

Passed the Senate March 5, 1957.

Passed the House March 12, 1957.

Approved by the Governor March 26, 1957, with the exception of section 1, which is vetoed.

Note: Excerpt of Governor's veto message reads as follows:

"I have signed into law House Bill No. 727. Section 3 of House Bill No. 727 repeals outright section 2, chapter 184, Laws of 1945 and RCW 83.40.050 sought to be amended by section 1 of Senate Bill No. 314. The section vetoed herein seeks to resolve difficulties incident to the deduction of federal estate taxes against inheritance taxes of the state of Washington. Since House Bill No. 727 will no longer permit the deduction of federal estate taxes against inheritance taxes imposed by the state of Washington, the problem sought to be resolved by section 1 of Senate Bill No. 314 no longer exists. For this reason section 1 is vetoed and the remainder is approved."

Veto message, excerpt from.

CHAPTER 286.

[S. B. 332.]

UNFAIR CIGARETTE SALES ACT.

AN ACT relating to prevention of unfair competition and unfair trade practices in the sale of cigarettes, to be known as the unfair cigarette sales act; prohibiting sales of cigarettes below cost; defining cost; licensing persons engaged in the sale of cigarettes; conferring powers and imposing duties on the tax commission and on persons engaged in the sale of cigarettes at retail or wholesale; providing remedies and imposing penalties.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. When used in this act, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: Definitions.

(1) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation, or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator. "Person."

(2) "Wholesaler" includes any person who: "Wholesaler."

(a) Purchases cigarettes directly from the manufacturer, or

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Definitions.
"Wholesaler."

(b) Purchases cigarettes from any other person who purchases from or through the manufacturer, for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only, or

(c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both a "wholesaler" and "retailer" under the applicable provisions of this act.

"Retailer."

(3) "Retailer" means and includes any person who operates a store, stand, booth, concession, or vending machine for the purpose of making sales of cigarettes at retail.

"Tax Commission."

(4) "Tax Commission" means the tax commission of the state of Washington.

"Cigarettes."

(5) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Sale."

(6) "Sale" means any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatsoever.

"Sell at wholesale," "sale at wholesale," "wholesale."

(7) "Sell at wholesale", "sale at wholesale" and "wholesale" sales mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

"Sell at retail," "sale at retail."

(8) "Sell at retail", "sale at retail" and "retail sales" mean and include any transfer of title to

cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

retail;" "retail sales."

(9) "Basic cost of cigarettes" means the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower, less all trade discounts and customary discounts for cash, to which shall be added the full face value of any stamps which may be required by any cigarette tax act of this state and by ordinance of any municipality thereof, now in effect or hereafter enacted, if not already included by the manufacturer in his list price.

"Basic cost of cigarettes."

(10) (a) The term "cost to the wholesaler" means the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler" which said cost of doing business amount shall be expressed percentage-wise in the ratio that said wholesaler's "cost of doing business" bears to said wholesaler's dollar volume per annum, and said "cost of doing business by the wholesaler" shall be evidenced and determined by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor costs (including reasonable salaries for partners, executives, and officers), rent, depreciation, selling cost, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising.

"Cost to the wholesaler."

"Cost of doing business by the wholesaler."

(b) In the absence of the filing with the tax commission of satisfactory proof of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be four percent of the "basic

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Definitions.

cost of cigarettes” to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the tax commission of satisfactory proof of a lesser or higher cost, shall be deemed to be one-half of one percent of the “basic cost of cigarettes” to the wholesaler.

“Cost to the retailer.”

(11) (a) The term “cost to the retailer” means the “basic cost of cigarettes” to the retailer plus the “cost of doing business by the retailer” which said cost of doing business amount shall be expressed percentage-wise in the ratio that said retailer’s “cost of doing business” bears to said retailer’s dollar volume per annum, and said “cost of doing business by the retailer” shall be evidenced and determined by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor (including reasonable salaries for partners, executives, and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising: *Provided*, That any retailer who, in connection with the retailer’s purchase, receives not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or in part, discounts ordinarily allowed upon purchases by a wholesaler shall, in determining “cost to the retailer”, pursuant to this subdivision, add the “cost of doing business by the wholesaler,” as defined in section 1, subdivision (10) of this act, to the “basic cost of cigarettes” to said retailer, as well as the “cost of doing business by the retailer.”

“Cost of doing business by the retailer.”

Proviso.

(b) In the absence of the filing with the tax commission of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the “cost of doing business by the retailer”

shall be presumed to be ten percent of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the tax commission of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer," who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or in part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten percent of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(12) "Business day" means any day other than a Sunday or a legal holiday. "Business day."

SEC. 2. It shall be unlawful and a violation of this act:

Unlawful practices—
Penalty.

(1) For any retailer or wholesaler with intent to injure competitors or destroy or substantially lessen competition:

(a) To advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as said cost is defined in this act, as the case may be;

(b) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatsoever in connection with the sale of cigarettes.

