

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 898

Introduced by Janssen, 15.

Read first time January 11, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Unfair Cigarette Sales Act; to amend
2 sections 59-1502 and 59-1505, Reissue Revised Statutes of
3 Nebraska; to redefine a term; to change the presumed cost
4 of doing business; and to repeal the original sections.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 59-1502, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 59-1502 As used in the Unfair Cigarette Sales Act, unless
4 the context otherwise requires:

5 (1) Person shall mean and include any individual, firm,
6 association, company, partnership, limited liability company,
7 corporation, joint-stock company, club, agency, syndicate,
8 municipal corporation or other political subdivision of this state,
9 trust, receiver, trustee, fiduciary, or conservator;

10 (2) Cigarettes shall mean and include any roll for
11 smoking made wholly or in part of tobacco, irrespective of size
12 or shape and whether or not such tobacco is flavored, adulterated,
13 or mixed with any other ingredient, the wrapper or cover of which
14 is made of paper or any other substance or material, excepting
15 tobacco;

16 (3) Sale shall mean any transfer for a consideration,
17 exchange, barter, gift, offer for sale, or distribution in any
18 manner or by any means whatsoever;

19 (4) Wholesaler shall include any person who:

20 (a) Purchases cigarettes directly from the manufacturer;

21 (b) Purchases cigarettes from any other person who
22 purchases from the manufacturer and who acquires such cigarettes
23 solely for the purpose of bona fide resale to retail dealers or to
24 other persons for the purpose of bona fide resale to retail dealers
25 or to other persons for the purpose of resale only; or

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

5 Nothing in the Unfair Cigarette Sales Act shall prevent a
6 person from qualifying in different capacities as both a wholesaler
7 and retailer under the applicable provisions of the act;

8 (5) Retailer shall mean and include any person who
9 operates a store, stand, booth, or concession for the purpose
10 of making sales of cigarettes at retail, including sales through
11 vending machines;

12 (6) Sell at retail, sale at retail, and retail sales
13 shall mean and include any transfer of title to cigarettes for
14 a valuable consideration, made in the ordinary course of trade
15 or usual conduct of the seller's business, to the purchaser for
16 consumption or use, including sales through vending machines;

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

22 (8) Basic cost of cigarettes shall mean ~~the invoice cost~~
23 ~~of cigarettes to the retailer or wholesaler, as the case may be, or~~
24 the replacement cost of cigarettes to the retailer or wholesaler,
25 as the case may be, in the quantity last purchased, ~~whichever~~

1 is lower, less all trade discounts and the normal discount for
2 cash afforded for prompt payment, but excluding any special,
3 extraordinary, or anticipatory discounts for payment within a
4 shorter period of time than the prompt payment date required for
5 eligibility for the normal discount for cash, without subtracting
6 any discounts, to which shall be added the full value of any stamps
7 which may be required by any cigarette tax act of this state and by
8 ordinance of any municipality of this state in effect or hereafter
9 enacted, if not already included by the manufacturer in his or her
10 list price;

11 (9) Division shall mean the cigarette tax division of the
12 Tax Commissioner; and

13 (10) Business day shall mean any day other than a Sunday
14 or legal holiday.

15 Sec. 2. Section 59-1505, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 59-1505 (1) Cost to the wholesaler shall mean the basic
18 cost of cigarettes to the wholesaler plus the cost of doing
19 business by the wholesaler, as evidenced by the standards and
20 methods of accounting regularly employed by him or her in his or
21 her allocation of overhead costs and expenses, paid or incurred,
22 and must include, without limitation, labor costs, including
23 salaries of executives and officers, rent, depreciation, selling
24 costs, maintenance of equipment, delivery costs, all types of
25 licenses, taxes, insurance, and advertising.

1 (2) In the absence of the filing with the division of
2 satisfactory proof of a lesser or higher cost of doing business by
3 the wholesaler making the sale, the cost of doing business by the
4 wholesaler shall be presumed to be four and three-quarters percent
5 of the basic cost of cigarettes to the wholesaler, ~~plus cartage~~
6 to the retail outlet, ~~if performed or paid for by the wholesaler,~~
7 which cartage cost, in the absence of the filing with the division
8 of satisfactory proof of a lesser or higher cost, shall be deemed
9 to be ~~three-quarters of one percent of the basic cost of cigarettes~~
10 to the wholesaler.

11 Sec. 3. Original sections 59-1502 and 59-1505, Reissue
12 Revised Statutes of Nebraska, are repealed.