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Insurance  
Transportation

**House Ways and Means Committee**  
**Senate Bill 40 — Sponsor Testimony**  
**Tuesday May 18 , 2021**

Chairman Merrin, Vice Chair Riedel, Ranking Member Sobecki, and members of the House Ways and Means Committee, thank you for the opportunity to present sponsor testimony on Senate Bill 40.

This legislation would bring the necessary clarifications to Ohio's Cigarette Sales Act, known more commonly as the "cigarette minimum price" law.

Rest assured this bill does not promote smoking in any way. What this bill does reflect is the agreed-to language late in the 133rd General Assembly between the two parties involved: wholesalers and retailers.

Current 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 that, decades ago, hurt retailers. 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.

Therefore, this legislation *does not* change the minimum mark-ups, but rather offers clarity for purposes of compliance, administration, and enforcement of the law. Specifically, the bill will do the following:

**Cost to the wholesaler clarifications**

The bill makes it clear that "invoice cost" in the definition of "cost to the wholesaler" is the manufacturer's 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. This bill 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**

Current 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*

*price.* However, the law is not clear on this point and it can lead to illegal/below minimum pricing. This legislation makes it clear that a competitor's price can be met only if the competitor has demonstrated to the Department of Taxation that his cost is less than the stated mark-up.

### **Sales between wholesalers**

This bill 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 Department of Taxation and practice within the industry.

Thank you once again, Chairman Merrin, and the members of the committee, for the opportunity to present this issue to you today. I am happy to answer any questions at this time.