

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 71**

**Representatives Scherer, Cera**

**Cosponsors: Representatives Antani, Becker, Green, Hambley, Lang, Lipps,  
Riedel, Rogers, Schaffer, Seitz**

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**A BILL**

To amend sections 1333.11, 1333.12, 1333.14, and 1  
1333.15 and to enact section 1333.13 of the 2  
Revised Code regarding cigarette minimum 3  
pricing. 4

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

**Section 1.** That sections 1333.11, 1333.12, 1333.14, and 5  
1333.15 be amended and section 1333.13 of the Revised Code be 6  
enacted to read as follows: 7

**Sec. 1333.11.** As used in sections 1333.11 to 1333.21 of 8  
the Revised Code: 9

(A) "Cost to the retailer" means the invoice cost of 10  
cigarettes to the retailer, or the replacement cost of 11  
cigarettes to the retailer within thirty days prior to the date 12  
of sale, in the quantity last purchased, whichever is lower, 13  
less all trade discounts except customary discounts for cash, to 14  
which shall be added the cost of doing business by the retailer 15  
as evidenced by the standards and the methods of accounting 16  
regularly employed by the retailer in the retailer's allocation 17

of overhead costs and expenses, paid or incurred. "Cost to the retailer" must include, without limitation, labor, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, insurance, advertising, and taxes, exclusive of county cigarette taxes paid or payable on the cigarettes. Where the sale to the retailer is on a cash and carry basis, the cartage to the retail outlet, if performed or paid for by the retailer, shall be added to the invoice cost of the cigarettes to the retailer. In the absence of proof of a lesser or higher cost by the retailer, the cartage cost shall be three-fourths of one per cent of the invoice cost of the cigarettes to the retailer, not including the amount added thereto by the wholesaler for the face value of state and county cigarette tax stamps affixed to each package of cigarettes.

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

(C) "Cost to the wholesaler" means the manufacturer gross invoice cost of the cigarettes to the wholesaler, or the replacement cost of the cigarettes to the wholesaler within thirty days prior to the date of sale, in the quantity last purchased, whichever is lower, less all trade discounts except customary discounts for cash, to which shall be added a

wholesaler's markup to cover in part the cost of doing business, 49  
which wholesaler's markup, in the absence of proof filed with 50  
and satisfactory to the tax commissioner of a lesser or higher 51  
cost of doing business by the wholesaler as evidenced by the 52  
standards and methods of accounting regularly employed by the 53  
wholesaler in the wholesaler's allocation of overhead costs and 54  
expenses, paid or incurred, including without limitation, labor, 55  
salaries of executives and officers, rent, depreciation, selling 56  
costs, maintenance of equipment, delivery, delivery costs, all 57  
types of licenses, taxes, insurance, and advertising, shall be 58  
three and five-tenths per cent of such invoice cost of the 59  
cigarettes to the wholesaler, to which shall be added the full 60  
face value of state and county cigarette tax stamps affixed by 61  
the wholesaler to each package of cigarettes, or of the 62  
replacement cost of the cigarettes to the wholesaler within 63  
thirty days prior to the date of sale in the quantity last 64  
purchased, whichever is lower, less all trade discounts except 65  
customary discounts for cash. 66

Where the sale by the wholesaler to the retailer is on a 67  
cash and carry basis, the wholesaler may, in the absence of 68  
proof of a lesser or higher cost filed with and satisfactory to 69  
the tax commissioner, allow to the retailer an amount not to 70  
exceed three-fourths of one per cent of the "cost to the 71  
wholesaler" excluding the amount added thereto for the face 72  
value of state and county cigarette tax stamps affixed to each 73  
package of cigarettes. 74

The tax commissioner may require a wholesaler who is 75  
filing proof of a lesser or higher cost of doing business under 76  
this section to have an independent certified public accountant 77  
certify that the calculation of the wholesaler's cost of doing 78  
business has been made in accordance with generally accepted 79

accounting principles. The commissioner also may request, and 80  
upon such a request the wholesaler shall provide, any additional 81  
information the commissioner considers necessary during review 82  
of the filing. The commissioner shall deny the wholesaler's 83  
request for a new cost of doing business if the wholesaler fails 84  
to provide such information. The commissioner shall approve or 85  
deny the wholesaler's request within ninety days after receipt 86  
of the original filing or of the filing of requested additional 87  
information, whichever is later. A denial is subject to appeal 88  
under section 5717.02 of the Revised Code. 89

(D) Any person licensed to sell cigarettes as both a 90  
wholesaler and a retailer, who does sell cigarettes at retail, 91  
shall, in determining "cost to the retailer", first compute 92  
"cost to the wholesaler" as provided in division (C) of this 93  
section; that "cost to the wholesaler" shall then be used in 94  
lieu of the lower of either invoice cost or replacement cost 95  
less all trade discounts except customary discounts for cash in 96  
computing "cost to the retailer" as provided in divisions (A) 97  
and (B) of this section. 98

(E) In all advertisements, offers for sale, or sales 99  
involving two or more items at a combined price and in all 100  
advertisements, offers for sale, or sales involving the giving 101  
of any concession of any kind, whether it be coupons or 102  
otherwise, the retailer's or wholesaler's selling price shall 103  
not be below the "cost to the retailer" or the "cost to 104  
wholesaler", respectively, of all articles, products, 105  
commodities, and concessions included in such transactions. 106

