As Re-Referred by the House Rules and Reference Committee

132nd General Assembly

Regular Session 2017-2018

H. B. No. 566

Representatives Scherer, Cera

Cosponsors: Representatives Butler, Antani, Lipps, Seitz, Retherford

# A BILL

To amend sections 1333.11, 1333.12, and 1333.15 and	1
to enact section 1333.13 of the Revised Code	2
regarding cigarette minimum pricing.	3

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1333.11, 1333.12, and 1333.15 be	4
amended and section 1333.13 of the Revised Code be enacted to	5
read as follows:	6
Sec. 1333.11. As used in sections 1333.11 to 1333.21 of	7
the Revised Code:	8
(A) "Cost to the retailer" means the invoice cost of	9
cigarettes to the retailer, or the replacement cost of	10
cigarettes to the retailer within thirty days prior to the date	11
of sale, in the quantity last purchased, whichever is lower,	12
less all trade discounts except customary discounts for cash, to	13
which shall be added the cost of doing business by the retailer	14
as evidenced by the standards and the methods of accounting	15
regularly employed by the retailer in the retailer's allocation	16
of overhead costs and expenses, paid or incurred. "Cost to the	17
retailer" must include, without limitation, labor, including	18

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salaries of executives and officers, rent, depreciation, selling 19 costs, maintenance of equipment, delivery costs, all types of 20 licenses, insurance, advertising, and taxes, exclusive of county 21 cigarette taxes paid or payable on the cigarettes. Where the 22 sale to the retailer is on a cash and carry basis, the cartage 23 to the retail outlet, if performed or paid for by the retailer, 24 shall be added to the invoice cost of the cigarettes to the 25 retailer. In the absence of proof of a lesser or higher cost by 26 the retailer, the cartage cost shall be three-fourths of one per 27 cent of the invoice cost of the cigarettes to the retailer, not 28 including the amount added thereto by the wholesaler for the 29 face value of state and county cigarette tax stamps affixed to 30 each package of cigarettes. 31

(B) In the absence of proof of a lesser or higher cost of 32 doing business by the retailer making the sale, the cost of 33 doing business to the retailer shall be eight per cent of the 34 invoice cost of the cigarettes to the retailer exclusive of the 35 face value of county cigarette taxes paid on the cigarettes or 36 of the replacement cost of the cigarettes to the retailer within 37 thirty days prior to the date of sale in the quantity last 38 purchased exclusive of the face value of county cigarette taxes 39 paid on the cigarettes, whichever is lower, less all trade 40 discounts except customary discounts for cash. 41

(C) "Cost to the wholesaler" means the manufacturer gross 42 invoice cost of the cigarettes to the wholesaler, or the 43 replacement cost of the cigarettes to the wholesaler within 44 thirty days prior to the date of sale, in the quantity last 45 purchased, whichever is lower, less all trade discounts except 46 customary discounts for cash, to which shall be added a 47 wholesaler's markup to cover in part the cost of doing business, 48 which wholesaler's markup, in the absence of proof <u>filed with</u> 49

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and satisfactory to the tax commissioner of a lesser or higher 50 cost of doing business by the wholesaler as evidenced by the 51 standards and methods of accounting regularly employed by the 52 wholesaler in the wholesaler's allocation of overhead costs and 53 expenses, paid or incurred, including without limitation, labor, 54 salaries of executives and officers, rent, depreciation, selling 55 costs, maintenance of equipment, delivery, delivery costs, all 56 types of licenses, taxes, insurance, and advertising, shall be 57 three and five-tenths per cent of such invoice cost of the 58 cigarettes to the wholesaler, to which shall be added the full 59 face value of state and county cigarette tax stamps affixed by 60 the wholesaler to each package of cigarettes, or of the 61 replacement cost of the cigarettes to the wholesaler within 62 thirty days prior to the date of sale in the quantity last 63 purchased, whichever is lower, less all trade discounts except 64 customary discounts for cash. 65

Where the sale by the wholesaler to the retailer is on a cash and carry basis, the wholesaler may, in the absence of proof of a lesser or higher cost <u>filed with and satisfactory to</u> <u>the tax commissioner</u>, allow to the retailer an amount not to exceed three-fourths of one per cent of the "cost to the wholesaler" excluding the amount added thereto for the face value of state and county cigarette tax stamps affixed to each package of cigarettes.

