

**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**

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**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

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 filed with 49

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 66  
cash and carry basis, the wholesaler may, in the absence of 67  
proof of a lesser or higher cost filed with and satisfactory to 68  
the tax commissioner, allow to the retailer an amount not to 69  
exceed three-fourths of one per cent of the "cost to the 70  
wholesaler" excluding the amount added thereto for the face 71  
value of state and county cigarette tax stamps affixed to each 72  
package of cigarettes. 73

(D) Any person licensed to sell cigarettes as both a 74  
wholesaler and a retailer, who does sell cigarettes at retail, 75  
shall, in determining "cost to the retailer", first compute 76  
"cost to the wholesaler" as provided in division (C) of this 77  
section; that "cost to the wholesaler" shall then be used in 78  
lieu of the lower of either invoice cost or replacement cost 79  
less all trade discounts except customary discounts for cash in 80

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
(F) (1) "Sell at retail," "sales at retail," and "retail	91
sales" include any transfer of title to tangible personal	92
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
(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.	109

**Sec. 1333.12.** (A) No retailer shall, with intent to injure competitors, destroy substantially or lessen competition, advertise, offer to sell, or sell at retail cigarettes at less than cost to the retailer.

(B) No retailer shall recklessly induce, procure, or attempt to induce or procure, either of the following:

(1) The purchase of cigarettes at a price that is less than the cost to the wholesaler;

(2) A concession of any kind in connection with the purchase of cigarettes from a wholesaler.

(C) No wholesaler shall recklessly, with intent to injure competitors, destroy substantially or lessen competition, advertise, do either of the following:

(1) Advertise, offer to sell, or sell at wholesale cigarettes at less than cost to the wholesaler, unless the wholesaler has demonstrated to the department of taxation that the wholesaler's cost is less than the cost specified in division (C) of section 1333.11 of the Revised Code;

(2) Offer or give a concession of any kind in connection with the sale of cigarettes.

(D) Evidence of advertisement, offering to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to ~~him~~ the wholesaler or retailer, is prima-facie evidence of intent to injure competitors, destroy substantially or lessen competition.

**Sec. 1333.13.** When one wholesaler sells cigarettes to another wholesaler, the selling wholesaler shall not be required to include in the selling price the cost to the wholesaler who

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