(F) (1) "Sell at retail," "sales at retail," and "retail 107  
sales" include any transfer of title to tangible personal 108  
property for a valuable consideration made, in the ordinary 109

course of trade or usual prosecution of the seller's business, 110  
to the purchaser for consumption or use. 111

(2) "Sell at wholesale," "sales at wholesale," and 112  
"wholesale sales" include any such transfer of title to tangible 113  
personal property for the purpose of resale. 114

(G) "Retailer" includes any person who is permitted to 115  
sell cigarettes at retail within this state under section 116  
5743.15 of the Revised Code. 117

(H) "Wholesaler" includes any person who is permitted to 118  
sell cigarettes at wholesale within this state under that 119  
section. 120

(I) "Person" includes individuals, corporations, 121  
partnerships, associations, joint-stock companies, business 122  
trusts, unincorporated organizations, receivers, or trustees. 123

(J) "County cigarette taxes" means the taxes levied under 124  
section 5743.021, 5743.024, or 5743.026 of the Revised Code. 125

**Sec. 1333.12.** (A) No retailer shall, with intent to injure 126  
competitors, destroy substantially or lessen competition, 127  
advertise, offer to sell, or sell at retail cigarettes at less 128  
than cost to the retailer. 129

(B) No retailer shall recklessly induce, procure, or 130  
attempt to induce or procure, either of the following: 131

(1) The purchase of cigarettes at a price that is less 132  
than the cost to the wholesaler; 133

(2) A concession of any kind in connection with the 134  
purchase of cigarettes from a wholesaler. 135

(C) No wholesaler shall recklessly, with intent to injure 136

competitors, destroy substantially or lessen competition, 137  
advertise, do either of the following: 138

(1) Advertise, offer to sell, or sell at wholesale 139  
cigarettes at less than cost to the wholesaler, unless the 140  
wholesaler has demonstrated to the satisfaction of the tax 141  
commissioner that the wholesaler's cost is less than the cost 142  
specified in division (C) of section 1333.11 of the Revised 143  
Code; 144

(2) Offer or give a concession of any kind in connection 145  
with the sale of cigarettes. 146

(D) Evidence of advertisement, offering to sell, or sale 147  
of cigarettes by any retailer or wholesaler at less than cost to 148  
him the wholesaler or retailer, is prima-facie evidence of 149  
intent to injure competitors, or destroy substantially or lessen 150  
competition. 151

**Sec. 1333.13.** When one wholesaler sells cigarettes to 152  
another wholesaler, the selling wholesaler shall not be required 153  
to include in the selling price the cost to the wholesaler who 154  
is the seller, as defined in division (C) of section 1333.11 of 155  
the Revised Code. Upon resale to a retailer, the purchasing 156  
wholesaler shall be deemed to be the wholesaler and shall be 157  
governed by division (C) of section 1333.11 of the Revised Code. 158

**Sec. 1333.14.** Sections 1333.11 to 1333.21, inclusive, of 159  
the Revised Code do not apply to sales at retail or sales at 160  
wholesale made in any of the following circumstances, provided 161  
prior approval of the tax commissioner is obtained: 162

(A) In an isolated transaction and not in the usual course 163  
of business; 164

(B) Where cigarettes are advertised, offered for sale, or 165

sold in bona fide clearance sales for the purpose of 166  
discontinuing trade in such cigarettes, and said advertising, 167  
offer to sell, or sale states the reason thereof and the 168  
quantity of such cigarettes advertised, offered for sale, or to 169  
be sold; 170

(C) Where cigarettes are advertised, offered for sale, or 171  
sold as imperfect or damaged and said advertising, offer to 172  
sell, or sale states the reason thereof and the quantity of such 173  
cigarettes advertised, offered for sale, or to be sold; 174

(D) Where cigarettes are sold upon the complete final 175  
liquidation of a business; 176

(E) Where cigarettes are advertised, offered for sale, or 177  
sold by any fiduciary or other officer acting under the order or 178  
direction of any court. 179

**Sec. 1333.15.** Any retailer or wholesaler may advertise, 180  
offer to sell, or sell cigarettes at a price made in good faith 181  
to meet the prices of a competitor who is selling the same 182  
article at cost to ~~him~~ the competitor as a wholesaler or 183  
retailer. A wholesaler may meet the price of a competitor only 184  
if the competitor has demonstrated to the satisfaction of the 185  
tax commissioner that the competitor's cost is less than the 186  
cost as specified in division (C) of section 1333.11 of the 187  
Revised Code. The prices of cigarettes advertised, offered for 188  
sale, or sold under the exemptions specified in section 1333.14 189  
of the Revised Code shall not be considered the price of a 190  
competitor and used as a basis for establishing prices below 191  
cost, nor shall prices established at bankrupt sales be 192  
considered as prices of a competitor under this section. 193

**Section 2.** That existing sections 1333.11, 1333.12, 194

1333.14, and 1333.15 of the Revised Code are hereby repealed.

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