(D) Any person licensed to sell cigarettes as both a
wholesaler and a retailer, who does sell cigarettes at retail,
shall, in determining "cost to the retailer", first compute
"cost to the wholesaler" as provided in division (C) of this
section; that "cost to the wholesaler" shall then be used in
lieu of the lower of either invoice cost or replacement cost
less all trade discounts except customary discounts for cash in

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computing "cost to the retailer" as provided in divisions (A)	81
and (B) of this section.	82
(E) In all advertisements, offers for sale, or sales	83
involving two or more items at a combined price and in all	84
advertisements, offers for sale, or sales involving the giving	85
of any concession of any kind, whether it be coupons or	86
otherwise, the retailer's or wholesaler's selling price shall	87
not be below the "cost to the retailer" or the "cost to	88
wholesaler", respectively, of all articles, products,	89
commodities, and concessions included in such transactions.	90
(E) (1) "Soll at motail " "soles at motail " and "motail	91
(F)(1) "Sell at retail," "sales at retail," and "retail	91
sales" include any transfer of title to tangible personal	
property for a valuable consideration made, in the ordinary	93
course of trade or usual prosecution of the seller's business,	94
to the purchaser for consumption or use.	95
(2) "Sell at wholesale," "sales at wholesale," and	96
"wholesale sales" include any such transfer of title to tangible	97
personal property for the purpose of resale.	98
(G) "Retailer" includes any person who is permitted to	99
sell cigarettes at retail within this state under section	100
5743.15 of the Revised Code.	101
	1.0.0
(H) "Wholesaler" includes any person who is permitted to	102
sell cigarettes at wholesale within this state under that	103
section.	104
(I) "Person" includes individuals, corporations,	105
partnerships, associations, joint-stock companies, business	106
trusts, unincorporated organizations, receivers, or trustees.	107
(J) "County cigarette taxes" means the taxes levied under	108
section 5743.021, 5743.024, or 5743.026 of the Revised Code.	100
Section 3,43.021, 3,43.024, of 3,43.020 of the Revised Code.	109

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Sec. 1333.12. (A) No retailer shall, with intent to injure 110 competitors, destroy substantially or lessen competition, 111 advertise, offer to sell, or sell at retail cigarettes at less 112 than cost to the retailer. 113 (B) No retailer shall recklessly induce, procure, or 114 attempt to induce or procure, either of the following: 115 (1) The purchase of cigarettes at a price that is less 116 than the cost to the wholesaler; 117 (2) A concession of any kind in connection with the 118 purchase of cigarettes from a wholesaler. 119 (C) No wholesaler shall recklessly, with intent to injure 120 competitors, destroy substantially or lessen competition, 121 advertise, do either of the following: 122 123 (1) Advertise, offer to sell, or sell at wholesale cigarettes at less than cost to the wholesaler, unless the 124 wholesaler has demonstrated to the department of taxation that 125 the wholesaler's cost is less than the cost specified in 126 division (C) of section 1333.11 of the Revised Code; 127 (2) Offer or give a concession of any kind in connection 128 129 with the sale of cigarettes. (D) Evidence of advertisement, offering to sell, or sale 130 of cigarettes by any retailer or wholesaler at less than cost to 131 him the wholesaler or retailer, is prima-facie evidence of 132 intent to injure competitors, destroy substantially or lessen 133

Sec. 1333.13. When one wholesaler sells cigarettes to135another wholesaler, the selling wholesaler shall not be required136to include in the selling price the cost to the wholesaler who137

competition.

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is the seller, as defined in division (C) of section 1333.11 of 138 the Revised Code. Upon resale to a retailer, the purchasing 139 wholesaler shall be deemed to be the wholesaler and shall be 140 governed by division (C) of section 1333.11 of the Revised Code. 141 Sec. 1333.15. Any retailer or wholesaler may advertise, 142 offer to sell, or sell cigarettes at a price made in good faith 143 to meet the prices of a competitor who is selling the same 144 article at cost to him the competitor as a wholesaler or 145 retailer if the competitor has demonstrated to the department of 146 taxation that the competitor's cost is less than the cost as 147 specified in division (A), (B), or (C), as applicable, of 148 section 1333.11 of the Revised Code. The prices of cigarettes 149 advertised, offered for sale, or sold under the exemptions 150 specified in section 1333.14 of the Revised Code shall not be 151 considered the price of a competitor and used as a basis for 152 establishing prices below cost, nor shall prices established at 153 bankrupt sales be considered as prices of a competitor under 154 this section. 155

Section 2. That existing sections 1333.11, 1333.12, and 156 1333.15 of the Revised Code are hereby repealed. 157

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