricing as a loss leader to take business from the competition. The cigarette category is 70% to 90% of a c-store wholesaler's overall sales and also a top selling category in c-stores so it's not hard to understand that if a wholesaler can get in the door of a store using artificially low below cost cigarette pricing, that wholesaler will get all of the other business from the store, too.

My company has lost good retail accounts to predatory cigarette pricing too many times. When I lose business to this illegal practice, bottom line profits are impacted which factors into my company's overall stability, growth and ability to add jobs.

Ohio's law worked well when it was written more than 70-years ago and for many years after but a lot has changed – the overall industry, business models, and obviously personnel in the businesses and in the Tax Department who work with the law. The absence of clear and direct language in the law has become loopholes that enable wholesalers to violate the law and compromises the Department's ability to enforce the law.

My company has felt the frustration of turning in violations to the Tax Department when a competitor has used illegal cigarette prices to take retail accounts from my business. Even when I've given documentation of the illegal pricing, the Department has a hard time enforcing the law against the other wholesalers because the law needs the clarifications that are in House Bill 71.

The bill doesn't change the fact that a wholesaler can apply less than the law's stated 3.5% wholesale mark-up if the wholesaler's costs are less than 3.5%. The bill just makes it clear, as historically intended and understood, that the wholesaler's lessor mark-up has to be approved by the Department, based on the wholesaler showing that their costs are less than the law's stated 3.5%.

The bill doesn't change the ability for a wholesaler to meet the price of a competitor who is using less than the law's stated mark-up. The bill just makes it clear, as historically intended and understood, that if I'm meeting a competitor's price, the competitor's price has to be legal, ie the department signed off on a wholesaler's lower mark-up based on a wholesaler showing costs less than the law's stated mark-up.

The bill adds much needed reference to how the law applies when wholesalers sell cigarettes to other wholesalers. When the law was written in the 1940's, wholesalers sold only to retailers but today they do sell to other wholesalers. It's important that the law reflects this business model and in doing so, that it also makes sure that 'invoice' in cost to the wholesaler ties back to the manufacturer gross invoice to the original wholesaler in the transaction. This closes the potential loophole of wholesalers having business and pricing relationships that bypass the law and that would be predatory against other wholesalers.

Thank you to the joint sponsors and co-sponsors of House Bill 71 for bringing attention to this important issue and to your committee for taking written comments and testimony. Your support is appreciated.