(2) For any retailer with intent to injure competitors or destroy or substantially lessen competition:

(a) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to wholesalers" as defined in this act;

(b) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of

Unfair cigarette sales act. Unfair practices—Penalty.

any kind or nature whatsoever in connection with the purchase of cigarettes.

(3) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars for each such offense. Any individual who as a director, officer, partner, member, or agent of any person violating the provisions of this act assists or aids, directly or indirectly in such violation, shall equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(4) Evidence of advertisement, offering to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to him, or evidence of any offer of a rebate in price, or the giving of a rebate in price or an offer of a concession, or the inducing, or attempt to induce, or the procuring, or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

Sales between wholesalers.

SEC. 3. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter, "cost to the wholesaler," as provided by section 1, subdivision (10) of this act, except that no such sale shall be made at a price less than the "basic cost of cigarettes" as defined in said section 1, subdivision (9) of this act, but the latter wholesaler, upon resale to a retailer, shall be deemed to be the wholesaler governed by the provisions of said section 1, subdivision (10) of this act.

Transactions involving combinations of items, gifts, trading stamps, discounts, etc.

SEC. 4. (1) In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale, or sales, in-

volving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler," respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

(2) In all advertisements, offers for sale, or sales wherein there is accepted as part of the purchase price any coupon, discount slip, trading stamp, or similar device, the net purchase price after deducting the value of said coupon; discount slip, or trading stamp, shall be not less than the retailer's, or the wholesaler's, as the case may be, as defined by this act, as being "cost of the retailer", or "cost of the wholesaler", respectively.

SEC. 5. The provisions of this act shall not apply to sales at retail or sales at wholesale made:

Transactions
to which
chapter does
not apply.

(1) As an isolated transaction and not in the usual course of business;

(2) Where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(3) Where cigarettes are advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(4) Where cigarettes are sold upon the final liquidation of a business; or

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

SEC. 6. (1) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith

Unfair cigarette sales act. Permissible advertisements, offers, sales—Action other than injunctive relief, judgment.

to meet the legal price, as defined in this act, of a competitor who is selling the same article at cost to him as a retailer as prescribed in this act. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the legal price, as defined in this act, of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler as prescribed in this act. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 5 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(2) In the absence of proof of the "price of a competitor", under this section, the "lowest cost to the retailer", or the "lowest cost to the wholesaler", as the case may be, determined by any "cost survey", made pursuant to section 10 of this act, may be deemed the "legal price of a competitor", within the meaning of this section. If the plaintiff elect not to seek injunctive relief, but does prove actual damages, plaintiff shall be entitled to the entry of a judgment in plaintiff's favor in the amount of said damages proven, together with his costs of suit and a reasonable attorney's fee to be fixed by the court.

Contract in violation of act, void.

SEC. 7. Any contract, expressed or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal and void contract and no recovery thereon shall be had.

Determining "cost to retailer" and "cost to wholesaler" when person complained against.

SEC. 8. (1) In determining "cost to the retailer" and "cost to the wholesaler" the tax commission or a court shall receive and consider as bearing on the bona fides of the cost, evidence tending to show that any person complained against under any of the provisions of this act purchased cigarettes, with re-

spect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fide of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes, or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

SEC. 9. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt, or close-out sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

Cost to retailer or wholesaler—Purchases, outside of ordinary channels of trade.

SEC. 10. Where a cost survey, pursuant to recognized statistical and cost accounting practices, has been made for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler", said cost survey shall be deemed competent evidence to be used in proving the cost to the person complained against within the provisions of the act.

Cost survey is competent evidence.

SEC. 11. (1) In addition to penalties provided by section 2 of this act, any person injured by any violation of this act, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and

Civil action for violations—Costs, attorney fees.

Unfair cigarette sales act.
Civil action for violations
—Costs, attorney fees.

in addition thereto shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorneys' fees. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

Unfair to conduct business without license.

SEC. 12. After the effective date of this act, no person shall engage in, or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state, without having first obtained the appropriate license for that purpose as prescribed in section 13 of this act.

Wholesalers, retailers licenses—Issuance by tax commission—Duration.

SEC. 13. The licenses issuable by the tax commission under this act shall be as follows:

- (1) Wholesalers license.
- (2) Retailers license.

All licenses shall be issued by the tax commission, who shall make rules and regulations respecting applications therefor and issuance thereof. The tax commission may refrain from the issuance of any license under this act, where he [it] has reasonable cause to believe that the applicant has wilfully withheld information requested of him for the purpose of determining the eligibility of the applicant to receive a license, or where he [it] has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. Each such license shall lapse on the last day of June of the period for which it is issued, and each such license shall be continued annually upon the conditions that the licensee shall have paid the required fee and complied with all the provisions of this act and the rules and regulations of the tax commission made pursuant thereto.

SEC. 14. For each license issued to a wholesaler, and for each continuance thereof, there shall be paid to the tax commission a fee of three hundred dollars. If a wholesaler sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license with a license fee of twenty-five dollars shall be required for each additional place of business. Each license, or certificate thereof, and such other evidence of license as the tax commission shall require, shall be exhibited in the place of business for which it is issued and in such manner as may be prescribed by the tax commission. The tax commission shall require each licensed wholesaler to file with him a bond in an amount not less than one thousand dollars to guarantee the proper performance of his duties and the discharge of his liabilities under this act. The bond shall be executed by such licensed wholesaler as principal, and by a corporation approved by the tax commission and authorized to engage in business as a surety company in this state, as surety. The bond shall run concurrently with the wholesaler's license.

Wholesaler
license fee—
Display of
license—
Wholesaler's
bond.

SEC. 15. For each license issued to a retail dealer and for each continuance thereof, there shall be paid to the tax commission a fee of five dollars. For each license issued to a retail dealer operating a cigarette vending machine, and for each continuance thereof, there shall be paid to the tax commission a fee of one additional dollar for each vending machine.

Retailer license
fee—Vending
machine fee.

SEC. 16. Any person licensed only as a wholesaler, or as a retail dealer, shall not operate in any other capacity except under that for which he is licensed herein, unless the additional appropriate license or licenses are first secured.

Separate
licenses to op-
erate in each
capacity
required.

SEC. 17. Any person who shall engage in any business or activity for which a license is required

Unfair cigarette sales act.
Engaging in business without license prohibited—Penalty.

under the provisions of this act, without first having obtained a license to do so, or who, having had such a license, shall continue to engage in or conduct such business after any such license shall have been revoked, or during a suspension thereof, shall be guilty of a misdemeanor.

Administration of act—Rules—Revocation, suspension, reinstatement of licenses, procedure—Appeals.

SEC. 18. (1) In addition to the penalties and rights imposed and set forth in sections 2 and 11 of this act, the tax commission may enforce the provisions of this act. The tax commission shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this act. The tax commission is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Washington upon sufficient cause appearing of the violation of this act or upon the failure of such licensee or permittee to comply with any of the provisions of this act.

(2) No license or licenses shall be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by said tax commission. The said tax commission, upon a finding by same, that the licensee has failed to comply with any provision of this act or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five nor more than twenty consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty consecutive business days nor more than twelve months, and, in the event the said tax commission finds the offender has been guilty of wilful and persistent violations, it may revoke said person's license or licenses.

(3) Any person whose license or licenses have been so revoked may apply to the tax commission at

the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the tax commission if it shall appear to the satisfaction of said tax commission that the licensee will comply with the provisions of this act and the rules and regulations promulgated thereunder.

Revocation,
suspension,
reinstatement
of licenses,
procedure
—Appeals.

(4) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever.

(5) Any determination and order by the tax commission, and any order of suspension or revocation by the tax commission of the license or licenses, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county in and for the state of Washington. Said superior court shall review the order or ruling of the tax commission and may hear the matter de novo, having due regard to the provisions of this act, and the duties imposed upon the tax commission. Said review by the superior court, and any order entered thereon by said superior court, shall be appealable under and by virtue of the procedural law of this state.

SEC. 19. All fees and penalties received or collected by the commission pursuant to the provisions of this act shall be paid to the state treasurer, to be credited to an account known as the cigarette fee account. The money so credited to the said fee fund shall be paid by the state treasurer upon warrants drawn by the state auditor for use in the administration and enforcement of this act. Said warrants shall be issued upon duly itemized and verified vouchers approved by the commission.

Cigarette fee
account—Use.

Severability.

SEC. 20. The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect.

Short title.

SEC. 21. This act may be known and cited as the unfair cigarette sales act.

Passed the Senate March 1, 1957.

Passed the House March 11, 1957.

Approved by the Governor March 26, 1957.

CHAPTER 287.

[Sub. S. B. 361.]

ELECTRIC UTILITY PROPERTIES—CITIES, TOWNS,
PUBLIC UTILITY DISTRICTS.

AN ACT relating to cities and towns, and public utility districts; authorizing cities and towns, and public utility districts to jointly own, operate and maintain electric utility properties for the generation and transmission of electric power and energy; to contribute to the cost of acquisition and construction thereof by the contribution of money and property, and to issue revenue bonds therefor.

Be it enacted by the Legislature of the State of Washington:

“Electric utility properties” defined.

SECTION 1. As used in this act “electric utility properties” shall mean any and all permits, licenses, property rights, water rights and any and all works, plants, dams, powerhouses, transmission lines, switchyards, substations, property and facilities of every kind and character which may be used, or may be useful, in the generation and transmission of electric power and energy, produced by water power, steam or any other methods.

Cities over 150,000 population, joint undertaking with P. U. D. as to electric utility properties.

SEC. 2. Any city or town with a population over one hundred fifty thousand within the state of Washington owning an electric public utility is authorized to cooperate with any public utility district within